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United Nations Office on Drugs and Crime

Country Review Report of the Republic of Moldova

Review by Bosnia Herzegovina and Norway of the implementation by the Republic of Moldova of articles 15 - 42 of Chapter III. “Criminalization and law enforcement” and articles 44 - 50 of Chapter IV. “International cooperation” of the United Nations Convention against Corruption for the review cycle 2010 - 2015

I. Introduction

The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.

In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.

The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.

The review process is based on the terms of reference of the Review Mechanism.

II. Process

The following review of the implementation by the Republic of Moldova of the Convention is based on the completed response to the comprehensive self-assessment checklist received from the Republic of Moldova, and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Bosnia Herzegovina and Norway, by means of telephone conferences, e-mail exchanges or any further means of direct dialogue in accordance with the terms of reference and involving the following experts from the reviewing States parties:

Norway

- Mr. Atle Roaldsøy, Policy Director, Section for European and International Affairs, Ministry of Justice and Public Security; and
- Mr. Anders Schiøtz Worren, Adviser, Ministry of Justice and Public Security.

Bosnia and Herzegovina

- Mr. Tomislav Ćurić, Expert Adviser for Combatting Corruption, Department for Combatting Organized Crime and Corruption, Ministry of Security;
- Mrs. Dženana Pinjo, Expert Adviser for the International Cooperation, Agency for the Prevention of Corruption and Coordination of the Fight against Corruption; and
- Mrs. Jasmina Kulenović, Expert Adviser for Legal Affairs, Agency for the Prevention of Corruption and Coordination of the Fight against Corruption.

A country visit, agreed to by the Republic of Moldova, was conducted from 22 to 24 September 2014.

During the country visit, the representatives from the reviewing States parties and the Secretariat had meetings with officials from national institutions and agencies in the Republic of Moldova involved in the

implementation of anti-corruption measures and policies, including: the National Anti-corruption Centre (General Corruption Combating Directorate, General Criminal Investigation Directorate, also including the Service for the Prevention and Combating of Money Laundering); the Ministry of Justice; the Ministry of Internal Affairs; the Anti-corruption Prosecutor's Office; and the Supreme Court of Justice.

The review team had also meetings with representatives from the civil society including: Transparency International - Moldova, the Anti-corruption Alliance, the Resource Centre for Human Rights (CReDO) and the NGO Agency for Regional Development "Habitat".

III. Executive summary

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II.Executive summary

Republic of Moldova

1. *Introduction: Overview of the legal and institutional framework of the Republic of Moldova in the context of implementation of the United Nations Convention against Corruption*

The United Nations Convention against Corruption was signed by the Republic of Moldova on 28 September 2004. By Law No. 158-XVI/2007, the Republic of Moldova ratified the Convention and deposited its instrument of ratification on 1 October 2007.

The Republic of Moldova has a civil law system with influences from both the French and the Germanic legal systems. According to the Constitution (article 8, paragraph 2), the entry into force of an international treaty containing provisions which are contrary to the Constitution “shall be preceded by a revision of the latter”.

The national anti-corruption legal framework includes provisions of the Constitution, the Criminal Code and the Criminal Procedure Code, as well as specific laws of relevance.

Different bodies are entrusted with anti-corruption action: the National Anti-Corruption Centre, the National Integrity Commission, the Prosecutor’s Office, the Ministries of Justice and Internal Affairs, the Information and Security Service, the Court of Accounts and other institutional establishments.

2. *Chapter III: Criminalization and law enforcement*

2.1. *Observations on the implementation of the articles under review*

Bribery and trading in influence (arts. 15, 16, 18 and 21)

Sections 324 and 325 of the Criminal Code establish the offences of passive and active bribery of public officials respectively. The bribery provisions use the terms “public person” and “person holding positions of public dignity”, all of which are defined in article 123 of the Criminal Code. According to the study conducted by the National Anti-Corruption Centre, with the support of the Supreme Court of Justice, on corruption cases from 1 January 2010 to 30 June 2012, the enforcement of section 324 of the Criminal Code is mostly limited to cases of passive corruption committed only through reception by the perpetrator of an undue remuneration and not through solicitation.

Article 325 of the Criminal Code uses the terms “promising”, “offering” or “giving” a bribe to a public person or foreign public person. Accordingly, article 324 refers to “requesting”, “accepting” or “receiving” services, privileges or advantages. Both articles 325 and 324 of the Code cover the direct and indirect commission of bribery offences.

The concept of “undue advantage” is transposed into national bribery provisions through the expression “goods, services, privileges or advantages of any kind to which [the public person] is not entitled”.

The advantage may be intended for the public official himself or herself or another person. The law explicitly covers both positive acts and

omissions by a public official, provided that they are “within the scope of his or her authority” or “contrary to his or her duties.”

The Criminal Code does not contain ad hoc provisions on criminalizing the bribery of foreign public officials and officials of public international organizations. Instead, the general provisions of sections 324 and 325 of the Code apply. Foreign public persons and international officials are defined in section 123/1 of the Criminal Code.

Trading in influence is criminalized through section 326 of the Criminal Code, as amended, to also include the active form of the conduct. Third-party beneficiaries, the indirect commission of offences and “supposed influence” are covered.

Active and passive bribery in the private sector are criminalized under sections 333 and 334 of the Criminal Code. Those provisions may also involve bribery acts in the sphere of “social or other non-governmental organizations”. The provisions cover not only persons with managerial functions, but also persons generally “working for the organization”.

Money-laundering, concealment (arts. 23 and 24)

The laundering of the proceeds of crime is criminalized through section 243 of the Criminal Code, which sets forth all the constituent elements required by article 23 of the Convention. Section 243 applies to the widest range of predicate offences, including those committed outside the territory of the country. Self-laundering is not explicitly covered in national legislation.

The criminalization of concealment is covered through the application of section 49 on “Favouring of a criminal” and section 323 on “Supporting a crime”.

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

Embezzlement in the private sector is criminalized through sections 191 and 335 of the Criminal Code. Particularly in the public sector, embezzlement is also tackled through sections 240, 327 and 251 of the Criminal Code.

The abuse of functions is criminalized through section 327 of the Criminal Code. The provision sets forth a requirement of “causing considerable damage to public interests or to the legally protected rights and interests of individuals or legal entities”, which is not foreseen in article 19 of the Convention.

Section 330/2 of the Criminal Code criminalizes illicit enrichment, which is defined as “ownership by a person holding a position of responsibility or a public person, personally or through third parties, of assets, the value of which substantially exceeds the acquired income, as long as it is established, on the basis of proofs, that those assets could not have been legally obtained”. The burden of proof rests with the prosecution.

