

## **Research**

### *Corruption at the local level in Republic of Moldova*

#### **Territorial administrative structure**

Republic of Moldova is organized from administrative perspective in villages, towns and autonomous territorial unit Gagauzia.<sup>1</sup> Two or more villages could form a single territorial-administrative unit named commune, and also another could be receive the status of municipality. The status of municipality has only the following cities: Chisinau, Balti, Bender, Comrat, Tiraspol.

Territorial-administrative structure of Republic of Moldova is separated in 2 levels: villages (communes) and cities (municipalities) are attributed to the first level, regions or so called districts are attributed to second level.<sup>2</sup> Republic of Moldova counts 932 territorial-administrative units, 898 of them are from the first level, and 34 are from the second level. Here are nor included the territorial-administrative units from the left side bank of the Dniester River, because this regions is self-proclaimed as a separate Republic, which is not recognized by the international community and Moldova too.

It should be noted that currently, a large number of municipalities "exist" contrary to current legislation, which provides that the administrative-territorial is created if its population is at least 1,500 people and has sufficient funds for the maintenance of the Hall and social sphere institutions. A lot of administrative units do not have the required number of people, either are not economically functional.

#### **The organization and functioning of local government in Moldova**

As authorities of municipalities where local autonomy is exercised in villages (communes), towns (municipalities) are local councils, as deliberative authorities, and mayors as executive authorities, and districts are district councils, as deliberative authorities, and district chairmen as executive authorities<sup>3</sup>.

The organization of the Gagauz Autonomous Territorial Unit (Gagauz People's Assembly, the Executive Governor of Gagauzia) is established in the law governing the special status of autonomous territorial unit of Gagauzia<sup>4</sup>.

The Constitution establishes a set of principles underlying the organization and functioning of local government. These principles relate to local autonomy, decentralization of public services, the legality in relations between public authorities and cooperation in solving common problems. Constitutional principles are closely interlinked and are designed to ensure an efficient activity of local authorities.

Relations within local government are determined by law, which establishes that local and district councils, mayors and district chairmen operate as autonomous authorities, settling public affairs in villages (communes), towns (municipalities) and districts under laws. Such a legal provision places the activity of local authorities on an equal level; they solve common problems, focusing on the principle of functional autonomy.

As regards the relations between central and local public authorities, the law indicates that these relations are based on principles of autonomy, legality, transparency and cooperation in solving common problems. Practically, all relationships between local governments and other authorities will be

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<sup>1</sup> Constitution of Republic of Moldova since 29.07.1994

<sup>2</sup> Law nr. 764 since 27.12.2001 on territorial-administrative structure of Republic of Moldova

<sup>3</sup> Law nr. 436 since 28.12.2006 about the local public administration

<sup>4</sup> Law nr.344 since 23.12.1994 about the juridical status of Gagauzia (Gagauz-Yeri)

built strictly in accordance with the interests of those authorities, respecting the principle of autonomy, without admitting any interference in their work. In developing this idea, the law specifies that between central and local authorities, between public authorities of the first level and second level there are no relations of subordination, excepting some cases provided by the law.

Moldovan realities show that de jure, LPAs in Moldova have sufficient declared autonomy, but, de facto, it is limited, in part because of the interference of the central authorities in their daily activity, partly because of their own financial resources under limit necessity. At the same time, limiting local autonomy is caused by an excessively fragmented administrative-territorial organization (32 districts, 932 administrative units for a population of 3.5 million, a territory with an area of 33 843 km<sup>2</sup>), which determines insufficient institutional and administrative capacities.

### **Decentralisation process**

Although in recent years, Moldova has taken several steps in decentralization and strengthening of local autonomy, significant results delay to appear. So far, local authorities activate in an excessively politicized environment, with extremely low administrative capacity, vested with powers and responsibilities difficult to implement because of the poor demarcation of these powers, lack of funds, human resources and heritage.

In 2012 the National Decentralization Strategy was adopted<sup>5</sup>, which sets the objectives and tasks in the medium term (Action Plan for 2012 - 2015) on decentralization and ensuring a genuine local autonomy for local government authorities, in accordance with the principles of the European Charter of Local Autonomy, ratified by Moldova in 1997. Unfortunately, we are already at the end of 2015 and we found out that over 80% of the tasks included in the strategy were not achieved. We could only observe the implementation of the first stage of the reform of local public finances.

In 2015, the new system of local government finances has begun<sup>6</sup>. This reform provides reforming the transfer systems by eliminating district administrations from the scheme of distribution of funds from the central budget to municipalities, thus diminished the impact that the political criteria played in the inter-budgetary relations. In addition, local authorities of first level are free to develop, approve and implement the budget according to its own priorities, depending on the area of the village, the number of inhabitants and revenues coming from taxes on income of individuals in the municipalities. However, earmarked transfers money from the general (balancing) from own revenues can be spend and planned according to the needs of the village and local strategic plans.

Meanwhile, the situation remains unchanged in the system of allocating financial resources for capital investments (roads, repairs, water, drainage, insulation of public buildings, etc.) that continues to carry out using political criteria. It's about Regional Development Fund, Environmental Fund, Energy Efficiency Fund and the Road Fund, where the most important resources of the state are concentrated.

