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State Capture:

the Case of the Republic of Moldova

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Introduction

The Constitution of the Republic of Moldova establishes the foundation for the functioning of the state, ensuring the separation and independence of the three branches of the state power, creating a mechanism of balance between these branches and putting the basis for a state of law and democracy with a market economy. Any distortion of this mechanism may deteriorate the institution of democracy, affect the basic rights of the citizens and hinder free competition. Corruption is a major impediment for the well functioning of this mechanism. Corruption that leads to state capture is a main threat for the country's survival.

Over the last decade, Moldova has gone through several stages - from endemic corruption, to the "politicization" of the fight against corruption by eliminating political rivals and business competitors and ultimately to state capture. The events culminated in December 2016 with the attempt to legalize money and property fraudulently accumulated in recent years, and in March 2017, with the attempt to adjust the electoral system to the survival need of the governing party, which under current circumstances risks not passing the electoral threshold in the next parliamentary elections. Numerous local experts, national and international opinion leaders, as well as representatives of international institutions and development partners made public declarations about the widespread state capture in the Republic of Moldova, while authorities asked for evidence of this phenomenon.

This study will use the aforementioned statement as a hypothesis, having the objective to prove with concrete examples that the three branches of power in the Republic of Moldova are affected by the phenomenon of state capture.

State capture has serious repercussions on the rule of law, it deteriorates the democratic, economic and social development of the country. It affects the moral of the Moldovan society, distorting its image and chances for European integration. It causes a massive depopulation of the country and leads to dictatorial governance – all of the above present a serious threat to national security.

There are multiple ways to define state capture. Some are based on political corruption, others on narrow interest groups (oligarchs, military groups, kleptocrats, etc.), the third ones are rooted in economic interests that penetrate into the political sphere, affecting decision-making in the executive branch.¹

In this study, we will use a simple definition, close to that of the World Bank: state capture is an advanced form of endemic corruption, predominantly in the top level of state power, where the interests of a narrow oligarchic group significantly influence the decision making process in the country. The ways of promoting its decisions at a first glance are not always illegal, but the capture of some state institutions in the final form lead to the capture of the entire state system.

The ways to take control over state institutions are multi-dimensional. They differ from one country to another, they are continuously developing and they depend on the concrete domain of public life:

Rule of law: from appointing loyal key actors in the justice system, law enforcement and anti-corruption bodies, to the direct control over these institutions, initiation of criminal investigations against business and political competitors, blackmailing, creating collusion between prosecutors, judges and bailiffs in so-called raider attacks, money laundering and banking frauds, persecuting judges and attorneys of prosecuted persons and whistleblowers - all creating the feeling of uncertainty and loss of public trust in the rule of law.

Political and democratic area: excessive media concentration in the hands of a single owner, manipulation of public opinion to the advantage of a narrow political group, coping and blackmailing politicians, creating parliamentary majorities with the so-called turncoats that do not reflect the citizens' choice and are created to modify the national legal framework to the benefit of a narrow group of interests.

Economic and banking area: creating a system of unloyal competition, selectively offering tax cuts, tax holidays and amnesties to "club members", while applying excessive state control over the competitors, disposal of assets, cartel agreements in public procurement, deliberate devaluation or bankrupting the state enterprises to privatize them at unreasonable low prices, committing frauds in the banking sector, money laundering.

Given the multiple events that have taken place in the Republic of Moldova over the last few years, the country seems to be an eloquent example of the state capture phenomenon. The population is increasingly aware of the danger of this phenomenon for the future of the country. Therefore, in a study conducted by Transparency International – Moldova in

¹ Anticorruption in Transition: A Contribution to the Policy Debate, The World Bank, 2000,

https://books.google.md/books?id=gpBvS3O17S4C&pg=PA3&redir_esc=y#v=onepage&q&f=false

Can a Think Tank Help Expose a Captured State? Open Society Foundation, 2014, <https://www.opensocietyfoundations.org/voices/can-think-tank-help-expose-captured-state>

From corruption to state capture: A new analytical framework with empirical applications from Hungary, Corruption Research Center Budapest, 2014, http://www.crcb.eu/wp-content/uploads/2014/11/Fazekas-Toth_State_capture_PP_2014Nov.pdf

State capture report, Corruption Watch, 2016, <http://www.corruptionwatch.org.za/state-capture-report-hearings-pp-must-publish-today/>

2015, households and business people considered the control of law enforcement institutions by oligarchs as the main cause of corruption in Moldova, which is why one of the most effective ways to fight corruption in their opinion is to remove law enforcement from the control of the oligarchs.²

Also, according to the 2016 Transparency International Global Corruption Barometer, 79% of the population considers that the private interests of the oligarch have an excessive influence on the decision-making process.³ According to the Public Opinion Survey of Moldovan Residents conducted by the International Republican Institute, 89% of the population believes that the country is governed by the interests of a narrow group of people.⁴ According to the Barometer of Public Opinion of the Institute for Public Policy, about 62.4% of the respondents believe that the tendency for the establishment of a totalitarian regime⁵ has been growing in Moldova.

Taking separate decisions in favor of different groups of interest is corruption and does not necessarily represent the capture of state institutions. However, the frequency and consistency by which decisions are taken predominantly in the interest of a single group demonstrates the transition from endemic corruption - a quantitative process (multiple abuses to the private gain of different actors) to a new qualitative phenomenon - state capture (a main beneficiary dictates the rules in all branches of state power).

The assessment of the National Integrity System carried out by Transparency International - Moldova in 2014⁶ sets out the necessary conditions for the prevention of corruption in the Republic of Moldova. The gaps in this system, the lack of political will to counter corruption and the use of the anti-corruption slogans in the fight with political opponents and business competitors have gradually transformed the state system into a captured one.

The idea of this study is to carry out a concise follow-up on the assessment conducted by the National Integrity System, in particular the chapters focusing on the three branches of state power, and to look at the state decisions taken for the benefit of oligarchic interest groups.

This study is the result of a joint effort between Transparency International -Moldova, IDIS Viitorul, Legal Resources Centre from Moldova (LRCM) and Association for Participatory Democracy (ADEPT). In this collaboration, Transparency International - Moldova developed the methodology of the study, the introductory note and the conclusions. The breakdown of the work on chapters was as follows: Legislative - ADEPT, Judiciary - LRCM, Executive - IDIS Viitorul.

² Transparency International – Moldova, Corruption in the Republic of Moldova: Perceptions Vs. Personal Experience of Business People and Households, 2015, http://www.transparency.md/wp-content/uploads/2017/06/TI_Moldova_Cercetare_Sociologica_2015.pdf

³ Transparency International, Global Corruption Barometer, 2016, <http://www.transparency.md/index.php/2016/11/16/barometrul-global-al-coruptiei-2016-guverele-din-europa-si-asia-centrala-esueaza-la-capitolul-combaterea-coruptiei/>

⁴ International Republican Institute, Survey of public opinion of the residents of the Republic of Moldova, February – March, 2017 http://www.iri.org/sites/default/files/iri_moldova_poll_march_2017.pdf

⁵ Public Policies Institute, Barometer of Public Opinion, April, 2016, http://www.ipp.md/public/files/Barometru/BOP_10.2016.pdf

⁶ Transparency International – Moldova, National Integrity System, 2014, http://www.transparency.md/wp-content/uploads/2017/02/TI_Moldova_Sistemul_national_de_integritate_2014.pdf

Chapter I: Political Parties, Elections and the Legislature

The representativeness, transparency, accessibility, accountability and efficiency are key values the Parliament should embody⁷ all the more so that Moldova is a parliamentary republic. However, the Barometer of Public Opinion⁸ (BOP) shows a decrease of trust in the legislature from 41% in November 2009 to 6% in October 2016. According to the Global Corruption Barometer 2016 of Transparency International, 76% of Moldovans perceive the Parliament as corrupt and extremely corrupt.⁹ Thus, the respondents' trust in the legislative body strongly correlates with the respondents' perception of Parliament corruptibility. In the same context, the trust in political parties decreased from 29% in November 2009 to 8% in October 2016. This reflects the respondents' perception that political parties and their leaders are responsible for politicization of law enforcement and independent regulatory institutions which impacted state capture.

The politicization of the law enforcement and regulatory institutions by the Parliament

The politicization of the law enforcement and regulatory institutions by appointing and dismissing high rank officials based on political criteria, was a conceptual and deliberate decision adopted by the governing Alliance for European Integration (AEI) to use these institutions as “leverages” for “decommunization” – getting rid of the legacy of the Party of Communist of the Republic of Moldova (PCRM), which ruled the country in the period 2001-2009. Less than a month after the AEI government sworn in, on October 20, 2009, the Parliament adopted *Law no.41-XVIII* on the modification of the *Law no.158-XVI of July 2008 on public function and the statute of the public servant*. The modification directly aimed at politicization of the public service by the AEI's components. On May 21, 2010, the AEI majority amended the *Law no.793-XIV on Administrative litigation* by publishing the List of High rank officials who were to be appointed on political criteria: Chairperson, vice-chairpersons and judges of all courts of law; Judges of the Constitutional Court; Chairperson and members of the Supreme Council of Magistracy; General Prosecutor and the deputies; Director of the Intelligence Service and deputies; Director of Center for Fighting Corruption and Economic Crimes and deputies; Director of Center for Human Rights and the ombudsman. Following this Law, officials appointed in the above mentioned functions were deprived of the right to address the Administrative Court their eventual abusive political dismissal.

A similar list was adopted for the High Rank officials of the regulatory and other independent institutions, particularly: the Governor of the National Bank and deputies; Director of the National Commission for Financial Market and deputies; Chairperson and members of the Chamber of Accounts; the General Director of the Energy Regulation Agency and deputies; the General Director of the Agency for the Regulation of Electronic Communication and Information Technologies and deputies; the General Director of Anti-monopoly Agency and deputies; the General Director of the Center for Personal Data Protection and deputy; the Chairperson and members of the Council for the Audiovisual; the Chairperson and members of the Central Election Commission; the Chairperson of the Tax Collection Agency and deputy; the General Director of the Custom Service; the Director of Land and Cadastre Agency and deputy; the Director of the National Agency of Statistics and deputy; the Ambassadors, chiefs of diplomatic missions, charge des affaires, general consuls.

The first, “victim” of politicization of the law enforcement institutions was the Chairperson of the Supreme Court of Justice, Ion Muruianu, who after being dismissed by the Parliament solicited the Constitutional Court (CC) to check the constitutionality of the mentioned law. In that context, the CC adopted the Decision no.29¹⁰ of December 21, 2010, according to which a strict delimitation was imposed between state institutions of *high political interest* and of *high public interests*. The CC clarified that the officials from the institutions of high political interest may be appointed and dismissed according to the political expediency, while the officials from the institutions of high public interests should enjoy stability being irremovable during the prescribed term of mandate, being protected from political interference. The Constitutional Court published the list of institutions of high public interest and obliged the Parliament to bring the legislation in accordance with the mentioned decision. Despite the compulsory character of the decisions of the Constitutional Court, the ruling AEI coalition continued the process of politicization of the independent institutions.

The politicization of the independent state institutions had an immediate negative impact, which was publicly remarked by the Prime-minister, Vlad Filat, the leader of the major AEI's component – Liberal Democratic Party of Moldova (LDPM). Being initially one of the main proponent of institution's politicization, on July 12, 2011 Vlad Filat addressed the citizens with a public warning that the politicized state institutions were used by coalition partner as *party filters*, depending on the interest of one or another politician... the real danger being the “mafiozation” of the Republic of

⁷ http://www.ipu.org/PDF/publications/democracy_en.pdf - Parliament and democracy in the twenty-first century: a guide to good practice. p. 10.

⁸ http://ipp.md/public/files/Barometru/BOP_10.2016_anexe.pdf

⁹ www.transparency.md/index.php/2016/11/16/barometrul-global-al-coruptiei-2016-guverele-din-europa-si-asia-centrala-esueaza-la-capitolul-combaterea-coruptiei/

¹⁰ <http://lex.justice.md/md/337241/>

Moldova, rather than the eventual “communization” (power regain by communists) of the country.¹¹ In this way, the ex-Premier, Vlad Filat, recognized that the AEI’s goal of country’s *decommunization* through the establishment of political control over the law enforcement and regulatory institutions turned de facto into its *mafiotization*.

The solutions to overcome the crisis proposed by the Prime-minister were to *make the state institutions functional*, to avoid *their re-setting whenever the ruling parties change* and make them serve the needs of the population rather than the interest groups; *adopting a law on ministerial responsibility*, so that “each member of the cabinet of ministers assumes the responsibility for this activity”; *depoliticize the law enforcement institutions* — the judiciary, the Prosecutor-General’s Office, the Intelligence and Security Service (ISS), the Ministry of Interior Affairs, and the Centre for the Combating Economic Crimes and Corruption, – all the above to break the vicious circle of a corrupt system based on the excessive politicization when the appointments of high rank official are based on political criteria, in the interests of parties’ leaders.¹²

The politicization of the independent state institutions resulted in several resonance scandals related to various crimes, mainly with economic and financial character¹³ which provoked mass protests in 2015 and brought “Moldova on the brink”.¹⁴ the so called schemes of “raider attack” on the banking system of Moldova in 2011 with the participation of judges and non-interference of the state’s financial regulators; the investigation of the illegal hunting in the Natural Reservation “Padurea Domnească” which disclosed collusion schemes between the heads of the politically shared law enforcement institutions and agencies (the General Prosecutor, the Chairperson and vice-chairperson of the Court of Appeal, the Director of “Moldsilva”) and business people with private interests, etc;¹⁵ USD 20 Billion of Russian money laundering through the Moldovan banking system, some off-shore companies and with the implication of Moldovan judges;¹⁶ the USD 1 Billion fraud from the Moldovan banking system.¹⁷

The impact of party system and party finance on Parliament’s functionality

Normally, the parliamentary political configuration depends on the electoral system. In Moldova the Parliament is elected according to a full proportional system: one country – one electoral constituency. The elections are based on the closed parties’ lists which are compiled by parties’ leaders, who control the main parties’ resources: financial, frequently from obscure sources; media and communication resources, owned or controlled directly by the leaders or through dummy nominee from off-shores. The problem of lacking internal democracy in parties caused by obscure funding coming mainly from their leaders was spoken out knowingly by the Chairman of the Constitutional Court, Alexandru Tanase, as the ex- Minister of Justice (2009-2011) and former vice-chairman of the LDPM, the largest AEI’s component: “*Moldovan political parties are authoritarian entities, dominated by “Leader’s cult”, without internal democracy and political visions*”.¹⁸

The *Law on political parties*, adopted in December 2007, in Chapter VI “Patrimony and surveillance of political parties finance” provides the norms on parties’ financial support from the state budget. It is worth mentioning that the issue of party funding was addressed by the authorities at the suggestions of the international development partners. In this context, the National Anticorruption Strategy for 2011-2015 adopted by the Parliament was supplemented with the Recommendations of the Group of States against Corruption (GRECO) on transparency of political parties finances. With the support of the International Foundation for Election Systems (IFES), UNDP and OSCE, the Ministry of Justice and the Central Election Commission (CEC), elaborated in 2012 a bill for modification of the Law on political parties and other related laws to solve the problem of parties’ finance. Accordingly, the funding of political parties from the public budget was seen as a solution to diminish obscure funding. The criteria for the allocation of public funds reflect properly the citizens’ support and the perspectives for parties’ development. The bill took into account the recommendations referring to: reduction of the ceiling for private donations; elaborating clear criteria for membership subscriptions; elaborating criteria for adequate budgetary support for parties; elaborating rules for periodical income and expenditure reports; setting rules and sanctions for disobeying the reporting provisions.

In its report on Moldova: “Transparency of Party Funding”,¹⁹ of March 2013 GRECO provided a thorough analysis of the mentioned bill elaborated by the Moldovan authorities and concluded that all its nine recommendations have been partially taken into account. However, during the adoption of this Bill in the Parliament, in April 2015, some very

¹¹ <http://inprofuzime.protv.md/stiri/politic/vezi-aici-discursul-integral-al-premierului-vlad-filat.html>

¹² Ibidem

¹³ <http://www.transparency.md/en/news/corruption-news/321-digest-radiography-of-a-bank-fraud-in-moldova-from-money-loudering-to-billion-fraud-and-state-debt>

¹⁴ http://www.nytimes.com/2015/08/11/opinion/bring-moldova-back-from-the-brink.html?_r=0

¹⁵ <http://parlament.md/LinkClick.aspx?fileticket=HHg%2bPLkzX0A%3d&tabid=128&mid=506&language=ro-RO> pag.18-35

¹⁶ <http://www.independent.co.uk/news/business/news/dirty-money-at-least-19-uk-firms-under-investigation-for-an-alleged-conspiracy-to-make-20bn-seem-a6728431.html>

¹⁷ http://candu.md/files/doc/Kroll_Project%20Tenor_Candu_02.04.15.pdf

¹⁸ “National Holiday or requiem for a failed national project”, Alexandru Tănase, Radio Free Europe, August 26, 2015

<http://www.europalibera.org/a/27209223.html>

¹⁹ [https://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2013\)2_Moldova_EN.pdf](https://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2013)2_Moldova_EN.pdf)

important provisions approved by GRECO, particularly on establishing the donation ceiling for private and legal entities, limitation of donation in cash, reporting and punishments for infringements of the norms were revised to an opposite direction. Consequently, room for distorting the correct and transparent party funding was deliberately created. In this context, the financial reports of political parties for 2015 and 2016, as well as the financial reports for expenditures in the presidential elections campaign of October 30, 2016 demonstrated that the revised by the Parliament legislation on political parties' funding, adopted in April 2015, eluded the most important GRECO's recommendations.

According to the modified legislation for an electoral campaign, donations from individuals and legal entities *shall not exceed 200 and 400 nationwide average monthly salaries set for the year in question*. Thus, Parliament increased the thresholds agreed with GRECO tenfold from the level set in the draft law (respectively, 20 and 40 times). Generally, in countries with established democracies private donations are comparable to the average salary because eventual funding of parties from the public budget is calculated based on private accumulations, which grows due to the multitude of donors and not to excessive amounts of donations. However in Moldova, one of the poorest countries in Europe, a 200-fold discrepancy between the size of people's incomes and their donations is allowed.

The data from the parties' financial reports for 2016 prove that raising the threshold for donations was made to perpetuate the vicious practices of obscure funding. The previous scheme remained unchanged – money from obscure sources were distributed confidentially among parties' members and proponents who, in their turn, "donated" it to parties²⁰. Though the initial intention was to lower the donation ceiling (to about 3-4 average salaries) that would create problems in such schemes because it would need to enlarge the circle of "donors" who could leak the uncomfortable information. While when the donation ceiling is high as it is in Moldova's case (200 average salaries or EUR 50 thousand) the money from obscure sources is distributed by the "parties' funders" only among the very closed proponents who, in their turn, "donate" amounts considerably exceeding their annual incomes. In this respect, from the political parties financial reports one can see public servants donating for the ruling parties amounts exceeding several times their annual incomes. To impede the control from CEC, the reports include only the names of the donors and not their eventual occupation or income to compare it with the size of the donation. When summoned about eventual infringements of this kind, the CEC replies that it cannot develop donors' personal data, though in a small country like Moldova it is not difficult to identify mayors and other high rank officials among those who make donations exceeding several times their annual incomes.

Despite the prohibition for parties to accept cash donations exceeding an average monthly income per economy, the financial report for the first half of 2016 of the ruling Democratic Party of Moldova (DPM) showed that it got 16 millions MDL exclusively from individuals' donations, including 2/3 in cash exceeding 4-5 times the permitted ceiling for cash donations. Nevertheless the state competent authorities hesitated applying sanctions to the ruling DPM. This illegal practice of funding political parties is not the first one. The Center for Investigative Journalism made an investigation: "*How the "Kickbacks" from the Public Procurements Fatten the Budgets of the Political Parties in Election Campaigns*"²¹ and found out that little changed in using obscure funds. Thus, if during the parliamentary elections from November 30, 2014 the main sources for parties funding came from the "kickbacks" of legal entities which "managed" to win public procurement tenders, than after the legislation modification in 2015 the parties funding came from the individuals, employees of companies which had concluded fat public contracts over the past years.

In the same context, during the presidential election campaign from October 30, 2016 another mechanism for obscure parties financing was described by the investigative journalism center RISE-Moldova in the investigation "*Dodon's money from Bahamas*"²². On the eve of the presidential elections the TV channels controlled by the members of the Party of Socialists of the Republic of Moldova (SPRM), re-translating Russian channels in Moldova, received 30 millions MDL as loans from Bahamas off-shore companies. SPRM members, as individuals, took loans of hundred of thousands MDL from the mentioned TV channels to make donations to SPRM.

The described investigations are underlining that the obscure sources of funding political parties may be different, but the mechanism of receiving the money by parties is the same – excessively high threshold for donations. To overcome this problem, decreasing the donation ceiling for private persons and legal entities and revising the criteria for budgetary funding by adding to the recompense criteria new one – the capacity to attract small private donations from as many as possible proponents.

²⁰ <http://jurnal.md/ro/politic/2017/4/26/scandal-in-jurul-pd-mai-multi-oameni-indicati-in-rapoartele-financiare-depuse-la-cec-nu-ar-fi-stiut-ca-sunt-sponsorii-partidului/>

²¹ <http://anticoruptie.md/en/investigations/public-money/how-public-procurement-kickbacks-end-up-in-political-party-budgets-during-election-campaigns>

²² <https://www.rise.md/articol/banii-lui-dodon-din-bahamas/>, Dodon Igor is the leader of the Socialist Party of the Republic of Moldova (SPRM)

The impact of the politicization of the Central Election Commission

The members of the Central Election Commission (CEC) are officially appointed on political criteria. According to Article 16(2) of the Electoral Code “The Central Election Commission (CEC) consists of 9 members: 1 member is appointed by the President of Republic of Moldova, the other 8 members by the Parliament, observing a proportional representation of the majority and of the opposition. The nominal composition of the Commission is approved by Decision of the Parliament with a vote of the majority of elected MPs”.²³ The District Electoral Councils and the Precinct Electoral Bureau are as well set up proportionally to the representation of parties in the Parliament.

In 2011, the former Prime-minister and leader of LDPM, Vlad Filat, publicly recognized that his party got control over CEC.²⁴ This kind of confessions about CEC's politicization generates public conflicts and mistrust in the freedom and fairness of the electoral process in Moldova. The Barometer of Public Opinion shows that about 2/3 of Moldovans consider the elections unfair.²⁵ One of the most recent public contestation of CEC's bias behavior was related to the initiation by citizens, in 2016, of a constitutional referendum. According to Article 141(1) “The revision of the Constitution may be initiated by a number of at least 200,000 citizens of the Republic of Moldova with voting rights. The citizens initiating the revision of the Constitution must represent at least a half of the territorial-administrative unites (counties), and in each of those units should at least be collect 20,000 signatures supporting this initiative”. Despite the fact that more than 400 thousands of citizens (~15% of the citizens with the right to vote) signed for the referendum (twice more than the necessary number required by the Constitution), CEC declined the organization of the Referendum on the ground that the second condition – collection of at least 20 thousand signatures in each unit (~50-60% of the citizens with the right to vote!) in the counties was unachievable. In the mentioned circumstances, the Vice-chair of CEC, Stefan Urîtu, insisted that the Parliament solves the legal inconsistencies related to the number of necessary signature for organizing a referendum.²⁶ The Parliament convoked public debates on the issue and agreed that the second condition is unachievable because the request concerning the collection of at least 20 thousands signature in a county was not readapted after the canceled in 2003 territorial-administrative reform of 1998,²⁷ which diminished four times the counties' sizes. The MPs recognized that it was Parliament's mistake to not diminish correspondently the number of necessary signature in counties, but nevertheless they supported CEC's decision to refuse the organization of the referendum.²⁸ However, only half a year later on CEC treated indulgently the ruling DPM which leader, Marian Lupu, managed to collect and to present CEC in only 24 hours 29 thousands signature, what physical impossible, for being registered as candidate for presidential elections. Such a record normally raised the suspicions of opposition parties that DPM was advantaged by its administrative resources, illegally used. Nevertheless CEC declared that it does not matter how the signatures were collected.²⁹ This reluctance of CEC to sanction the ruling DPM for ostentatious infringement of the rules proves once more that the decisions at high level are made for the advantage of the ruling party.

The prioritization of fighting corruption by the Parliament

In 2009-2016 the Parliament adopted six governing programs³⁰ and all of them contained corruption fighting as the priority. Above that the Parliament adopted the National Strategy for Fighting Corruption for 2011-2016.³¹ Currently Moldova has a considerable important number of special documents for preventing and fighting corruption: on the conflict of interests; on Public Officer's Code of Conduct; on prevention and combating of corruption; on approval of Regulations on the operation of the anticorruption hotlines system; on application of lie detector (polygraph) testing; on verification of holders of and candidates for public offices; on professional integrity testing; on estimation of corruptibility of draft legislative acts; on approval of the Methodology of evaluation of corruption risks in public authorities and institutions; on establishment of permissible value of symbolic gifts, of gifts offered by courtesy or on occasion of protocol actions and approval of the Regulations on the evidence, evaluation, storage, use and redemption of symbolic gifts and of gifts offered by courtesy or on occasion of protocol actions.