Obstruction of justice (art. 25)

Article 25 (a) of the Convention is sufficiently implemented through sections 309 and 314 of the Criminal Code. Similarly, article 25 (b) is adequately implemented through articles 303 and 349 of the Criminal

Code.

Liability of legal persons (art. 26)

Section 21, paragraph 3, of the Criminal Code provides for the criminal liability of legal entities (except for public authorities). Sanctions against legal persons include fines, deprivation of the right to practice certain activities and liquidation (section 63 of the Criminal Code). Article 521 and subsequent articles of the Criminal Procedure Code introduce special rules applicable to criminal proceedings against legal persons to allow charges initially brought against legal persons to be extended to their legal representatives for the same or related offences. While legal provisions are in place to implement article 26 of the Convention, the reviewers found it difficult to assess whether those legal provisions were effectively enforced in practice, given that no case examples of criminal proceedings against legal entities were provided.

Participation and attempt (art. 27)

The general provisions of the Criminal Code regulate the different forms of participation in the commission of a criminal offence (section 42) and the attempt to commit a crime and its preparation (sections 25-27 and 81).

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

The reviewers took into account the National Anti-Corruption Centre study and were of the view that it reflected a picture of an inconsistent, and to a large degree extremely lenient, practice regarding the sanctions imposed for corruption offences. Although the Convention is legislatively implemented, serious challenges remain in the area of enforcement. Case examples shed limited light on the enforcement of Convention-related offences.

Immunities are foreseen for the President and the deputies in the parliament. Corruption in the judiciary, in conjunction with the implementation of article 30, paragraph 2, of the Convention, was discussed. The National Anti-Corruption Centre provided statistics for 2014 indicating considerable progress in the fight against corruption in that field. The reviewers welcomed those developments and expressed support for further improvements, including consistent practices, to ensure that investigative measures are allowed before the lifting of immunity takes place.

The institution of plea bargaining agreements has been taken gradually into national legislation and practice. Pursuant to the National Anti-Corruption Centre study, in 81 per cent of the corruption cases reviewed, the prosecutors, exercising discretionary powers, have asked the courts to reduce by one third the sentence as a result of plea bargaining agreements under section 80 of the Criminal Code. The reviewers expressed serious concerns over that trend, as it might undermine the possibility of imposing sanctions that take into account the gravity of the offence.

The Execution Code No. 443/2004 provides for measures for the reintegration of convicted persons into society, including conditional release from punishment.

Provisional suspension from office is foreseen in section 200 of the Criminal Procedure Code.

Section 65 of the Criminal Code defines the conditions for the deprivation of the right to hold certain positions or to practice certain activities as a result of conviction. According to statistics provided by the Moldovan authorities, only 63 per cent of persons convicted of corruption offences were also punished by dismissal and deprivation of the right to occupy certain positions (where this punishment was ex lege mandatory).

Law No. 25-XVI/2008 on the code of conduct for civil servants provides for the liability of civil servants for misconduct while performing duties that may give rise to the exercise of disciplinary powers.

In reviewing the implementation of article 37 of the Convention, the reviewers examined a special defence for the perpetrator of active bribery in the public and private sectors and trading in influence: sections 325, paragraph 4, 334, paragraph 4, and 326, paragraph 4, of the Criminal Code release the bribe-giver and the influence-peddler from criminal liability on condition that either the bribe and service/exercise of influence were extorted from him/her, or that the person denounces himself/herself without knowing that criminal investigative bodies knew about the crime he/she committed. The reviewers expressed serious concerns about the automatic nature of the defence.

Protection of witnesses and reporting persons (arts. 32 and 33)

Witness protection measures are foreseen in both the Criminal Procedure Code and Law No. 105/2008 on the protection of witnesses and other participants in criminal procedures. The reviewing experts suggested the inclusion of all corruption offences in the category of at least “serious crimes” (section 16, paragraph 4, of the Criminal Code), with a view to making the provisions of Law No. 105/2008 applicable to them as well. No specific information concerning the use of that law was provided in relation to offences established in accordance with the Convention.

Article 18 of Law No. 90-XVI/2008 on the prevention and combating of corruption and article 12/1 of Law No. 25-XVI/2008 on the code of conduct for civil servants provide for protection measures for any civil servant who reports in good faith on the commission of corruption acts, violation of the rules on conflict of interest and declaration of income.

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

Section 106, paragraph 1, of the Criminal Code defines confiscation as “the forced and free transfer to the state of property or goods used in the commission of a crime or that resulted from crimes”. The scope of goods that can be confiscated is defined in section 106, paragraph 2, of the Criminal Code and is in line with article 31 of the Convention.

Subject to confiscation also is property equivalent to the proceeds of crime when such proceeds can no longer be found in the assets of the convicted person. Confiscation may exceptionally be ordered in the absence of conviction (section 106, paragraph 4, of the Criminal Code).

The Criminal Procedure Code provides for the seizure of assets (sections 202-210). Seizure orders are intended to secure items for the purposes of the investigation.

Section 106, paragraph 3, of the Criminal Code authorizes the confiscation of property that belongs to third parties and has been used for, or resulted from, the commission of an offence, but only when the third parties are aware of the illegal nature of the property.

There is no specialized body to deal with the management of frozen, seized or confiscated property. However, the tax authorities are responsible for registering, assessing the value of and selling seized and confiscated property.

Section 106/1 of the Criminal Code regulates the extended confiscation of assets that go beyond the legal means and which can be generally attributed to illicit sources. Section 106/1 establishes a rebuttable presumption of the illicit origin of the property of the defendant which does not contradict article 46, paragraph 3, of the Constitution.

The reviewers welcomed the legislative developments in that area, especially the tool of extended confiscation, but noted the lack of information on the enforcement of the legal provisions and the fact that the volume of confiscated property is low in comparison with the number of convictions.

Law No. 550-XIII/1995 on financial institutions (article 22), the Criminal Procedure Code (sections 126 and 128, paragraph 5) and Law No. 190-XVI/2007 on the prevention and combating of money-laundering and the financing of terrorism (article 12) regulate issues related to bank secrecy, which was reported not to be an obstacle to national investigations. The freezing of accounts of the suspects is suspended by a simple filing of an appeal in money-laundering and financing of terrorism cases under specific conditions (article 14 of the Law, as supplemented by Law No. 179/2014). The new provision was introduced after the country visit and it was not possible for the reviewers to review its application.

Statute of limitations; criminal record (arts. 29 and 41)

Most of the corruption offences are either less serious crimes (statute of limitations period of 5 years) or serious crimes (statute of limitations period of 15 years).