Currently, the financial decentralization process was stopped. To ensure real financial autonomy of local authorities, the second phase of local finance reform - strengthening tax base, should be implemented, which means a real transfer of resources to local authorities, namely, more sources of revenue for local government. Lack of continuity and concrete actions in this area could reduce the positive effect of the implementation of the first stage of reform of local finances; moreover, can lead to full discredit of the whole process of decentralization reform.

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<sup>5</sup> Law on National Strategy of Descentgralization nr.68 since 05.04.2012

<sup>6</sup> Law on modification and changing the Law of local public finances nr. 267 since 01.11.2013

Reasons for the failure to reform: lack of political will, lack of understanding of the importance and scope of reforms to be carried out, lack of the necessary capacity at the central level to implement such comprehensive reforms, that must include both the central and local government

### **Electing local authorities**

Election of mayors and local/district councils are made under the system of proportional representation. Under this scheme, constituencies are formed for each administrative unit. Mayors are elected by universal, equal, direct and secret suffrage for a term of four years. The candidate for mayor is considered elected if he receives more than half of the valid votes of the voters who participated in voting. For councils, voters are faced with several lists of candidates on the ballot and will choose one list, without amending or supplementing it. Local councils are also elected for a term of four years<sup>7</sup>. The number of councilors for each administrative territorial unit depends on the number of inhabitants according to statistics from January 1 of the year when elections are carried out. The number of councilors varies between 9-43 and for Chisinau municipality, a number of 51 councilors is set. District chairman is elected by the district council at the proposal of at least one third of councilors elected by a majority vote of councilors elected.

In June 2015, local elections were held in the Republic of Moldova, after which they 898 mayors, 1116 district councilors and 10564 village / commune / town councilors' were elected. Participation voting rate was 48.95%. Practically in all polling stations in the country the 25% turnout has exceeded, which means that the elections were valid. The lowest attendance rate was in Gagauzia - 43.08% and the highest rate of turnout was recorded in Donduseni - 58.08%<sup>8</sup>.

The low turnout is due to the massive migration of the population to work abroad (according to official data persons who left abroad are in more than 300 thousand, and after unofficial data are out more than 1 (one) million Moldovans), passivity, disappointment in the major political parties, distrust in the ability of local authorities to solve community problems.

### **The perception of the corruption phenomenon**

Corruption is perceived as being one of the biggest issues of the Moldovan society. This fact is confirmed by the dozens of surveys and researches at the national and international level.

According to the Transparency's International Index of corruption perception<sup>9</sup>, in 2013, Moldova was ranked on 102<sup>nd</sup> place from 177 countries (comparing to 112 place from 180 countries in 2008), registering an average level among East Partnership countries.

According to the non-governmental business association "TRACE International", Republic of Moldova is situated on 130 places among 197 countries in the ranking of corruption risk (Global Business Bribery Risk Index) in 2014<sup>10</sup>. This ranking of corruption index measurement represents an alternative to the corruption index perception developed by Transparency International. According to this ranking, Republic of Moldova obtained a moderate score (49 points) in matter of "Government and

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<sup>7</sup> Electoral code nr.1381 since 21.11.1997

<sup>8</sup> Central electoral committee [www.cec.md](http://www.cec.md)

<sup>9</sup> <http://www.transparency.org/cpi2013/results>

<sup>10</sup> [www.traceinternational.org](http://www.traceinternational.org)

administration transparency”. Moldova obtained an average score of 64 points which placed Moldova in the group of high corruption risk countries.

The most recent national surveys underline that corruption represents one of the most important point the society is thinking of. According the Barometer of Public opinion, conducted in April 2014 by the Institute of Public Policy<sup>11</sup>, 31% of respondents had indicated corruption as a phenomenon which bothers most of all. Another survey, performed by the Center of Sociological Investigations and Marketing CBS-AXA<sup>12</sup> in March 2015, had showed that 39.5% of surveyd respondents are worried about the level of corruption. The data of another survey, performed the International Republican Institute<sup>13</sup>, in September – October 2015, showed that 31 % of Moldova’s citizens consider corruption as the most important issue, while only 4 % consider corruption as being the most important issue. Meantime, the survey reflects that 58% of the respondents have a negative attitude toward local public authorities.

### **The corruption reflected in mass-media and in projects of NGOs which are fighting against corruption**

The corruption abuses, which imply officials and public clerks at the local and central level, are in the permanent focus and attention of the mass-media who also performed multiple journalistic invetigations.

Among the most important and active representatives of mass-media we can metion the weekly newspaper “Ziarul de Gardă”<sup>14</sup> whose aim is the investigation of corruption abuses and cases in the judge system. .

Also, we could mention „RISE Moldova”<sup>15</sup>, which is representing the community of investigative journalists, programmers and activists from Moldova and Romania, who are looking for organized crimes, off-shore frauds, and traffic of arms, fiscal frauds and illegal business activities of politicians.

Since 2003 the Center of Jounalistic investigations<sup>16</sup>, has been created by a group of journalists and 3 mass-media NGOs. They performed several investigations on the following subjects: corruption, organized crime organizations, illegal property obtained by politicians, etc. The investigations are published simultaneously in 16 local newspapers and in several, which are at the national level. Meantime, the team of this center created in 2012 an online platform<sup>17</sup> to urge people to tell about corruption abuses, influence peddling, lack of transparency in public institutions, etc.