Moldova has as well an institutional infrastructure for fighting corruption, the main institutions in the field being the National Anti-Corruption Centre, National Integrity Authority (former National Integrity Commission), the Anti-Corruption Prosecution, the Chamber of Accounts and the Information and Security Service. Nevertheless, systemic and endemic corruption remains the main problem in the country. Since 2009, when AEI came to power, Moldova's corruption index,

²³ [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)031-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)031-e)

²⁴ <http://unimedia.info/stiri/filat-declara-ca-va-face-public-acordul-secret-al-aie-41220.html>

²⁵ <http://ipp.md/libview.php?l=ro&idc=156&id=820&parent=0>

²⁶ <http://protv.md/stiri/actualitate/cec-a-respins-referendumul-constititional-republican-propus-de--1403441.html>

²⁷ <http://lex.justice.md/md/312874/>

²⁸ <http://lifestream.totul.md/ro/newsitem/1036657.html>

²⁹ <https://www.zdg.md/editia-print/politic/semnaturi-pentru-presedinte>

³⁰ <http://www.e-democracy.md/elections/parliamentary/>

³¹ <http://lex.justice.md/md/340429/>

measured by Transparency International, dropped down dramatically from position 89 in 2009 to position 123 out of about 170 countries included in the 2016 ranking.³²

In March 2016, the Government together with Parliament elaborated a Roadmap³³ on the agenda of high-priority reforms to overcome the crisis provoked by the *USD 1 Billion bank fraud*. The Roadmap was a response of Moldovan authorities to the Conclusions³⁴ of the European Union Council of February 15, 2016. Combating corruption was the first priority of the Roadmap. Accordingly, in March – July 2016, the Parliament had to adopt a set of integrity related laws: The Law on the National Integrity Authority (NIA); the Law on declaration of assets and interests which would extend the circle of subjects and objects of the declaration; laws on delimitation of competences between the anti-corruption institutions, etc. The mentioned laws were adopted and they put the basis of a new system for verification of wealth, personal interests and incompatibilities in public service, including clear provisions on penalties that can be applied for such violations. As well some technical measures have been adopted, such as extending the deadline of the National Anticorruption Strategy and amendments to the Criminal Code. The law on institutional integrity assessment was adopted and promulgated, constituting a system for testing the professional integrity of any public agent and assessing the integrity of public institutions, a mechanism of unprecedented volume in European countries and not only. Nevertheless, the mechanism of the laws could imply a number of risks to the fundamental rights and freedoms of the tested persons, if not applied in good faith. The biggest drawback in the anti-corruption field was the failure to reform the National Anticorruption Center (NAC) and maintaining the criminal investigation of small corruption cases in the competence of Anticorruption Prosecution Office. If the mandate of NAC is not clarified and the Anticorruption Prosecution Office's mandate is not reduced, combating corruption via prompt and efficient investigation of cases of high level corruption may remain at the level of declarations.³⁵ A year after the Legislature adopted the integrity package of laws; its implementation remains a problem due to the lack of a genuine political will to build a strong and impartial National Integrity Authority (NIA), which currently stays inoperable.³⁶ Thus, on the one hand, Moldovan authorities report to the development partners a successful implementation of the Roadmap, particularly the anti-corruption engagements,, on the other hand, the specialized and reformed NIA does not perform its' duties for more than a year. It seems that the more control over the state institutions the leading DPM gets, the less interest to control its' appointees by third parties it has.

Transparency of decision making process in the Parliament

Formally the activity of the Parliament fits the legal standards. In practice, the general public can obtain some information on some activities and decision making processes of the Parliament in a timely manner. However, due to the deficiencies of the legal framework, some important information of public interest remains less accessible. That is because the real power is *de facto* held by the parties' leaders of the majority coalition. The most important document for AEI functioning is the "Coalition agreements"³⁷ between its components which describes the real process of decision making. The document mentions that the main structure of alliance is the Reunion of Alliance's Leaders (the leaders of the coalition parties) who meet weekly to solve the strategic issues. The decisions adopted by the Reunion of Alliance's Leaders are absolutely lacking transparency. These decisions were passed to the hierarchically lower structure – the Council of Alliance, composed by the confidants of parties' leaders, to debate details. In its turn the Council of Alliance passed the documents to the Parliamentary Council of the Alliance and, respectively, the Presidium of the Government for being brought in conformity with the legal requirements on the legislative technique and then presented for public examination in the Government and, finally, in the Parliament. Thus, the role of the Parliament is to legalize the interests of the parties' coalition leaders. It is true that after DPM's former partners – LDPM and LP, became "escape goats" all important decisions are taken by DPM and are announced to public opinions by the DPM leader, Vlad Plahotniuc.

As for the transparency of the legislative procedure, it is reduced to posting the draft bills on the website of the Parliament. However, usually a *large number of supplementary documents is lacking: opinions of committees, opinions of the Government, opinions of the General Legal Department of the Secretariat of the Parliament, the reports of the line standing committee, information notes, and other documents according to requirements, anti-corruption expertises by the National Anticorruption Centre*. Thus, the necessary additional documents are actually available for only 5 – 10% of the draft bills.³⁸ The legal terms (15 work days since their publication on the web page) for public consultations of the bills are very frequently ignored.³⁹ The web page of the Parliament does not indicate the day of the publication or the

³² http://www.transparency.org/news/feature/corruption_perceptions_index_2016

³³ <http://dcfta.md/uploads/0/images/large/moldova-s-priority-reform-action-roadmap-key-measures-until-31-july-2016.pdf>

³⁴ <http://www.consilium.europa.eu/en/press/press-releases/2016/02/15-fac-moldova-conclusions/>

³⁵ Monitoring report on the implementation of the Priority Reform Action Roadmap (March-August 2016), ADEPT, Expert-Grup, CRJM, 2016

³⁶ <https://www.soros.md/files/publications/documents/Implementation%20of%20the%20Association%20Agreement.pdf>

³⁷ <http://unimedia.info/stiri/doc-acordul-de-constituire-a-aie-3-a-fost-publicat-documentul-are-12-pagini-98152.html>

³⁸ The study "Transparency in the Parliament's Decision Making: Legal Provisions, Applicability and Application" (ADEPT) - <http://www.e-democracy.md/files/td/transparenta-decisionala-parlament-2013.pdf>.

³⁹ Ibidem.

deadline for submitting comments, hence for civil society it is difficult to know if they are in line with their comments. Also, some important and controversial bills are adopted in the urgent procedure in a very short term without informing the society and giving no possibility to comments. In these circumstances, even though the sessions and sittings of the Parliament are accessible for being watched, the agenda and the shorthand of the sittings are posted on the web page of the Parliament, it remains difficult to follow the MPs activity, the way they vote the bills.. Moreover, within cartel agreements MPs can be required by parties' leaders to vote and later to revoke a legislative act that was passed and has already entered into force. A convincing example in this sense is the Decision of the Parliament no. 104 of 03.05.2013 on abrogating its own Decision no. 81 of 18.04.2013 on appointing the General Prosecutor.⁴⁰ Subsequently, Parliament Decision no. 104 of 03.05.2013 was declared unconstitutional by the Constitutional Court.⁴¹

The most relevant example of eluding the legal provisions on transparency of decision making process by the Parliament was the so called draft Law on capital liberalization and fiscal facilitation that was, in fact, an attempt to legalize any assets with illegal provenience against a 2% fee.⁴² The bill was registered on December 1, 2016 and voted in the first reading in the Parliament on December 16, 2016, despite the hurry it was drafted, breaching the rules of transparency in decision-making and legislative technicks, lacking the mandatory opinion of the Government, the anti-corruption expertise, a thorough justification of the document, its' expected financial and economic impact. Competent civil society organizations⁴³ and Moldova's development partners criticized content of the bill qualifying it as an attempt to officially launder the frauden money, as well as the hurry and the secrecy it was voted suspecting doubtful private interests from close to the governance circles.

Another eloquent example of violating the rigors of decisional transparency and promoting the interests of the DPM and its leader who intends to stay in power at any costs, despite the very low rating, is the recent initiative to change the electoral system in the Republic of Moldova.

In March-April 2017, two draft laws on the modification of the electoral system were passed in the Parliament of the Republic of Moldova: the draft law stipulating the changeover to the system of Parliamentary election based on uninominal constituencies submitted by the parliamentary faction of the DPM and the draft law on a mixed electoral system (where half of the deputies would be elected according to the existing system from pre-established party lists in a national constituency and the other half – on uninominal constituencies) submitted by the Socialist Party (SPRM).

On May 5, 2017, in the absence of the *expertise of the Government, parliamentary commissions notifications, assessment of the impact of these laws, anti-corruption expertise required by the legislation, the opinion of the Venice Commission*, the Speaker of the Parliament proposed to include the first draft law on the agenda of the Parliament. On the same day, following a negotiation with SPRM, the second draft law of SPRM was also included on the agenda of the Parliament. Both projects were endorsed by the Parliament's Legal Committee in just half an hour and both were voted on in the first reading. Subsequently, with the Parliament's decision, the projects were to be merged into one, based on the joint with SPRM project.

Specialized civil society organizations called the obscure attempt to change the election system a step back from democracy, condemned the arrangements between the DPM and the SPRM, the manipulation of public opinion, as well as the flagrant violation of the legal norms that have led to this decision, requiring the withdrawal of both initiatives, soliciting the development partners of the Republic of Moldova to condemn the above mentioned actions and to cease support if the Parliament adopts it in final reading⁴⁴.

The Parliament's measures vis-à-vis the USD 1 Billion banking fraud

The problems of the banking sector were in the public attentions and declared as a priority of the authorities⁴⁵ since 2012, however the so desperately needed measures⁴⁶ never were taken. After the **USD 1 Billion bank fraud** and the following triggering of the banking crisis, under the pressure of development partners and IMF, the Moldovan authorities were obliged to undertake measures to diminishing the threats of a repeated bank fraud. The authorities' intentions in this sense were reflected in the Moldova's Priority Reform Action Roadmap⁴⁷. Among the mentioned priorities were: strengthening the independence and supervisory powers of the National Bank and of the National Commission for Financial Markets; Initiating a thorough, impartial investigation of the 2014 fraud, to recover the diverted funds and to

⁴⁰ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=347741>

⁴¹ <http://lex.justice.md/md/348220/>

⁴² <http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/3503/language/ro-RO/Default.aspx>

⁴³ <http://www.transparency.md/index.php/2016/12/12/adoptarea-proiectului-legii-privind-liberalizarea-capitalului-submineaza-eforturile-anticoruptie/>

⁴⁴ <http://www.transparency.md/2017/05/19/changing-the-electoral-system-before-elections-an-attempt-of-self-preservation-for-compromised-governors/>, <http://www.transparency.md/2017/05/05/the-parliamentary-majority-is-amending-the-electoral-system-by-breaching-the-legislation-and-common-sense-undermining-the-principles-of-democracy/>.

⁴⁵ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=346871>

⁴⁶ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=348802>

⁴⁷ <http://dcfta.md/uploads/0/images/large/moldova-s-priority-reform-action-roadmap-key-measures-until-31-july-2016.pdf>

bringing the responsible to justice. These measures were necessary to re-launch the negotiations to sign a Cooperation Agreement with the IMF. Otherwise the development partners would not resume the financial support for Moldova. The cooperation Agreement with IMF was signed⁴⁸ on November 7, 2016 after the Government and National Bank of Moldova sent to IMF, on October 24, 2016, its Letter of Intent, Memorandum of Economic and Financial Policies, and the Technical Memorandum of Understanding.⁴⁹ The Government assumed on September 26, 2016 the responsibility before the Parliament to adopt the following laws: on redressing and resolution of banks; law to amend and complete the legislative acts, related to the draft law on redressing and resolution of banks; law on central securities depository and the law on issuance of state bonds and to assume the responsibility, by which the government put the burden of the accumulated debt onto the shoulders of taxpayers. The role of Parliament in the mentioned process was a passive. To the opposite, on December 16, 2016 the Parliament approved in first reading the bill on capital liberalization and fiscal facilitation.⁵⁰ According to it any individual (Moldovan citizen or his/her legal representative, such as parent, adoptive parent, guardian or trustee) may declare assets (e.g. cash, real estate, stockholdings, securities or road vehicles) that hitherto were registered in the name of other persons or not registered at all, or may reevaluate assets whose declared value was understated. That meant guaranteed legal protection (the state would neither be able to verify the origin of these assets nor apply penalties to public officials for the illegal acquisition or failure to declare these properties) for a 2% of asset value fee. The bill was to impeded the NIA and the tax authorities to verify the origins of liberalized assets and capital. In fact, the proposed capital liberalization and amnesty was to vain all dissuasive sanctions for acts of corruption included in the legislative package on integrity (confiscation of unjustified wealth, dismissal of the official from office, prohibition for a maximum period of 3 years to hold public office, etc.). According to independent experts⁵¹, the bill would it become a law would increase the impunity and high-level corruption as the interdiction imposed on the NIA to verify the legalized assets would compromise all anti-corruption reforms launched by Moldovan authorities in 2016.

Due to the pressure⁵² from civil society organizations and development partners the bill was withdrawn by the Parliament. There were reasonable suspicions that the bill on capital liberalization and fiscal facilitation was aimed at creating favorable conditions for using the stolen billion apparently legal investments and privatization in Moldova. According to the former (2010-2014) chairman of the Parliamentary Commission for Budget and Finance, Veaceslav Ioniță, a part of the fraudulent money by hidden ways returned to Moldova and invested.⁵³

The Parliament's oversight of the Government

One of the main functions of the Parliament is to provide oversight of public institutions, including the Government. Article 106 of the Constitutions provides that: "(1) The Government may assume responsibility before the Parliament upon a program, a statement of general policy or a draft law; (2) The Government is dismissed if a motion of censure, brought before within 3 days following the date of presentation of the program, of statement of general policy or of the draft law, has been passed in terms of Article 106; (3) If the Government has not been dismissed pursuant to para.2, the lodged draft law is considered to be adopted, and the program or the statement of general policy becomes mandatory for the Government".⁵⁴ Unfortunately, this constitutional instrument is abusively used to elude the parliamentary oversight of the Government. On the contrary, when very sensitive problems occur, the Government imposes its will while the Parliament remains passive, despite of Moldova being a parliamentary republic.

In this context, on July 22, 2014 the Moldovan Government has assumed the responsibility before the Parliament for the adoption of several laws, which according to the Prime Minister, were "blocked by the Parliament". During an extraordinary governmental meeting, Premier noted that the matter is about several bills which have not been adopted by the Parliament, but which are very important for the functioning of country's economy. "We are in an extremely difficult situation. A number of important bills were not accepted by the Parliament in specified terms, some were not even discussed".⁵⁵ Thus, the Government took responsibility for the draft law on: strengthening the National Anti-Corruption Center (NACC) and Money Laundering department. Later it was found out that the draft provided for special measures that would forbid suspending decisions of Money Laundering Department by the courts of law. Among the bills that were referred by the Government, there was a draft law to enhance the capacity of the NBM and the NCFM.

⁴⁸ http://en.publika.md/imf-executive-board-approved-program-for-moldova-s-funding_2630389.html

⁴⁹ <https://www.imf.org/external/np/loi/2016/mda/102416.pdf>

⁵⁰ <http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/3503/language/ro-RO/Default.aspx>

⁵¹ <http://crim.org/en/amnistia-fiscala-si-de-capital-republica-moldova/>

⁵² http://crim.org/wp-content/uploads/2016/12/2016-12-19-NP_Amnestia-fisc-capital_FINAL_en.pdf

⁵³ <http://independent.md/ionita-kroll-stie-unde-sunt-85-din-banii-din-miliardul-de-dolari-furat/#.WQdbV8aLmUk>

⁵⁴ <http://www.presedinte.md/titul3#6>

⁵⁵ http://adevarul.ro/moldova/politica/care-legilepentru-guvernul-leanca-isi-asuma-raspunderea-politica-infata-parlamentului-1_53ce19cd0d133766a8a43fe2/index.html

In the same context, two months later, on September 25, 2014 the Government announced again that it engages the responsibility before the Parliament for another package of draft laws.⁵⁶ Among bills were those on providing additional powers to the National Bank of Moldova (NBM) and the Ministry of Finance to intervene for reducing consequences of the financial crisis. Thus, the Parliament was excluded from the decision making process and conditions for providing the NBM a billion dollars credit to the three robbed banks were created.

On April 9, 2015 the Government again assumed the responsibility before the Parliament.⁵⁷ This time for adopting the Law on State budget for 2015, which was contrary to the Constitution, as according to the Constitution the adoption of the Law on state budget should obligatory be debated by the Parliament. Also on September 26, 2016 the Government again resorted to responsibility assumption before the Parliament. The documents for which the government took responsibility are the following: “the law on redressing and resolution of banks; law on amendment and completion of some legislative acts, related to the draft law on redressing and resolution of banks; law on central securities depositary and the law on issuance of state bonds, so that the Finance Ministry carries out the payment of obligations coming from the state guarantees No.807 from 17 November 2004 and No.101 from 1 April 2015. At the same time, the government approved a string of amendments and completions to the state budget law, law on state social insurances budget and law on mandatory health insurances accounts for 2016”.⁵⁸ This time the explanation was the lack of time for passing the bill through the Parliament as the time frame imposed by IMF was expiring.

Thus, four times in only two years the Government assumed its responsibility before the Parliament just to avoid debates on crucial problems and the Parliament accepted to elude its controlling responsibilities.

Parliament's accountability to citizens

One can have a general impression about the Parliament's accountability to citizens by analyzing the implementation of the official programs adopted on the bases of electoral promises. Thus, for example the AIE components fulfilled only about 30% of their quantified promises for the electoral cycle 2010-2014.⁵⁹ For the ongoing electoral cycle 2014-2018 the parliamentary parties totally changed their initial agenda⁶⁰ because of the crises provoked by the bank fraud. Before the parliamentary elections⁶¹ of November 2014 the political parties that formed the ruling majority knew in details about the bank fraud and its eventual impact, already because they were the once who created the conditions for the fraud, by changing the legal framework that regulates the bank activity. Perhaps therefore they refrained to inform public for the sake of their victory in parliamentary elections. Only after winning elections they informed the public about the banking fraud, generated by their policies, and later announced that new challenges impose the implementation of a Roadmap⁶² to overcome the effects of the banking fraud.

Nowadays the parliamentary majority is cynically waiting for citizens' appreciation of its efforts to overcome the crises generated by its actions. In this context, formally, the Parliament reports on its activities, though the information that is delivered to the general public is insufficient. The Parliament supplies statistical information for a certain period of time on the attendance of MPs to meetings, the draft bills and the legislative initiatives that were submitted and reviewed. The Secretariat of the Parliament provides reports both on its own activities and on the implementation of some policy documents such as the Strategic Development Plan of the Secretariat of the Parliament for certain periods. Certain subdivisions of the Secretariat prepare reports, such as reports on handling petitions. However, the information provided to the general public by the Parliament is insufficient to foster participation of the general public in the parliamentary decision making process.

Parliament's differentiated treatment of MP's

The coalitions based on cartel agreements among the parliamentary political parties function until conflicts between groups of interests occur. The banking scandal of 2015 provoked mass protests and *somebody had to pay the bill*, being appointed “escape goats”.⁶³ That may be the case of the former Prime-minister Vlad Filat, who was arrested in Parliament on October 15, 2015, after the General Prosecutor, invited by MPs to present his dismissal, changed dramatically the agenda of the legislative body by presenting to MPs the so called self-denunciation⁶⁴ of the main culprit for the fraud of the banking system Ilan Sor and requesting the immunity withdrawal⁶⁵ for LDPM leader. Ignoring several obligatory procedural measures, the Parliament rapidly consented to vote the immunity withdrawal and Filat was

⁵⁶ <http://www.gov.md/ro/tags/asumarea-raspunderii>

⁵⁷ http://www.publika.md/gaburici-la-parlament-ce-spun-deputatii-despre-asumarea-raspunderii-guvernului-in-fata-legislativului_2278261.html

⁵⁸ <http://www.gov.md/en/content/government-assumes-responsibility-seven-key-laws-agreement-imf>

⁵⁹ <http://www.promis.md/promisiuni/electorala-2010/>

⁶⁰ <http://www.promis.md/promisiuni/electorala-2014/>

⁶¹ <http://www.e-democracy.md/en/elections/parliamentary/2014/results/>

⁶² <http://dofa.md/uploads/0/images/large/moldova-s-priority-reform-action-roadmap-key-measures-until-31-july-2016.pdf>

⁶³ <http://independent.md/reactia-pldm-la-arestarea-lui-filat-adevaratii-vinovati-cauta-un-tap-ispasitor/#.WQbxL8aLmUk>

⁶⁴ <http://newsmaker.md/rus/novosti/chto-ilan-shor-rasskazal-pro-vladimira-filata-v-rasporyazhenii-nm-okazalsya-protok-18731>

⁶⁵ <http://www.parliament.md/LinkClick.aspx?fileticket=6a%2Fu7JWjMp4%3D&tabid=128&mid=506&language=fr-FR>

immediately put under arrest, even though he promised to release the corrupt schemes taking place particularly during the bank fraud. Perhaps therefore all sitting of the law court were declared closed, in spite of multiple requests from civil society to make them public. On June 27, 2016, after an absolutely nontransparent trial, the LDPM leader was convicted to 9 years of detention on the bases of Penal Code for crimes related to influence traffic and passive corruption.⁶⁶ In a country like Moldova very few are those who doubt that politicians are corrupted, a fact confirmed by surveys, but the nontransparent trial raised serious question marks concerning the selective justice which is transforming former partners in “escape goats”. And that’s because the politicized law enforcement institutions are serving the interests of the party which took control over them. This happened to the former DPM’s partners, which set up the Alliance for European Integration – LDPM and Liberal Party (LP).

At the same time, an indulgent treatment of those affiliated to DPM, which according to the secret protocol took control over courts of justice and prosecution institutions, can be noticed. An example is the former DPM’s MP, Valeriu Guma, who was condemned in April 2013 to four years of jail detention in Romania for bribing in 2008 the General Director of the Legal Directorate of the Authority for State Assets Recovery.⁶⁷ On October, 30, 2014, the judge delegated for the international cooperation from the Tribunal from Bucharest took the decision to require from the Republic of Moldova the recognition and execution of the criminal sentence in Guma’s case. Nevertheless the Moldovan Parliament did not intend to withdraw his parliamentary immunity to implement the provisions of the Constitutional Court decision of April 22, 2013 that stated that only reasonable suspicions about the eventual implications in corruption case are sufficient for high rank officials to be dismissed.⁶⁸ The Moldovan justice ignored the request of the Romanian authorities, and on November, 20, 2015, after the parliamentary mandate of Valeriu Guma expired, the Moldovan law court substituted the decision of the Romanian court of law vis-à-vis Valeriu Guma with a punishment of four years detention with suspension.

In the above mentioned context it is important to follow the assessments of some MPs concerning the differentiated treatment of parliamentary majority towards concrete deputies, parliamentary factions and parliamentary groups. Thus, on April 28, 2017, MP Lilian Carp, the member of the Liberal Party (LP) parliamentary faction which is part of parliamentary majority together with DPM, declared that he decided to leave the majority⁶⁹ as protest against DPM’s actions to discredit its coalition partner through politically controlled law enforcement institutions, that openly politically ordered criminal cases against the inconvenient politicians. A similar declaration, but more carefully expressed, was made by leader of LP Mihai Ghimpu, who said that a series of criminal investigations were opened against LP officials were motivated by the LP’s refuse to support the DPM legislative initiative to change the election system.⁷⁰ The same day, the vice-chair of the Parliament, representing LDPM faction, Liliana Palihovich announced the decision to renounce to her MP mandate and apologized before citizens, saying that “Democracy failed in Moldova. Values are substituted in Parliament with interests, demagoguery about values is ruling in Moldova”.⁷¹

Floor crossing phenomenon in the Parliament and its effects

The MPs floor crossing (leaving the parliamentary factions of the parties with which MPs got mandates during the elections) became recently a phenomenon in the Moldovan Parliament which apparently is inspired by DPM. After the withdrawal of parliamentary immunity and the arrest on October 15, 2015 of LDPM’s leader, Vlad Filat, on October 29, 2015 DPM voted the dismissal of the fifth AEI edition Government. The LDPM removal from power to declare it and its leader guilty for the bank fraud would affect the creation of parliamentary majority. On December 21, 2015, 14 out of 21 MPs from the PCRM were “convinced” to leave their parliamentary faction and join the DPM in framework of the ad hoc invented social-democratic platform.⁷² Thus, 14 communists, who were elected by their voter to promote Eurasian integration, unexpectedly, along with DPM, became so called promoters of European integration. At the same time, about half LDPM’s MPs, as well under the pretext of of the European integration, decided to leave their faction and together with DPM, LP and the *floor crossed* communist formed a new parliamentary majority which on January 20, 2016, against the backdrop mass protests, invested⁷³ a new Government.

In the mentioned context it is worth underlining that since 2009 only DPM was invariable part of the ruling coalition, based on cartel agreements. In this period, despite its enormous financial, media and administrative

⁶⁶ See more details in chapter “Judiciary and Anti-corruption bodies” of the present report

⁶⁷ <http://www.jurnal.md/en/politic/2016/12/30/former-pd-mp-valeriu-guma-condemned-in-romania-to-4-years-of-imprisonment-caught-up-coming-out-of-the-building-of-the-government/>

⁶⁸ http://www.constcourt.md/public/files/file/Documente%20presa/Hotarare_Sesizarea_10a_22_aprilie_2013.pdf

⁶⁹ <http://protv.md/stiri/actualitate/deputatul-pl-lilian-carp-paraseste-majoritatea-parlamentara-toate---1861301.html>

⁷⁰ <http://unimedia.info/stiri/permalink-132197.html>

⁷¹ <http://tribuna.md/2017/04/28/liliana-palihovici-si-a-depus-mandatul-de-deputat/>

⁷² <http://zugo.md/article/video-%E2%94%82-14-deputa%C8%9Bi-au-p%C4%83%C4%83sit-frac%C8%9Biunea-comunist%C4%83-%C8%99i-vor-s%C4%83-%C8%99i-fonzeze-propriul-partid.htm>

⁷³ http://adevarul.ro/moldova/actualitate/live-vot-nou-guvern-chisinau-protestatari-ameninta-intra-parlament-1_569f80bd37115986c6b6db64/index.html

resources, DPM managed to obtain at elections 12-16% of votes.⁷⁴ During the last parliamentary elections DPM obtained only 19 mandates out of 101, the 4th result among political parties. Nowadays its parliamentary faction is the largest one, officially consisting of 41 MPs but controlling an absolute majority by facilitating the floor crossing phenomenon. All parliamentary factions suffered because of the floor crossing: SPRM lost 1 MP out of 25; PCRM – 14 out of 21; LDPM – 17 out of 23; LP – 2 out of 13. Thus, DPM became the absolute beneficiary of the floor crossing phenomenon. MP Elena Botnarenco, representing PCRM factions, publicly disclosed the methods used by DPM for inspiring MPs' floor crossing: "An MP from DPM proposed me a very consistent remuneration and functions for relatives to leave the faction".⁷⁵ During the 2016 the PCRM faction tried three times to introduce on the Parliament agenda a bill condemning the MP's floor crossing but the controlled majority rejected the initiatives.⁷⁶

All the above mentioned confirms that, despite a democratic elections process, the Legislature of the Republic of Moldova is currently not representing the will of the citizens and the main decisions in the Legislature were made to the advantage of a very narrow group of interests represented by the currently ruling party – DPM and its' lider.