Criminal punishments and criminal records for offences committed outside the national territory are taken into consideration in individualizing the punishment for a new crime committed by the same person in the Republic of Moldova (section 11, paragraph 7, of the Criminal Code).

Jurisdiction (art. 42)

Under section 11 of the Criminal Code, jurisdiction is established on the basis of the principle of territoriality. Extraterritorial jurisdiction is also possible over criminal offences committed by Moldovan citizens or stateless persons ordinarily resident in the country and criminal offences committed by foreign citizens or stateless persons not resident in the country, if the offences are detrimental to the interests of the country and the rights and interests of its citizens, or if they are mentioned in the international treaties to which the Republic of

Moldova is a party, provided that the perpetrators of the offences have not been subjected to punishment in another State.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

Law No. 90-XVI/2008 on the prevention and combating of corruption provides that decisions, contracts or clauses of an agreement affected by an act of corruption are null and void from the very moment of their adoption and do not have any legal effect for any of the parties, independent of their knowledge of such acts.

Law No. 131/2015 provides for the exclusion of the bidder owing to participation, among others, in corruption and money-laundering offences, the rejection of the bid in a procurement process as a result of acts of corruption and the cancellation of a procurement procedure involving corruption acts.

Law No. 90-XVI/2008 also provides for the right of a person who has suffered damage as the result of criminal acts to compensation for that damage (article 23/1).

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

The National Anti-Corruption Centre is a specialized body in the prevention and fight against corruption with, among others, investigative functions. It is the successor to the former Centre for Combating Economic Crimes and Corruption, which was established in 2002 and was reformed and renamed in 2012. The Centre has organizational, functional and operational independence in accordance with the terms established by the law.

Article 25 of Law No. 294-XVI/2008 established specialized prosecutor's offices with anti-corruption tasks. Ongoing efforts to reform the prosecution service were reported.

While the Republic of Moldova has done considerable work in building a legal and institutional anti-corruption framework, implementation is faltering. Another problem is the lack of a comprehensive vision of reforms related to combating corruption, which leads to duplication of effort. Such institutional fragmentation increases institutional overlap and reduces institutional efficiency in combating corruption in practice.

There is national legislation aimed at promoting cooperation between the national competent authorities and the private sector, especially Law No. 190-XVI/2007 (reporting of any suspicious activity or transaction of money-laundering). According to some interlocutors, challenges remain in cooperation between the authorities and the private sector, including civil society. In practice, hotlines are in place to enable citizens to report corrupt acts. Statistics were provided, but the reviewers had no solid basis for assessing the effectiveness of the concept.

2.2. Successes and good practices

- *The provision criminalizing illicit enrichment (section 330/2 of the Criminal Code), although not tested in practice (article 20).*
- *The wider scope of application of sections 333 and 334 of the Criminal Code on bribery in the private sector (compared to*

article 21 of the Convention): it is not limited to “in the course of economic, financial or commercial activities”, but may also cover cases involving “social or other non-governmental organizations”.

- *The possibility of non-conviction based confiscation (section 106, paragraph 4, of the Criminal Code).*
- *The legal option of extended confiscation (section 106/1 of the Criminal Code).*

However, the reviewers favoured more extensive implementation of those successful examples, given that all the above-mentioned legal provisions were tested to a very limited degree in practice.

2.3. Challenges in implementation

- *Ensure effective implementation of article 15 (b) of the Convention in cases not only of receiving, but also of solicitation, of an undue remuneration by the perpetrator.*
- *Consider amending national legislation in a way that allows for the criminalization of abuse of functions, regardless of the damage caused (article 19).*
- *Ensure more effective enforcement of sections 333 and 334 of the Criminal Code on the criminalization of bribery in the private sector (article 21).*
- *Consider, for purposes of legal certainty and clarity, the inclusion of a provision in national legislation to explicitly cover self-laundering (article 23, paragraph 2 (e)).*
- *Consider introducing a provision criminalizing concealment (article 24).*
- *Ensure effective enforcement and implementation of the national provisions regulating the criminal liability of legal persons (article 26).*
- *Regarding article 30, paragraph 1, of the Convention:*
 - o *Revise the sanctions for corruption as an offence, with a view to increasing the punishments and treat it, depending on the case (basic/aggravated forms), as a serious or particularly serious crime (see section 16, paragraphs 4 and 5, of the Criminal Code). That, in turn, would also prolong the existing statute of limitations periods and would further make applicable to them Law No. 105 of 16 May 2008 on the protection of witnesses and other participants in criminal procedures.*
 - o *Amend the legislation to ensure consistent court practice in avoiding the combined application of section 364/1 of the Criminal Procedure Code (trial based on the evidence collected during the criminal investigation phase) and especially its paragraph 8, or section 80 of the Criminal Code (application of punishment in cases of plea bargaining) with sections 76, paragraph 1 (f) (mitigating circumstances/admitting guilt) and 79 (application of a punishment milder than the one provided by law) of the Criminal Code, thus preventing the cumulative qualification of mitigating and exceptional circumstances when individualizing the sanctions in corruption cases.*
 - o *Amend legislation (section 55 of the Criminal Code) so that the perpetrators of such offences as bribery in the private sector, abuse of official position and embezzlement are not exempted from criminal liability and, instead, are subject to*

administrative liability.

- o Enhance the effectiveness and level of sanctions in the enforcement of the offences established in accordance with the Convention, in line with the guidance of the Plenum of the Supreme Court of Justice.*
- o Increase the number of in-service training sessions for judges and prosecutors at the National Institute of Justice on the investigation and trial of corruption cases, including individualization of punishments.*
- *Ensure consistent practice, allowing investigative action aimed at securing criminal evidence with regard to public officials enjoying immunity before the lifting of such immunity takes place (article 30, paragraph 2).*
- *While taking into account the spirit and rationale of article 30, paragraph 3, of the Convention, limit the scope of application of the provisions of article 80 of the Criminal Code when examining corruption cases and make its application subject to cooperation with the competent authorities in identifying other persons involved in the commission of corruption offences (article 30, paragraph 3, and article 37, paragraphs 1-3).*
- *Ensure effective implementation of section 65 of the Criminal Code on
the deprivation of the right to hold certain positions or to practice
certain activities as a result of conviction in corruption cases (article 30, paragraph 7).*
- *Consider the establishment of a specialized body for the administration of frozen, seized or confiscated property (article 31, paragraph 3).*
- *Ensure enforcement of the national provisions on seizure and confiscation and provide for training for all personnel involved in seizure and confiscation of assets, namely National Anti-Corruption Centre investigators, prosecutors and judges (article 31).*
- *Consider the conclusion of agreements or arrangements for the relocation of witnesses (article 32, paragraph 3).*
- *Consider extending the legal framework offering protection against unjustified treatment to persons other than civil servants, persons holding positions of public dignity and other persons providing public services (article 33).*
- *Overcome legislative obstacles to increase the effectiveness of the activities of the National Anti-Corruption Centre to prevent and combat corruption; consistently preserve the institutional independence guarantees of the Centre, especially in light of its broad mandate, and increase its resources (article 36).*
- *Continue and complete ongoing efforts to reform the National Integrity Commission and the prosecution service, and ensure effective implementation of the relevant reforms (article 36).*
- *Further enhance cooperation between the National Anti-Corruption Centre and other stakeholders involved in anti-corruption processes, especially in the areas of conducting training on combating corruption and the investigation and prosecution of offences established in accordance with the Convention (article 38) and the adjudication of related cases before the court.*
- *While noting the recommendation above on the need for a very careful application of discretionary prosecutorial powers, consider whether an amendment in the form of optional wording in the text of the special defence contained in sections 325, paragraph 4, 326, paragraph 4, and 334, paragraph 4, of the*