In 2006 it was established the “Alliance against corruption”<sup>18</sup>, which is a voluntary union of NGOs being active in the prevention, mitigation and eradication of corruption in Moldova. Alliance currently has about 20 members, joining representatives of the media, youth organizations from the education and science etc.

Alliance signed a collaboration agreement with the Government and whenever necessary notifies state institutions about possible acts of corruption and acts of corruptive behavior, possible abuse cases, incompatibility and lack of integrity.

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<sup>11</sup> [http://ipp.md/public/files/Barometru/Brosura\\_BOP\\_04.2014\\_anexa\\_final.pdf](http://ipp.md/public/files/Barometru/Brosura_BOP_04.2014_anexa_final.pdf)

<sup>12</sup> <http://www.cbs-axa.md/>

<sup>13</sup> [www.iri.org](http://www.iri.org)

<sup>14</sup> [www.zdg.md](http://www.zdg.md)

<sup>15</sup> [www.rise.md](http://www.rise.md)

<sup>16</sup> [www.investigatii.md](http://www.investigatii.md)

<sup>17</sup> [www.anticoruptie.md](http://www.anticoruptie.md)

<sup>18</sup> [www.alianta.md](http://www.alianta.md)

In 2012, the Independent Press Association and the Anti corruption edited the so called page "Active", which is focused on anti-corruption activities of the Anticorruption Alliance members.

In 2008 the initiative "Civic Initiative for a Clean Parliament" was established by seven organizations in order to prevent the voters about the compromised or corrupt election candidates by informing them about the obtained from monitoring and confrontation with the criteria of integrity.

As result, the online platform<sup>19</sup> has been created to track the integrity of the officials and clerks. This platform became a discussion platform for conducting analysis of corruption abuses, etc.

Another active ONG in fighting against corruption could be mentioned the Center for Analysis and Prevention of Corruption<sup>20</sup>, was created in 2000, with the purpose to reduce the corruption, to raise awareness, to determine the areas which were the greatest extent affected by corruption, to increase transparency in the activity of state and political institutions and to establish an effective public control over the activity of state bodies.

Therewith, Transparency International Moldova<sup>21</sup> has worked since 2000 as a national subsidiary of the World-Wide Transparency International organization. One of the main priorities of Transparency International Moldova is to promote the anti-corruption movement, by convening the most proactive known personalities in the country as promoters of the principles of transparency and democracy. Herewith, we need to mention the journalistic investigations in amount of 8 buletin volumes "Journalists against corruption" edited by Transparency International Moldova. Initiatives against corruption also involved NGOs such as: Soros Moldova, East European foundation, etc.

### **Anti-corruption institutions of Moldova**

3 important institutions that are mandated to fight against corruption are: National Center of Anti-Corruption (NCA), Anti-corruption prosecution and National commission on integrity<sup>22</sup>. National Center of Anti-corruption has been created by the government in 2002, firstly named as the Center of combating economic crimes and corruption. In 2012, after the performed reform the Center losed its competencies in economic crimes that lead to the name change. The center is a combined anti-corruption institution, responsible both for combat, as well as corruption prevention, with a total of 350 employees.

Anticorruption Prosecutor's Office is a specialized institution, created shortly after the anti-corruption institution in 2002. The Prosecution is responsible for directing all criminal investigations conducted by officers of the Centre National Anti investigation, but may conduct criminal investigations independently.

National Integrity Commission was created in 2012, being responsible for monitoring the income, properties and personal interests of public officials, conflicts of interest and incompatibilities of public officials. The commission acts in common with the National Center of Anti-corruption and Anti-corruption Prosecution by sending their reports.

### **Statistics about corruption at the local level**

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<sup>19</sup> [www.moldovacurata.md](http://www.moldovacurata.md)

<sup>20</sup> [www.capc.md](http://www.capc.md)

<sup>21</sup> [www.transparency.md](http://www.transparency.md)

<sup>22</sup> National system of integrity Moldova 2014, Transparency International Moldova, <http://www.transparency.md/Docs/SNI-2014.pdf>

Analysis of criminal cases on corruption, which are investigated by the National Anti-Corruption Center, shows that the number of cases of corruption in local government is growing.

In 2010 at the NCA were 398 cases of corruption and related acts 41 of them involving representatives of the local government, this representing 10.3% of all criminal cases of corruption (for comparison - in 2009 there were only 29 cases PLA). In 2011 there were 401 acts of corruption, 48 of them or 12% being at the local level.

In 2012 – were identified 436 corruption cases, 68 or 15.6% of them being at the local level. In 2013- were identified 431 corruption cases, 85 or 20.7% of them being at the local level. In 2014 - were identified 498 corruption cases, 82 or 16.5% of them being at the local level.

With regard to decisions of the court on these corruption cases, especially of corruption in local government, investigated by the National Anti Corruption Center, unfortunately we do not have a reliable statistic. We could mention otherwise, the information reflected in the study on corruption cases filed in courts in the period 1 January 2010 - 30 June 2012<sup>23</sup>.

As result of the examination in court of corruption cases the courts have issued sentences in 60%. Criminal proceedings were ranked in 31% of cases and acquittal sentences were issued in 9% of cases. In the individualization process of court sentences, the judges found that certain provisions excessive were applied according the criminal law and the criminal punishment was reduced.

