

Moldavian Dual Perspective on Corruption Proofing: Civil Society and Anticorruption Agency


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Corruption Screening of Draft Laws (Corruption Proofing)

What makes corruption possible?

- Position
 - Powers
 - Duties
 - Responsibilities
 - Discretions
- used for private purpose
- 

All of which are defined in laws

Example:

documents needed to get a passport

CASE A.

- Application
- Picture 3x4 cm
- Applicant's birth certificate
- Payment confirmation
- **Any other document required**

CASE B.

- Application
- Picture 3x4 cm
- Applicant's birth certificate
- Payment confirmation
- **Place of residence confirmation**

“Que toute loi soit claire, uniforme et précise: l'interpréter, c'est presque toujours la corrompre.”



*(Dictionnaire philosophique, 1764,
citations de François Marie Arouet,
dit **Voltaire**)*

“Let all laws be clear, uniform and precise: to interpret laws is almost always to corrupt them.”

When discretion of public officials to interpret laws is dangerous?

When he may choose an interpretation of the legal provisions which he prefers

When he may choose a preferred interpretation rather than the one expected by the citizen

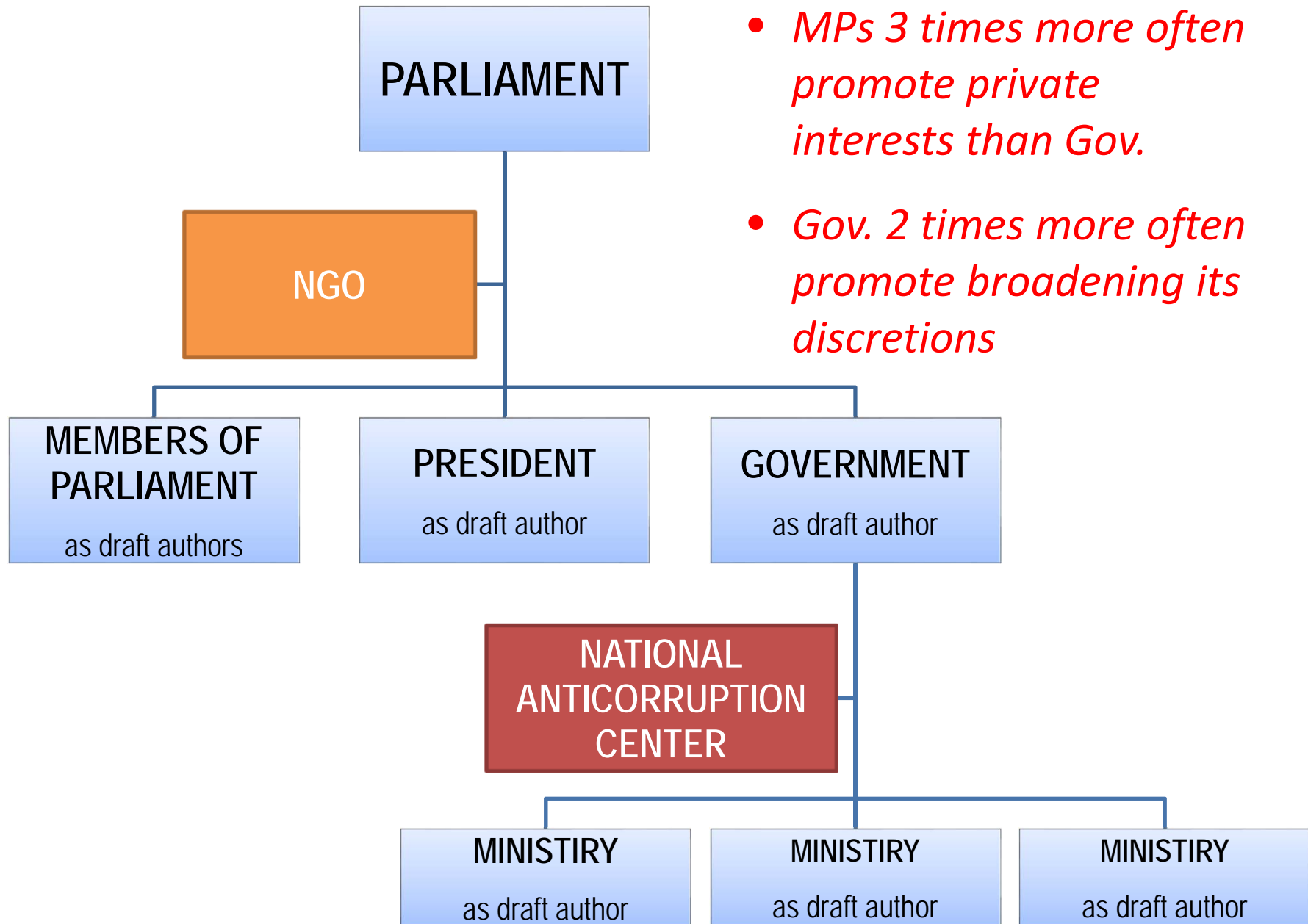
When such interpretations may be used for private gain

Solution to dangerous discretions of legal interpretation

- **Corruption proofing** – a process of review of the draft rules (laws, by-laws, administrative acts) aimed at detecting the provisions which favour or might favour corruption and other abuses upon application (corruptibility risks).