⁷⁴ <http://www.e-democracy.md/en/elections/parliamentary/>

⁷⁵ <http://agora.md/stiri/17126/elena-bodnarenco--citata-de-cna-dupa-ce-a-declarat-ca-i-s-a-propus-mita-de-ordinul-milioanelor-de-dolari>

⁷⁶ Ibidem

Chapter II: Judiciary and Anti-corruption Bodies

Justice sector reform has continually been on Moldova's agenda since the political changes in 2009. The Justice Sector Reform Strategy (JSRS) for 2011-2016⁷⁷ was adopted in 2011 and its implementation is part of the Association Agreement Agenda signed with Moldova in 2014. Despite the JSRS implementation, the Moldovan population's level of trust in the judiciary is decreasing. According to the public opinion barometer, in November 2011 – 74.5%⁷⁸ of the population did not trust the judiciary while in October 2016, 89.6% had very little or no trust.⁷⁹ This situation, to a great extent, is determined by the political influence of anticorruption bodies and judiciary and by the selective justice manifested in cases where interests of the political figures, including financial, are at stake.

Political involvement in the appointment of the leading persons in the judiciary and anticorruption bodies

On 30 December 2010, after the parliamentary elections of 28 November 2010, three parliamentary parties – Liberal Democratic Party of Moldova (LDPM), Democratic Party of Moldova (DPM) and Liberal Party (LP) - signed an Agreement for the creation of the Alliance for European Integration 2 (AEI 2).⁸⁰ In his speech from 12 July 2011,⁸¹ Vlad FILAT, the Prime Minister at that time, mentioned about secret annexes to the AEI 2 agreement. According to these secret annexes,⁸² not only political functions were divided among the three governing parties, but also law enforcement bodies. LDPM would propose the leadership of the Ministry of Justice and Ministry of Internal Affairs, DPM took over the General Prosecution Office and National Anticorruption Centre (NAC), and LP – the Legal Parliamentary Committee for Appointments and Immunities and the Intelligence and Information Service (SIS). In his speech of 12 July 2011, Mr. Filat mentioned that the Supreme Court of Justice (SCJ) was also a part of the secret annexes, but the documents do not mention the SCJ.⁸³ Mr. Filat noted that he would insist on the de-politisation of the judicial functions. On 15 October 2015, Mr. Filat was arrested on corruption charges and convicted in 2016, after a closed trial. After the swearing in of the new Cabinet at the beginning of 2016, a re-design of the governing influence took place and the Ministry of Justice, Ministry of Internal Affairs and Legal Parliamentary Committee was taken over by DPM. On 2 June 2017, after the arrest of Dorin CHIRTOACĂ, Chisinau mayor and LP member, LP declared that it withdraws from the governing coalition and that DPM has subordinated all law enforcement bodies, using these institutions to achieve its political objectives.⁸⁴

NAC status:

Politicians moved NAC from the Government subordination into the Parliament subordination several times after the change of power in 2009. NAC was under the Parliament administration until May 2013, when the LDPM and Party of Communists from the Republic of Moldova (PCRM) voted for its transfer under the Government subordination. After Filat's arrest on 15 October 2015, Valeriu STRELEȚ, the LDPM leader and Prime Minister at that time, initiated the dismissal procedure of the NAC director.⁸⁵ On 22 October 2015, DPM, PCRM and Socialist Party of the Republic of Moldova (SPRM) moved the NAC back under the supervision of the Parliament. The law was adopted in two readings in one day, without any public consultation. The NAC director can be elected and dismissed only by the Parliament. Experts commented that this move was made in order to save Mr. Chetaru from dismissal and that the migration of the institution following the desire of the politicians does not ensure its independence.⁸⁶ Mr. Chetaru leads the NAC since 2009.⁸⁷ The current director of NAC has led the institution since 2009 and is a political appointee from the Moldovan Democratic Party.⁸⁸

⁷⁷ Adopted by the Moldovan Parliament on 25 November 2011 (Law no. 231), in force from 6 January 2012.

⁷⁸ Institute for Public Policies, Public Opinion Barometer, November 2011, <http://www.bop.ipp.md/result?type=bar>.

⁷⁹ Institute for Public Policies, Public Opinion Barometer, October 2016, <http://www.bop.ipp.md/result?type=bar>.

⁸⁰ Agreement for the creation of the European Integration Alliance 2 (EIA 2), 30 December 2010, <http://www.e-democracy.md/files/parties/acord-constituire-aie-2010.pdf>.

⁸¹ Vlad FILAT, speech to the people, 12 July 2011, <http://inprofunzime.protv.md/stiri/politic/vezi-aici-discursul-integral-al-premierului-vlad-filat.html>, https://www.privesc.eu/ahiva/5552/Adresarea-lui-Vlad-Filat-catre-cet-tenii-Republicii-Moldova?utm_source=partner&utm_medium=widget&utm_term=live_5552&utm_campaign=redirect.

⁸² See for details the article <http://unimedia.info/stiri/doc-acordul-aie2--mina-care-a-desfiintat-aliana-cum-s-au-partajat-functiile-57321.html>.

⁸³ See for details the article <http://unimedia.info/stiri/ghimpu-a-dat-publicitati-anexele-acordului-aie-nu-e-scris-nimic-de-presedintia-csi-41257.html>.

⁸⁴ <http://www.pl.md/libview.php?l=ro&idc=78&id=6939&t=/Presatiri/Declaratia-PL-de-trecere-in-opozitie-fata-de-coalitia-PD-SPRM>.

⁸⁵ See for details the article <https://anticoruptie.md/ro/stiri/premierul-cere-demisia-sefului-cna-viorel-chetaru-sunt-general-ma-voi-conforma>.

⁸⁶ See for details the article <https://anticoruptie.md/ro/stiri/centrul-national-anticoruptie-din-nou-in-subordinea-parlamentului-expertii-este-un-ping-pong-infinit-intre-partide>.

⁸⁷ Mr. Chetaru led the NAC predecessor, the Center for Combating Economic Crimes and Corruption, from 4 November 2009 till October 2012. On 25 October 2012 he was appointed as NAC director by the Parliament, <http://cna.md/pageview.php?l=ro&idc=159&t=/Despre-CNA/Conducerea/Chetaru-Viorel>.

⁸⁸ 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-aliana-cum-s-au-partajat-functiile-57321>

Prosecution office:

As stated above, the 2010 secret annexes of the then ruling governing coalition indicated expressly that NAC and Prosecutor General's Office (PGO) were appointees of the DPM. The reform of the prosecution service was on the agenda of the authorities since 2009, however, it developed very slowly. A working group was set up by the Ministry of Justice in 2013 to draft the prosecution service concept reform and the new law on prosecution service and related legislation. An NGO leader⁸⁹ was appointed as the head of the respective working group, as an attempt to ensure some balance between the Ministry of Justice (LDPM appointee) and the Prosecutor General (DPM appointee). Although the concept for the reform and the draft law on prosecution service was ready by the end of 2013, the process of their adoption was dragged until 2016. This process showed lack of real will on behalf of the then ruling parties: LDPM, DPM and LP. Only on 25 February 2016, the Parliament adopted in final reading the new Law on prosecution service that entered into force on 1 August 2016.

According to the law, the Prosecutor General is appointed by the President at the proposal of the Superior Council of Prosecutors (SCP). On 7 December 2016, the Superior Council of Prosecutors (SCP) proposed to the President of the Republic of Moldova the appointment of Mr. Eduard HARUNJEN to this position.⁹⁰ Mr. Harunjen was nominated the winner of the contest after he had obtained the highest score from the selection board made up of the SCP members. Although the new Prosecutor General was selected according to a complex procedure provided by the new Law on the Prosecution, the way in which Mr Harunjen was interviewed raised suspicion of the civil society representatives.⁹¹ In particular, the members of the SCP superficially examined the question of Mr Harunjen's involvement in the events of April 2009 and did not ask any questions about his property, which appears to be inconsistent with his earning as prosecutor. Earlier the press published materials indicating that Mr Harunjen gave orders to close a criminal case involving the death of a person related to April 2009 events, as well that he has a luxurious house in a luxury region of Chisinau.⁹² In less than 24 hours from selection, the new Prosecutor General was approved by the President Nicolae TIMOFTI,⁹³ although president has additional mechanisms for verifying the integrity of the candidates and a new President should have taken to office in several days. A group of NGOs disapproved the way the new prosecutor was elected and requested the President Timofti to make public the information on the integrity check-up of Mr Harunjen.⁹⁴ The signatories also asked the Prosecutor General to come with explanations which would exclude any doubt regarding the legality of the provenance of his assets and the actions related to the tragic events of April 2009. In the official reply from 12 December 2016, Mr. Harunjen denied the existence of any situation that would make him incompatible with the position of the Prosecutor General.⁹⁵ However, Mr Harunjen avoided explaining the sources of his property, instead pointing out the inconsistency of the information provided by media.

The hasty appointment of the new Prosecutor General has fueled suspicions that the entire appointment process was orchestrated, his candidacy being previously decided at the political level and the appointment hurried to avoid the involvement in the selection procedure of Mr. Igor DODON, the new president of the country, who took office on 13 December 2016. It is to be noted that Mr. Harunjen worked in the anticorruption prosecution office between 22 August 2013 and 3 July 2015 (including the period of bank fraud), as first-deputy of the Prosecutor General during 3 July 2015 – 31 July 2016 and Interim Prosecutor General between 1 March – 8 December 2016, prior to being appointed as Prosecutor General. Given the distribution of bodies in 2010, GPO has been since then within the DPM "portfolio". Taking this fact into account, in conjunction with the way Mr. Harunjen was appointed, there is at least a strong suspicion that the DPM influence of the prosecution service continues.

Judiciary:

As for the leadership of the judiciary, the Superior Council of Magistracy (SCM) and the position of the President of the SCJ are particularly important for the system. The SCM is a collegial body that decides on administration of the court system, including career and disciplinary responsibility of judges, including dismissals. Hence, the quality of the SCM and its independence has a direct impact on the entire system. The position of the President of the SCJ is very important since the person holding it has two significant lines of influence over the judiciary: administratively via the SCM (as an ex-officio member) and on judicial practice via the influence / policy of the Supreme Court. The SCM is a collegial body, composed of 12 members, out of whom three ex-officio members – Minister of Justice, President of the SCJ and Prosecutor General, three law professors appointed by the Parliament (hence half of the total number of SCM members are appointed through political processes) and six judges elected by their peers, representing all three jurisdiction levels

⁸⁹ Vladislav GRIBINCEA, Executive Director of the Legal Resources Centre from Moldova, was appointed as the head of the working group.

⁹⁰ http://www.procuratura.md/file/2016-12-08_255%20hotarire%20CSP.pdf.

⁹¹ <https://www.privesc.eu/arhiva/71546/Sedinta-Consiliului-Superior-al-Procurorilor-din-07-decembrie-2016-etapa-de-interviu-si-desemnarea-ingingatorului-concursului-pentru-selectarea-candei>.

⁹² See for details the article <https://www.zdg.md/stiri/stiri-justitie/foto-casa-si-cv-ul-procurorului-general-interimar-eduard-harunjen>.

⁹³ <http://www.president.md/rom/presa/presedintele-republicii-moldova-nicolae-timofti-a-semnat-un-decret-de-numire-a-procurorului-general>.

⁹⁴ <http://crim.org/wp-content/uploads/2016/12/2016-12-09-Declaratie-numire-Procurorul-General-fin.pdf>.

⁹⁵ <http://crim.org/wp-content/uploads/2016/12/raspunsul-PG.pdf>.

(first instance, appeal and supreme courts). The current composition of the SCM offers a significant role to political appointees and this directly influences their modus operandi. However, there is a draft law on changing the Constitution to amend the SCM composition, hence in this report the focus is placed on the practice of the SCM on selection and promotion of judges, since this is a crucial element of judiciary's independence.

As to the SCJ President, although there were allegations that the position was also split in 2010 among the political parties (Filat claiming it was assigned to LP, while Ghimpu contesting that), there was never a written piece proving that allegation. The current SCJ President mentioned in an interview back in 2012 that he initially renounced at applying for the post due to lack of the then political parties' support of his candidature, but later on was convinced by family and friends to apply and finally his candidature was accepted by the Parliament. Asked about the allegations of "Antimafia" movement leader that he is Plahotniuc's man, he denied them and mentioned that he got to know Mr. Plahotniuc accidentally 12 years ago at a coffee place, when he was gravely sick and Mr. Plahotniuc recommended him a good doctor in Kyiv.⁹⁶ Allegations of Mr. Poalelungi – Mr. Plahotniuc relations remained pure allegations. One cannot firmly conclude that the SCJ is under the DPM influence, especially given the individual independence and guarantees of judges. It is important to note, however, that the SCJ has not issued so far decisions that would run contrary to important financial interests of DPM or companies related to DPM leadership. A telling example is the case that is pending before the SCJ regarding the demolition of the coffee shop Guguta in the central parc of Chisinau to be replaced with a hotel of Finpar Invest Company, directly linked with Mr. Plahotniuc. The case concerns the permit of Finpar to build a 15-floor hotel in the central parc, instead of the Guguta coffee shop. On 20 December 2015, the first instance court allowed Finpar Invest to build the hotel, but prohibited privatizing the land. The decision was contested by representatives of Chisinau municipality and Monuments' Agency mainly because the Guguta coffee shop is a historical monument. In April 2016, Chisinau Court of Appeals annulled the first instance decision, maintaining the prohibition to privatize the land. On 14 June 2017, after five postponements, the SCJ quashed the decision of Chisinau Court of Appeals and sent the case for a repeated examination.⁹⁷ In conclusion, one could infer from the SCJ practice that there are signs of DPM influence, but could not conclude that the institution is controlled by DPM.

Selection and promotion of judges. Membership in SCM affiliated bodies

Selection and promotion of judges is a crucial problem in Moldova. The legislation provides for merit-based selection and promotion and a separate body was set up for evaluating the candidate judges, the Judges' Career and Selection Board (*Career Board*). When evaluating the candidate judges or the judges for promotion, the Career Board relies on several criteria, including the results of judges' performance evaluation⁹⁸ or the candidate judges' graduation exams.⁹⁹ Hence, before a candidature for selection or promotion reaches the Superior Council of Magistracy, s/he shall pass two filters at minimum: 1) the graduation examination at the National Institute of Justice (for candidate judges) or performance evaluation (for judges) and 2) the evaluation by the Career Board. The Career Board issues reasoned decisions for each candidate / judge, with points and brief explanation for each evaluated criteria and the final points awarded. The decisions are then presented to the Superior Council of Magistracy (SCM), who shall then propose the candidates with the highest points to the President/Parliament for appointment/promotion.¹⁰⁰

However, in most of the cases, the SCM disregards the points awarded by the Career Board and does not provide any reasoning for selecting candidates with lower points. During 2013-2016, SCM consistently disregarded the decisions of the Career Board when deciding on judge selection and promotion. Most notably, at least six judges¹⁰¹ were promoted by SCM to the Courts of Appeals and at least 5 judges¹⁰² were promoted to the Supreme Court of Justice (Supreme Court), even though they had lower or even the lowest points awarded by the Career Board. It is particularly striking regarding the Supreme Court, since the 5 judges that were appointed during 2013-2016 with lower points were chosen within 8 contests, which means 62% of the total number of appointments.

In addition, during 2013-2016, several cases were noted when judges with integrity issues were appointed or promoted by the SCM, including after the President's refusal to appoint some of them, providing no reasoning that would exclude the doubts regarding candidates' integrity. A journalistic investigation¹⁰³ reported about refusals of the Presidents of

⁹⁶ See for details the interview of 20 February 2012, available at http://adevarul.ro/moldova/actualitate/mihai-poalelungi-justitia-noi-costum-pierre-cardin-stofa-autohtona-1_50ae89cf7c42d5a6639dae81/index.html.

⁹⁷ See for details <https://anticonuptie.md/ro/stiri/dosarul-guguta-csi-a-casat-decizia-curtii-de-apel-ce-urmeaza>.

⁹⁸ Since 2012, judges are evaluated in Moldova every three years, based on a set of criteria and indicators approved by the Superior Council of Magistracy.

⁹⁹ Candidate judges are of two categories: 1) graduates of the National Institute of Justice and 2) candidates with work experience in eligible legal fields that pass the graduation exam at the National Institute of Justice.

¹⁰⁰ Judges of first instance and appeal courts are appointed by the President of the country at the proposal of the SCM. The President can reject the SCM proposal once, by reasoned decision. The SCM can propose the same candidate the second time with 2/3 votes of its members and the President is obliged to appoint the judges. The judges of the Supreme Court of Justice are appointed by the Parliament, also at the proposal of the SCM.

¹⁰¹ Judges Ous, Colev, Simciuc, Negru, Balmus and Morozan.

¹⁰² Judges Stenioală, Guzun, Moraru, Toma, Pitic.

¹⁰³ „The judges with nine lives”, available at <http://anticonuptie.md/en/investigations/justice/the-judges-with-nine-lives>.

the Republic of Moldova to promote, appoint or transfer nearly 80 judges proposed by the SCM during 2005 - 2015. Among the invoked reasons are discrediting justice, lack of objectivity, possession of unjustified wealth, integrity issues etc. Despite the arguments brought in the refusals of the President, the SCM left in office or promoted no less than 55 judges. Such a situation denotes either a biased practice of unjustified refusals by the President or unreasoned disregard by the SCM of the information provided by the President to the SCM. Civil society organizations requested adequate procedures from the SCM, however, no reasoning was ever provided by the SCM for appointing or promoting judges with integrity issues.¹⁰⁴ Early 2016, a judge with the least experience among the candidates, who had not declared her full property and declared buying a Porsche Cayenne at a price of approximately EUR 500, was promoted by the SCM and the Parliament in a record time.¹⁰⁵ Later on she was elected the President of the Council of the National Institute of Justice, a public institution for initial and continuous training of judges and prosecutors.

Another important area that highlights the problematic system of judicial promotions is the way several *key positions within the judiciary have been filled in, especially since 2015*. One of the examples that illustrates this issue is the case of the deputy-president of the Supreme Court. This position became vacant in April 2015, after the former deputy-president resigned amid criminal accusations of manipulation of the Integrated Case Management System (ICMS) made by the President of the SCM in December 2014.¹⁰⁶ At the end of December 2016, no further information about criminal cases brought against the former deputy-president was made public, only reinforcing the suspicion that the SCM President's allegations were used to pressure her to resign from her position. Further developments on the vacancy strengthen this appearance. In 2015, the SCM announced three contests for filling in the position. At the third contest, on 28 April 2015, only a single candidate applied, Ms. Raducanu, one of the most outspoken SCM members, often raising issues about SCM's selective approach regarding judges' career. However, she failed to get enough votes from the SCM members. The SCM decision fails to provide any reasons why the only candidate to the contest was not appointed. Only at the end of December 2016 was the position filled by a judge not seen as a leader in the system and who was part of the judicial panels that took several controversial decisions.¹⁰⁷

On 9 February 2016, the SCM proposed the Parliament the then President of the Supreme Court, Mr. Poalelungi, to be reappointed for another mandate. He was the only candidate that participated in the contest. Several opinions were expressed regarding the fact that a single candidate for the highest judicial position might be an indicator of fear from within the judiciary to compete with the current Chief Justice. One SCM member voted against his appointment and highlighted several problems in her separate opinion.¹⁰⁸

Moldova is undergoing a reorganization of the court system, which includes merger of several first instance small courts in order to ensure courts with minimum 9 judges. In this process, five current first instance courts in Chisinau will merge into one court, which will become the biggest court in the country. Competition for the president of Chisinau first instance court was announced at the end of 2016. Only one candidate participated in the competition. He did not accumulate sufficient votes within the SCM and another competition was announced. Again, the same and only candidate applied. On 7 March 2017, he was selected by the SCM, who proposed him for appointment to the President. Media reported on several questionable judgments that the respective judge took in the past and issues with his assets statements.¹⁰⁹

¹⁰⁴ For example, in an appeal of 29 September 2014 (<http://crjm.org/ong-uri-solicita-presedintele-m-verifice-informatii-candidati-judecatori-si-admita-pe-cei-cu-reputatie-ireproabila>) several civil society groups requested the President to verify the compatibility of 5 candidate judges, about whom the press reported serious issues related to their integrity, such as unjustified or undeclared properties, conflict of interests, relations with controversial persons etc. The President appointed only one of the 5 candidates and refused the other four. Since then, the SCM has appointed three of the four candidates (Lucia Bagrin in a Chisinau court, Natalia Berbec in Hincesti court and Petru Harmanuic for Chisinau district court, currently pending appointment by the President) providing no reasoning for ignoring the issues raised in mass-media and in the President's refusal (<http://crjm.org/apel-hotarari-csm-bagrini>). The last candidate is still participating in contests for appointment as a judge. On 2 June 2015, the SCM repeatedly proposed for reconfirmation the judge Anatolie Galben at a Chisinau court, after almost six months from the President's refusal, providing no reasoning regarding the alleged integrity issues by the President. On 26 January 2016, the SCM proposed for appointment as a President of Cahul Court of Appeals of judge Serghei Gubenco, who was previously refused by the President for risk factors (<http://crjm.org/wp-content/uploads/2016/02/2016-02-08-Apel-CarieraJudecatori-ENG.pdf>). The SCM provided no reason for its repetitive decision.

¹⁰⁵ By decision no. 7/2 of 26 January 2016, the SCM proposed the Parliament to appoint Mrs. Mariana PITIC to the position of judge to the Supreme Court. Ms. Pitic did not accumulate the highest points of the JSCB evaluation, had the shortest experience as judge of all candidates, mass-media had published several materials about her property which she has not declared, as well as about the fact that she declared having procured a Porsche Cayenne with approx. 500 EURO, which is far below any probable market price for such luxurious cars. On 27 April 2016, the Parliament appointed Ms. Pitic as a judge of the Supreme Court, in spite of the fact that at that point the investigation into her income and property declarations had not been finalized by the National Integrity Commission. On the other hand, there are cases when judges were not appointed by the Parliament for several months since the SCM's proposal.

¹⁰⁶ In a press interview in January 2015, the former deputy-president of the Supreme Court, Ms. Filincova, denied the allegations, claiming that they were made to pressure her to take decisions in a few civil cases in favor of the parties "protected" by those that accused her.

¹⁰⁷ See for details <http://anticoruptie.md/ro/stiri/judecatoare-implicata-la-luarea-unor-decizii-controversate-propusa-la-functia-de-vicepresedinta-a-csi>.

¹⁰⁸ See the separate opinion to the SCM decision no. 46/3 of 9 February 2016, signed by SCM member Tatiana RADUCANU, at <http://www.csm.md/files/Hotaririle/2016/03/46-3-opinia.pdf>.

¹⁰⁹ See for the details <https://anticoruptie.md/ro/stiri/radu-turcanu-propus-pentru-functia-de-presedinte-al-judecatoriei-chisinau>.

Merit-based and transparent recruitment and promotion of judges is also noted as an issue of concern in the EU Council Conclusions on the Republic of Moldova of 15 February 2016.¹¹⁰ In 2016, GRECO report also highlighted problems with judges' appointment, noting the following in para 101:

The GET is also deeply concerned by indications that candidates presenting integrity risks are appointed as judges. The integrity of candidates is verified by the SIS and the results of this assessment are communicated to the President of the Republic and the SCM. In case of a negative assessment, the President of the Republic has to refuse to appoint the candidate proposed by the SCM. But the SCM may decide by a simple majority vote to propose the candidate again and in this case, the President has to appoint him/her. According to information gathered by the GET, this occurred in nine cases in 2015. All the judges concerned were proposed again by the SCM and finally appointed. It is likely, therefore, that candidates presenting integrity risks are appointed as judges, all the more since the SCM confirmed to the GET that the integrity of candidates was not assessed by them during the selection process, as this was seen as the SIS's sole prerogative. In view of the detrimental effect of such questionable practices on public confidence in the SCM's decisions and in the selection process of judges, a system needs to be devised in order to avoid making questionable appointment proposals to judicial positions.¹¹¹

The above examples indicate towards a selective approach on the promotion of judges, in particular to the highest court, both on behalf of the SCM and of the Parliament. Court presidents still have several administrative tools that can exercise influence on judges, hence the way promotion is done regarding court presidents has a direct impact on the quality and independence of the entire system. The selective approach regarding appointments and promotions suggests that the SCM and the Parliament promotes loyalty over merit, otherwise there is no reasonable explanation why SCM does not reason its decisions when ignoring the Career Board results and when it proposes a candidate that was initially refused by the President. Such practice sends the message that individual beliefs of SCM members matter more than transparent and merit-based appointments, which will lead to a complacent and obedient to the SCM judiciary. Society will continuously have a low trust in a system that appoints and promotes judges based on individual / clout beliefs rather than clear criteria. In the longer term, this kind of promotions encourages loyalty to the leadership of the system at the expense of respect of law and procedures. Single candidates for key judicial positions is a sign of at least a dysfunctional system if not more. A hierarchical system created within judiciary gravely affects the independence of judges. Moreover, Parliament's selective approach¹¹² suggests a direct interference, at least of the majority coalition, with the judiciary. In a country with systemic corruption across all branches of power, the collusion between judiciary and parliamentary coalition is very problematic. This is a dangerous approach for the functioning of judiciary and the rule of law in general.

SCM affiliated bodies:

In the last two years, at least two important positions in the SCM affiliated bodies were filled by persons directly linked with the DPM. For example, on 23 June 2015, following a public contest,¹¹³ Mr. Alexandr CAUIA was elected to the position of member of the Board for Performance Evaluation of Judges of the SCM. The legislation expressly prohibits members of party to be appointed as members of the SCM Boards. Mr. Cauia worked as member of the Board between 23 June 2015 and 6 April 2016, when the SCM admitted his resignation request.¹¹⁴ Mr. Cauia resigned after information on his incompatibility, namely his involvement in political activity as DPM member, appeared in mass-media.¹¹⁵ It is not clear if the SCM verified the information from Mr. Cauia's CV and why it was not vigilant to exclude any political involvement in the activity of its boards. The SCM decision on appointment of Mr. Cauia contains no reference to the incompatibility of the Board's member, although there was sufficient evidence in this respect.¹¹⁶

Vitalie Gamurari, a law professor, was appointed as a member of the Judges' Disciplinary Board on 10 November 2015.¹¹⁷ On 27 March 2017, the President of the DPM presented Mr. Gamurari as the new spokes person of the DPM at

¹¹⁰ Conclusion no. 7, available at <http://www.consilium.europa.eu/en/press/press-releases/2016/02/15-fac-moldova-conclusions/>.

¹¹¹ GRECO report available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c9b1a>.

¹¹² Selective approach manifested by rushed examinations and approvals of some candidates, while protracting the appointments of other, as mentioned above regarding the cases of judges Filincova, Pitic, Turcan.

¹¹³ Information on contest available here: <http://csm.md/files/Hotaririle/2015/19/456-19.pdf>.

¹¹⁴ Information on resignation available here: <http://csm.md/files/Hotaririle/2016/10/227-10.pdf>.