Thus, in every third case examined, the courts decided to relieve the defendant of criminal charges and to undergo administrative charges. Every fourth conviction, the courts have decided to apply milder punishment due to exceptional circumstances. Every third case, the courts have decided to suspend application of imprisonment. In case of administrative punishments (about 29%), the penalties were symbolic - about 150 EUR. While in the cases of criminal responsibility (60%), sanctions included: criminal fines (to 80%) averaged at about 670 euros; deprivation of the right to hold certain positions (about a third, the other two thirds of prisoners were not restricted from returning to public service); imprisonment with conditional suspension of sentence (34%) and unconditional prison (1.5% of convicted) with an average term of seven months.

Unconditional imprisonment was imposed only for traffic of influence, not passive corruption and abuses committed by public officials. In addition, the study reported that courts never confiscated proceeds of corruption results thus offenders are neither punished nor prevented from committing new crimes of corruption in the future. It was also found that about half of all cases of corruption (43%) were examined in a single hearing and widely used "agreements confessions" which the defendant admits his guilt, thus making it possible examination the case through court proceedings simplified faster.

### **Studies and analyzes on corruption**

In Moldova were drawn relatively few studies and analyzes on corruption, actually there are no specialized analysis on local corruption. Much of the researches on corruption are analyzed in a series of tangentially related studies in administration, economics, finance, etc. We will mention a good part of these studies:

- In 2001 the Center for Strategic Studies and Reforms together with Transparency International Moldova developed the study "Corruption and quality of governance"<sup>24</sup>.

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<sup>23</sup> [http://cna.md/sites/default/files/statdata/eng\\_studiu\\_privind\\_dosarele\\_de\\_coruptie\\_final\\_decembrie\\_2013.pdf](http://cna.md/sites/default/files/statdata/eng_studiu_privind_dosarele_de_coruptie_final_decembrie_2013.pdf)

<sup>24</sup> <http://www.cisr-md.org/pdf/0101%20Coruptia%20si%20calitatea%20guvernarii.pdf>

- In 2003 the Institute for Development and Social Initiatives (IDIS) "The Future" developed a report entitled "Economic and institutional corruption"<sup>25</sup>.
- In 2007, IDIS published the research "Protecting the autonomy of local heritage in Moldova"<sup>26</sup>, describing the situation about the decentralization and autonomy of local heritage
- In 2009, IDIS experts elaborated the study "The organization and functioning of local government in Moldova: Skills, Structure and Resources"<sup>27</sup>.
- Expert Group, another think tank in 2010 elaborated the research "Analytical study on optimal administrative-territorial structure of the Republic of Moldova"<sup>28</sup>.
- In 2010, UNDP within the Joint Integrated Local Development developed "valuation Report of the administrative capacity of local authorities"<sup>29</sup>.
- In 2011 IDIS developed the research "Assessing the attitudes, skills and needs of the Moldovan authorities in the Context of European Integration Processes"<sup>30</sup>.
- In 2011 Expert Group developed the study "Effectiveness of Local Authorities in Moldova: Importance and Determinants"<sup>31</sup>. In the same year 2 other studies appeared 2 researches referring to property management by APL namely: "Evaluation of Properties Decentralisation in Moldova"<sup>32</sup> and "Tools Classification property and responsibility of central and local Public Administration Department"<sup>33</sup>.
- In 2012 IDIS elaborated a series of researches about the public local finances.
- Thus, IDIS developed "The guide of the local elected official" in local government finances, the budget process, local financial autonomy and local budgets<sup>34</sup>. Joint Integrated Local Development Programme published report "Local Public Finance, International Practice Models"<sup>35</sup>.

<sup>25</sup> [http://old.viitorul.org/public/433/ro/PE\\_1.pdf](http://old.viitorul.org/public/433/ro/PE_1.pdf)

<sup>26</sup> <http://viitorul.org/doc.php?l=ro&idc=306&id=749&t=/STUDII-IDIS/Administrare-publica/Politici-PublicePROTECTIA-AUTONOMIEI-PATRIMONIALE-LOCALE-IN-REPUBLICA-MOLDOVA>

<sup>27</sup> <http://www.viitorul.org/doc.php?l=ro&idc=306&id=2421&t=/STUDII-IDIS/Administrare-publica/Organizarea-si-functionarea-APL-in-Republica-Moldova-competente-structura-si-resurse>

<sup>28</sup> <http://www.expert-grup.org/ro/biblioteca/item/746-studiu-analitic-privind-structura-administrativ-teritorial%C4%83-optimal%C4%83-pentru-republica-moldova&category=180>

<sup>29</sup> <http://www.serviciilocale.md/doc.php?l=ro&idc=110&id=172&t=/Publicatii-i-resurse/Administratie-publica-locala/Raport-de-evaluare-a-capacitatilor-APL>

<sup>30</sup> <http://www.viitorul.org/doc.php?l=ro&idc=306&id=3586&t=/STUDII-IDIS/Administrare-publica/Evaluarea-atitudinilor-capacitatilor-si-nevoilor-autoritatilor-Republicii-Moldova-in-contextul-proceselor-de-integrare-europeana>

<sup>31</sup> <http://www.serviciilocale.md/doc.php?l=ro&idc=110&id=157&t=/Publicatii-i-resurse/Administratie-publica-locala/Eficienta-autoritatilor-publice-locale-din-Republica-Moldova-importanta-si-factorii-determinanti>