Criminal Code (“may be exempt from criminal liability”), coupled with the option of mitigating punishment/circumstances, could be conducive to a more flexible application of the relevant provisions on a case-by-case basis and could allow the public prosecutor to assess in each case the acts of the perpetrator (article 37).

- *Facilitate and encourage further cooperation between the national authorities and the private sector, including civil society, to detect, investigate and prosecute corruption more effectively (article 39).*
- *Monitor the application of article 14 of Law No. 190-XVI/2007, as supplemented by Law No. 179/2014, concerning the suspension of freezing of accounts on specific conditions, in order to ensure that the interpretation and application of the provision does not hamper the effectiveness of investigation of crimes falling under the remit of the Convention (article 40).*

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

*Extradition; transfer of sentenced persons; transfer of criminal proceedings
(arts. 44, 45 and 47)*

Extradition is regulated in the Criminal Procedure Code and Law No. 371/2006 on “international legal assistance in criminal matters”.

The Republic of Moldova generally requires dual criminality for extradition. As an exception, dual criminality is not required if it is excluded by an international treaty to which the Republic of Moldova is a party. The national authorities also adopt a flexible approach by focusing on the underlying conduct of the offence in question.

The punishment threshold for the identification of extraditable offences is deprivation of liberty of one year or, if extradition is requested for enforcement of a sentence, a period of at least six months of such a sentence.

In general, the Republic of Moldova makes extradition conditional on the existence of a treaty and considers the Convention a legal basis for extradition. No relevant notification has been submitted by the national authorities to the Secretary-General of the United Nations. No extradition cases based solely on the Convention have been assessed by a national court. Extradition can also be granted in certain cases on the basis of “written obligations of reciprocity” (article 51 of Law No. 371/2006).

The grounds for refusal of extradition requests are set out in section 546 of the Criminal Procedure Code. Of relevance also are sections 42 and 43 of Law No. 371. Extradition would not be refused on the grounds that the offence involved fiscal matters.

A simplified extradition procedure is foreseen in section 545 of the Criminal Procedure Code and article 59 of Law No. 371/2006.

The Republic of Moldova does not extradite its nationals. Where a request for extradition is refused on the grounds of nationality, the Moldovan authorities inform the requesting State of the possibility of taking over the prosecution against that person. For taking over the

proceedings, a formal request of the requesting State is needed, together with the transfer of the file of the case.

If the postponement of extradition could lead to the expiry of the limitation period of the criminal case, or could cause serious difficulties in establishing the facts, the person sought may be extradited temporarily, based on a reasoned request, under conditions agreed jointly with the requesting State.

The Republic of Moldova enforces foreign sentences, including in cases where the extradition of nationals is rejected, in line with chapter VI of Law No. 371/2006 and sections 558 and 559 of the Criminal Procedure Code.

The length of extradition proceedings invariably depends on the complexity of the matter. No information has been provided regarding the average duration of the extradition process. Given the piecemeal statistical data on extradition proceedings, the reviewers favoured a more systematic approach in compiling statistical information on extradition cases.

The Republic of Moldova is bound by the European Convention on Extradition and its First and Second Additional Protocols.

The Criminal Procedure Code (sections 551-557) and Law No. 371/2006 (chapter V) govern the transfer of prisoners into and out of the country. The Republic of Moldova is a party to the European Convention on the Transfer of Sentenced Persons and its Additional Protocol.

The transfer of criminal proceedings is regulated through chapter III (articles 34-41) of Law No. 371/2006. The Republic of Moldova has also ratified the European Convention on the Transfer of Proceedings in Criminal Matters.

Mutual legal assistance (art. 46)

The Republic of Moldova has in place legislation for the provision of mutual assistance in criminal matters (Law No. 371/2006, chapters I and II, and sections 531-540 of the Criminal Procedure Code). The national authorities can afford assistance on the basis of an applicable treaty or on the basis of reciprocity, in the broadest possible sense, also in relation to legal persons.

Mutual legal assistance may be refused in the absence of dual criminality (section 534, paragraph 1 (7), of the Criminal Procedure Code). No distinction exists in the national legislation between coercive and non-coercive measures as a criterion for requiring dual criminality (although the concept of “coercive procedural measures” is familiar with regard to national criminal proceedings (see title V of the Criminal Procedure Code).

Spontaneous transmission of information prior to a request for mutual legal assistance is regulated in Law No. 371/2006 (article 29). Hearings by teleconference are possible through application of article 28 of the same Law. The execution of such requests is carried out in accordance with Moldovan legislation.

Bank secrecy and the fiscal nature of requests for mutual legal assistance are not included among the grounds for refusal set forth in

article 534 of the Criminal Procedure Code.

The Republic of Moldova has designated the Prosecutor General's Office (in the criminal prosecution phase) and the Ministry of Justice (in the trial phase and for court decisions enforcement) as the central authorities for requests for mutual legal assistance. However, no notification has yet been submitted to the Secretary-General of the United Nations regarding the designated central authorities and the language(s) acceptable for the submission of such requests.

A period of one month is an indicative average period for the execution of requests for mutual legal assistance by the authorities, while four to six months are needed for the execution of letters rogatory. Generally, the time frame depends on the volume and complexity of each case.

The Republic of Moldova is bound by the European Convention on Mutual Assistance in Criminal Matters and its two Additional Protocols.

Similarly to extradition, analytical statistical data on mutual legal assistance proceedings was not provided.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

The national law enforcement authorities engage in cooperation with their foreign counterparts to combat transnational crime, including offences under the terms of the Convention. In addition, at the national level, an inter-institutional cooperation mechanism is in place to facilitate cooperation with foreign counterparts.