Emergence of anticorruption expertise in Moldova

- **June 2006** – NGO launched corruption proofing
- **23 August 2006** – Gov Decision # 977 passing the Rules of conducting anti-corruption expertise of draft laws and by-laws
- **10 November 2006** – Law # 332 amending law on legal acts, law on normative acts of Gov, Law on the National Anticorruption Center
- **3 May 2007** – Order # 47 of the Director of the Anticorruption Center approving the Methodology of the anti-corruption expertise



- *MPs 3 times more often promote private interests than Gov.*
- *Gov. 2 times more often promote broadening its discretions*

Special concerns of the anti-corruption expertise

- Justification of the draft's solutions?
- “Hidden goals”?
- Financial coverage of the draft?
- Beneficiaries of draft?
- Sufferers from the draft?
- Compliance with other legislation?
- Establishing new public authorities?
- Regulating the activity of public authorities' and/or the activity of their officials?

Corruption Proofing Expertise report:

I. General Evaluation

1) Author, 2) Category, 3) Goal

II. Justification of the Draft

4) Transparency, 5) Sufficiency, 6) Financial coverage

III. Substantive evaluation of the draft

7) Private interests' promotion, 8) Damages, 9) Legal cohesion,
10) Draft's language, 11) Public authorities activities,
12) Draft's detailed analysis:

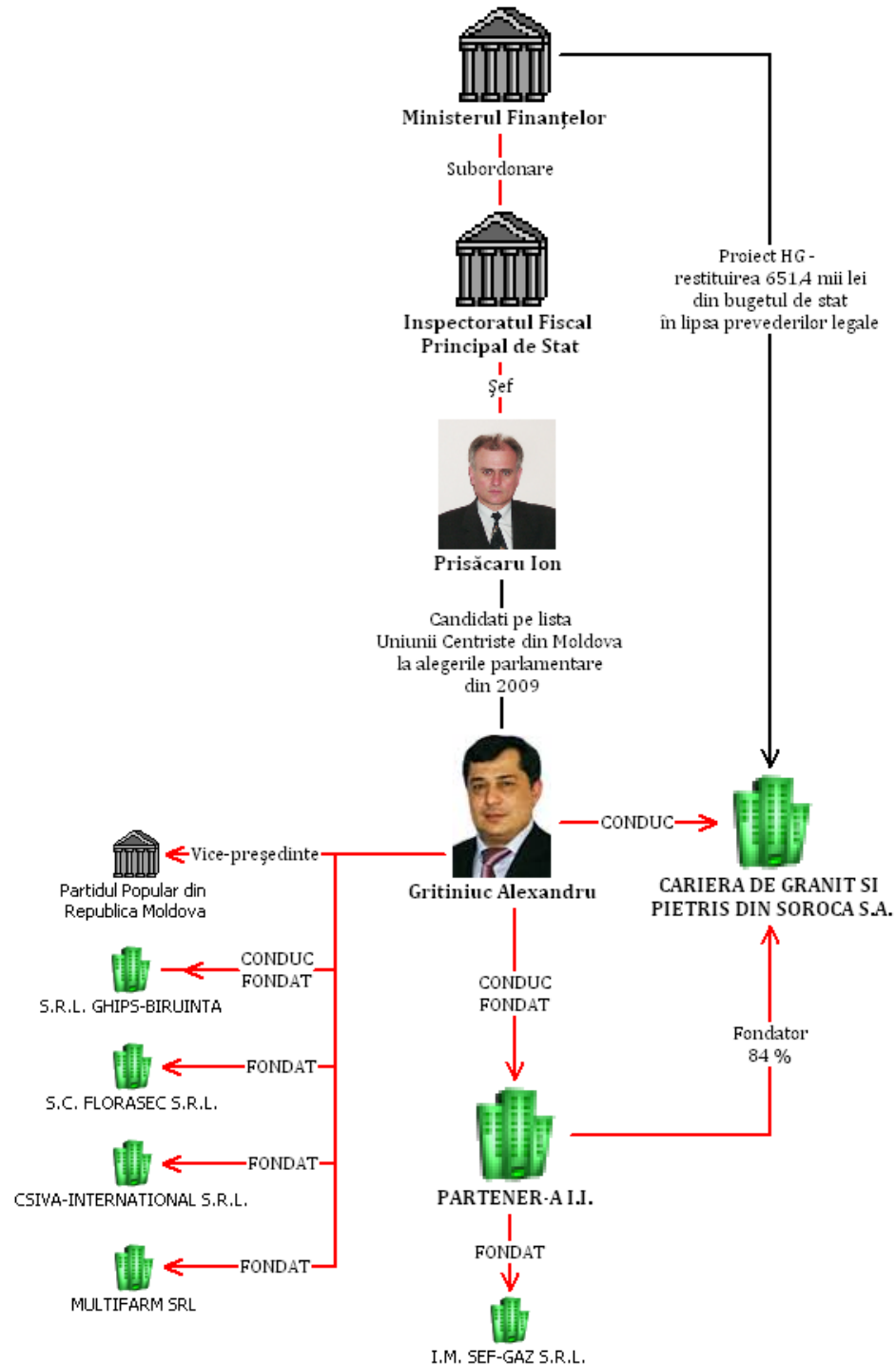
No	Draft article	Draft text	Expert's Objection	Corruption Risk	Recommendation for remedy

IV. Conclusions

Amount of work

- 350-500 draft laws and by-laws per year
- 2.500 pages of drafts screened
- Efficiency – 60-70% of recommendations taken into account
- Strong part of screening conducted by ACA – identifying private interests promotion

Example of private interest promotion identified:



Typical prone areas to private interests' promotion:

- Change of the land destination
- Public-private partnerships
- Industrial parks
- Exemption of taxes and customs duties
- Debt exemptions
- Budgetary favoring of certain public authorities
- Derogation from the trade rules

Thank you for attention!