<sup>32</sup> <http://www.serviciilocale.md/public/files/5. Evaluarea descentralizarii proprietilor din Republica M.pdf>

<sup>33</sup> <http://www.serviciilocale.md/public/files/8. Evaluarea descentralizarii proprietilor din Republica M.pdf>

<sup>34</sup> <http://www.viitorul.org/doc.php?l=ro&idc=306&id=3751&t=/STUDII-IDIS/Administrare-publica/Ghidul-alesului-local-pe-domeniul-finantelor-publice-locale>

<sup>35</sup> <http://www.serviciilocale.md/doc.php?l=ro&idc=49&id=174&t=/Publicatii-i-resurse/Descentralizare/Raport-privind-finantele-publice-locale-Practici-si-modele-internationale>

- Meantime, Expert-Group developed two studies: “Evaluation of the efficiency and transparency of public financial resources allocated for the use of roads”<sup>36</sup> and „Political clientelism in the allocation of capital investments of local government in Moldova”<sup>37</sup>.
- IDIS developed the research „Conflict of interest and incompatibility regime in local government institutions in Moldova”<sup>38</sup>.
- In 2012 „ Performance evaluation study project beneficiary cities Local Government Support Project in Moldova”<sup>39</sup>.
- In 2013 – IDIS developed the study „ The new budget process for APL regulations, principles, rules, responsibilities”<sup>40</sup>.
- In 2014 - Expert – Grup presented the study „Transparency in Chisinau”<sup>41</sup> and the study „ Procurement in Moldova: Problems and Solutions”<sup>42</sup>.
- Transparency International Moldova published the research „ Moldova National Integrity System in 2014”<sup>43</sup>.
- In 2015, Expert - Grup developed the study „ About how public money is lost: Perception of Local Authorities”<sup>44</sup> and „Assessment of the transparent use of the Road Fund”<sup>45</sup>.
- IDIS published the study „ Transparency in decision-making within local authorities. Problems and solutions”<sup>46</sup>.

## Strategies and legislation ant-corruption

Moldova has besides anti-corruption institutions also a vast legal framework for preventing and combating corruption. The most important policy documents in this area are National Strategy for Preventing and Combating Corruption, implemented through a series of action plans for the period 2005-2010<sup>47</sup> and the National Anticorruption Strategy for 2011-2015<sup>48</sup> through 2 action Plans on the

<sup>36</sup> <http://www.expert-grup.org/ro/biblioteca/item/676-evaluarea-eficien%C8%9Bei-%C8%99i-transparen%C8%9Bei-utiliz%C4%83rii-resurselor-financiare-publice-alocate-pentru-drumuri&category=180>

<sup>37</sup> <http://www.expert-grup.org/ro/biblioteca/item/631-clientelism-politic-%C3%AEn-alocarea-investi%C8%9Biilor-capitale-autorit%C4%83%C8%9Bilor-publice-locale-%C3%AEn-republica-moldova&category=180>

<sup>38</sup> <http://viitorul.org/doc.php?l=ro&idc=306&id=3966&t=/STUDII-IDIS/Administrare-publica/Conflictul-de-interese-si-incompatibilitati-in-institutiile-administratiei-publice-locale-din-Republica-Moldova>

<sup>39</sup> [http://pdf.usaid.gov/pdf\\_docs/PA00HXHT.pdf](http://pdf.usaid.gov/pdf_docs/PA00HXHT.pdf)

<sup>40</sup> <http://www.viitorul.org/doc.php?l=ro&idc=306&id=4124&t=/STUDII-IDIS/Administrare-publica/Noile-reglementari-ale-procesului-bugetar-pentru-APL>

<sup>41</sup> <http://www.expert-grup.org/ro/biblioteca/item/971-transparenta-chisinau&category=180>

<sup>42</sup> <http://www.expert-grup.org/ro/biblioteca/item/969-achizitii-publice-moldova&category=180>

<sup>43</sup> <http://www.transparency.md/Docs/SNI-2014.pdf>

<sup>44</sup> <http://www.expert-grup.org/ro/biblioteca/item/1129-recomandaricc-apl&category=180>

<sup>45</sup> <http://www.expert-grup.org/ro/biblioteca/item/1158-transparenta-fond-rutier&category=180>

<sup>46</sup> <http://viitorul.org/doc.php?l=ro&idc=295&id=4720&t=/STUDII-IDIS/Politica/Transparenta-procesului-decizional-in-cadrul-autoritatilor-administratiei-publice-locale-Probleme-i-solutii>

<sup>47</sup> Parliament decision nr. 421-XV din 16.12.2004 for approving the National strategy on prevention and fight against corruption 2005-2010 and the plan of actions on the same strategy

<sup>48</sup> Parliament decision nr.154 din 21.07.2011 for approving the National strategy on anti-corruption 2011-2015

implementation of the Strategy<sup>49</sup>. Currently the process is drafting a new anti-corruption strategy for the years 2016 - 2018 and an action plan for this strategy.

After evaluating the implementation of the National Anticorruption Strategy 2005-2010<sup>50</sup>, it was found that 90% of all planned actions from the Strategy's action plans have been achieved.