¹¹⁵ See the article <https://anticoruptie.md/ro/stiri/conflict-de-interese-noul-presedinte-al-organizatiei-de-tineret-a-pd-este-si-membru-al-colegiului-de-evaluare-a-performantelor-judecatorilor>.

¹¹⁶ Information on Mr. Cauia activity in the DPM <http://www.pdm.md/ro/noutati/stiri/noii-lideri-ai-tineretului-democrat-alesi-cadrul-unui-eveniment-de-anvergura>.

¹¹⁷ See the Superior Council of Magistracy decision no. 840/34 of 10 November 2015.

a press-briefing.¹¹⁸ On 28 March 2017, the SCM accepted Mr. Gamurari's resignation as a member of the Disciplinary Board.¹¹⁹

Combating corruption and ensuring accountability within the judiciary

Despite of the existence of anticorruption tools, their implementation within the judiciary is deficient. The judicial and anti-corruption bodies do not react timely when serious breaches are committed by judges. Crucial journalistic investigations are generally ignored. The lack of firm and timely actions by law enforcement bodies when irregularities committed by judges are discovered, lead to the conclusion that the system is not ready to fight systemic corruption within the judiciary and that this is backed up at the political level in order to misuse the system when it is necessary.

Anticorruption tools:

Only three out of the nine anti-corruption tools are applied in the court system (declaring gifts, running anti-corruption hotlines and random distribution of cases).¹²⁰ Although, under the law, the polygraph testing of candidates for the function of judge and prosecutor should be put in place by 1st January 2015, this testing is not applied in practice so far. The SCM did not find any case of *ex-parte* communication (the judge's interdiction to communicate with the trial participants or other persons, in relation to a case examined by the judge, outside court hearings). Although there is a regulatory framework for the Service for Intelligence System (SIS) verification of holders and candidates for judges, the instrument is only partially enforced, in a selective manner. There are cases of repeated proposals of judges and candidates by the SCM, poorly motivated, regarding the appointment / promotion in the positions of judge of persons in respect of whom corruption risks have been identified.¹²¹ The legal framework on the declaration and control of the judges' personal wealth and interests in force until 1 August 2016 was not clear enough and only one judge was sanctioned with a fine of MDL 1,500 (about EUR 750).¹²² In some obvious cases of breach of the property declaration regime, the competent institution did not apply sanctions.¹²³

The new institutional integrity assessment system adopted in 2016, which is also applicable to judges, is a new anticorruption tool that is highly debatable from the human rights perspective. The mechanism was initially introduced in 2013 as integrity testing, which allowed integrity testers to provoke public officials and if the latter failed, disciplinary sanctions, including dismissal, would have applied. The Venice Commission¹²⁴ highlighted several issues of the mechanism contrary to the fair trial standards, including lack of proper judicial review and risks of abuse of the mechanism by the testing institution. The Constitutional Court¹²⁵ declared unconstitutional several provisions of the Law no. 325 that introduced integrity testing. The Law no. 102 of 2016 amended the Law no. 325, introducing institutional integrity evaluation, with integrity testing as one of its stages. The new mechanism still does not provide for proper judicial review of integrity testing, it does not require a genuine reasonable doubt for initiating a professional integrity test for a specific person, nor is there a guarantee that integrity testers will not incite to committing the illegality. The new system also creates prerequisites for unlimited influence by the NAC of any public entity. Such a provision raises questions about the possible interference from the NAC and the SIS in the independence of the judiciary. A similar mechanism does not exist in any European country. As provided by law, this mechanism leaves room for abuses.¹²⁶

¹¹⁸ See for details the article <https://anticoruptie.md/ro/stiri/un-membru-al-colegiului-disciplinar-al-csm-purtator-de-cuvariant-al-pd-reactii>.

¹¹⁹ See for details the article <https://www.zdg.md/stiri/stiri-politice/csm-a-acceptat-demisia-noului-purtator-de-cuvariant-al-pdm-si-a-anuntat-concurs-pentru-functia-de-membru-al-colegiului-disciplinar/comment-page-1>.

¹²⁰ Centre for Analysis and Prevention of Corruption, Doar 3 din 9 instrumente anticoruptie se aplică în sistemul judecătoresc (Only 3 out of 9 anti-corruption tools are applied in the judiciary), <http://capc.md/ro/events/348.html>.

¹²¹ Centre for Analysis and Prevention of Corruption, Assessment Report on the Implementation of the Anti-Corruption Instruments in the Judicial System, Chişinău, May 2017, page 5, http://capc.md/files/RAPORT%20DE%20EVALUARE_FINAL_2.05.2017_versiune%20finala.pdf.

¹²² Centre for Analysis and Prevention of Corruption, Assessment Report on the Implementation of the Anti-Corruption Instruments in the Judicial System, Chişinău, May 2017, page 5, http://capc.md/files/RAPORT%20DE%20EVALUARE_FINAL_2.05.2017_versiune%20finala.pdf.

¹²³ On 28 April 2016, the National Integrity Commission (NIC) initiated a procedure to check the declaration of income and properties by Mariana PITIC. Mrs. Pitic mentioned in the statement of income and properties for 2015 that the Porche Cayenne was purchased at the price of MDL 11,000 (about EUR 500). NIC did not see any problem in the extremely low price of the car compared to the market price, but found that Mrs. Pitic did not indicate in the declaration for 2015 the right to use an apartment and a car model "Lexus LX 470". Thus, NIC has found a breach of the obligation to declare the assets by Mrs. Pitic (art. 4 para. (1) b) of Law no. 1264), but concluded that this violation was not intentional and, therefore, the case was closed. Mrs. Pitic received a simple warning to comply in the future with the legal provisions of declaration of income and assets. One day before NIC decision, Mrs. Pitic was promoted by the Parliament as a judge at the SCJ. See the NIC decision of 14 July 2016 at <http://www.zdg.md/wp-content/uploads/2016/07/Pitic-act-de-constatare.pdf>.

¹²⁴ See Venice Commission Opinion of 15 December 2014 regarding the integrity testing mechanism at [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2014\)039-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)039-e).

¹²⁵ See the Constitutional Court decision of 16 April 2015 on integrity testing at <http://constcourt.md/ccdocview.php?tip=hotariri&docid=532&l=ro>.

¹²⁶ Centrul de Resurse Juridice din Moldova, Buletin informativ nr. 11, iulie-septembrie 2016, pag. 5, <http://www.crjm.org/wp-content/uploads/2017/02/CRJM-17-03-09-Newsletter-11-ENG.pdf>.

According to NAC, the system of random distribution of court cases (ISMC) is vulnerable and can be manipulated through the human factor. The technical gaps offer the possibility of distributing a file to a particular judge.¹²⁷ In December 2014, SCM notified NAC about alleged manipulation of ICMS at the SCJ in 22 cases during January-November 2014. As a result, the cases were assigned to Mrs. Svetlana FILINCOVA, Deputy President of the SCJ. In February 2015, a criminal case was initiated.¹²⁸ In April 2015, Mrs. Filincova resigned from her position. After this, no further information was made public about this criminal case, reinforcing the suspicion that the SCM's complaint was used to pressure her to resign.

Disciplinary responsibility:

The mechanism of disciplinary responsibility of judges functioning from 1st January 2015 has many flaws. Law no. 178 on the disciplinary liability of judges created a complicated judges' disciplinary liability mechanism, with five stages involving the following bodies: 1) examination of the complaint by the Judicial Inspection, which can reject or accept the complaint; 2) examination of admissibility of the complaint by the Disciplinary Board's admissibility panel, which can reject or admit the complaint; 3) examination of the case by Disciplinary Board, which can find or not a disciplinary offence; 4) examination of the appeal to the Disciplinary Board's decision by the SCM, which can maintain, annul or amend the Board's decision and 5) examination of the SCM's decision by the SCJ, which can maintain, annul or amend the SCM decision.¹²⁹ Judicial Inspection has a selective practice to investigate the disciplinary cases of judges. In a number of cases involving the chairpersons of courts or judges from higher courts, the inspectors-judges dismissed as manifestly unfounded complaints which had elements of disciplinary offences, defended the judges before the Disciplinary Board and the SCM and did not investigate cases sufficiently well, while cases were submitted before disciplinary bodies lacking evidence.¹³⁰

On 18 March 2016, in the case of former President of Centru district Court, Ion Țurcan, the Disciplinary board of the SCM terminated the disciplinary proceedings brought against him on the grounds of lack of evidence. It seems that the investigation of the case by the Judicial Inspection was deficient. SIS accused Mr. Țurcan of unjustified receipt of goods from a controversial person and influencing some judges in order to issue particular judgments, from his position of court president. The judge inspector who was in charge of the case, Mr. Valeriu Catan, was in conflict of interest with the judge Țurcan, since the latter examined a case which involved a company where one of the co-owner was the wife of Mr. Catan.¹³¹ In another case, the Judicial Inspection did not take into account and did not attach an audio recording that was presented as evidence in a case against Mr. Oleg MELNICIUC, the President of Rîșcani Court. The case concerned an improper conduct of Mr. Melniciuc, who shouted at a lawyer in a criminal court hearing, threatened the accused with the most severe sanction if his guilt is found, and addressed in an undignified manner to a witness. The Disciplinary Board has discontinued the disciplinary proceedings on the grounds that no misconduct was found due to lack of evidence.¹³²

In several cases where judges from the SCJ are involved, the CSM annulled the disciplinary sanction imposed on judges. One of the relevant cases is the one against the judge of the Center Court, Garri Bivol, and the judges of SCJ, Iulia Sârcu, Galina Stratulat, Iulia Oprea and Ion Druță ("Basconslux" case). In this case, the judges ordered the state budget to pay the amount of MDL 14 mill. (about EUR 700,000) for the demolition of the Republican Stadium, in the absence of a written contract between Basconslux and the state authorities, without a record of the contract with the State Treasury and without organizing a public contest. Initially, the Judicial Inspection rejected the complaint filed by the Ministry of Finance as manifestly unfounded. The Admissibility Board quashed the Judicial Inspection's decision and sent the case to the Disciplinary Board. In examining the "Basconslux" case, many dubious circumstances were found, such as the admission of the late Basconslux claim for damages, without paying the court fee in the amount stipulated by the law, the admission of a penalty of MDL 6 mill. (about EUR 30,000) without establishing the period for which the penalty was calculated, etc. In these circumstances, it is unclear to what extent the Judicial Inspection carried out sufficient checks and why the complaint in this case was rejected as manifestly unfounded. The Disciplinary Board has applied reprimand to SCJ judges, but this sanction has been annulled by the SCM on the grounds that judges cannot be

¹²⁷ National Anticorruption Centre, Analytical study on the deficiencies registered in the system of random distribution of cases "The Integrated Case Management System", Chișinău, 2016, page 14, http://cna.md/public/files/studiu_piqd.pdf.

¹²⁸ <https://www.zdg.md/editia-print/investigatii/dosarul-fraudelor-de-la-csj-fara-ex-vicepresedintele-instantei>.

¹²⁹ Legal Resources Centre from Moldova, Assessment of Needs to Improve the Legal Framework on the Disciplinary Liability of Judges, Chișinău, 2016, <http://crjm.org/wp-content/uploads/2016/04/CRJM-Politici-8-Disciplinar-ENG.pdf>.

¹³⁰ Legal Resources Centre from Moldova, Analiza legislației și practicii privind răspunderea disciplinară a judecătorilor 2015-2016 (Analysis of legislation and practice on disciplinary liability of judges 2015-2016), pages 16-17, http://crjm.org/wp-content/uploads/2016/12/CRJM_2016.11-DPP-Raspundere-disciplinara_fin.pdf.

¹³¹ Legal Resources Centre from Moldova, Newsletter no. 9, January-March 2016, page 6, http://www.crjm.org/wp-content/uploads/2016/06/CRJM_Newsletter-9-ENG.pdf.

¹³² Legal Resources Centre from Moldova, Newsletter no. 8, October - December 2016, page 4, <http://www.crjm.org/wp-content/uploads/2016/05/CRJM-Newsletter-8-eng.pdf>.

held liable for the adoption of judgments.¹³³ Another case regards the SCJ judge, Ion Druță, who participated twice in the examining of the same case. He upheld the court action lodged by a lawyer in the first instance court and established that a foreign company had to pay him more than MDL 3 mln. Later, as a judge of the SCJ, Mr. Druță took over the review application and upheld the judgement delivered by him in the first instance, ordering the payment of MDL 3 mill. from the state budget. On 27 March 2015, the Disciplinary Board sanctioned him with a reprimand. On 2 June 2015, the SCM invalidated the disciplinary proceedings and cancelled the disciplinary sanction on the ground that the limitation period passed and the law did not prohibit the repeated participation of examining the case in the procedure of review.¹³⁴ The cases regarding Mr. Druță are important to be noted since he is the President of the Judges' Association and included on several important panels at the SCJ. When high positioned judges get a preferential treatment, it sends a message of impunity and selective approach within the judiciary.

Hence, anticorruption tools are not really used within the system itself, while disciplinary responsibility mechanism is used selectively and has a series of loopholes. This sends a very negative message about the judiciary and the real will to fight corruption in the country.

Prosecution of cases involving state financial interests

In the "Russian Laundromat" case, during 2010-2014, around 20 billion USD have been laundered from Russia to various European states via Moldova, including due to "legalization" of these operations by Moldovan courts via a simplified procedures (procedure in ordinance¹³⁵).¹³⁶ Although the Superior Council of Magistracy was aware since 2012 about the involvement of judges in these cases,¹³⁷ they did not take action until the autumn of 2016. Several judges involved in such cases were either evaluated very positive (Iurie Hirbu¹³⁸) or promoted to administrative positions (Serghei Popovici) or to Courts of Appeal (Ștefan Nița¹³⁹ and Serghei Gubenco¹⁴⁰) during 2014-2016.

Since 2014, the media has issued several investigations about the schemes in the "Russian Laundromat", but no concrete action has been taken by judicial or other law enforcement bodies.¹⁴¹ Only in the fall of 2016, several National Bank employees, judges and bailiffs were arrested. At the press conference held on 21 September 2016, the Head of the Anti-Corruption Prosecutor's Office and the head of the General Investigation Directorate at the NAC declared that the criminal investigation of the "Russian Laundromat" case began in 2014.¹⁴² Officials explained that criminal prosecution against 16 judges and 4 bailiffs were initiated only one week before. They avoided answering if the names of the judges were provided by the businessman Veaceslav Platon,¹⁴³ arrested and extradited from Ukraine on 29 July 2016.

Officials stated that the 2014 public interventions of the SCJ chairman Mihai Poalelungi and the ex-governor of the NBM, Dorin Drăguțanu, have compromised the investigation carried out by the NAC Anti-Money Laundering Service. The

¹³³ Legal Resources Centre from Moldova, *Analiza legislației și practicii privind răspunderea disciplinară a judecătorilor 2015-2016* (Analysis of legislation and practice on disciplinary liability of judges 2015-2016), pages 17-18, http://crjm.org/wp-content/uploads/2016/12/CRJM_2016.11-DPP-Raspundere-disciplinara_fin.pdf.

¹³⁴ Legal Resources Centre from Moldova, Newsletter no. 6, April - June 2015, page 5, <http://www.crjm.org/wp-content/uploads/2015/09/Newsletter-no-6.pdf>.

¹³⁵ The ordinance procedure, provided by the Civil procedure code, is a simplified procedure through which the judge, unipersonal, issues a court order (ordinance) that allows collecting / cashing in of an amount of money or reclaiming goods from the debtor, based on the written materials provided by the creditor).

¹³⁶ For more details on the money-laundering scheme and the arrest of judges in 2016, see one of the investigating journalistic source of 2014:

<https://www.rise.md/articol/operatiunea-ruseasca-the-laundromat/>; Press conference of the head of the Anticorruption Prosecution Office and the head of the criminal investigation of the National Anticorruption Center of 21 September 2016 (http://www.realitatea.md/live-viorel-morari-si-bogdan-zumbreanu-conferinta-de-presa-privind-bilantul-operatiunii-de-retinere-a-celor-15-magistrati-si-3-executori-judecatoresti-pentru-fapte-de-coruptie_45501.html). Also see a more recent investigation at <https://www.theguardian.com/world/2017/mar/20/british-banks-handled-vast-sums-of-laundered-russian-money>.

¹³⁷ The SCM knew about the "Russian Laundromat" back in 2012 when the Security and Intelligence Service (SIS) was notified of the actions of Judge Iurie HIRBU at Telenești Court. At that time, the SCM took note of the information provided by the Judicial Inspection that the judge certified the debt of USD 30 million on the basis of unauthenticated copies of documents. The SCM also noted the intention of a member of the SCM to initiate disciplinary proceedings against that judge and forwarded the materials to the General Prosecutor's Office. See for details the SCM decision no. 812/38 of 8 December 2012 in Romanian, <http://csm.md/files/Hotaririle/2012/38/812-38.pdf>. In 2014, the SCJ analyzed the court practice on this issue and found several misconduct by judges. The findings were brought to the attention of prosecutors, NAC and SCM. In May 2014, SCM took note of this information but did not order any further investigation or disciplinary proceedings. See for details the SCM decision no. 470/16 of 27 May 2014 in Romanian, <http://csm.md/files/Hotaririle/2014/16/470-16.pdf>.

¹³⁸ Between 2012-2014, Judge Iurie Hirbu was not sanctioned in disciplinary procedure and in February 2015 he was evaluated "very good". See more details: Performance Evaluation Board, decision no. 18/2 of 13 February 2015, <http://csm.md/files/Hotaririle%20CEvaluare/2015/02/18-2.pdf>.

¹³⁹ Superior Council of Magistracy, decision no. 769/30 of 20 October 2015, <http://csm.md/files/Hotaririle/2015/30/769-30.pdf>.

¹⁴⁰ Superior Council of Magistracy, decision no. 8/2 of 26 January 2016, <http://csm.md/files/Hotaririle/2016/02/8-2.pdf>.

¹⁴¹ <https://www.rise.md/articol/operatiunea-ruseasca-the-laundromat/>; <http://www.ziarulnational.md/spalatorii-de-miliarde/>;

<https://anticoruptie.md/ro/investigatii/justitie/prin-intermediul-sistemului-judecatoresc-din-r-moldova-au-fost-spalate-18-miliarde-de-dolari-din-2010-incoace-ii>.

¹⁴² See video press-conference http://www.realitatea.md/live-viorel-morari-si-bogdan-zumbreanu-conferinta-de-presa-privind-bilantul-operatiunii-de-retinere-a-celor-15-magistrati-si-3-executori-judecatoresti-pentru-fapte-de-coruptie_45501.html.

¹⁴³ See details on Platon case below.

information provided to Poalelungi by this service in February 2014 was confidential and the two-year work of this service in the investigation of money laundering cases was damaged after the release of this information in the mass-media.¹⁴⁴ According to IDIS Viitorul, the actions of both Mr. M. Poalelungi and the former governor D. Drăguțanu could have been coordinated, with the purpose of transmitting clear signals to those involved in conducting suspicious operations.¹⁴⁵ According to an analysis conducted by IDIS Viitorul, the courts have had a significant role in this case, because the money was legalized through court orders. The majority of magistrates that issued court orders came from the Rîșcani District Court. The then president of this court is now the President of the SCM. IDIS Viitorul concluded that judges were aware of the illicit nature of transactions and the entire criminal structure of the actors involved in these activities. The reason for which those 15 judges have adopted decisions in favor of criminal networks is that they have been assured that they will have all the necessary support from higher political and judicial factors.¹⁴⁶ This clearly demonstrates political involvement in the sphere of justice in the interests of narrow circles.

The case "Russian Laundromat" clearly shows the lack of involvement of the SCM in cases when there are enough information of grave breaches of the law and of the financial security of the state. Moreover, in April 2014, SIS notified SCM on tendencies of subordination and concentration of control over the major financial institutions in the country, at the disposal of some companies and individuals in the last period. Without disclosing the information, SCM stated that some courts in the country admitted violations of the law when deciding on the insurance measures of the court actions.¹⁴⁷ There is no evidence that SCM initiated disciplinary or criminal proceedings on these violations, even if it is clear that they envisaged either the money laundering actions or the "billion theft".

Related the "billion theft" case,¹⁴⁸ there is some information on several cases that were initiated against the deputy of the National Bank, the director of the Economy Bank, the chairman of the Administrative Council of the Economy Bank at that time, Ilan Shor, and the businessmen Veaceslav Platon and other less public persons. It is difficult to mention what is the exact state of affairs in investigating the "billion theft" as the law enforcement bodies or other state institutions do not inform periodically the society information on this issue. Kroll company was hired for an international audit investigation and issued already two reports. The first one was made public by the Speaker Andrian Candu, while the second is still not published. Although the NAC director declared in May 2015 that their conclusions are "fiction" and cannot use the report as an evidence in court,¹⁴⁹ the information in Kroll reports is valuable information and shall be used in court alongside other evidence (as confirmed later on by the Anticorruption Prosecution head, Viorel Morari).

According to the declarations to the ex-chairman of the NAC Anti-Money Laundering Service, Mihail GOFMAN, in 2013, the ex-Prime minister Leancă created a secret working group to provide a real situation of the financial-banking system. The group included Gofman members from the NBM, NAC, the National Commission for Financial Markets and others. According to Mr. Gofman, the group presented a report at the end of 2013 that was sent to the leadership of the country, including the NAC.¹⁵⁰ According to the report, two groups benefited from non-performant credits from the three banks: Shor group and Platon group.¹⁵¹ According to Mr. Gofman, after issuing the report, the members of the working group started to be intimidated. Mr. Gofman was dismissed from NAC in April 2014. On 25 January 2015, Mihai Bologan, head of Section at the NBM was found dead in his own apartment after gas intoxication.¹⁵² Another NBM representing member, Mihai Dohotaru, was arrested in the fall of 2016. Mr. Leancă denied the existence of the working group and of the report, but declared that Mr. Gofman was dismissed from NAC at his request.¹⁵³

The lack of actions from the NAC are very difficult to understand, especially taking into account that they were aware of the real situation in the financial-banking system. Taking into account the political influence of DPM over NAC, the only reasonable explanation is that NAC did not action at the DPM political command.

¹⁴⁴ http://adevarul.ro/moldova/economie/vasile-Sarco-seful-serviciului-prevenirea-combaterea-spalarii-banilor-rusia-nu-colaboreaza-dosarul-spalarii-bani-1_5368512b0d133766a864a5ef/index.html.

¹⁴⁵ IDIS Viitorul, Operațiunea Laundromat: Analiza actorilor și a acțiunilor întreprinse (Laundromat Operation: Analysis of the actors and actions taken), Chișinău, 2017, page 12, http://www.viitorul.org/files/library/Puterea%20hibrida_site.pdf.

¹⁴⁶ IDIS Viitorul, Operațiunea Laundromat: Analiza actorilor și a acțiunilor întreprinse (Laundromat Operation: Analysis of the actors and actions taken), Chișinău, 2017, pages 15-16, http://www.viitorul.org/files/library/Puterea%20hibrida_site.pdf.

¹⁴⁷ Superior Council of Magistracy, decision no. 324/12 of 8 Aprilie 2014, <http://csm.md/files/Hotaririle/2014/12/324-12.pdf>.

¹⁴⁸ „Billion theft” or „billion fraud” case are used throughout the report to refer to the disappearance of around 1 billion USD from Moldovan banking sector, including the nearly a third of the National Bank Reserves, or the equivalent of 15% of Moldovan GDP, within several years, with the information publicly released at the end of 2014. For a detailed explanation of the issue see <http://www.transparency.md/2016/12/20/radiography-of-a-bank-fraud-in-moldova-from-money-laundering-to-billion-fraud-and-state-debt/>.

¹⁴⁹ See for details the article <http://agora.md/stiri/8542/video-chetra-ur-banii-sunt-in-tara-trebuie-sa-ne-clarificam-cu-aeroportul>.

¹⁵⁰ See for details the articles <http://agora.md/stiri/20559/doc-secret-gofman-i-a-dat-lui-chetra-ur-lista-companiilor-lui-shor-si-platon-care-au-scos-4-2-mlrd-lei-din-sectorul-bancar>, <http://newsmaker.md/rus/novosti/grupovaya-poruka-o-problemah-v-bankah-rukovodstvo-moldovy-znalo-zadolgo-do-krazhi-25602>, <http://newsmaker.md/rus/novosti/bylo-chetko-vidno-chto-shlo-moshchnevshie-potroshenie-bankovskoy-sistemy-eks-sotru-25927>.

¹⁵¹ The first Kroll report confirmed that the Shor group was among the main beneficiaries. The following Kroll reports have not been published.

¹⁵² See for details the article <http://www.zdg.md/editia-print/investigatii/morti-suspecte-in-dosarul-miliardului>.

¹⁵³ See for details the article <http://agora.md/stiri/20362/leanca-despre-gofman-acest-om-a-fost-demis-de-la-cna-la-insistenta-mea-e-doar-un-instrument-al-cuiva>.

Selective justice: initiation, investigation and examination of cases by courts

The years of 2015-2016 were marked by several high profile the cases of corruption, including the case of former Prime Minister Vlad Filat, the case of businesspersons Ilan Shor and Veaceslav Platon. The criminal cases against the former Prime Minister Chiril GABURICI and the court decision in the case of the former Moldovan deputy, Valeriu GUMA, raises reasonable suspicions. Judiciary and anti-corruption bodies have demonstrated very different approaches to investigation and examination of these cases depending on the political affiliation of the person.

On 27 June 2016, former Prime Minister **Vlad Filat** was sentenced by the Buiucani District Court to 9 years in prison for passive corruption and trafficking of influence, a ruling maintained by SCJ on 22 February 2017.¹⁵⁴ The magistrates found that Mr. Filat took bribes from Mr. Ilan SHOR to facilitate the latter's business, as well as taking control of Economy Bank. The criminal case against Mr Filat was send to court in December 2015, and on 5 January 2016, the judges decided to examine it behind closed doors. Examination of the case in closed hearing was requested by the prosecutor, who argued that the Prosecutor's Office is still working on a case file related to the case under examination, and examining the case in public hearing could hinder the accumulation of evidence and harm the secret of that investigation in the second file. Mr. Filat requested that the case be examined in public. The judges subscribed to the prosecutor's arguments, finding that the reasons invoked by the prosecutor justified the ban on the participation of the press and the public at the hearings. On 24 March 2016¹⁵⁵ and 24 June 2016,¹⁵⁶ more than 20 non-governmental organizations have asked judges to review the decision on the examination of the case in a closed session. Despite these appeals, the case continued to be examined in closed hearing.