The Republic of Moldova also participates in the Camden Assets Recovery Interagency Network, the Organization for Democracy and Economic Development (GUAM) network, the Southeast European Prosecutors Advisory Group and the Southeast European Law Enforcement Centre. Agreements with Eurojust and the European Police Office (Europol) have been signed.

The Republic of Moldova considers the Convention a basis for cooperation on law enforcement.

The Republic of Moldova also makes use of joint investigation teams through section 540/2 of the Criminal Procedure Code and article 20 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters. The recurring problems regarding the establishment of such teams are language problems and the diversity of legal systems.

The use of special investigative techniques is regulated in the Criminal Procedure Code (chapter III on means of proof and evidentiary procedures). The evidence derived from the use of special investigative techniques is admissible in court proceedings. However, the interception and recording of communications (section 132/8 of the Criminal Procedure Code) are not applicable with regard to all corruption-related offences. The use of special investigative techniques at the international level is regulated through agreements on law enforcement cooperation.

3.2. Successes and good practices

- *The existence of a comprehensive legal framework on*

international cooperation in criminal matters.

- *The flexible interpretation of the dual criminality requirement based on the underlying conduct of the offence (article 43, paragraph 2).*
- *Participation in several networks of cooperation on law enforcement (article 48).*

3.3. Challenges in implementation

- *Continue efforts to put in place and render fully operational an information system, compiling in a systematic manner information on extradition and mutual legal assistance cases, with a view to facilitating the monitoring of such cases and assessing in a more efficient manner the effectiveness of implementation of international cooperation arrangements; in doing so, devote more human resources and make a greater effort to maintain statistics regarding compliance with chapter IV of the Convention (articles 44 and 46).*
- *Expand the network of bilateral treaties on extradition and mutual legal assistance, especially with non-European States (articles 44, paragraph 18, and 46, paragraph 30).*
- *Notify the Secretary-General of the United Nations that the Convention can be used as a legal basis for extradition (article 44, paragraph 6 (a)).*
- *Specify in legislation the distinction between coercive and non-coercive measures as a criterion for determining the fulfilment of the dual criminality requirement in the practice of mutual legal assistance and consider providing a wider scope of assistance that involves coercive measures without requiring dual criminality, especially in cases of assistance, in the absence of an applicable treaty, to States that are not members of the Council of Europe (article 46, paragraph 9 (b) and (c)).*
- *Notify the Secretary-General of the United Nations of the central authority designated to deal with requests for mutual legal assistance and of the acceptable languages for the submission of such requests (article 46 (13) and (14)).*
- *Ensure sufficient possibilities for investigating acts of corruption-related offences from the initial stage of investigation. In that respect, wiretapping should be possible in all cases of suspicion of corruption, irrespective of the aggravating circumstances, which usually cannot be established at the initial stage of an investigation. To that end, revise the exhaustive list of crimes in section 132/8 of the Criminal Procedure Code with regard to which the interception and recording of communications can be authorized and used, to include all corruption-related offences (article 50).*

IV. Implementation of the Convention

A. Ratification of the Convention

Please provide general information on the ratification and status of UNCAC in your country

The Convention was signed by the Republic of Moldova on 28 September 2004. By Law no.158-XVI of 06.07.2007 the Republic of Moldova ratified the UNCAC and deposited its instrument of ratification on 1 October 2007.

Article 8 “Observance of International Law and International Treaties“ of the Constitution states that “The Republic of Moldova commits to observe the Charter of the United Nations and the treaties to which it is a party, to ground its relationships with other states on the unanimously recognized principles and norms of international law.

The coming into force of an international treaty containing provisions which are contrary to the Constitution shall be preceded by a revision of the latter.”.

According to article 20 of Law no. 595-XIV of 25.09.1999 on international treaties of the Republic of Moldova “provisions of international treaties that, according to their wording, are susceptible to apply to legal relations without adopting special normative acts, are enforceable and directly applicable in the legal and judicial system of the Republic of Moldova. To implement the other provisions of the treaties, there shall be adopted appropriate normative acts.”

B. Legal system of the Republic of Moldova

Please briefly describe the legal, institutional and political system of your country.

The Republic of Moldova is a sovereign, independent, unitary and indivisible state. The form of government of the State is the republic.

Legislative, Executive and the Judicial Powers are separate and cooperate in the exercise of the assigned prerogatives pursuant to the provisions of the Constitution.

Parliament

Parliament is the supreme representative body of the people of the Republic of Moldova and the sole legislative authority of the State. It is composed of 101 members.

Parliament has the following basic powers:

- a) adopts laws, decisions and motions;
- b) declares the holding of referendums;
- c) provides legislative interpretations and ensures unanimity of legislative regulation throughout the country;
- d) approves the main directions of internal and external policy of the State; e) approves the state military doctrine;

- f) exercises parliamentary control over executive power in the manners and within the limits provided for by the Constitution;
- g) ratifies, terminates, suspends and repeals international treaties concluded by the Republic of Moldova;
- h) approves the State budget and exercises control over it;
- i) supervises upon the allocation of State loans, upon any aid of economic or other nature granted to foreign countries, upon the conclusion of agreements concerning State loans and credits obtained from foreign sources;
- j) elects and appoints State officials, in cases provided by the law; k) approves the orders and medals of the Republic of Moldova;
- l) declares partial or general mobilization of the armed forces; m) declares the state of national emergency, martial law and war;
- n) initiates investigations and hearings concerning any matters touching upon the interests of the society;
- o) suspends the activity of bodies of local public administration, in cases provided by the law;
- p) adopts acts on amnesty;
- q) carries out other powers, as provided for by the Constitution and by the laws.

Members of Parliament may not be prosecuted or held legally liable for their votes or opinions expressed in the exercise of their mandate.

Parliament adopts constitutional, organic and ordinary laws. Constitutional laws are aimed at revising the Constitution. The organic laws shall govern:

- a) electoral system;
- b) organisation and carrying out of referendum; c) organisation and functioning of Parliament;
- d) organisation and functioning of the Government;
- e) organisation and functioning of the Constitutional Court, the Superior Council of Magistracy, courts of general and administrative jurisdiction;
- f) organisation of local administration, of the territory, as well as the general regulation of local autonomy;
- g) organisation and functioning of political parties;
- h) procedure for establishing exclusive economic zones;
- i) general legal regulation of private property and inheritance;
- j) general regulation of labour relationships, trade-unions and social protection; k) general organisation of the education system;
- l) general regulation of religious cults;
- m) regulation of the state of national emergency, martial law and war; n) criminal offences, punishments and the procedure of their execution; o) granting of amnesty and pardon;
- p) other fields where the Constitution provides for the necessity of adopting organic laws;
- r) other fields where the Parliament recommends the passing of organic laws. The ordinary laws shall intervene in any field of social relationships, except for the spheres regulated by constitutional and organic laws.