Among the normative corruption acts most important, developed in that period, we might call: the law on conflict of interest<sup>51</sup>, the law on the code of conduct for civil servants<sup>52</sup>, the law on transparency in decision making<sup>53</sup>, the law on public function and status of civil servant<sup>54</sup>, and the law on verification of candidates for public office<sup>55</sup>, the law on preventing and combating corruption<sup>56</sup>, Government Decision on approving the methodology for assessing the risk of corruption in public institutions, etc.

In spite of this fact, the strategy realized a limited progress in reaching its aim because the most important results of the anti-corruption strategy were formal.

At the moment there is no assessment of the implementation of the National Anticorruption Strategy for 2011-2015, it will most likely be made in the near future.

Among the important normative acts on anticorruption that emerged during this period are noteworthy: the law on the National Integrity Commission<sup>57</sup>, the law amending the legislation that established the withdrawal of immunity of judges for corruption<sup>58</sup>, the law amending the legislation to ensure the independence of the National Centre Anticorruption<sup>59</sup>, Act to amend the legislation to strengthen the sanctions for corruption, illicit enrichment, expanding confiscation law on testing professional integrity<sup>60</sup>, Government Decision "On establishing the amount of permissible gifts and approval of the Regulation on the evidence, evaluation, storage, use and redemption of gifts"<sup>61</sup>, Government Decision approving Regulation framework whistleblowers<sup>62</sup>, Government Decision for implementing the law on professional integrity testing<sup>63</sup>, etc.

At the local level, local authorities implement the requirements of the normative documents listed above, as well as developing and keeping (records of whistleblowers; records of gifts, conflict of interest, and filing cases of improper influence), approval corruption Action Plan at the local level, etc.

Many actions taken by the Government, local and central authorities were not effective and have not led to results because of corruption in the judiciary. In this sense, it was drafted by the Justice Sector

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<sup>49</sup> Parliament decision nr.12 since 17.02. 2012 and Parliament decision nr.76 since 16.05.2014

<sup>50</sup> [http://cna.md/sites/default/files/sna\\_rapoarte/raport\\_evaluare-final\\_-2013.pdf](http://cna.md/sites/default/files/sna_rapoarte/raport_evaluare-final_-2013.pdf)

<sup>51</sup> Law nr.16 since 15.02.2008 about the interest of conflict

<sup>52</sup> Law nr. 25 since 22.02. 2008 about the code of conduct of the officials

<sup>53</sup> Law nr. 239 since 13.11. 2008 on transparency in decision making process

<sup>54</sup> Law nr. 158 since 04.07. 2008 about the public position and status of the public official

<sup>55</sup> Law nr. 271 since 18.12.2008 on verification of and candidates for public office

<sup>56</sup> Law nr. 90 since 25.04.2008 on preventing and combating corruption

<sup>57</sup> Law nr.180 din 19.12.2011 about National Commission on Integrity

<sup>58</sup> Law nr.153 din 5.07. 2012 about amending and supplementing certain acts

<sup>59</sup> Law nr.120 din 25.05. 2012 about amending and supplementing certain acts

<sup>60</sup> Law nr.326 din 23.12.2013 about amending and supplementing certain acts

<sup>61</sup> Government decision nr.134 since 22.02.2013

<sup>62</sup> Government decision nr.707 since 09.09.2013

<sup>63</sup> Government decision nr.767 since 19.09.2014

Reform Strategy for 2011-2016<sup>64</sup>, implemented through an action plan in the same period. However, unfortunately, the situation has not improved significantly in court.

### **Areas vulnerable to corruption at the local level**

Locally most affected by corruption are the following areas

#### *1. Management of administrative-territorial units' property*

Corruption is generated by the uncertainty of the public property. So far, the process of shaping the status of the public property is not finished. Moreover, not all public goods are registered in the Register of immovable assets, most of them are registered not according the requirements, or aren't evaluated according to their market value. Also we could notice the uncertain juridical status of the following goods that are on the territory of local community: engineering networks and facilities, water supply systems, pipelines, power system objects etc.

All these factors generate uncertainty, confusion and contradiction in the process of property management. The legal framework on public property is confused, contradictory, incomplete, superficial and gives the possibility of abusive interpretation.

Among the most important laws we might note: the law on public property and delimitation of their lands<sup>65</sup>, the law on management and privatization of public property<sup>66</sup>, the law on public property of public authorities<sup>67</sup>, the Civil Code<sup>68</sup>, Land Code<sup>69</sup>, Subsoil Code<sup>70</sup>, the Forest Code<sup>71</sup>, the Water Law<sup>72</sup>, etc.

The most widespread corruption cases in this area are related to: to give into administration, leasing, or concession of property in the public domain; sale, privatization, concession, lease of assets to the private domain; organization and development, auctions and competitions on buying or selling of land; alienation of land for construction; essential reduction of prices of real estate is alienated; land use change; and so on.

#### *2. Public procurement*

In this area the most widespread practices are to organize and arrange the public procurments. Moreover, a lot of dubious schemes related to the execution of the contracts. Majority of the frauds in the public procurement sector could not be organized without corruption element and the lack of interest.

Conflict of interest is when representatives of contracting authorities involved in the procurement process use their status and position to award contracts to companies in which they have financial or managerial interest. For example, were identified such cases when the contracts were awarded to companies whose founders were relative of the decision making working group.