In 2008, the SCM adopted a Regulation providing that sentences in criminal cases are published on the court website.¹⁵⁷ On 21 June 2016, six days before the sentence in Mr Filat's case, the SCM repealed the 2008 Regulation and adopted a new Regulation, according to which rulings on the cases examined in closed hearing are not published on the website. The ruling in Filat case was not published on the web site immediately after the pronouncement. However, at the beginning of August 2016, a part of the motivated decision, which contains only the parties' arguments and witness statements, was placed on the website of the Buiucani District Court.

The Filat case is an important indicator of the lack of a real will to combat corruption, confirming more the perception that it is an "escape goat" case used by DPM for two main reasons: one the one hand to destroy their main political opponent, the LDPM, on the other hand to provide some "satisfaction" to the society that steps are taken to identify and punish those responsible in the "billion fraud", the main reason of the 2015 mass protests in Chisinau. Otherwise there is no logical explanation why the prosecution insisted and judiciary accepted to carry out his case in closed hearings at all hearings during the first instance and appeal court (SCJ procedure was in writing, with no hearing). Basically Mr. Filat was deprived of any public communication since the moment of his arrest on 15 October 2016. Just before his arrest on 15 October 2015, Filat made several statements in a speech in the Parliament stating, among other, that state institutions are captured and controlled by one person; that decisions are not taken in the courts, General Prosecution Office and National Anticorruption Center but on Cantemir street (business office of Mr. Plahotniuc); that judiciary is politically controlled.¹⁵⁸ Surely these statements cannot be accepted as entirely reflecting the truth. However, the fact that he was denied a public hearing at all court levels, including his last word, only reinforces the suspicion that there is some truth in what he claimed and the public was prevented to find out more information. The manner in which he was treated might also be a signal sent to the entire country that anyone that is not in line with the allegedly coordinator/power holder will get a severe treatment, irrespective of the position held. The way that Filat's case was handled by national authorities clearly suggests a controlled judiciary and political motivation. This conclusion does not refer to Filat's guilt or not, that is entirely up to courts. What is important to note is that an entirely closed criminal case on such charges does not meet the fair trial requirements. Justice must not only be done, but also to be seen as independent and impartial. Any case handled with grave procedural violations is not justice. All allegations voiced by Filat remain in the public space and maintain their merit as long as the anticorruption prosecution office and courts will not start applying the law correctly.

Another high-profile corruption case, related to the billion fraud, is the case of **Ilan Shor**. He is accused of a fraud of more than MDL 5 Billion from the Economy Bank, which he would have laundered between 4 and 25 November 2014 through offshore companies. According to the Kroll report,¹⁵⁹ published in May 2015 by the Speaker of the Parliament, the so-called "Shor Group", involving companies related to Ilan SHOR, the Chairman of the Administrative Council of the Economy Bank at that time, benefited from a number of loans issued in

¹⁵⁴ http://jurisprudenta.csi.md/search_col_penal.php?id=8400.

¹⁵⁵ <http://crjm.org/wp-content/uploads/2016/03/03-24-Apel-public-sedintele-Filat.pdf>.

¹⁵⁶ http://crjm.org/wp-content/uploads/2016/06/2016-Apel-sedinta-publica-FILAT_fin.pdf.

¹⁵⁷ http://csm.md/files/Acte_normative/publicare%20a%20hotaririlor%20iudecatoresti%20pe%20pagina%20web.pdf.

¹⁵⁸ The full speech is available here: <http://unimedia.info/stiri/video-discursul-integral-al-lui-filat-niciun-cetatean-sa-nu-recunoasca-aceasta-procuratura-acest-centru-anti-pldm-aceasta-justitie-102681.html>, <https://www.youtube.com/watch?v=9HMIMncZ0J0> or here <https://www.youtube.com/watch?v=61qclKByNa0>.

¹⁵⁹ http://candu.md/files/doc/Kroll_Project%20Tenor_Candu_02.04.15.pdf.

dubious circumstances. On 6 May 2015, Mr. Shor was arrested by NAC and was officially charged of involvement in the "USD 1 Billion fraud". The same day, a judge ordered his house arrest, even if prosecutors requested for pre-trial detention. In the same period, the electoral campaign for local elections was taking place. Ilan SHOR joined the race for mayor of Orhei town. For this reason, on 22 May 2015, NAC released Mr. Shor from house arrest, invoking the impossibility of detention under house arrest of an election candidate. According to art. 46 para. 5 of the Election Code, election candidates can be arrested with the approval of the electoral body. It is unclear if prosecutors asked permission of the electoral body for arresting Mr. Shor after his release. On 1 July 2015, Ilan Shor won the local election and became mayor of Orhei.

After more than one year, on 22 June 2016, NAC arrested Ilan Shor for 72 hours. On 24 June 2016, Buiucani District Court issued an arrest warrant on Shor's name for 30 days. On 5 August 2016, the Chişinău Court of Appeals decided on Ilan Shor's placement under house arrest that is prolonged until the moment of drafting of the present report. On 24 August 2016, the Prosecutor General's Office announced that it had completed the criminal investigation and sent the Shor case to the court.¹⁶⁰ The case is examined by the Buiucani District Court in closed hearings.

In the case of businessman **Veaceslav Platon**,¹⁶¹ he was arrested in Ukraine the same day that the head of the Anticorruption Prosecutor's Office publicly announced that he was indicted and that an international arrest warrant was issued. The Prosecutor General's Office has announced that it will initiate the extradition procedure.¹⁶² Despite the fact that Platon held Ukrainian citizenship, he was extradited to the Moldovan authorities. The media reported about the transfer of Mr. Platon with a private charter flight that would involve very high costs and it is not clear who incurred these costs.¹⁶³ Mr. Platon was placed under preventive arrest in Prison no. 13. In November 2016, the Anticorruption Prosecutor's Office finalized the criminal investigation and sent the case against Platon to court.¹⁶⁴ Amnesty International Moldova expressed its concern¹⁶⁵ about criminal cases filed against Mr. Platon's lawyers - Ana Ursachi¹⁶⁶ and Eduard Rudenco.¹⁶⁷ The latter two lawyers claim that they are victims of political pressures. On 11 October 2016, 21 members of the Parliamentary Assembly of the Council of Europe (PACE) made a statement regarding the extradition of Mr Platon. They have called on the Moldovan authorities to refrain from any intimidation of activists, politicians and key witnesses.¹⁶⁸ On 25 January 2017, 23 PACE members asked the Moldovan authorities to stop the crackdown on Mr Platon, noting that he was a key witness against Mr. Vladimir Plahotniuc in the bill of theft of the billion USD.¹⁶⁹ Veaceslav Platon said he was the victim of Vladimir Plahotniuc.¹⁷⁰

In January 2017, Buiucani District Court decided to examine the case in closed hearings on the reason of the banking secrecy, lack of space and the secret of the prosecution in another case initiated against Mr Platon. In February 2017, the court removed Mr Platon from the hearings and he could not assist at the examination of his case, being denied his last word and was only represented by his lawyers. During the trial, the law enforcement officers prohibited Mr. Platon from making declarations to journalists, including by using sound distortion devices.¹⁷¹ On 20 April 2017, Buiucani District Court condemned Mr Platon to 18 years of imprisonment. The court decision was not published yet. In May 2017, the second criminal case against Mr Platon was sent to court.

¹⁶⁰ <http://www.procuratura.md/md/news/1211/1/6736/>.

¹⁶¹ According to Platon, he used to have friendly relations both with Shor and Plahotniuc. He has also stated that the final beneficiary of the „billion fraud” is Mr. Plahotniuc, while Shor was involved throughout the banking fraud scheme and is a liar. See for details <https://deschide.md/ro/stiri/social/682/Platon-la-judecat%C4%83-Am-fost-prieten-cu-Shor-%C8%99i-Plahotniuc.htm>. In another interview, of 16 September 2016, Mr. Platon stated that his relations with Mr. Plahotniuc started deteriorating in 2009, when he disagreed with Mr. Plahotniuc's appointment of Mr. Zubco as General Prosecutor. See for more details the interview at <http://newsmaker.md/rus/novosti/ya-ne-angel-i-u-merya-est-greshki-no-ya-ne-prichasten-k-krazhe-milliarda-vyachesla-27372>.

¹⁶² <http://www.procuratura.md/md/news/1211/1/6718/>.

¹⁶³ General Police Inspectorate reported that the transfer costs constituted USD 1,690, covered from the state budget. The [mass-media wrote](#) that the fly the luxury ship with which Mr Platon was carried would have cost at least EUR 7,600, plus other taxes, that is, about 4.5 times more than the amount indicated by the General Police Inspectorate.

¹⁶⁴ See for details the article http://www.realitatea.md/dosarul-lui-veaceslav-platon-transmis-in-instanta-de-judecata-procurorii-au-aplicat-sechestrul-pe-bunurile-omului-de-afaceri_48560.html.

¹⁶⁵ See for details the article <https://anticoruptie.md/ro/stiri/amnesty-international-moldova-ingrijorat-de-dosarele-penale-intentate-unor-avocati>.

¹⁶⁶ See for details the article http://adevarul.ro/moldova/actualitate/ana-ursachi-dosarul-intentat-numele-parte-dintr-un-scenariu-procurorului-eduard-harujen-a-l-impresiona-plahotniuc-1_583540e25ab6550cb8c1fa75/index.html.

¹⁶⁷ See for details the article <http://www.jurnal.md/ro/justitie/2016/12/7/avocatul-eduard-rudenco-avertizat-si-amenintat-de-reprezentantii-organelor-de-drept-regimul-lui-plahotniuc-incearca-sa-reduca-la-tacere-persoanele-incomode/>.

¹⁶⁸ PACE, written declaration no. 617, doc. 14169 of 11 October 2016, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=23134&lang=en>.

¹⁶⁹ PACE, written declaration no. 623, doc. 14254 of 25 January 2017, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=23437&lang=en>.

¹⁷⁰ See for details the article <http://www.europalibera.org/a/27955667.html>.

¹⁷¹ See for details the article <http://www.realitatea.md/no-comment-veaceslav-platon-bruiat-pe-holurile-judecatoriei-buiucani-pentru-ca-jurnalistii-sa-nu-auda-declaratiile-lui-video-47200.html>.

Ilan Shor was involved both in Filat and in Platon cases. The charges against Mr. Filat were based on the self-denunciation of Ilan Shor. Mr. Shor admitted that he bribed Mr. Filat with USD 250 Million, when the later was prime-minister, to adopt a Governmental decision business-friendly to him. While acknowledging that he bribes Filat, Mr. Shor was not charged in this respect. According to NAC, Mr. Shor is released from criminal liability for active corruption, given the fact that he denounced himself and the criminal investigation body had not known about these facts before self-denunciation. NAC's interpretation was confirmed during an interview on 27 February 2017 by the General Prosecutor, who declared that Shor is liberated from criminal liability because he self-denounced the criminal act before the law enforcement bodies knew about it.¹⁷² Shor provided statements regarding Platon as well, allegedly on 22 July 2016, which prompted Moldovan authorities to include Platon in international search on 25 July 2016.¹⁷³

It is difficult to qualify NAC's and prosecution interpretation of Shor's denunciation in Filat case as unbiased. Liberation of criminal responsibility is applied when the person voluntarily denounces, before the criminal investigation bodies know about the case. Mr. Shor had been under investigation for the "billion fraud" at least since May 2015. His "self-denunciation" in October 2015 raises justified suspicion whether this was not a deal with the investigation bodies to ensure a "lighter" treatment in his main case. The facts support these suspicions. Although the first Kroll report indicates the involvement of the "Shor Group" in the "billion theft", Ilan Shor is judged under house arrest, unlike the other two high profile cases of Mr. Filat and Mr. Platon. The decisions of the house arrest of Mr Shor raises questions, especially in the light of court rulings in Filat case, which does not seem to be linked to the billion theft. Unlike the criminal cases of Mr. Filat (sent to court in about 2 months and the case in the first instance court lasted about 6 months and more 8 months for a final decision at the SCJ) and Mr Platon (sent to court in about 4 months and the case in the first instance court lasted about 5 months), the case of Mr. Shor evolves quite slowly – the criminal investigation lasted more than one year, although the Kroll report clearly indicates his involvement in the "billion theft" and Buiucani District Court still examines the case during 9 months. The different approach used by judiciary and anti-corruption bodies in these three cases are examples of selective justice in Moldova.

In the case of **Chiril Gaburici**, Prime minister at the time of the events, in April 2015, a criminal case was initiated for falsification of his study diploma¹⁷⁴ apparently after he refused to adopt a decision to assume the responsibility of the Government in the "billion theft" case. On 6 June 2015, Mr. Gaburici sent a letter to Mr. Nicolae Timofti, the President of the country at that time, and to Mr. Andrain Candu, the Speaker of the Parliament, asking the resignation of the leadership of the General Prosecution Office, National Bank, and National Commission for Financial Markets, due to the precarious situation that is recorded in the banking financial system.¹⁷⁵ At that time, the public information on the "billion theft" case was scarce and the public opinion found out only pieces of information. The President noted that he shared the concerns regarding the alarming situation in the financial-banking system, but the dismissals were in the exclusive competence of the Parliament.¹⁷⁶ He added that over the last 3 years, this topic had been addressed on several occasions at the Supreme Security Council, and the Government was informed on the financial and banking sector dysfunctions.¹⁷⁷ No answer followed from the Parliament. On 12 June 2015, Mr. Gaburici resigned from his position. On 2 July 2015, the criminal investigation was terminated on the reason that the limitation period expired.¹⁷⁸ It was clear from the beginning that the case has no chance because of the expiration of limitation period. It seems that the criminal case was a tool to force Mr. Gaburici to resign. This case shows the use of law enforcement bodies in order to escape from undesired political opponents.

There are cases of when justice is applied in favor of DPM affiliated people.

An ex high-rank DPM member, **Valeriu Guma**, was convicted on 17 April 2013 by the High Court for Cassation and Justice of Romania¹⁷⁹ to 4 years imprisonment for corruption. On 30 October 2014, Romanian authorities asked the Republic of Moldova to recognize and enforce the criminal sentence. On 20 November 2015, after more than one year, Buiucani District Court of Chişinău admitted the request of the Ministry of Justice and acknowledged that the judgment in question is legal and can be enforced in Moldova.¹⁸⁰ At the same time, the court ruled that the penalty of four years imprisonment should be conditionally suspended for a period of 4 years, obliging Mr. Guma not to change his residence

¹⁷² <http://newsmaker.md/rus/novosti/shor-iskupil-svoyu-vinu-tem-cto-napisal-etot-donos-intervyu-nm-s-genprokurorom-ed-29986>.

¹⁷³ See for details <https://deschide.md/ro/stiri/social/682/Platon-la-judecat%C4%83-Am-fost-prieten-cu-Shor-%C8%99i-Plahotniuc.htm>.

¹⁷⁴ See for details the article <http://jurnal.md/ro/politic/2015/4/29/studiile-lui-gaburici-a-fost-deschis-dosar-penal-pentru-acte-false/>.

¹⁷⁵ See for details the article <https://www.zdg.md/editia-print/politic/fricile-lui-gaburici-si-pominile-procuraturii-generale>.

¹⁷⁶ See for details the press-release of the President, <http://www.presedinte.md/rom/comunicate-de-presa/presedintele-nicolae-timofti-comenteaza-apelul-lansat-de-primul-ministru-chiril-gaburici>.

¹⁷⁷ See for details the press-release of the President, <http://www.presedinte.md/rom/comunicate-de-presa/presedintele-nicolae-timofti-comenteaza-apelul-lansat-de-primul-ministru-chiril-gaburici>.

¹⁷⁸ See for details the press-release of the General Prosecutors Office, <http://www.procuratura.md/md/news/1211/1/6252/>.

¹⁷⁹ The judgement available at <http://crim.org/wp-content/uploads/2016/04/2013-04-17-ICCJ-sentinta-Guma.pdf>.

¹⁸⁰ The Buiucani court order available at <http://crim.org/wp-content/uploads/2016/04/2015-11-17-Jud-Buiucani-Guma.pdf>.

without the consent of the authority in charge of execution of the sentence. The Judge acted contrary to the Moldovan Criminal Procedure Code when he modified the sanction legally imposed by the Romanian authorities. On 15 December 2015, by a final judgment, the Chisinau Court of Appeal dismissed as inadmissible the appeal of the prosecutor on procedural reasons. The court noted that it cannot examine the appeal of the prosecutor, because, in such cases, an appeal could be filed only by the Ministry of Justice. The Ministry of Justice did not appeal and its representative was not presented at the hearing in the court of appeal. Thus, the solution ordered by Buiucani District Court became final and Mr. Guma escaped from prison.

The case of Sorin Pleșca, the son of the actual DPM deputy, Nae-Simion Pleșca, demonstrates the use of law enforcement bodies by the Government party. On 7 March 2016, Sorin Pleșca allegedly shot dead his brother by accident. He ran away from the crime scene, being searched by the police for two weeks. Later, after being found, Sorin Pleșca was indicted for murder from imprudence. After about 2.5 months, the case was closed for the reason that the parties reached an agreement. The decision raised reasonable questions on the legality of prosecutors' actions, including due to the nature of allegations of intentional murder and the flight away for two weeks.¹⁸¹ It is improbable that a similar case of a simple person would have been closed so quickly. In December 2016, Sorin Pleșca was employed at the Embassy of the Republic of Moldova in Turkey.¹⁸² His father, Nae-Simion Pleșca, became a deputy in July 2015 on the LDPM lists. In January 2016, he was part of the group of LDPM MPs who left the faction and supported the investiture of the new DPM supported Filip Government. In April 2017, along with five other deputies elected on LDPM lists, Nae-Simion Pleșca joined the DPM faction of the Parliament.

Besides the initiation of criminal cases, law enforcement bodies are involved in discrediting political opponents. For instance, in February 2013, mass media published several phone conversations of high state officials, such as Vladimir Filat, the Prime-minister at that time, Nicolae Vicol, the head of State Tax Inspectorate at that time, both LDPM members, Dorin Recean, minister of interior appointed by LDPM, Valeriu Streleț, chairman of LDPM faction in the Parliament, and other LDPM members.¹⁸³ These recordings were done within a criminal investigation and only the NAC, the prosecutor and the investigative judge had access to the audio recordings.¹⁸⁴

In April 2017, several officials from Chisinau municipality related to LP were arrested and criminal investigation against them opened, for various corruption allegations, mostly related to the issue of paid parking slots in Chisinau. On 27 April 2017, the LP Minister of Transports and Roads' Infrastructure, Iurie Chirinciuc, as well as three other persons (deputy general director of Roads' Administration, Veaceslav Teleman and the heads of two construction companies) were arrested. On 28 April 2017, LP deputy president and mayor of Chisinau, Dorin Chirtoaca, qualified these arrests as DPM pressure on LP to support the DPM's initiative on changing the electoral system.¹⁸⁵ On 25 May 2017, the mayor Chirtoaca was also arrested by NAC.¹⁸⁶ As of mid-June 2017, he was investigated under house arrest. On 2 June 2017, LP declared that it withdraws from the governing coalition and that DPM has subordinated all law enforcement bodies, using these state institutions to achieve its political objectives.¹⁸⁷

Recently two cases have been opened regarding DPM related officials. This may be interpreted as a sign that the anticorruption prosecution office is set to carry out its mandate irrespective of the political colors of the suspected persons, the circumstances and follow up to these arrest do not allow drawing this conclusion yet. On 15th of March – the Agriculture minister, Eduard Grama, was arrested for corruption allegations.¹⁸⁸ He was related with LDPM (deputy minister appointed by LDPM) and since January 2016 appointed as minister in the new government created by DPM.

On 31 March 2017, the deputy minister of Economy, Valeriu Triboi, was arrested. He is a DPM member or affiliated to DPM. This case raises the following main concerns. The arrest happened on the day when the Ministry was supposed to announce that Moldova will not buy energy from an operator based in the Transnistrian region (Cuciurgan) and will sign the contract with a Ukrainian provider.¹⁸⁹ For unclear reasons, a few month later, as predicted in March, the Government announced that they will buy 30% from the Ukrainian

¹⁸¹ See for details the article <https://www.zdg.md/stiri/stiri-justitie/dosarul-pleasca-a-fost-inchis>.

¹⁸² See for details the article <http://www.zdg.md/stiri/stiri-politice/oficial-dupa-ce-si-a-impuscat-fratele-fiul-deputatului-pleasca-a-fost-angajat-la-ambasada-r-moldova-din-turcia>.

¹⁸³ See for details the article http://www.publika.md/interceptari-telefonice-care-ar-putea-crea-un-nou-scandal-politic-nume-citate-filat-vicol-recean-ciocan-strelet-audio_1265141.html.

¹⁸⁴ See for details the article <https://www.zdg.md/editia-print/investigatii/cna-a-vandut-dosarul-vicol-pe-bucati>.

¹⁸⁵ See for details <http://agora.md/stiri/31531/chirtoaca-vorbeste-despre-votul-uninomial-in-contextul-valului-de-arestari-ale-membrilor-pl>.

¹⁸⁶ See for details https://www.realitatea.net/perchezitii-in-biroul-lui-dorin-chirtoaca-primarul-chisinaului_2067252.html.

¹⁸⁷ <http://www.pl.md/libview.php?l=ro&idc=78&id=6939&t=/Presatiri/Declaratia-PL-de-trecere-in-opozitie-fata-de-coalitia-PD-PSRM>.

¹⁸⁸ See for details <http://agora.md/stiri/29490/ascensiunea-si-caderea-lui-eduard-grama-cum-a-ajuns-un-ministru-propus-de-pldm-intr-un-guvern-albastru>.

¹⁸⁹ See for details the article <https://www.europalibera.org/a/valeriu-triboi-retinut-liliana-barbarosie/28408414.html>.

provider and 70% from the Transnistrian-based provider.¹⁹⁰ It is not clear whether his arrest did take place in order to prevent that contract to be signed. He is charged with having bought an expensive building from the state enterprise Moldtelecom and later on he had it renovated by other state enterprises from the energy sector, allegedly, this has happened over several years and it is unclear why only this year action was taken.

No investigation has been announced against a high-level official affiliated with SPRM, although there have been serious allegations about illegal party financing of SPRM¹⁹¹ and high-level SPRM officials involved in illegal schemes related to import-export of meat.¹⁹²

The examples given above regarding the way of investigation of several high-profile cases are direct evidence of selective justice, both on behalf of anticorruption bodies and the courts. Examination of three high-profile cases behind closed doors, all allegedly linked to the USD 1 Billion fraud, one of the biggest frauds in Moldova's history, is unprecedented. As long as these cases continue being examined behind closed doors, the allegations of selective justice will be justified. Similarly, investigations have to be carried out irrespective of political color of the indicted or suspect in order to restore the confidence in the anticorruption bodies.

Tendencies of closing the court system

Access to court hearings and court judgments has not been an issue in Moldova. Public hearings are provided by the Constitution and the secondary legislation and generally has been respected.¹⁹³ Access to court judgments is ensured for the public via the publication of court judgments on the courts' portal. Moldova has done a remarkable progress by publishing the court judgments online, with some exceptions and with anonymization of certain types of judgments.¹⁹⁴

However, a new trend has been noticed especially since 2015, when high-profile cases have been examined in closed hearings, limitations introduced on publication of judgments taken in closed hearings and new rules on access to court hearings and courts have been adopted. Filat, Shor and Platon cases are examined above, all examined in closed hearings, in spite of civil society calls to ensure the right to a public hearing in this case given the high public interest.¹⁹⁵ The provisions included in the SCM Regulation of 21 June 2016 on publishing the court judgments, according to which judgments in the cases examined behind closed doors are not to be published,¹⁹⁶ are a serious impediment in accessing these decisions. The timing and content of the amendment suggests a sharp change in the judiciary's approach towards accessibility of judicial decisions. There is no legal justification in limiting the publication of the court decisions taken in closed hearings, as personal data can be easily hidden. Such a change only demonstrates the tendency towards selective and closed justice in the country.

On 29 September 2016, the SCM approved a regulation on access to court hearings and courts, which imposed severe restrictions on access to courts and court hearings. Several media and civil society organizations condemned this regulation.¹⁹⁷ As a result, the SCM suspended its application as of 1 November 2016. However, by mid-June 2017, no new regulation was yet adopted. The mere adoption of such a regulation is an indicator of the SCM's problematic understanding of the right to public hearings and access to courts.

There is also a tendency to limit media access to information on the benefits or career of judges, which are subjects of increased public interest. In 2014-2015, the media reported about low-priced apartments built for prosecutors¹⁹⁸ and judges.¹⁹⁹ General Prosecutors Office denied mass-media from access to information on the beneficiaries. The Rîșcani Chișinău District Court, the Chisinau Court of Appeal and the SCJ²⁰⁰ considered that the General Prosecutor's Office refusal to provide the list of beneficiaries of apartments to "Ziarul de Gardă" was legal, but did not explain why. The courts also blocked a request from the Journalistic Investigation Center against the refusal of the President of the Republic of Moldova to provide them with information about all the documents sent to the SCM by which rejected the

¹⁹⁰ See for details the article <http://www.dw.com/ro/energia-care-finan%C8%9Bbeaz%C4%83-separatismul/a-39142599?maca=ro>.

¹⁹¹ See, for example, 2016 Rise investigation on offshore funding of SPRM, available at <https://www.rise.md/articol/banii-lui-dodon-din-bahamas/>.

¹⁹² See for details the investigations at <http://bani.md/dezvaluiri-care-este-originea-averilor-socialistului-igor-dodon-politicianul-ar-sta-in-spatele-mafiei-camii-docvideo/>; <https://anticoruptie.md/ro/electorala-2016/banii-afacerile-si-interesele-lui-igor-dodon-si-aliantele-cruciale-pd-psrm>; <http://www.timpul.md/articol/sos-mafia-camii-ne-fura-de-2-miliarde-de-lei-pe-an-4230.html>.

¹⁹³ OSCE Trial Monitoring report, 2009.

¹⁹⁴ SCM Regulation on publication of court judgments.

¹⁹⁵ See for example the public appeals of several NGOs of 24 March 2016 (<http://www.ipn.md/ro/politica/75548>) and of 24 June 2016 (<http://crim.org/judecarea-cauzei-filat-sedinta-publica/>).

¹⁹⁶ The regulation in force since 2008 until 21 June 2016 did not provide such a limitation.

¹⁹⁷ See, for example, a declaration available at: <http://www.api.md/news/view/ro-declaratie-ong-urle-de-media-si-redactiile-protesteaza-impotriva-restrictiilor-abuzive-de-acces-la-sedintele-de-judecata-1343>

¹⁹⁸ <http://www.zdg.md/editia-print/investigatii/lista-secreta-de-la-procuratura>.

¹⁹⁹ <https://www.rise.md/judecatori-la-bloc/>; <https://www.rise.md/apartament-cu-discount-pentru-copiii-judecatorilor/>.