Government

The Government ensures the carrying out of the state internal and external policy and shall exercise the

general management of the public administration.

Government consists of a Prime Minister, a first Vice-Prime-Minister, Vice-Prime-Ministers, ministers and other members, as determined by organic law.

The President of the Republic of Moldova designates a candidate for the office of Prime Minister following consultations with parliamentary fractions. The candidate for the office of Prime Minister shall request, within 15 days following the designation, the vote of confidence of the Parliament over the programme of activity and the entire list of the members of the Government.

The programme of activity and the list of the members of Government are subject to parliamentary debates in session. It shall grant confidence to the Government with the vote of majority of the elected members of Parliament. On the basis of the vote of confidence granted by the Parliament, the President of the Republic of Moldova shall appoint the Government.

The Government shall enter into the exercise of its powers on the very day of taking the oath by its members before the President of the Republic of Moldova.

The Government adopts decisions, ordinances and regulations. Decisions are adopted to ensure enforcement of laws.

Ordinances are issued according to the provisions of Article 106/2

Decisions and ordinances adopted by the Government are signed by the Prime Minister, countersigned by the ministers bearing the responsibility to put them into effect and shall be published in "Monitorul Oficial al Republicii Moldova". Failure to publish the decision and ordinance entails its nullity.

Regulations are issued by the Prime Minister for the organization of the internal activity of the Government.

The Government shall exercise its mandate up to the date of validation of the election of the new Parliament.

President of the Republic of Moldova

The President of the Republic of Moldova represents the State and is the guarantor of national sovereignty, independence, of the unity and territorial integrity of the State.

The mandate of the President of the Republic of Moldova is a 4-year tenure which shall start on the oath-taking day. No person may exercise the duties of President of the Republic of Moldova more than for two consecutive mandates.

In the event the President of the Republic of Moldova commits certain deeds infringing the provisions of the Constitution, he/she may be removed from office by the Parliament with the vote of a majority of two thirds of its elected members. The motion requesting the removal from office shall be initiated by at least one third of the members of Parliament and shall be acknowledged to the President of the Republic of Moldova without delay. The President may offer the Parliament and the Constitutional Court explanations on the deeds he is charged with.

Courts of Law

Justice is administered by the Supreme Court of Justice, courts of appeal and courts of law. For certain categories of cases special courts of law may operate according to the law. The establishment of extraordinary courts of law is forbidden.

Judges sitting in the courts of law are independent, impartial and irremovable according to the law.

Judges sitting in the courts of law are appointed, according to the law, by the President of the Republic of Moldova upon proposal submitted by the Superior Council of Magistrates. Judges who successfully passed the contest shall be firstly appointed for a 5-year term of office. After the expiration of the 5-year term of office, the judges shall be appointed to this position until reaching the age limit fixed by the law (65 years).

The presidents, vice-presidents and judges of the courts of law are appointed by the President of the Republic of Moldova following a proposal submitted by the Superior Council of Magistracy, for a 4-year term.

The presidents, vice-presidents and judges of the Supreme Court of Justice are appointed by Parliament following a proposal submitted by the Superior Council of Magistracy. They must have a working tenure as judge of at least 10 years.

Judges are promoted and transferred only at their own consent.

The office of judge shall be incompatible with the exercise of any other public or private remunerated position, except for the didactic and scientific activity.

Prosecutor's Office

The Prosecutor's Office represents the general interests of the society and defends rule of law and the rights and liberties of the citizens, it also supervises and exercises, according to the law, the criminal prosecution and brings the accusation in the courts of law.

Public prosecution system includes the General Prosecutor's Office, territorial and specialized prosecution offices.

Prosecutor General is appointed by the Parliament following the proposal submitted by the President of the Parliament. The hierarchically inferior prosecutors are designated by the Prosecutor General and are subordinated to the latter. Term of office of the prosecutors is 5 years.

The office of prosecutor is incompatible with any other public or private remunerated position, except for didactic and scientific activity.

Anti-corruption Prosecutor's Office - is specialized in fighting corruption offences and exercises its powers on the entire territory of the country.

National Anti-corruption Centre

The National Anti-corruption Centre is a specialized body in the prevention and fight against corruption, corruption related acts and acts of corruptive behaviour.

The Centre is a legal entity of public law, completely financed from the state budget, has treasurer accounts, seal with the image of the State Emblem of the Republic of Moldova and other necessary attributes.

The Centre is an apolitical body, does not provide help and does not support any political party. It is independent in its activity and submits only to the law. The Centre has organizational, functional and operational independence in accordance with the terms, established by the law.

Please list relevant laws, policies and/or other measures that are cited in the responses to the self-assessment checklist and provide them as attachments by separate email to the secretariat.

1. Constitution of the Republic of Moldova
2. Criminal Code no. 985-XV of 18.04.2002
3. Criminal Procedure Code no. 122-XV of 14.03.2003
4. Law no. 371 of 01.12.2006 on international legal assistance in criminal matters
5. Law no. 595 of 24.09.1999 on the international treaties of the Republic of Moldova
6. Law no. 190-XVI of 26.07.2007 on the prevention and combating of money laundering and the financing of terrorism

The general framework for anti-corruption measures in the country is provided for in the National Anti-corruption Strategy for 2011–2015.

Have you ever assessed the effectiveness of anti-corruption measures taken by your country? If available, please attach any relevant documents (e.g. gap analysis, reports of other international and regional review mechanisms, policy studies).

1. GRECO third evaluation round, Evaluation report and Compliance report on incriminations.
2. MONEYVAL 4th assessment

C. Implementation of selected articles

General observation of the reviewing experts

The reviewing experts stressed as an important cross-cutting issue especially for the implementation of Chapter III of the UNCAC, their finding on the inconsistent, and to a large degree extremely lenient, practice in the Republic of Moldova regarding the sanctions imposed for corruption offences. The reviewing experts made certain recommendations in order to assist the Moldovan authorities in reviewing and ensuring better enforcement of the criminalization and other corruption-related provisions of Chapter III of the Convention. These recommendations echo similar conclusions/recommendations of national studies (see below under the respective sections of the report) and are specified in detail under article 30, paragraph 1 of the UNCAC.