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<sup>64</sup> Law nr. 231 din 25.11. 2011 pentru aprobarea Strategiei de reformare a sectorului justiției pentru 2011-2016

<sup>65</sup> Law on public property and the demarcation of public lands nr.91 since 05.04.2007

<sup>66</sup> Law on management and privatization of public property nr. 121 since 04.05.2007

<sup>67</sup> Law on public property of public authorities nr.523 since 16.07.1999

<sup>68</sup> Civil code Nr. 1107 since 06.06.2002

<sup>69</sup> Land code Nr. 828 since 25.12.1991

<sup>70</sup> Subsoil Code Nr. 3 since 02.02.2009

<sup>71</sup> Forest code Nr. 887 since 21.06.1996

<sup>72</sup> Water law Nr. 272 since 23.12.2011

Although each member of procurement working group is required to submit declarations of confidentiality, impartiality and absence of conflict of interest, the Court of Accounts audit reports, repeatedly found cases of non-submission of these statements<sup>73</sup>. Paying bribes and granting worthy gifts and services is a practice used to influence the decisions in awarding the contract modification (additional agreements, arrangements expansion), providing confidential information, trimming, inadequate monitoring and preventing good reception of deliverables unqualified or nonexistent. Usually the amount of the bribe is a fix percent from the price of the contract: 5-20% to wind the procurement.

Auditors Court in its reports found several cases of goods and services purchases at increased prices compared to the market price for the same goods and services as well as the existence of major differences for the same goods purchased from various contracting authorities. Unfortunately, cases of investigation and trial of bribery for public procurement, does not really exist or are not made public.

The lack of bribery in public procurement cases is rather a problem of system malfunction and law enforcement, of widespread corruption and don't represent the reality.

The most common schemes of fraud in public procurement are:

- *The signing of multiple additional agreements with the same supplier* - additional agreements are less controlled than the original tender and contract award process so widespread modification contract is a way to "win" fraudulent means.
- *Procurement Splitting* - contrary to the legal framework, some of the authorities practice to purchase goods, services and works in small amounts to avoid using competitive methods, to evade further approval. Thus, they "lessen the risk" award the contract to the economic agent than the "preferred".
- *The exclusion of qualified economic operators fomr competition* - by limiting access to information, a short period for submission of tenders, etc. - Representatives of the contracting authority may facilitate the selection of a bidder (following the cartel) the exclusion of other qualified bidders by different methods (implementation of procedures for prequalification unjustified, non-proper invitations, complicating within a procurement procedure, specifications, etc).
- *Disclosure of information about the tender* – representatives of the contracting authority may disclose relevant information on a given procurement, including budget estimates, the desired solutions or competitive bids already submitted or above to help prepare tender favored bidder.

Elements of fraud may occur at all stages of public procurements, but most frequently relates to the failure by the economic conditions of the contract, the presentation and payment of bills for goods / services / works that have not been delivered, presenting reports (documents ) false to justify compliance with contractual terms.

It is necessary to emphasize the lack of transparency in public procurement and post-acquisition control that fosters corruption. As an example we can note the failure in publishing procurement plans, reports (the reports), etc.

3. Situations of incompatibility to the position of local elected / public official and conflicts of interest

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<sup>73</sup> Public procurement in Moldova: problems and solutions (Expert-Grup 2014)

Incompatibility is when the law establishes an unconditional prohibition to hold a certain public together with another public or private position. Conflict of interest means the obligation of officials to refrain from an act or participate in making a decision that is or might be influenced by their personal interests.

After the local elections in 2011, but after the local elections in 2015 an enormous number of cases of incompatibilities for public positions were unearthed, when the mayors had duties and carried out other activities, including holding positions in the management bodies of commercial structures. This may allow the use of elective positions to obtain benefits or facilities for the incompatible function.

As examples of conflict of interest we may identify the following: where property interests of one or more civil servants, spouse or first degree relatives can influence the decisions they have to take in the public position; situation in which civil servants have access to public economic-financial and uses to favor certain commercial enterprises, private enterprises, in order to get a significant commission; situation in which civil servants use public goods for personal use; situation where the mayor / deputy mayor of the village issue an administrative act or has entered into a legal document or issued regulations in exercising the public position that produced a material benefit for himself, for his / her spouse or his relatives of I degree through affinity (in-law, father in law, brother in law, daughter in law)<sup>74</sup>.

#### 4. Public-private partnership

For realization of projects of public interest in attracting private investment public-private partnerships can be organized under the law on public-private partnership<sup>75</sup>, which specifies several ways of contracts for public-private partnership (contract for works / services; trust management contract, tenancy / lease, concession, contract for company or civil society, etc.).

In Moldova, the regulatory framework in the field of public-private partnership consists of several laws regulating directly or indirectly the development of other forms of public-private partnership and relations between the public partner and the private partner. Apart from the law on public-private partnership, the note the existence of the Government Decision on the National Council for Public-Private Partnership<sup>76</sup>, the Government Decision on the approval list of goods owned by the State and the works and services of national public interest proposed to the public – private partnership<sup>77</sup>, Government Decision approving the regulation on standard procedures and conditions for selecting the private partner<sup>78</sup>, etc.

In reality, partnerships, which are announced for implementation by far are not carried out in accordance with the regulations set out in law, and often any form of partnership or no clear benefits, they will have every part of the contract cannot be identified. In most cases, prior to partnerships, any feasibility studies are made, or studies are prepared superficially, which casts doubt on the viability of the partnership, leaving the door open to the elements of corruption. However, public - private partnerships are often carried out in a transparent way.