²⁰⁰ SCJ, case no. 3ra-44/16, decision of 20 January 2016, http://jurisprudenta.csi.md/search_col_civil.php?id=25324.

candidates for the position of judge or judges who were requesting the promotion during the period 2001 - 2015.²⁰¹ The SCJ motivated the refusal by interference with the private life of the candidates rejected by the presidency and the state secret.²⁰² Most of the President refusals rely on the information regarding the integrity of the candidates.

These examples demonstrate a clear tendency of closing the court system. Open court hearings and the publication of court decisions are crucial elements for ensuring judiciary accountability, as the public can attend the court hearings, read the court rulings and draw conclusions. When such access is closed, the judiciary remains outside of any oversight, except for improper third party influences. Information on the assets, career and integrity of judges are subjects of increased public interest and cannot be kept behind closed doors on a reasoning of private life. 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.

Use of criminal justice to put pressure on public figures and magistrates

There are several recent cases that raise justified doubts regarding the independence of law enforcement and judiciary, in particular the use of criminal justice for intimidation of public officials and judges who oppose decisions favorable to DPM.

The case of Taraclia's mayor

On 4 April 2016, the Cahul Court of Appeal decided to suspend from office the mayor of Taraclia town Serghei FILIPOV. Mr. Filipov was accused of organizing illegal cutting of 31 trees in the courtyard of Taraclia town hall, without having the agreement of the Ecological Inspection in this regard.²⁰³ In the examination of this case, the mayor of Taraclia said that he did not have an active role in organizing and cutting the trees, this is a matter for specialized services within the municipality. The mayor publicly stated that the criminal case is actually a political order, as a result of his refusal to join and represent the Democratic Party in local elections in 2015.²⁰⁴ Mr. Filipov was obliged by the court to pay the damage caused to the state, estimated at MDL 164,000, and a fine of MDL 8,000. Additionally, the court imposed mandatory additional penalty established for such offense - deprivation of the right to hold public office for a period of two years. This implicitly means that Mr. Filipov would be unable to exercise further his mandate as mayor. The decision of the Court of Appeals comes after the first instance court issued an [acquittal](#) in this case. Mr. Filipov's recourse was examined by the Supreme Court in August 2016. The SCJ quashed the decision of the Court of Appeals and sent the case to retrial.

Shortly after the decision of the Cahul Court of Appeals, the Congress of Local Authorities from Moldova (CLAM) adopted a statement in support of Serghei Filipov requesting reinstalling him in his position. The EU Ambassador to the Republic of Moldova²⁰⁵ and the US Embassy expressed concern and disappointment²⁰⁶ regarding the Cahul Court of Appeals decision on mayor Filipov. They stated that judicial decisions should never be or appear to be politically motivated.

In response, the Association of Judges issued an open letter²⁰⁷ addressed to the EU Ambassador requesting more caution in commenting on cases that are pending in courts, particularly those to be subject to judicial review by higher courts. According to the above-mentioned letter, such actions constitute an interference with justice meant to adversely affect the examination of the case. Also, the Association of Judges suggested Mr. Tapiola to address the Judicial Inspection of the SCM, in case he has evidence on political influence on that judgment.

The open letter generated a wave of indignation from both several judges and representatives of the civil society who declared their support for Ambassador Pirkka TAPIOLA and EU efforts to support justice reform in Moldova. On 12 April 2016, a group of judges issued a statement²⁰⁸ declaring that the open letter signed by Mr. DRUȚĂ was not consulted with the members of the Executive Council of the Association of Judges and, respectively, it does not represent the opinion of the entire judicial body.

The decision of Cahul Court of Appeals in respect of Mr. Filipov raises several questions. In a democratic society it is acceptable and useful to discuss and critically analyse the court decisions, especially if they are not reasoned enough and raise questions about the impartiality of judges. Unfortunately, the reaction of the Association of Judges shows a

²⁰¹ <https://anticoruptie.md/ro/stiri/centrul-de-investigatii-jurnalstice-a-pierdut-procesul-impotriva-presedintiei-biografiile-persoanelor-decorate-cu-distinctii-de-stati-actele-prin-care-seful-statului-respinge-candidaturile-judecatorilor-raman-secrete>.

²⁰² SCJ, case no. 3ra-749/16, decision of 29 June 2016, http://jurisprudenta.csj.md/search_col_civil.php?id=29504.

²⁰³ See for details the article <http://www.ziarulnational.md/primarul-unui-oras-important-din-r-moldova-a-fost-demis-motivul-este-incredibil/>.

²⁰⁴ See the mayor's statements on 5 April 2015.

²⁰⁵ See the statements at <http://protv.md/stiri/actualitate/serghei-filipov-suspendat-din-functia-de-primar-al-orasului-taraclia--1409281.html>.

²⁰⁶ See the US Embassy post here <https://www.facebook.com/U.S.EmbassyMoldova/posts/10153735496084081>.

²⁰⁷ See the letter at <https://anticoruptie.md/ro/stiri/pirkka-tapiola-criticat-de-asociatia-judecatorilor-dupa-ce-a-sarit-in-apararea-primarului-condamnat-de-la-taraclia>.

²⁰⁸ The statement available at <https://anticoruptie.md/ro/stiri/un-grup-de-magistrati-despre-replica-data-de-asociatia-judecatorilor-lui-pirkka-tapiola-nu-reprezinta-opinia-intregii-bresle>.

lack of understanding of the essential difference between criticizing court decisions and interference in delivery of justice. An independent and professional judiciary involves making unpopular decisions, which can be criticized, judges having the task of reasoning them clearly and sufficiently as to dispel any suspicions about their independence and impartiality. The Association's reaction also raises questions as to its independence and impartiality. It is to be noted that it did not make statements regarding other cases of high resonance.

The case of Basarabeasca's mayor

On 17 March 2017, the mayor of Basarabeasca town, Valentin CIMPOIEȘ, was apprehended and in the same day the investigative judge issued a decision on preventive arrest for 30 days. The mayor is accused of negligence in the office for the fact that a father in the town was forcing his 13 years daughter to provide sexual services and the mayor did not undertake any actions to prevent this crime. This case is pending. However, the mere arrest and such an accusation raise questions regarding the justification and the impartiality of the charges.

To be noted, the mayor is a member of Our Party, an extra parliamentary declared party, led by Renato USATYI, who has made several statements accusing the DPM' president of various illegalities.

The Congress of Local Authorities of Moldova (CALM) issued a statement expressing their concern with the unprecedented unjustified arrest of the mayor, who did not present a social danger for being arrested. CALM requested the mayor's immediate release and reserved the right to protest in case the authorities do not respond.²⁰⁹

The case of judge Manole

On 14 April 2016, at the request of an initiative group for organization of a referendum to amend the Constitution, Domnica MANOLE, a judge at Chișinău Court of Appeals, quashed the decision of the Central Election Commission (CEC) of 30 March 2016 on the refusal to organize the constitutional referendum. The judge ordered CEC to adopt a decision on the initiation of the referendum to revise the Constitution. The judge noted that the initiative group collected the required number of signatures provided by art. 141 of the Constitution (200,000 signatures, including 20,000 from at least half of the administrative units existing in the year 2000. This constitutional provision was introduced in the year 2000. Back then, the Republic of Moldova was divided into 12 territorial units of second level).

The decision of the Court of Appeals was challenged by the CEC in the Supreme Court of Justice (SCJ). On 22 April 2016, the Supreme Court found that CEC's decision is lawful, quashed the decision of Chișinău Court of Appeals and dismissed the request of the initiative group. The SCJ concluded that the decision of 14 April 2016 was adopted with "incorrect interpretation of legal norms, applying a law that was not to be applied given its abrogation, exceeding limits of powers by the court by interpreting the Constitution and compelling the appellant to adopt a certain act, invoked by the appellant for the quashing of the impugned decision". The SCJ noted that only the Constitutional Court may interpret the Constitution and that it is inadmissible to calculate the number of administrative-territorial units of the second level from the number of units existing back in 2000, as the law on administrative-territorial division in force from 2000 was abrogated in 2002.

On 23 May 2016, the CEC submitted a complaint to the General Prosecutor's Office on the commission of the offense by judge Manole provided by art. 307 of the Criminal Code.²¹⁰ The next day, on 24 May 2016, the Interim General Prosecutor requested the Superior Council of Magistracy's consent to initiate criminal proceedings against judge Domnica MANOLE, based on art. 307 par. (1) of the Criminal Code. It reproduced the arguments invoked by the SCJ on 22.04.2016. By SCM decision no. 369/17 of 31 May 2016,²¹¹ the SCM accepted the request of the Interim General Prosecutor and issued its consent to initiate criminal investigation.²¹² The SCM decision does not contain any reasoning for the taken decision. The SCJ judge, member of the SCM, Tatiana RĂDUCANU, in a separate opinion²¹³ declared her disagreement with the SCM decision, arguing that the request to allow the criminal investigation actually refers to the interpretation of the law, containing only the arguments raised by the Supreme Court. The consent to initiate criminal investigation in this case sets a dangerous precedent for the independence of judiciary. The SCM sitting, in which the consent for criminal investigation was issued, was held behind closed doors, although judge Manole and her lawyer requested examination of the case in public court hearing.²¹⁴

²⁰⁹ See for details <http://jurnaltv.md/ro/news/2017/3/21/calm-face-apel-catre-autoritati-10277014/> and

²¹⁰ Art. 307 provides for the offence of deliberate pronouncement of a judgment contrary to the law.

²¹¹ SCM decision available at <http://www.csm.md/files/Hotaririle/2016/17/369-17.pdf>.

²¹² Three SCM members voted against the decision.

²¹³ The separate opinion available at <http://www.csm.md/files/Hotaririle/2016/17/369-17-opinias.PDF>.

²¹⁴ According to the SCM decision no. 368/17 of 31 May 2016 (<http://www.csm.md/files/Hotaririle/2016/17/368-17.pdf>), the sitting was declared closed under the provisions of p. 9.5 of the Regulation on the organization and functioning of the SCM, approved by the SCM Decision no.668/26 of 15.09.2015 (which provides that the Council will, in closed sittings, examine the notification of the General Prosecutor, only regarding the observance of the conditions or the circumstances of the Criminal Procedure Code for initiating criminal investigation, apprehension, arrest or search of the judge, without assessing the quality and authenticity of the presented materials). Law no. 947 of 19.07.1996 on the SCM does not contain such provisions.

Judge Manole challenged in the SCJ the SCM's consent for initiating criminal investigation, requesting, also the suspension of the criminal investigation until the SCJ decision. Although the SCJ had to examine the request on applying the interim measure the same day or maximum within 5 days from receiving the request, the SCJ examined the request and took a decision on refusal of the suspension of the criminal investigation only on 23 June 2016. The complaint regarding the SCM consent is still pending before the SCJ, being examined for more than a year. The examination by SCJ has been protracted initially due to changes in the panels of judges assigned to examine the appeal. Later, on 15 December 2016, the SCJ challenged the constitutionality of the art. 307 of the Criminal Code,²¹⁵ based on which judge Manole is investigated. The Venice Commission issued an amicus curiae on this issue and the Constitutional Court issued a judgment in this respect on 28 March 2017.²¹⁶ In the meantime, a provision of the Law on the SCM regarding the competences in review of the SCM decisions by the SCJ was challenged at the Constitutional Court. On 3 May 2017, the judge Manole requested the suspension of examination of her case by the SCJ until the Constitutional Court issues a decision in that respect.²¹⁷ Hence, as of mid-June 2017, the SCJ did not review judge Manole's appeal regarding the SCM consent to initiate a criminal case against her for the decision regarding the referendum. The judge challenged the motion to initiate criminal investigation (in another proceeding). The Rîșcani Court dismissed that request.

The case of judge Manole caused strong reactions in the society. On 30 June 2016, a group of civil society organizations in Moldova issued a public appeal²¹⁸ expressing concern towards the request of the Interim General Prosecutor, qualifying it as biased and dangerous for the whole judiciary. The appeal also emphasizes that the prosecution request does not refer at all to the adoption of the decision by judge Manole, knowing that it is illegal, an element without which criminal investigation cannot be initiated under art. 307 of the Criminal Code, the request exclusively relying on the SCJ decision, which in its turn is a court decision where legal norms are analysed and interpreted, including constitutional ones. The signatory organizations considered the prosecution request as an attempt to intimidate the judge. For the first time for the justice system of the Republic of Moldova, on 31 May 2016, a group of judges from the Chișinău Court of Appeals²¹⁹ publicly declared their support for the judge Manole, considering the request of the Interim General Prosecutor as an "attempt without precedent to the independence of justice, contrary to the international justice standards, contrary to the objectives of the European integration promoted by the judiciary". On 2 June 2016, the European Union issued a written statement²²⁰ through the Department of coordination of the EU foreign policy (EEAS), asking the Republic of Moldova to implement the 2010 recommendations of the European Council on "independence, efficiency and accountability of judges", especially those which require that "the interpretation of the law, assessment of facts or weighing of evidence carried out by judges to determine cases should not give rise to civil or disciplinary liability, except in cases of malice and gross negligence." The US Embassy in Chișinău supported the European Union's message, posting the following message on Facebook:²²¹ "Ensuring independence and impartiality in the justice sector is of utmost importance to any democracy... for real reform to take root, Moldovan authorities must take great care to ensure that the rule of law is respected and that there is not even the appearance of political interference, unfairness or intimidation in the conduct of legal matters".

On 3 June 2016, the SCM reacted to statements of the EU Ambassador and US Ambassador to Moldova through a press release.²²² It states that "the Council has expressed a desire to bring clarity as quickly as possible in this case. The only mechanism that can verify and prove the absence or existence of bad ill - is proving innocence or guilt of the accused person in an investigation and legal proceedings, transparent, fair and uninfluenced by anyone. Therefore, I wish to assure you that the Superior Council of Magistracy will undertake and ensure that this process is as transparent and fair as possible. The judiciary is equally interested in such a development of things. Moreover, where there will be evidence or signs that this process is conducted in bad faith, the Superior Council of Magistracy, will use absolutely all available legal tools to prevent and combat such practice".

The handling of the case of judge Manole raises several questions. Besides the lack of reasons for initiating the case based on pure interpretation of the law, or at least this is the information released to the public, the fact that the case is pending since May 2016 is very problematic. A judge under investigation for such a long time is under constant pressure. From the political implications' perspective, this case is a very important one as it shows how a judge that dared taking a decision that is not entirely supported by the current leadership can be persecuted. The signatories for the referendum

²¹⁵ See the SCJ submission to the Constitutional Court here <http://despre.csj.md/index.php/despre-curtea-suprema-de-justitie/mass-media-si-relatiile-cu-publicul/818-exceptia-de-neconstitutionalitate-a-articolului-307-din-codul-penal-completul-curtii-supreme-de-justitie-cauza-dominica-manole-vs-csm>.

²¹⁶ Constitutional Court, Decision no. 12 of 28 March 2017 on constitutionality of art. 307 of the Criminal Code.

²¹⁷ See for details <http://www.jurnaltv.md/ro/news/2017/5/3/suspendare-in-procesul-manole-10281956/#2>.

²¹⁸ See the public appeal at <http://www.crim.org/apel-public-fata-de-actiunile-procurorului-general/>.

²¹⁹ See for details <http://www.zdq.md/stiri/stiri-justitie/doc-solidarizarea-judecatorilor-mai-multi-magistrati-de-la-curtea-de-apel-s-au-mobilizat-pentru-colega-dominica-manole>.

²²⁰ See for details <https://www.europalibera.org/a/27774527.html>.

²²¹ See for details: <http://jurnal.md/ro/justitie/2016/6/3/sua-impartaseste-ingrijorariile-ue-in-cazul-dominicai-manole-nu-trebuie-sa-existe-nici-macar-aparenta-intimidari-si-amestecului-politic/>.

²²² See the press release at <http://www.csm.md/noutati/2235-comunicat030616.html>.

were collected by an opposition newly created party, Platform Dignity and Truth. If the referendum was allowed, this could have raised the ratings of that political party. On the other hand, the Constitutional Court on 4 March 2016, decision no. 7, declared unconstitutional the amendments of 2001 to the Constitution and restored direct Presidential elections. Without going into details of this decision, it is important to note the dangerous precedent set by the Constitutional Court to legal certainty, declaring unconstitutional a law passed 16 years ago. Through this decision, the Constitutional Court de facto changed the way of electing the country's President, a matter within the Parliament's ambit. Given the fact that the decision of judge Manole was of an interpretative nature and had no practical implications on the disputed matter (it was annulled by the SCJ and, furthermore, the Constitutional Court reinstated direct presidential elections), the dragging of this case shows a very tight link between judiciary and politics, namely ruling political party.

The above examples show the use of criminal justice for intimidating political opponents or independent judges that support unpopular political decisions. These cases are a very alarming indicator regarding the capture of judiciary and law enforcement bodies.

The anticorruption bodies, due to their hierarchical subordination and lack of individual guarantees similar to judges, are more prone to subordination. Given the political distribution of the functions between the political parties since 2010, the subsequent legislative changes (eg changes of National Anticorruption Centre subordination to Government and then back to Parliament, decided overnight and without any public consultation), maintenance in leading positions of more or less the same persons since 2010 and practice of selective criminal investigations, one can conclude that these institutions are still within the DPM influence.

The "Russian Laundromat" scheme took place throughout 2010-2014, in which about USD 22 Billion were laundered from Russia to Europe through Moldova, with the involvement of several judges. Although the National Anticorruption Centre, the Anticorruption Prosecution, the Secret Information Service, the Supreme Council of Magistracy and the Supreme Court of Justice knew about these illegalities since 2012, criminal investigations were announced only in September 2016. During 2012-2016, the Superior Council of Magistracy and its affiliated bodies evaluated and even promoted some of the judges arrested in September 2016. No actions were taken by the judiciary to prevent judges' involvement and contribution to that scheme. These are indicators of both serious dysfunctionalities within the judiciary, as well as coordination among the several bodies not to take the necessary actions.

There are several examples of decisions and other actions taken by judiciary that favor DPM or its allies. Among the most prominent examples are the following: the handling of Filat, Shor and Platon cases behind close doors, preventing any disclosure of info to the public; the differential treatment provided to Shor in terms of pre-trial detention measures is also an important indicator of selective approaches; the change of a criminal sanction of imprisonment awarded by Romanian courts to an ex DPM high level official to conditional imprisonment is another telling example. Last but not least, promotion of judges with lower scores and integrity issues, in particular to the Supreme Court, are indicators of grave dysfunctionalities within the judiciary. Superior Council of Magistracy impacts directly judges' career. The court presidents have an influence via administrative tools. The Supreme Court has a direct influence on judges at least via court practice being the last jurisdiction. Hence, the way SCM functions and the way judges are appointed and promoted, has a direct impact on the functioning of the entire judiciary. We cannot conclude that the entire judiciary is captured, since judges benefit from individual independence and some critical voices, although limited, are still seen. However, the evidence clearly indicates a dire state within the judiciary.

Chapter III: The Executive

Research of international organizations and findings of civil society monitoring reveal serious malfunctions of the executive, including in terms of decisional transparency, integrity, appointment to public office, accountability and transparency in the use of public money, etc. Even members of government point to problems in the activity of the executive.²²³ Corruption cases against members of central and local governments seem to be a settling of accounts with those who are not loyal to the ruling party (DPM), which is concentrating its power within the executive, rather than an efficient fight against corruption. According to the Barometer of Public Opinion, citizens' trust in the Government declined sharply from 44% in November 2009 to 9% in October 2016.²²⁴

Political color of the Executive

Stanford Emeritus Professor, Stephen Krasner, says in his famous work 'Good Enough Government' that a successful democratic government is based on three essential pillars: security, better service provision and economic growth; however everyone needs a solid strategy to subsist.²²⁵ Without proper security (domestic and external), Governments tend to dedicate resources that otherwise would be channeled to the better tailored public services or arrest economic growth for the sake of protecting rent-seeking schemes. Often, political 'bickering' or 'tactical positional battles' between various dominant elites networks²²⁶ shaping out political agenda of the governments and often ending in a wasteful zero-game scenarios. Moldova is, from all these perspectives, a living example of dysfunctional quasi-democratic model, defined by a hybrid-type dominant coalition, which has absorbed elements of pluralist inefficiency with authoritarian pro-business management.

After September 25, 2009, the Republic of Moldova had 6 governments: Vlad Filat 1 government (25 September - 27 December 2010),²²⁷ Vlad Filat 2 government (14 January 2011 – 30 May 2013),²²⁸ Iurie Leancă government (31 May 2013 - 10 December 2014),²²⁹ Chiril Gaburici government (18 February 2015 – 12 June 2015),²³⁰ Valeriu Streleț government (30 July 2015 - 30 October 2015)²³¹ and Pavel Filip government (since 20 January 2016).²³² The ruling alliances in the Republic of Moldova during the years 2009-2015, suggestively named Alliance for European Integration had 3 main components - Liberal Democratic Party of Moldova (LDPM), Democratic Party of Moldova (DPM) and Liberal Party (LP). Alliances were marked by the rivalry between LDPM, the main ruling party and DPM, assisted by LP.

This rivalry was the consequence of harsh struggle for power in the state between the leaders of these two parties - chairman of LDPM, Vlad Filat, and the first deputy chairman of DPM, Vladimir Plahotniuc. During this dispute, two representatives of LDPM – Vlad Filat and Valeriu Streleț – were dismissed from the office of prime minister as a result of motions of no confidence for "corruption allegations".²³³ Both Filat and Streleț, upon dismissal, accused Plahotniuc of taking the state institutions "in captivity".²³⁴

An important moment in the feud over power between Filat and Plahotniuc was the political crisis in early 2013, caused by "Padurea Domneasca" (Princely Forest) incident at the end of 2012. In the aftermath of this political crisis, due to the Constitutional Court decision of April 22, 2013, under which a prime minister dismissed for suspicion of corruption cannot be the candidate for a new mandate,²³⁵ Filat was practically politically ostracized.

Many political experts and analysts accused the Constitutional Court of becoming a political actor, while the communist deputy, Mark Tkaciuk, sarcastically noted about the Court decision that "*Vladimir Gheorghievici Plahotniuc is the best*

²²³ Parliament Decision nr. 56 of 30.03.2017 on the approval of the National Integrity and Anti-Corruption Strategy for 2017-2020, draft version, <http://parlament.md/ProcesulLegislativ/Proiectedeactele legislative/tabid/61/LegislativId/3759/language/ro-RO/Default.aspx> (the final version is undergoing drafting).

²²⁴ Final report, Barometer of Public Opinion, October 2016, annexes. / http://ipp.md/public/files/Barometru/BOP_10.2016_anexe.pdf

²²⁵ Stephen Krasner, *Autocracies Failed and Unfailed Limited Strategies for State Building, Limited Strategies for State-building, Atlantic Council Strategy Papers, No.3, March 2016.*

²²⁶ Mungiu-Pippidi, A. (2015). *The quest for good governance: how societies develop control of corruption.* Cambridge University Press.

²²⁷ Vlad Filat government (1). / [https://ro.wikipedia.org/wiki/Guvernul_Vlad_Filat_\(1\)](https://ro.wikipedia.org/wiki/Guvernul_Vlad_Filat_(1))

²²⁸ Vlad Filat government (2). / [https://ro.wikipedia.org/wiki/Guvernul_Vlad_Filat_\(2\)](https://ro.wikipedia.org/wiki/Guvernul_Vlad_Filat_(2))

²²⁹ Iurie Leancă government. / https://ro.wikipedia.org/wiki/Guvernul_Iurie_Leanc%C4%83

²³⁰ Chiril Gaburici government. / https://ro.wikipedia.org/wiki/Guvernul_Chiril_Gaburici

²³¹ Valeriu Streleț government. / https://ro.wikipedia.org/wiki/Guvernul_Valeriu_Strele%C8%9B

²³² Pavel Filip government. / https://ro.wikipedia.org/wiki/Guvernul_Pavel_Filip

²³³ Vlad Filat 2 government was dismissed by votes of PCRM, PD and non-affiliated MPs, 5 March 2013. / <http://unimedia.info/stiri/breaking-news-guvernul-filat-2-a-fost-demis-cu-voturile-pcrm-pd-si-deputatilor-neafiliati-58041.html>;

The motion of no confidence was backed: Streleț government was ousted, 29.10.2010. / <http://protv.md/stiri/actualitate/guvernul-strelet-demis-motiunea-de-cenzura-a-fost-votata--1209331.html>

²³⁴ http://www.noi.md/news_id/71703

²³⁵ Maintaining in office the prime minister dismissed for corruption reasons is unconstitutional. / <http://www.constcourt.md/libview.php?l=ro&id=428&idc=7>

expert in constitutional decisions".²³⁶ Following this decision by the Constitutional Court, Filat gradually lost his political influence, while Plahotniuc, on the contrary, began to control increasingly the political situation in the Republic of Moldova. Consequently, on 15 October 2015, the former Prime Minister Vlad Filat was arrested for passive corruption and influence peddling.²³⁷

After the arrest of Filat and the fall of LDPM government led by Streleț in October 2015, DPM took over control of government in the Republic of Moldova. At the end of 2015 – beginning of 2016, 14 MPs left Party of Communists of the Republic of Moldova (PCRM) and 7 MPs left LDPM to vote for a new government led by DPM. LP voted for a new government. On January 20, 2016, under conditions of major street protests, the government led by Pavel Filip was established. On March 4, 2016, the Constitutional Court made another controversial decision ruling for direct elections to choose the president.²³⁸ Following the "politicized" decision by the Constitutional Court, mobilization of people dropped sharply, while DPM led by Vlad Plahotniuc strengthened its control over government institutions despite widespread protests.

At the beginning of 2017, DPM officially included the former communist deputies and some of former liberal-democrat deputies into the parliamentary faction of democrats, which reached more than 40 MPs.²³⁹ Thus, DPM has become "legally" the largest parliamentary party in the Republic of Moldova, although at parliamentary elections of 30 November 2014 it gained only 19 mandates.

The way coalition governments were formed

Coalition governments were formed since 2009 based on the following defining features: difficult negotiations; sharing posts; politicizing institutions; lack of transparency.

Following the early parliamentary elections on 29 July 2009, the ruling party, PCRM, lost 12 seats compared to the April 5 parliamentary elections, winning only 48 seats, insufficient to form the government. Opposition parties - LDPM (18 mandates), LP (15 mandates), DPM (13 mandates) and AMN (7 mandates) - won 53 mandates, which allowed them to form the parliamentary majority. Although there was uncertainty in society after the elections about the composition of the future government (PCRM-DPM bilateral coalition, 61 mandates, or the multilateral coalition LDPM, LP, DPM and AMN, 53 mandates), soon afterwards, the four opposition parties united against PCRM and decided to form a majority government.