III. Criminalization and law enforcement

Article 15. Bribery of national public officials

Subparagraph (a) of article 15

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code of the Republic of Moldova no. 985-XV of 18.04.2002:

Article 123 Persons holding positions of responsibility, public persons and persons holding positions of public dignity

(1) Persons holding positions of responsibility shall mean persons who in an enterprise, institution or organization under the authority of the State or local public administration or in a subdivision thereof are assigned, either permanently or temporarily, by law, appointment, election or delegation, certain rights and obligations with a view to exercising the functions of a public authority or functions related to administrative management or to economic/organizational activities.

(2) Public person shall mean any civil servant, including civil servants with special status (staff of the diplomatic service, customs service, the defense, national security and public order bodies or any other person with special or military ranks); any member of staff of autonomous or regulatory public authorities, of State or municipal undertakings or of any legal entity under public law; any member of the private office of a person holding a position of public dignity; and any person authorized or entitled by the State to perform, on its behalf, public services or fulfill activities of public interest.

(3) Persons holding positions of public dignity shall mean persons whose appointment or election is governed by the Constitution of the Republic of Moldova or who holds office by virtue of his/her election or appointment by the Parliament, the President of the Republic of Moldova or the Government; local councilors or members of the People's Assembly of Gagauzia, and persons to whom persons holding positions of public dignity delegate their authority.

Article 325. Active bribery

(1) Promising, offering or giving a bribe, directly or through an intermediary, to a public person or foreign public person, in the form of goods, services, privileges or advantages of any kind to which he or she is not entitled, for himself or herself or for anyone else, with a view to having him or her perform or refrain from performing an act, or delay or facilitate the performance of an act, in the exercise of his or her duties or contrary thereto, shall be punishable by imprisonment for up to 6 years with a fine of between 1000 to 3000 conventional units in the case of a natural person, and a fine of between 2000 to 4000 conventional units with disqualification from performing certain activities in the case of a legal person.

(2) The same actions committed: b) by two or more persons; c) on a large scale shall be punished by imprisonment from 3 to 7 years with a fine of between 1000 to 3000 conventional units in the case of a natural person, the legal entity shall be punished by a fine of between 3000 to 8000 conventional units with disqualification from performing certain activities.

(3) The actions set forth in par. (1) or (2) committed: a) on an especially large scale; a1) with a person holding position of public dignity or international official; b) in the interests of organized criminal group or a criminal organization shall be punished by imprisonment for 6 to 12 years with a fine in the amount of 1000 to 3000 conventional units in the case of a natural person, the legal entity shall be punished by a fine of between 5000 to 10000 conventional units with disqualification from performing certain activities or the liquidation of the legal entity. (...)

(4) The person who promised, offered, or provided the goods or services listed in art. 324 shall be exempt from criminal liability provided that the goods or services were extorted from him/her or if the person denounces himself/herself without knowing that criminal investigative bodies knew about the crime he/she committed.

Please provide examples of cases and attach case law if available.

Ex.: Director of a kinder garden tried to bribe a NAC officer with MDL 10 000 in order to determine investigators to end a criminal case initiated on decision makers of the institution she leads.

If available, please provide related statistical data on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures, as available. Please describe how such information is collected and analysed.

2011 - 5 investigations of which 4 were sent to the court 2012 - 9 investigations of which 2 were sent to the court 2011-2012 - 2 convictions

The information about crimes that is received by criminal investigation bodies is divided into two

categories: a) information regarding crimes that were committed, prepared or in the process of being prepared, provided by the Criminal code, that are registered in the so called “Register no.1”, and b) other information regarding crimes and incidents, that cannot serve as a ground for starting the criminal investigation and require additional control, that are registered in the “Register no.2”. The information is sent through the telecommunication network to the Information technologies service of the Ministry of Internal Affairs for a centralized record.

All the data are sent to the Information technologies service of the Ministry of Internal Affairs by the criminal investigation bodies, prosecutors’ offices and courts during the criminal investigation and the trial phase.

Study on corruption cases archived in the courts for the period from 1 January 2010 o 30 June 2012
(Developed by the National Anti-Corruption Centre with the support of the Supreme Court of Justice and together with the experts of MIAPAC Project and EUHLPAM Mission, based on an extensive research on corruption cases sent to court and examined by national courts with a view to the implementation of p.7 and p.8 of the 2012-2013 Action Plan for the Implementation of the Anticorruption Strategy for 2011-2015)

The active subjects of corruption crimes (the corrupters) are rarely subjected to criminal liability because the applicable legislation provides the concession of exemption from penal consequences in case of denunciation of the crime and cooperation with the criminal investigation bodies.

National Anti-Corruption Centre: Progress report (January-June 2014)

Since October 2012 NAC was supposed to start working according to its original reform concept. However, absent coordination with NAC reform process, an amendment was featured into the Criminal Procedure Code (CPC), making it nearly impossible for NAC to investigate corruption crimes properly. Namely, **in order to be granted authority by the court to record the behavior of its suspects, NAC had to summon and inform them that a criminal case was opened, as well as to present its suspicions of crime.** Obviously, such a procedure made no sense for corruption investigation. The only exception allowed was for glaring offences, in which court’s authority could be obtained within 24-48 hours. Thus, NAC was constrained to work within this regime of allowed “exception from the general rule”, as the application of the “general rule” of informing the suspect about suspicion against him/her would have compromised investigation for obvious reasons.

Supreme Court of the Republic of Moldova – Decision of the Plenary

**On application of legislation on criminal liability for corruption offences
No. 11 of 22 December 2014**

9. The material or immaterial object of active bribery offence (Art.325 CC) is identical to the entities designating the material or immaterial object of passive corruption offence, having the same content.

10. The objective element of the active bribery offence (Art.325 CC) consists of a harmful event expressed only through action, expressed alternatively in three regulatory proceedings:

- 1) promising a public entity or foreign public entity, of goods, services, privileges or benefits in any form, undue to it;
- 2) offering a public entity or foreign public entity of goods, services, privileges or benefits in any form, undue to it;

3) giving a public entity or foreign public entity of goods, services, privileges or benefits in any form, undue to it;

10.1. Promising for the purposes of paragraph (1) Art.325 CC, is the undertaking, and commitment of the suborner to the possible corruptor to transmit the latter in the future – in a definite or indefinite period of time - illegal remuneration, should the latter act in the direction desired by the suborner.

The promise can be made verbally, in writing or in any other manner perceptible to become known to the recipient. It also can be an express or implied promise or even allusive one. Even though the promised benefits cannot be determined in terms of quality and quantity, the promise must be serious and not vague or impossible.