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<sup>74</sup> Conflict of interest and incompatibilities regime in local government institutions in Moldova (IDIS Viitorul)

<sup>75</sup> Law on public-private partnership nr.179 since 10.07.2008

<sup>76</sup> Government decision on National Council on Public-Private Partnership nr. 245 since 19.04.2012

<sup>77</sup> Government decision nr.419 since 18.06.2012

<sup>78</sup> Government decision nr.476 since 04.07.2012

## 5. Transparency in decision-making

According to Open Government Index Report 2015 prepared by the World Justice Project Republic of Moldova, on the openness of government, with a score of 0.55, ranks 46 among 102 countries worldwide. Also, according to the report, only 44% of the population from Moldova knows about the existence of laws that guarantees access to public information held by public authorities.

According to a report monitoring access to information and transparency in the decision making process, carried out in 2010<sup>79</sup>, the local situation denotes a weak degree of knowledge and implementation of legislation. Thus, only 32.1% of authorities / municipal or district institutions affords to citizens the right of access to public information. However, in the awareness of the law on transparency in the decision making process, 49.7% of local authorities and 40.7% of civil society answered they know "little" and "very little" and 36.4% of local authorities and 11.8% civil society "know nothing" or did not know what to answer.

Realities from municipalities show low involvement of citizens and other stakeholders in the decision making process. Citizens of local communities don't know about their right to information, consultation, participation in the drafting and adoption of local decisions. The process of continuous and effective communication between local governments and citizens is missing. However, we should note that not all civil society representatives have the opportunity and resources to express their views in the minimum period of 10 days prescribed by law, on an initiative of drafting a bill.

Moldova has the legal framework to ensure a transparent and a participatory decision making process<sup>80</sup>, but it does not work effectively at the local level. The most important deviations of local authorities from the legal requirements regarding transparency in decision concerns:

- LPAs fail to inform about initiating a decision and don't consultate with the public the draft decisions of local authorities, which prevents interested parties to submit proposals and recommendations;
- All means provided by law to inform citizens and other stakeholders on the decision-making process in order to ensure their participation in any stage of this process are not used. Not all authorities have web pages or have, but do not place a whole range of information. Moreover, the portal created for access to the normative acts of local authorities, [www.actelocale.md](http://www.actelocale.md) is not working effectively at the moment;
- Most local authorities have not developed and approved internal rules for information, consultation and participation in the drafting and adoption of decisions;
- It is very difficult to identify a person within a public authority responsible for coordinating the process of public consultation, in the absence of any information about it, including the website of the respective authorities;
- Summary of recommendations as a result of the consultations is not made public and interested parties cannot know which of the recommendations were accepted, which were rejected and the reason for their non-acceptance;
- Ensuring access to all interested parties at public meetings of the authorities is often impossible;
- There are cases when LPAs decisions are not published or disclosed selectively to citizens;

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<sup>79</sup> Monitoring report "Acces-info": "Access to information and transparency in decision making: attitudes, perceptions, trends"

<sup>80</sup> Law nr.239/2008 and Governmental decision nr.96/2010

- Local authorities are debtors in preparing and making public reports on transparency in the decision making process.

It is necessary to note that the national legal framework does not contain clear and detailed rules on control mechanisms for non-compliance with local decision-making transparency. Similarly, the existing rules do not regulate in detail the mechanism of accountability of individual officials for failure to comply with transparency requirements and does not contain provisions regarding the possibility of penalizing individuals elected to leadership positions (mayor), making the law to be applied inefficiently at the local level.

## *6. Local public services*

Local authorities in Moldova are responsible for providing a range of services to citizens and entrepreneurs at local level: local taxes; issuing permits and construction permits; issuing operating permits for establishments that sell products and services; authorization to change the use of buildings; compliance inspection on marketing products and services and the functioning of traders; provision of agricultural, veterinary consultancy; certifications for individuals (certificate of family composition, certificate on the absence or existence of arrears to the budget, heir certificate, certificate of origin of agricultural production), etc.

The survey from 2011, carried out by the International Republican Institute (IRI), Baltic Surveys / The Gallup Organization showed that additional informal payments constituted usual way of solving problems interacting with citizens in the public institutions in over 80% cases. According to the survey in 2013<sup>81</sup>, 47% of respondents recognized that unofficial payments were asked from them during social services. Survey results show the need for serious changes in the organization of public services.

An effective measure to prevent corruption is to implement one-stop shop practice in public administration, which will eliminate direct contact between the applicant and the authority which must approve the issuance of a document and consequently reduce the risk of corruption at this stage. In this context, the Government was engaged in several policy documents (policy priorities for the years 2015-2017, the National Decentralization Strategy, public services reform program for the years 2014-2016, etc.) in order to improve the quality of public services, including through one-stop shop as one of the most effective solutions for this purpose. At the LPA level, one-stop shops have been established with the support of international donors in particular. But they were set up in several LPA of level II and serve as information centers.

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<sup>81</sup> FINAL REPORT ON THE OPINION POLL RESULTS. Quantitative research on public perceptions of the quality of public service delivery Management, Administration and Public Policy Institute, Chisinau, 2013