After the meeting of 3 August 2009, at the headquarters of Our Moldova Alliance, of the leaders of LDPM, LP, DPM and AMN, the four party chairmen were pleased with the results of negotiations and stated that the discussions were constructive. In terms of sharing posts, the chairman of LP, Mihai Ghimpu said that *"the goal is to oust the communists, but not sharing posts"*, while the chairman of LDPM, Vlad Filat declared that *"it is important to be compatible with that post, while, however, taking into account the results of parliamentary elections"*.²⁴⁰

Already after the first meetings, there were disagreements between parties in terms of sharing power in the state. This thing, in fact, was publicly acknowledged by DPM honorary chairman: *"I think they can agree by Monday, since only the chairmen of these parties participate in the negotiations. But as far as I can see, some animosities emerged"*. Diacov also said that, according to the European tradition, the party that gained most mandates takes over the responsibilities of the government, *"but in our case there are heated negotiations for the office of the parliament speaker"*.²⁴¹

Participants in the talks, the chairpersons of the four parties, were trying to conceal the disagreements emerged between them due to sharing posts within government from public opinion, by making statements about certain democratic ideals they pursued: *"We are now discussing the components, we are trying to agree with the World Bank. Only with its contribution will we be able to ensure the wellbeing of the population, help the country to get over this profound crisis that Moldova has not faced since the 1990s. We do not want to repeat the sad traditions of politicians in the Republic of Moldova who were eager to take over the offices. In our case, it is not a declarative coalition, but one that is capable of*

²³⁶ Tkaciuk: „Vladimir Gheorghiveici Plahotniuc, best expert in constitutional decisions”. / <http://ziarulnational.md/tkaciuk-vladimir-gheorghiveici-plahotniuc-cel-mai-bun-expert-in-decizii-constitutionale/>

²³⁷ How Vlad Filat got to prison, 22 February 2017. / <https://www.zdg.md/stiri/stiri-politice/cum-a-ajuns-vlad-filat-la-inchisoarew>

²³⁸ Decision nr.7 of 04.03.2016 on the control of constitutionality of certain provisions of Law nr. 1115-XIV of 5 July 2000 on amending the Constitution of the Republic of Moldova. / <http://www.constcourt.md/ccdocview.php?tip=hotarini&docid=558&l=ro>

²³⁹ From 19 to 40 MPs in the Legislative. How DPM has increased since the 2014 parliamentary elections until now, 10 April 2017. / <http://unimedia.info/stiri/infografic-de-la-19-la-40-de-deputati-in-legislativ-cum-a-crescut-pdm-de-la-scrutinul-parlamentar-din-2014-si-pana-in-prezent-131225.html>

²⁴⁰ Leaders of LDPM, LP, DPM and AMN are satisfied with the results of negotiations on Monday evening at the headquarters of Our Moldova Alliance, 3 August 2009. / <http://www.azi.md/ru/print-story/4918>

²⁴¹ LDPM, LP, DPM and AMN will announce the results of the negotiations after the validation of election, Chisinau (7 August 2009). / <http://www.mediafax.ro/exteme/pldm-pl-pdm-si-amn-vor-anunta-rezultatele-negocierilor-dupa-validarea-scrutinului-4727945>

taking the country from the sludge, in which, unfortunately, we are up to the ears”, said AMN chairman, Serafim Urecheanu.²⁴²

On August 8, 2009, LDPM, LP, DPM and AMN signed the document establishing the ruling coalition "Alliance for European Integration" (AIE). At the first parliamentary session, the liberal Mihai Ghimpu was elected Speaker. It was announced that LDPM chairman, Vlad Filat, would be the next prime minister of the government of the Republic of Moldova, and DPM chairman, Marian Lupu, would become the President of the country.²⁴³

The negotiations to form the government after the early parliamentary elections of 28 November 2010 were very difficult. For one month, DPM, which won 15 mandates, discussed the formation of the cabinet of ministers on two dimensions: 1) negotiated the formation of a government with PCRM (42 mandates), on the one hand; 2) renegotiated with LDPM (32 mandates) and PL (12 mandates) the formation of a new AIE government, on the other hand.

Negotiations were not transparent, while the society was wondering why things dragged on. Although "European practice" and "principles and values" were invoked while forming the government, the sharing of posts in government was actually discussed. Several experts emphasized the strategically privileged position of DPM in negotiations²⁴⁴, while the democrats took advantage of this situation to the maximum seeking to gain as many advantages as possible in the future ruling coalition. Eventually, on December 30, 2010, it was decided to reestablish the AEI. Within the AIE 2, Vlad Filat became the head of cabinet of ministers, Marian Lupu took over the positions of Mihai Ghimpu and Vladimir Plahotniuc became the first deputy chairman of the parliament. At the same time, DPM insisted that the decision-making process within the government would take place through consensus, and the Council of the Alliance for European Integration was established to this end.²⁴⁵

Subsequent negotiations on the formation of coalition governments only perpetuated the difficulty of conducting them, irrespective of whether it was the government of Leancă, Gaburici or Streleț. In two situations, candidates nominated by LDPM - Iurie Leancă and Maia Sandu - for various reasons, failed to be appointed as prime ministers. If in the 2009 and 2010 negotiations on forming the government, Moldovan politicians used rhetoric such as "European ideal" and "principles and values", subsequently, they did not conceal any more that the disagreements between them were related to positions in government.²⁴⁶ Even under these conditions, negotiations remained non-transparent while the decisions were taken behind the scenes.

The end of 2015 meant the end of the political cycle called AIE in the history of the Republic of Moldova. In the situation where LDPM refused to participate in the formation of a new ruling coalition, choosing to become an opposition party, DPM managed to convince 14 MPs from PCRM and 7 from LDPM to leave their parliamentary factions and to support a new government led by DPM. For a short time, DPM had a political conflict with the presidency, when the head of state, Nicolae Timofti, nominated former Prime Minister Ion Sturza as a candidate to form the new government.²⁴⁷

Although Ion Sturza, as a nominated prime minister, attempted to force the formation of an apolitical government, its members signing an integrity code, the parliamentary majority established ad hoc ignored the parliamentary procedure of appointing Sturza. In response, making use of the Constitutional Court ruling of December 30, 2015,²⁴⁸ which provides that the President of the Republic of Moldova is obliged to nominate the candidate for prime minister backed by an absolute parliamentary majority, DPM managed to impose Pavel Filip as candidate for prime minister on the head of state.

On January 20, 2016, against the backdrop of massive street protests, a new government led by Pavel Filip was voted as a matter of urgency that stealthily took the oath at a secret ceremony. In the Report *Nations in Transit 2017* it is noted with reference to the Republic of Moldova: *"The new government was installed in January during an undisclosed, late-night ceremony and only later confirmed by a press release from the president's office. This left the premiership and speaker of parliament positions in the hands of DPM, an unusual concentration of power for a party that placed fourth in*

²⁴² Idem.

²⁴³ Leaders of the majority coalition assume collective responsibility for governance, 28 August 2009. / <http://www.azi.md/ro/story/5382>

²⁴⁴ Igor Boțan „Democratic Party is in a privileged position”, 13 December 2013. / <http://www.europalibera.org/a/2247325.html>

²⁴⁵ (doc) AIE 2 values and principles are public, 18 January 2011. / [http://www.timpul.md/articol/\(document\)-acordul-de-constituire-al-alianei-pentru-integrare-europeana-este-public-19654.html](http://www.timpul.md/articol/(document)-acordul-de-constituire-al-alianei-pentru-integrare-europeana-este-public-19654.html)

²⁴⁶ Leancă: AIE3 = non-transparent negotiations, desperate struggles for positions, an agreement full of empty talk, feuds over power, backstage arrangements, 26 July 2015. / <http://www.timpul.md/articol/leanca-aie3-%3D-negocieri-netrasparante-batalii-disperate-dupa-functii-acord-plin-de-voixe-goale-partajari-politice-inelegeri-de-culise-77334.html>

²⁴⁷ Nicolae Timofti appointed Ion Sturza as a candidate for the premiership. Sturza: „When the commander-in-chief called me to duty, I obeyed”, 21.12.2015. / <http://protv.md/stiri/actualitate/nicolae-timofti-i-a-desemnat-pe-ion-sturza-drept-candidat-pentru---1295731.html>

²⁴⁸ Decision nr.32 of 29.12.2015 on control of constitutionality of the Decree of the President of the Republic of Moldova nr. 1877-VII dated 21 December 2015 on the nomination of the candidate for the post of prime minister. / <http://www.constcourt.md/ccdocview.php?tip=hotariri&docid=553&l=ro>

the last parliamentary elections in 2014".²⁴⁹ Several NGOs signed a statement condemning the appointment of Filip government, considering it contrary to democratic norms and provisions of the Constitution.²⁵⁰

The way coalition governments functioned

In 2009-2015, a number of malfunctions were seen between the components of the ruling coalition. There were permanent disputes and confusion within the AIE governments on the criteria government ministers had to be subordinated. AEI governments functioned based on political criteria, rather than on the logic of a state institution.

The three parties and their leaders, euphemistically speaking, were compared in society with the crayfish, the frog and the pike - the characters of a fable that pull the cart, to which they are harnessed, in different directions. After the "concrete"²⁵¹ experience of the first ruling coalition in 2009-2010, upon the creation of the following coalition, the first question that emerged was how durable it was going to be? This question emerged despite the fact that the political leaders declared each time that they had provided enough "mechanisms" to ensure the good functioning of the ruling coalition.

A very important aspect related to the functioning of AEI was that no partner was satisfied with other coalition partners. In particular, this referred to the relationship of LDPM, on the one hand, and DPM and PL, on the other hand. Filat accused the partners of interference in the activity of government and, at the same time, of criticizing the government. In their turn, Lupu and Ghimpu reproached Filat for his arrogant refusal to involve them in the governance process, lack of communication and intention to marginalize them.

During this period, the government did not function as a whole; there are three mini-governments within it, because cabinet ministers were primarily subordinated to be the party leader, then to the prime minister. "Filat has to deal with his ministries. I will deal with mine. These are areas that PL is responsible for. This is only our business who we are going to nominate for this post",²⁵² constantly claimed the leader of PL, Mihai Ghimpu, during his verbal disputes with the Prime Minister Vlad Filat. In response, Filat answered him: "Ghimpu will provide assessments when he becomes Prime Minister. For now, I am in this position and according to functional and legal duties I have this ability ... I am the Prime Minister ... and mister Ghimpu has to admit that".²⁵³ Another contradiction within the AEI governments was the one between LDPM and DPM. In particular, these were the numerous verbal disputes between the Minister of Economy Valeriu Lazar, who very often criticized openly the decisions of the government and the Prime Minister Filat who expressed his dissatisfaction with Lazar's institutional behavior of insubordination.²⁵⁴

Components of governing alliances were officially coalition partners, in reality they were political rivals, being permanently involved in a political dispute. In this dispute, each party sought to use the state institutions as levers. In this way, political leaders and parties compromised not only themselves, but also the state institutions, starting with the General Prosecutor's Office and the CNA and ending with the Constitutional Court.

Filip government, although formally it is a coalition, is actually a DPM executive. The other political actors that voted for the Filip government (PL and MPs that left PCRM and LDPM) are political satellites rather than DPM ruling coalition partners. More than a year after the appointment of Filip government, this situation became official when the parliamentary faction of DPM was extended to over 40 MPs and the parliamentary group of the European People's Party of Moldova (PPEM), which promotes a loyal policy towards government, increased as well.

Accountability of the executive members for their actions

In the Republic of Moldova there is no political practice established at the level of political culture of senior officials being accountable for their actions. Situations when senior officials were held accountable for their actions were related to the political context of the moment and were not the result of legal norms functioning. Representatives of the Executive were held accountable for their actions based on political grounds, either by the leader of their own party or were "victims" of inter-party political disputes.

²⁴⁹ <https://freedomhouse.org/report/nations-transit/2017/moldova>

²⁵⁰ We condemn the undemocratic way in which Filip Government was invested, 22 January 2016. /

<http://www.transparency.md/index.php/2016/01/22/condamnam-modul-nedemocratic-in-care-a-fost-investit-guvernul-filip/>

²⁵¹ The ruling alliance is solid and sound and has no problems, 09.02.2010. / <http://protv.md/stiri/politic/aliana-de-guvernare-este-beton-si-nu-are-nicio-problema-in-interior---46725.html>

²⁵² Ghimpu's reply: Filat has to deal with his ministries. I will deal with mine. 5 February 2013. / <http://unimedia.info/stiri/video-Replica-lui-Ghimpu-Filat-sa-se-lamureasca-cu-ministerele-lui-eu-cu-ale-mele-56983.html>

²⁵³ Filat and Ghimpu attack each other: When the prime minister leaves, the whole Government leaves, 22 February 2012. / <http://unimedia.info/stiri/video-filat-si-ghimpu-se-pisca-reciproc-cand-pleaca-prim-ministrul-pleaca-intreg-guvernul-44732.html>

²⁵⁴ Filat may demand resignation of Valeriu Lazăr for „being too talkative”, 27 June 2011. / <http://www.azi.md/ro/print-story/19329>

The LDPM faction tried to promote two legislative initiatives with reference to the executive's activity: Law on government and Law on ministerial accountability. The draft law on ministerial accountability²⁵⁵ aimed at enhancing the personal responsibility of government members. The project was to regulate two types of ministerial accountability - political and legal. Political accountability was to be collective or individual and could be requested by the parliament. The draft law on ministerial accountability was not approved at that time, due to claims that there were several formulas that could lead to deficiencies in implementation.²⁵⁶

Transparency in decision-making

Although there is a legal framework on transparency in the decision-making process,²⁵⁷ the Government often applies it in an inappropriate way. Civil society role is being drastically reduced. Various leaders of the civil society have expressed their dissatisfaction on this situation, while among the objections there was mentioned failure to comply with the requirements for stakeholder consultation and transparency at the decision-making stage, failure to submit normative acts for expertise, avoiding transparency of opinions on deputies' initiatives, etc.²⁵⁸ As a result, the political incumbents decided to strike back and dismiss every sign of criticism of the Moldovan civil society organizations by assembling their own 'constructive civil society', definitely more obedient and designed to serve ruling parties objectives. In fact, this kind of double-sided civil society serves as a firm sign of 'consent' with governmental policies of the 'right citizens', who save no efforts to cry out and silence the 'wrong citizens', whose who are 'politicized' because they make political statements. The so-called 'gongo's have emerged literally overnight, gaining wide media coverage at the media outlets, owned by the most affluent media owner in Moldova, President of the Democratic Party.

Deficiencies in decision-making transparency had extremely serious consequences, in particular, in terms of the assumption of responsibility by the governments of Leancă and Gaburici, when were created conditions for urgent crediting by the NBM of banks in difficulty (BEM, Banca Socială and Unibank) and decisions were made to allocate about one billion dollars from the NBM to these three banks.²⁵⁹ It should be mentioned that in the case of BEM, the government did not make its decisions public, but on the contrary, it has kept them in secret.

The concession of the Chisinau International Airport was conducted in a non-transparent manner as well, the Government taking the decision without the approval of state structures, such as the Ministry of Internal Affairs, the Intelligence and Security Service, the Ministry of Transport and Road Infrastructure.²⁶⁰ The same suspicious is the attitude of Filip government to the Draft Law on capital liberalization and fiscal stimulation,²⁶¹ a draft that, in the opinion of civil society, would legitimize money laundering and undermine anti-corruption efforts in the Republic of Moldova.²⁶²

The deficiencies in the decision-making transparency of the Government were also recognized by the governors in the Parliament's Decision on the approval of the National Integrity and Anti-Corruption Strategy for 2017-2020,²⁶³ which reveals, in particular, that the Government lacks a system for recording and transparency of draft normative acts submitted for approval, tolerates the approval of draft laws that have not been subjected to corruption proofing and not all government authorities within government introduce corruption proofing findings in the synthesis.²⁶⁴

²⁵⁵ Law on ministerial accountability. Draft. / https://www.google.md/?gws_rd=ssl#q=legea+privind+r%C4%83spunderea+ministerial%C4%83+Moldova

²⁵⁶ The government postponed the approval of the project on ministerial accountability, 16 January 2013. / <http://unimedia.info/stiri/doc-guvernul-a-amanat-avizarea-proiectului-cu-privire-la-raspunderea-ministeriala-56267.html>

²⁵⁷ Law Nr.239 of 13.11.2008 on transparency in decision-making. / <http://lex.justice.md/md/329849/>

²⁵⁸ Appeal on enhancing transparency in decision making, 29 January 2010. / <http://www.consiliulong.md/apel-cu-privire-la-sporirea-transparentei-actului-decisional/>

²⁵⁹ Radiography of Banking Fraud: Laundromat, Theft of Billion and the State Debt, 17 October 2016. /

<http://www.transparency.md/index.php/2016/10/17/radiografia-fraudelor-bancare-spalatoria-furtul-miliardelor-si-datoria-de-stat/>

²⁶⁰ <http://cna.md/libview.php?l=ro&id=1053&idc=5&t=/Mass-media/Comunicate-de-presa/Recomandarile-CNA-privind-concesionarea-Aeroportului-International-Chisinau/#sthash.Y8iXp67o.dpuf>

²⁶¹ Law on capital liberalization and fiscal stimulation. Draft law. /

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

²⁶² Approval of the Draft Law on the Liberalization of Capital Undermines Anti-Corruption Efforts, 12 December 2016. /

<http://www.transparency.md/index.php/2016/12/12/adoptarea-proiectului-legii-privind-liberalizarea-capitalului-submineaza-eforturile-anticoruptie/>; Appeal of Civil Society Representatives to the United States Government of America, 12 January 2017. / <http://www.transparency.md/index.php/2017/01/12/apel-al-reprezentantilor-societatii-civile-catre-guvernul-statelor-unite-ale-americii/>; No amnesty of corruption in Moldova. Press Releases, 7 February 2017. /

<http://www.transparency.md/index.php/2017/02/07/no-amnesty-for-corruption-in-moldova/>

²⁶³ Initial draft of the Decision - <http://parlament.md/ProcesulLegislativ/Proiectedeacteleislative/tabid/61/LegislativId/3759/language/ro-RO/Default.aspx> (final version is undergoing drafting process).

²⁶⁴ Decision on approval of the National Integrity and Anti-Corruption Strategy for 2017-2020. Draft, p.13. /

<http://parlament.md/ProcesulLegislativ/Proiectedeacteleislative/tabid/61/LegislativId/3659/language/ro-RO/Default.aspx>

Meritocracy in the executive branch

In the Republic of Moldova, informal practices based on nepotism upon appointment of persons in office are widespread, including at the highest level. The press reported many times about such relations within the state institutions.

There were several notorious cases of informal relations in Moldovan politics: PL leader, Mihai Ghimpu, is the uncle of prime deputy chairman of PL, the mayor of Chisinau, Dorin Chirtoacă; DPM chairman, Vladimir Plahotniuc is the godfather of the speaker of parliament and deputy chairman of DPM, Andrian Candu. At the same time, the press wrote that Plahotniuc would be the godson of Raisa Apolschii, DPM deputy and chairwoman of the Committee on legal affairs, appointments and immunities. Former Prime Minister, Chiril Gaburici, had as financial advisor his godson Natan Garstea, while another of his godsons, Eduard Banaruc,²⁶⁵ was the deputy secretary general of the Government.

Anatolie Donciu, head of the former National Integrity Commission, often said that there is no conflict of interest, as long as the legislation does not provide for notions such as “godparent” or “godchild”: *“The notion of nepotism is a form of corruption, in fact, and is introduced into the official UN vocabulary. However, there are no discussions about the relations between godparents and sponsors yet. It would be appropriate to introduce these notions as well and then we would have a legal framework within which we could react”*²⁶⁶. Some experts claimed that such words as “godfather” and “sponsor”, called cronyism, should be governed by a law on favoritism.²⁶⁷

In addition to the criteria of nepotism, after 2009, another criterion for appointment in public positions was the party affiliation. If in the first AIE government, in high-level ministerial functions, the minister could be from a party, and the deputy minister from another party (for example the Ministry of Foreign Affairs and European Integration), then, during the negotiations on the formation of the AIE 2 government, in December 2010, the Executive was strictly divided into areas, each ministry representing one area. Based on these agreements, the ministries acquired a “party” structure, while the criterion of belonging to a certain party prevailed over that of professionalism. The ministers themselves often provoked comments, both from political opponents and from society, on their professional capacity to lead the ministry.

Interference of other actors in the activity of the Executive

„I was just a premier”, was the answer given at a televised talk show by the former Prime Minister Iurie Leancă, when asking the question why he did not take any action in the case of fraud at Banca de Economii and concession of Chisinau International Airport.²⁶⁸ In fact, Leancă, in his statement, acknowledges that he did not have leverage when the illicit acts in the financial-banking system were committed, while the AIE governments were constrained and limited in their actions by political party factors. This was the reason provided at the time of resignation by another former Head of the Executive, Chiril Gaburici: *“Currently a manager has no power, we cannot mimic reforms”*.²⁶⁹

„Leverage depends on the functions the PL has received. We are members of the Alliance and regardless of the number of functions we have joint responsibility”, this was the way to regard alliance governments of the liberal leader, Mihai Ghimpu.²⁷⁰ There were divergences and different opinions within governing alliances as to how an executive should function as a state institution. If LDPM, which held the position of prime minister of the government sought to escape the party control of alliance colleagues, then DPM and PL through the mini-alliance within the ruling alliance attempted by all means to control through various filters the activity of the executive led by LDPM representative.²⁷¹ In the AEI governments, the Alliance Council and the Presidium of the Government functioned above the executive.

After the political crisis related to „Pădurea Domnească” (Princely Forest) incident and the Constitutional Court ruling the governance started to be carried out through “intermediaries”. Iurie Leancă, Valeriu Streleț and Pavel Filip did not have (and do not have) the decision-making power in their parties, while Chiril Gaburici was not a member of any political party. In terms of political image, this fact was clearly reflected during Leanca's first period of governance when the

²⁶⁵ Nepotism in Moldovan politics. Godparents, godchildren, sponsors and relatives in Parliament and Government, 18 March 2015. / <http://inprofunzime.protv.md/stiri/politic/nasul-in-politica-din-moldova-nasii-cumetrii-finii-si-rudele-din--905441.html>

²⁶⁶ Nepotism, condemned by law. „We must declare this notion as a form of corruption”, http://www.publika.md/cumatrismul-condamnat-prin-legislatie-sa-declaram-aceasta-notiune-drept-forma-a-coruptiei_1462471.html

²⁶⁷ „Nepotism is just a form of corruption”, 19 March 2015. / <http://www.europalibera.org/a/26909495.html>

²⁶⁸ „I was just a premier”; Leancă about the fraud in BEM, Airport concession and everything that happened afterwards in 2009, 20 February 2015. / <http://jurnal.md/ro/politic/2015/2/20/am-fost-doar-un-premier-leanca-despre-jaful-de-la-bem-cedarea-aeroportului-si-tot-ce-s-a-intamplat-dupa-2009/>

²⁶⁹ Prime Minister Chiril Gaburici has resigned, specifying that he no longer wants the topic of his studies to be a public matter: „It is a step forward”, 12.06.2015. / <http://protv.md/stiri/actualitate/ultima-ora-premierul-chiril-gaburici-si-a-dat-demisia--997441.html>

²⁷⁰ Mihai Ghimpu: LP does not have enough levers and functions. There will be enough leverage when LP has 50 + 1 votes, 29.10.2012. / <http://www.pl.md/libview.php?l=ro&id=78&id=4253&t=/Presa/tiri/Mihai-Ghimpu-PL-nu-are-suficient-parghii-i-functii-Parghii-vor-fi-destule-atunci-cand-PL-va-avea-501-voturi>

²⁷¹ Liberal Democrats demand the Alliance for European Integration to renounce at control over government activity, 19.07.2011. / <http://moldnews.md/rom/news/38915>

former premier Vlad Filat accompanied him at most public events attended by the Prime Minister.²⁷² Subsequently, when the two LDPM leaders had a conflict, Iurie Leancă spoke about two decision-making centers. Attempts of real leaders - the chairman of LDPM, Vlad Filat, in the summer of 2015, and that of the current DPM chairman, Vladimir Plahotniuc, at the beginning of 2016 - to come to the head of the Executive failed. Thus, the system in which the main person of the ruling party did not lead the Cabinet of Ministers was maintained. A few months after the Executive's activity, this state of affairs was "certified" by public appearance of the post of executive coordinator of the ruling alliance.²⁷³

In addition to politicizing and giving a party affiliation nature to the central public authority, local public authorities followed the same pattern. In 2011, following local elections, there was an attempt to extend the AIE agreement at the local level as well. However, this initiative failed due to disagreements between LDPM and PL.²⁷⁴ After the local elections in the summer of 2015, DPM negotiated by various methods the creation of local coalitions without the participation of LDPM. After the arrest of Filat, many local representatives of LDPM left the party and joined DPM. Liberal Democrats accused Democrats that these party switching examples were the result of pressure and blackmail.²⁷⁵

Such accusations were made by local representatives from other parties as well. A relevant case was that of the mayor of Taraclia, Serghei Filipov, who was fined and ousted from office for having cut down several trees in front of the town hall in Taraclia. "*Cahul Court of Appeal's decision on the dismissal of the mayor of Taraclia is politically motivated*", was the reaction of Filipov at the court ruling.²⁷⁶

The case of Filipov was not a single one. Another example is the case of the mayor of Basarabeasca, Valentin Cimpoieș, who was detained for negligence in a criminal case where a father forced his 13 year-old daughter to provide sexual services for payment. Congress of Local Authorities of Moldova (CALM) showed its concern about the detention of the mayor of Basarabeasca claiming that this decision "is totally disproportionate and unjustified and may be considered as excess of power and abuse by judicial bodies".²⁷⁷

Another controversial aspect of the relationship between central public authority and local government is that of allocating budgetary funds based on political criteria.²⁷⁸

Ensuring integrity of the Executive

The investigative journalists write frequently about the properties and businesses of the Executive members, in many cases raising questions about the sources from which public officials / civil servants acquire their wealth or how they manage their businesses, occupying public positions at the same time.²⁷⁹ The National Integrity Commission (NIC), established in 2011, was to check the income, property and personal interest statements of dignitaries and officials, as well as their non-compliance with the provisions on conflicts of interest and incompatibilities. The attitude of CNI members on possible violations of legislation by the Executive representatives were often criticized by civil society and the media that noted the existence of a political influence on the entity, which reflected on biased decisions allowing public persons to avoid responsibility for failure to declare income and property, including those from abroad.²⁸⁰

In 2016, the Parliament of the Republic of Moldova approved the "integrity package", which included for instance the Law on the declaration of property and personal interests and Law on the National Integrity Authority (ANI), which

²⁷² Who is the Prime Minister? Filat accompanied Leancă at the flag hoisting ceremony. The two seem to be inseparable, 27 April 2013. / <http://inprofunzime.protv.md/stiri/politic/cine-e-premierul-filat-l-a-insotit-pe-leanca-si-la-arborarea-drapelului.html>

²⁷³ The new function of Plahotniuc: „Executive Coordinator of the Governing Alliance Council”, 3 May 2013. / <http://agora.md/stiri/18758/noua-functie-a-lui-plahotniuc-coordonator-executiv-al-consiliului-aliantei-de-guvernare>

²⁷⁴ Find out what analysts say about AIE dissensions and creating alliances at the local level, 7 July 2011. / <http://inprofunzime.protv.md/stiri/politic/afla-ce-spun-analistii-despre-disensiunile-din-aie-si-crearea.html>

²⁷⁵ Valeriu Streleț: „Magicians from PD could stage a fall of Filip government”, 12 February 2016. / <http://www.timpul.md/articol/-valeriu-strele-magicienii-de-la-pd-ar-putea-regiza-o-cadere-a-guvernului-filip-87973.html>

²⁷⁶ Serghei Filipov is an inconvenient mayor?!, 6 April 2016. / <http://www.zdg.md/stiri/stiri-politice/serghei-filipov-este-un-primar-incomod>

²⁷⁷ CALM, outraged and worried by the actions of the judiciary in the case of mayor of Basarabeasca: intimidation, a sword of Damocles over mayors! 22.03.2017. / <http://www.calm.md/libview.php?l=ro&idc=66&id=3583>

²⁷⁸ <http://moldnova.eu/ro/primarii-dezamagiti-de-guvernul-filip-care-le-taie-banii-5281.html/>

²⁷⁹ The new ministers, own houses worth millions, companies and property in Romania, 6 August 2016. / [²⁸⁰ National Integrity System Moldova 2014, page 157-158. /\[http://www.transparency.md/wp-content/uploads/2017/02/TI_Moldova_Sistemul_national_de_integritate_2014.pdf\]\(http://www.transparency.md/wp-content/uploads/2017/02/TI_Moldova_Sistemul_national_de_integritate_2014.pdf\); Luxury villas that are not declared by high officials, 7 May 2013. /<https://point.md/ro/noutati/obschestvo/vile-de-lux-nedeclarate-de-catre-inalii-demnitari; The new ministers, own houses worth millions, companies and property in Romania, 6 August 2015. /https://www.zdg.md/editia-print/investigatii/cine-sunt-noii-ministri>](http://www.zdg.md/editia-print/investigatii/cine-sunt-noii-ministri; Ministers in Filip Government, a year with businesses and interests, 19 January 2017. / http://www.zdg.md/editia-print/investigatii/ministri-in-guvernul-filip-un-an-cu-afaceri-si-interese; Mayors with hidden interests and property, 27 April 2016. /http://www.moldovacurata.md/interese-avere-la-vedere/integritatea-persoanelor/primari-cu-interese-si-averi-ascunse; Assets, businesses and hidden interests of heads of state agencies, 28 January 2016. /https://anticoruptie.md/ro/investigatii/integritate/sefii-agentiilor-de-stat-averi-afaceri-si-interese-i</p></div><div data-bbox=)

were to strengthen the system of integrity of civil servants and dignitaries.²⁸¹ The laws were passed were arrears of implementing the Action Plan for the implementation of the Association Agreement with the European Union. Although upon entry into force, the “integrity package” was supposed to be a radical solution in combating the undeclared property of state officials and dignitaries, it seems that state authorities do not hurry to implement it. There were a number of controversies in society on the slow process of initiating ANI’s activity, the way of selecting members of ANI Integrity Council,²⁸² civil society suspecting that authorities are seeking to reduce the impact of these laws by establishing control over the organization that will monitor the property and interests of civil servants.

Government’s fight against corruption

On many occasions, Moldovan authorities made use of rhetoric of fighting corruption. During the PCRM government, criminal cases were opened against the majority of opposition MPs. The most notorious case during the period of Voronin was that of the Mayor of Chisinau, seraphim Urecheanu, the main opposition leader at the time.²⁸³

During the AIE government, criminal cases were opened against ministers during political conflicts between parties forming the ruling coalition. In early 2013, during the political crisis caused by the „Pădurea Domnească” (Princely Forest) incident, several searches were conducted at the government, especially at the ministries led by LDPM representatives. Although it was attempted to describe those searches at the government as fight against corruption, public opinion rather described them as “selective justice”, consequence of the major political conflict between DPM and LDPM.²⁸⁴ In April 2017, several officials and dignitaries close to PL were victims of the guillotine of “selective justice” .²⁸⁵

Although several ministers were accused of corruption during the reference years, on the other hand, the government blocked several packages laws aimed at fighting corruption. In June 2015, the executive of the Republic of Moldova blocked the draft law on the declaration of personal property and interests and the CNI reform. The purpose of these legislative acts was to streamline the process of filing and checking the property and personal interests of officials and dignitaries.²⁸⁶ Government attitude towards this package of laws was an important argument for blocking the EU budgetary support to the Republic of Moldova in July 2016, because the CNI reform had been declared as priority for the European Union and the assistance program.²⁸⁷

Another case by which the Executive restricted by its actions the fight against corruption relates to blocking CNA access to the Integrated Customs Information System and Integrated Customs Information System "ASYCUDA World". Two amendments were made to the text of Article 17 of the Customs Code of the Republic of Moldova, which led to blocking the CNA officers' access to these data - the first amendment was carried out by AIE 2 deputies on 23 December 2013 and the second was made on April 12, 2015 when Gaburici government assumed responsibility for a package of laws on fiscal and customs policy.²⁸⁸

The widely spread corruption in the public sector is also acknowledged in the National Integrity and Anti-Corruption Strategy for 2017-2020: “*The entire public sector is bedeviled by systemic corruption. The causes of this state of affairs are such as: weakening of the relationship between state institutions and citizens; political control over staff employment policy in the public sector; breach of public procurement legislation; distorting the purpose of public-private partnership; tolerance of the lack of integrity of representatives of public institutions; impunity of public officials*” .²⁸⁹

²⁸¹ Package of laws on integrity, voted in final reading; „We must admit that there is corruption in this Parliament as well”, 17.06.2016. / <http://jurnal.md/ro/politic/2016/6/17/pachetul-de-legi-cu-privire-la-integritate-votat-in-lectura-finala-trebuie-sa-recunoastem-ca-si-in-acest-parlament-exista-coruptie/>

²⁸² Minister of Justice, on representatives of civil society elected to the Integrity Commission: „It is one thing to know the law and another thing is to apply the law”, 28.12.2016. / <http://anticoruptie.md/ro/stiri/ministrul-justitiei-despre-reprezentantii-societatii-civile-alesi-in-comisia-de-integritate-este-una-sa-stii-legea-si-alt-lucru-este-sa-aplici-legea>

²⁸³ General Prosecutor’s Office opened a criminal case against Serafim Urechean, 21.11.2008. / <http://protv.md/stiri/politic/procuratura-general-a-deschis-un-dosar-penal-pe-numele-lui-serafim-36427.html>

²⁸⁴ Plahotniuc was dismissed. Masked men burst into the Government, 15.02.2013. / <http://www.dw.com/ro/plahotniuc-a-fost-demis-masca%C5%A3ii-aun%C4%83v%C4%83lit-%C3%AE-n-guvern/a-16602236>

²⁸⁵ Fight against corruption, under the wand of Plahotniuc. List of those detained and convicted, 28 April 2017. / <http://moldova.eu/ro/lupta-cu-coruptia-sub-bagheta-lui-plahotniuc-lista-celor-retinuti-si-condamnati-15273.html/>

²⁸⁶ A package of anti-corruption laws rejected by the government. Ministers proposed by DPM were against, 16.06.2015. / <http://www.moldovacurata.md/news/view/un-pachet-de-legi-anticoruptie-respins-de-guvern-s-au-opus-ministrii-propusi-de-pdm>

²⁸⁷ Integrity of dignitaries: from one gate to another, 18 June 2015. / <http://www.zdg.md/editia-print/politic/integritatea-demnitarilor-dintr-o-poarta-in-alta>

²⁸⁸ Who blocked the CNA access to the Customs database, 29.09.2015. / <https://www.mold-street.com/?go=news&n=4137>

²⁸⁹ Parliament Decision nr. 56 of 30.03.2017 on the approval of the National Integrity and Anti-Corruption Strategy for 2017-2020, draft version. / <http://parlament.md/ProcesulLegislativ/Proiectedeactlegislative/tabid/61/LegislativId/3759/language/ro-RO/Default.aspx> (the final version is undergoing drafting).

Commitment and engagement of the Executive in the development of a well-managed public sector

Another serious problem in the activity of the Executive refers to its commitment and engagement in the development of a well-governed public sector. Over the last few years, there were several examples showing that the Government encouraged amateurism and incompetence in the public sector rather than seeking to strengthen it.

First, the negative implications of establishing the algorithm for ruling alliances after 2009 are to be mentioned. This meant that the deputy ministers from some parties were subordinated to ministers from other parties that were part of the AIE. As a result, this fact caused problems in the activity of ministries, because the deputy ministers coordinated their activity with the parties that nominated them, provoking a conflict in terms of lack of subordination to the heads of ministries. It should be mentioned that the logic of "multi-party" ministries generated major problems related to coordination of ministries activity and encouraged corruption.

Another serious problem that had a negative impact on the public service activity is the quality of staff that was recruited. After 2009, the ruling parties started a process of dismissal from office both within ministries and bodies subordinated to them. People considered being difficult to deal with²⁹⁰ and those that did not belong to ruling parties were dismissed, while the main criterion for employment was political affiliation, which meant being member of a party that was part of the ruling coalition.²⁹¹ This process also affected the employees of enterprises controlled by the state, which became the networks of governing political parties.²⁹² This deficient practice had negative consequences on the public service in the Republic of Moldova.

Also, it is worthwhile mentioning pressures and other informal practices used against some local politicians to force them to vote for ruling parties, especially during elections of district chairpersons after the 2015 local elections. We refer both to pressures faced by councilors of the opposition parties²⁹³ and to the influence from the center on the territorial organizations of liberal democrats and democrats while choosing district authorities²⁹⁴. This vicious practice of intimidating local elected representatives was not stopped, but on the contrary, it is continued. In this context, LDPM practically lost all district chairpersons of the 8 that it had after the local elections in 2015. The phenomenon of intimidation and pressure on local elected representatives was confirmed both by interviews with local elected representatives in the settlements of the Republic of Moldova and by public statements made by local councilors or mayors.²⁹⁵

It is also worthwhile mentioning the vicious distribution of state budget allocations for local public administration authorities to finance capital expenditures. In the Republic of Moldova, the ruling parties supported, on a priority basis, the localities whose authorities were a reflection of the political configuration at national level.²⁹⁶

The government has contributed to the decrease by more than a quarter of the number of authorizations, permits and licenses for the business in 2016, by instituting a moratorium on state controls and then developing a new mechanism for carrying out controls. This mechanism provides for a decrease in the number of control bodies from 69 to 18, including 5 independent regulators.²⁹⁷ However, these achievements are overshadowed by the attitude of the ruling parties towards the public service, in general, and local public administration, in particular, which is evidence of public sector clientele relations with the government. This situation could have a negative impact on projects to reform central and local public administration.

Discrimination based on loyalty and political business interests

A serious problem in the activity of central and local public administration is the support provided for certain business groups and the use of administrative resources in the political struggle with opposition parties.

²⁹⁰ The Republic of Moldova districts lack qualified staff, 30 April 2010. / <http://archiva.flux.md/editii/201016/articole/9445/>

²⁹¹ The new chairperson of the district Hâncești, intercepted in the case of the former head of the tax office: „The entire republic has to be green”, 10.01.2015. / <http://www.moldovacurata.md/interese-avere-la-vedere/integritatea-persoanelor/noul-presedinte-al-raionului-hancesti-interceptat-in-dosarul-fostului-sef-de-la-fisc-toata-republica-sa-fie-verde>

²⁹² Veaceslav Ioniță. State-run enterprises and their role in the national economy, p.9. IDIS „Viitorul”, July 2016. / <http://www.viitorul.org/doc.php?l=ro&idc=294&id=5267&t=STUDII-IDIS/Economie/Intreprinderile-gestionate-de-stat-i-rolul-lor-in-economia-nationala>

²⁹³ Collegiate bodies of the Party of Socialists decided to exclude them from the party of all those who had violated party principles and voted in common with the representatives of the oligarchs in the districts, 21.07.2015. / <http://socialistii.md/organele-colegiale-ale-partidului-socialistilor-au-decis-excluderea-din-formatiune-a-tuturor-persoanelor-care-au-incalcat-principiile-partidului-si-au-votat-in-comun-cu-reprezentantii-oligarhilor-din/>

²⁹⁴ Veaceslav Berbeca. Structure of alliances in district councils: between desiderata and facts. Policy Brief. IDIS „Viitorul”, September 2015. / http://www.viitorul.org/files/library/4822295_md_policy_brief_2_0.pdf

²⁹⁵ Local elected officials from LDPM, blackmailed, 6 February 2016. / <http://jurnaliv.md/ro/news/2016/2/6/alesii-locali-din-pldm-santajati-10190329/>

²⁹⁶ Veaceslav Berbeca. Distribution of allocations for capital investments based on the criterion of political affiliation. Policy Brief. IDIS „Viitorul”, January 2015. / <http://www.viitorul.org/ro/content/proces-democratic>

²⁹⁷ Speech of the Prime Minister Pavel Filip on the occasion of one year anniversary since the Government was invested, 20.01.2017. / <http://www.gov.md/ro/content/discursul-prim-ministrului-pavel-filip-cu-prilejul-implinirii-unui-de-la-investirea>

On the one hand, LPA authorities loyal to the government created impediments to the process of collecting signatures for holding a referendum on the election and dismissal of the head of state by direct vote and reducing the number of members of parliament from 101 to 71, organized by Justice and Truth Platform. On the other hand, administrative resources for collecting signatures in support of the candidate Marian Lupu or the uninominal voting system were massively used.²⁹⁸

After 25 years of independence, the state remains the largest employer in the country with a share of 60% of the employees in the official sector of the country, employed either in public institutions or state-run enterprises, some of which are state monopolies.²⁹⁹ These companies, such as JSC "Metal Feros", enjoy a privileged status on internal market and are an element of corruption.³⁰⁰

Appointment of managers and members of boards of directors of state-owned enterprises is carried out on a clientele basis. Lack of comprehensive criteria in terms of appointment to these management boards enables the appointment of both state representatives and business managers based on political criteria, creating a clientele and dubious system of state property management.³⁰¹

The National Integrity and Anti-Corruption Strategy for 2017-2020 notes that *„in recent years, journalistic investigations have revealed several situations where members of the government, local elected representatives and other public officials promoted their personal interests in their professional activities to the detriment of the public interest defying the legislation in various ways”*.³⁰²

Supervision of the Executive's activities

The executive is accountable for its activity to the Parliament which has a number of tools to monitor government activity. MPs have the right to file simple or censure motions against government activity and may submit questions or interpellations. MPs make use of these instruments, including the motion of censure, by which was passed the vote of no confidence in Vlad Filat government on 5 March 2013, or Valeriu Streleț on 29 October 2015. However, these censure motions looked more like settling of accounts between DPM and LDPM than an attempt to establish the bases of an efficient government.

The activity of the Executive is supervised by the law enforcement agencies. However, their activity is selective, since those detained or accused are dignitaries³⁰³ who were associated with LDPM or because their activity aims at intimidating local councilors and mayors and compelling them to join DPM.

It should be noted that civil society and the media also play an important role in monitoring the activity of the government, revealing problems/deviations, including in the decision-making process, public procurement procedures, declarations of property and personal interests, management of state enterprises, etc.³⁰⁴

Measures taken by the government to investigate the bank fraud

News about the fraud in the banking system led to the "explosion" of Moldovan society, whose consequence was the mass protests in the second half of 2015. Experts specified the ways the government contributed to the devaluation of Moldovan banking sector: problems in BEM were concealed; part of BEM shares were sold; letters of guarantee were signed, by which loans from the NBM were taken to cover the losses incurred by BEM.³⁰⁵ These actions were kept in secret, the actions were orchestrated by accumulating important resources in a few banks, after which bad loans were given, while the government covered these gaps with money borrowed from the NBM. The executive did not take the

²⁹⁸ Election observation mission for the office of President of the Republic of Moldova on 30 October 2016 REPORT nr. 3 Monitoring period: September 14 - October 4 2016. / <http://www.e-democracy.md/files/elections/presidential2016/report-promo-lex-elections-2016-3-ro.pdf>

²⁹⁹ Veaceslav Ioniță. State-run enterprises and their role in the national economy, p.9, IDIS "Viitorul", July 2016. /

<http://www.viitorul.org/doc.php?l=ro&idc=294&id=5267&t=STUDII-IDIS/Economie/Intreprinderile-gestionate-de-stat-i-rolul-lor-in-economia-nationala>

³⁰⁰ The searches occurred after State Tax Service revealed FRAUDS at „Metal Feros”, 15 February 2013. / <http://www.timpul.md/articol/perchezitiile-vin-dupa-ce-fiscul-a-descoperit-fraude-la-metal-feros-41006.html>

³⁰¹ The legal framework for state-owned enterprises needs to be reviewed, 23 March 2017. /

<http://www.transparency.md/2017/03/23/cadrul-legal-privind-intreprinderile-cu-capital-de-stat-trebuie-revazut/>

³⁰² Parliament Decision nr. 56 of 30.03.2017 on the approval of the National Integrity and Anti-Corruption Strategy for 2017-2020, draft version,

<http://parlament.md/ProcesulLegislativ/Proiectedeacteleislative/tabid/61/LegislativId/3759/language/ro-RO/Default.aspx> (the final version is undergoing drafting).

³⁰³ Former head of State Tax Service Nicolae Vicol, announced in international search, 23 June 2015. / http://unimedia.info/stiri/Fostul-sef-al-FISC-Nicolae-Vicol-anunat-in-cautare-internaionala-96231.html?utm_source=rss&utm_medium=rss&utm_campaign=rss

³⁰⁴ "Property declaration — integrity test", July 2016. / <http://www.e-democracy.md/adept/activities/declaratia-avere-test-integritate/>; Public money is also my money! Public Procurement Monitoring Report (Nr.4). Chisinau, 2017. / <http://ager.md/sites/default/files/Raportul%20de%20Monitorizare%20Nr%204.pdf>; Monitoring transparency of state-owned enterprises and joint stock companies with full and majority state ownership from the Republic of Moldova.

Transparency International – Moldova 2016. / Reform of the public procurement system in the Republic of Moldova – a reform with arrears, 30 May 2017. / <http://expert-grup.org/ro/activitate/comunicate-de-presa/item/1431-reforma-sistemului-achizitiilor-publice-din-republica-moldova-o-reforma-cu-restante>

³⁰⁵ The government is responsible for the theft of the billion, experts, 28 July 2016. / <http://www.ipn.md/ro/special/78004>

necessary steps to remain the major shareholder in BEM. The decrease in the state share in BEM's share capital would have been impossible without government contribution.³⁰⁶

Investigation to identify those responsible for the devaluation of the banking system generates much controversy and there are suspicions that not enough efforts are being made to achieve this goal. The director of the National Anticorruption Center, Viorel Chetragaru, stated in the Parliament that the money stolen from the banking system can be recovered and that much of the money is in the country, as investments, at Chisinau International Airport and Duty-free stores.³⁰⁷

The final beneficiaries of the banking sector fraud are not known. To recover part of the money embezzled from the banking sector was contracted the American company Kroll, whose investigation is in progress. Prior to recovering the money following Kroll investigation, the government assumed responsibility before the Parliament regarding the conversion into state debt of emergency loans offered by the National Bank of Moldova (NBM) to the three banks that were liquidated.³⁰⁸ According to the project on the conversion into state debt of emergency loans, the volume of government bonds is equal to the amount of outstanding loans of Banca de Economii, Banca Socială and Unibank taken from the National Bank of Moldova. Government bonds will be paid off within a period of up to 25 years with an effective interest rate of 5% per year.

One of the extra-parliamentary opposition leaders, Maia Sandu, declared that *“By today's decision to put all debt on the shoulders of population, which is already very poor, the government has admitted that it does not want to find those responsible for the theft of the billion and recover the money from the thieves”*.³⁰⁹

The people who have taken loans from BEM and failed to pay them back are not known, although civil society requested several times to reveal the list of these people. In November 2016, the head of the parliamentary faction of PL, Mihai Ghimpu, requested this list, during the Parliament session, from the Governor of the NBM and the Prosecutor General, admitting that several government officials as well as deputies would have benefited from BEM loans without paying them back and these people would be covered by the Prosecutor's Office and the NBM.³¹⁰ The requests by civil society and deputy Ghimpu have never been answered.

The appointment of Filip government in 2016 led to the concentration of DPM power within the Executive. Criminal investigation bodies and courts are used by this party as instruments to intimidate and make loyal political rivals both at central and local level. This practice is obvious particularly in relations with local councilors and mayors that are blackmailed and compelled to join the ruling party.

The state has an inefficient central government, controlled by an interest group using government institutions to its own benefit. The state is facing endemic corruption and governmental bodies that are hardly accountable for their actions.

Allocation of financial resources from state funds for infrastructure projects is carried out based on clientele principles, while local governments headed by DPM representatives have priority. The “billion theft” scandal is one of the best examples of the state captured by interest groups that have created extractive economic and political institutions for the benefit of restricted interests of those who hold power.

³⁰⁶ <https://vnegruta.files.wordpress.com/2015/05/3-bem-cronologie-parteaii.pdf>

³⁰⁷ Chetragaru: Money is in the country. We need to clarify with the Airport, 8 May 2015. / <http://agora.md/stiri/8542/video--chetragaru-banii-sunt-in-tara--trebuie-sa-ne-clarificam-cu-aeroportul>

³⁰⁸ The billion stolen in Chisinau will be paid by citizens. Opposition reaction, 26 September 2016. / <http://moldnova.eu/ro/miliardul-furat-de-la-chisinau-va-fi-platit-din-buzunarele-cetatenilor-6759.html/>

³⁰⁹ Idem.

³¹⁰ Theft of the billion // The Prosecutor General and the Governor of the NBM defy a leader of the ruling coalition? They do not submit the required list, 10 February 2017. / <http://www.ziarulnational.md/furtul-miliardului-procurorul-general-si-guvernatorul-bnm-sfideaza-un-lider-al-coalitieii-de-la-guvernare-nu-i-prezinta-lista-ceruta/>

Conclusions

Over the last few years, the Republic of Moldova has been a "polygon" of sharing state institutions between the ruling parties. During this time, a clear transition from endemic corruption to the politicization of the fight against corruption, culminating in the capture of the three branches of state power by a narrow group of obscure interests.

Beginning in 2009, the Democratic Party of Moldova (DPM) headed initially from the shadows, and then officially by the controversial oligarch Vladimir Plahotniuc, imposed its interests in cartel agreements between members of the ruling coalition. Initially, he took control over the anticorruption bodies, further expanding the law enforcement. In spite of the enormous financial, media and administrative resources, DPM obtained modest results in the last parliamentary elections. However, the party with the highest anti-rating according to sociological studies has "converted" by various methods, including blackmail and bribery, MPs from other factions. Parliament has been subject to an unprecedented dictate of political "migration", with the share of transferees in various factions accounting for around 1/3 of the deputies. At present, DPM has become the absolute beneficiary of the "migration" phenomenon of deputies and in fact controls the Legislature.

As a result of deputies' "migration", the new structure of the Legislature does not reflect the will of the people. Questions regarding its legitimacy, in particular, the legitimacy of decision-making, and in the context, - the legitimacy of the intention to change the electoral system in the Republic of Moldova, are still more pressing.

Anticorruption bodies, due to their hierarchical subordination and lack of individual guarantees and freedoms similar to judges, are more prone to control. The political distribution of functions among political parties, the lack of new names in the anti-corruption institutions, the selectivity of filing files against political opponents and economic competitors, speak of the fact that the institutions are under the influence of this group of interests / oligarchs.

The interest group that controls the Legislature and the anti-corruption bodies extends its control over the judiciary. Reform in the judiciary has involved considerable financial resources, especially from development partners. Expectations from the implementation of the reform were high, but this was largely mimicked by the authorities, as virtually the same actors remained in the system with questions of integrity.

There are multiple examples of abusive use of the function by judges and cases demonstrating the judicial link and bias towards the DPM. It can not be concluded that the entire judiciary is captured because judges benefit from individual independence, and some critical voices are still seen. However, the evidence clearly indicates the bad state of affairs in the judiciary. Relevant cases of persecution of judges, advocates and whistleblowers are relevant. Money laundering schemes, bank frauds, attempts to legalize fraudulent money, which could not be applied in practice without involving the interest group in the sphere of justice, are also eloquent.

By controlling the Legislature and dominating, in large part, the Judiciary, it is very easy to concentrate power in the institutions of the Executive. Starting in 2016, the DPM took de facto power in the Executive. Criminal prosecution bodies and courts have been used by this party as instruments of intimidation and loyalty to political rivals both at central and local level. This practice is particularly noticeable with regard to local councilors and mayors who are blackmailed to join the DPM. The central government and, to a large extent, the local government are controlled by this party that uses state institutions for their own benefit. An eloquent example is the allocation of financial resources for infrastructure projects on a client basis, a priority being given to the local authorities headed by DPM representatives.

The aforementioned prove that Moldova is seriously affected by state capture. Control established over the main state bodies and agencies is based on patron-clientelle relationships, rent-seeking and a sophisticated mechanism of sanctioning dissent or autonomy from the dominant power-coalitions. As Conolly has been substantiated in his writings,³¹¹ this sort of government leads to the merge between organizational boundaries of economic and political organizations into personal unions, based on safeguarding individual benefits or shelter from eventual prosecution. Thus, extraction of rents (resources) do not target specific groups, but particularly state institutions as carriers of authority and rent-multiplication in a closed political order.

An effective way to redress the situation would be to initiate independent international investigations of the money laundering, bank fraud, attempts to legalize fraudulent money. If there is no urgency to carry out such investigations, the Republic of Moldova risks becoming a zone for regional instability creating risks of various international criminal schemes, including money laundering and legalization of fraudulent capital.

³¹¹ Conolly R, *The economic sources of social order in post-socialist Eastern Europe*, London, Routledge.