In the case of a promise, the initiative comes from the suborner, constituting a unilateral act thereof. Therefore, the application of liability in accordance with paragraph (1) Art.325 CC it does not matter if the recipient accepts or rejects the promise.

10.2. The offering for the purposes of paragraph (1) Art.325 CC involves the presentation, display, appearance of goods, services, privileges or benefits in any form, undue to the public entity or foreign public entity.

As with the promising, the initiative of offering belongs to the suborner, as a unilateral act thereof. Therefore, for the application of liability under paragraph (1) Art.325 CP, it does not matter if the recipient accepts or rejects the offer. It is sufficient for the offer to be realized by the suborner.

The offer must imply a precise nature, resulted in an effective, real, but not imaginary action. It is sufficient for the offer to be intelligible to the person concerned, who, knowing the relevant nuances, is in a position to understand the significance.

The offer may be preceded by promise, but in such a case, the offense is consumed once the promise has been voiced, offering being exhausted. However, given the materiality of the offense, the offer already implies a promise. If the promise and offer are simultaneous, the offer absorbs the promise and exceeds it, the two activities overlap so that the acts shall be consumed from the time of presentation, display, appearance of goods, services, privileges or benefits in any form, undue to the public entity or foreign public entity.

10.3. Giving - in the purposes of paragraph (1) Art.325 CC, represents the handing over, submission, factual delivery of illegal remuneration by the suborner to the public entity or foreign public entity.

Unlike promise or offer, the giving is necessarily bilateral, i.e. forms the correlative action of receiving illegal remuneration, the action committed by public entity or foreign public entity.

For the existence of the offense referred to in paragraph (1) Art.325 CC, in the proceeding of giving is irrelevant to whom belongs the initiative – to the corruptor or suborner. However, if giving illegal remuneration is based on the initiative of the corruptor, forming the action of extortion, giving illegal remuneration to the corruptor will not generate suborner's criminal liability, since there will operate the impunity clause provided in paragraph (4) Art.325 CC.

10.4. The offense under Art.325 CC is formal and consumed once the action of promising, offering is made (whether public entity or foreign public entity does not allow corruption and does not accept them or has failed to fulfil the request) or once the illegal remuneration was given in full.

Active corruption offence occurs when promising, offering illegal remuneration is made before the fulfillment of the action requested by the suborner.

Any person who promises, offers or gives, personally or through an intermediary, goods, services or other material or immaterial benefits to the expert (to draw conclusions or misrepresentation), to the interpreter (to make incorrect interpretations), to the translator (to translate incorrectly) within the course of prosecution or trial in the national or international court, is framed under art.314 CC (determining misrepresentation, false conclusions or incorrect translations) except under Art.325 CC, since inducing misrepresentation or false interpretations or incorrect translations is a particular case of active corruption, so it retains the rules of concurrence pursuant to art. 116 CC.

11. Active corruption offence is committed only with direct intent, perpetrator must know that illegal remuneration, which he/she promises, offers or gives to a public entity or a foreign public entity, undue to it, represents the consideration to make him/her act in his/her interests or people he/she represents.

12. The subject of active bribery offence can be any natural person who has reached the age of 16 years. The subject of active corruption offence may be also a legal entity, except for public authorities.

13. If promising, offering or giving illegal remuneration to a public entity or foreign public entity is done through an intermediary, acting on behalf of suborner and with the intention of helping him/her, the intermediary shall act as an accomplice to the offense specified in paragraph (1) Art.325 CP.

If a person receives from the corruptor certain benefits, ostensibly to transmit them to a public entity or a foreign public entity as an illegal reward, but having no intention of doing so, taking them permanently under his/her possession, then the act of the fictional intermediary meets the elements of swindling (art.190 CC). In such circumstances, the one who transmits to the fictional intermediary the illegal remuneration shall be liable for attempted offense referred to in paragraph (1) art.325 CC. However, if this person is not aware that he/she is being deceived, as the one to whom he/she wishes to transmit the benefits does not want to mediate the illegal remuneration.

In the same circumstances, if the suborner transmits to the intermediary undue benefits, and the latter, deceiving the suborner, leaves a part of these benefits, transmitting the remainder to a public entity or foreign public entity, the actions of the intermediary will form the offense specified in paragraph (5) art. 42 and paragraph (1) Art.325, along with one of the offenses referred to in art.190 CC.

(b) Observations on the implementation of the article

The reviewing experts noted that section 325 CC establishes the offence of active bribery of public officials containing a basic provision (paragraph 1) and provisions for aggravated offences (paragraphs 2 and 3). In addition, the authorities have based themselves on the guidance provided by the Plenum of the Supreme Court of Justice in its decisions no.5 of 30 March 2009 “On the application of the legislation on criminal liability for passive and active corruption” and no. 11 of 22 December 2014 “On application of legislation on criminal liability for corruption offences”.

Section 325 CC uses the terms “public person” and “person holding positions of public dignity”, all of which are defined in article 123 CC.

Article 325 CC uses the terms “promising”, “offering” or “giving” a bribe to a public person or foreign public person. It covers the direct and indirect commission of the bribery offences (“directly or through an intermediary”).

The concept of “undue advantage” is transposed in section 325 CC through the expression “goods, services, privileges or advantages of any kind to which [the public person] is not entitled”. The decision of the Plenum of the Supreme Court of Justice no. 11 of 22 December 2014 “On application of legislation on criminal liability for corruption offences” further analyzes the concept by referring to the term “illegal remuneration” and indicating that this also includes tangible or intangible benefits and can constitute the material or immaterial object of the crime.

The provision on active bribery of public officials specifies that the advantage may be intended for the public official himself or herself or another person (third party beneficiary). The Moldovan law explicitly covers both positive acts and omissions by a public official, provided that they are “within the scope of his or her authority” or “contrary to his or her duties.”

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Subparagraph (b) of article 15

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

...

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code of the Republic of Moldova no. 985-XV of 18.04.2002: Article 324. Passive bribery

(1) Requesting, accepting or receiving, directly or through an intermediary, by a public person or foreign public person, of goods, services, privileges or advantages of any kind to which he or she is not entitled, for himself or herself or for anyone else, or accepts an offer or promise thereof, in order to perform or refrain from performing an act, or delay or facilitate the performance of an act, in the exercise of his or her duties or contrary thereto, shall be punishable by imprisonment for 3 to 7 years with a fine of between 1,000 and 3,000 conventional units and with a disqualification from holding office or from engaging in certain activities for a period of 2 to 5 years.

(2) The same actions committed: a) by international officials; b) by two or more persons; c) with extortion of goods or services listed in par. (1); d) large scale shall be punished by imprisonment for 5 to 10 years with a fine in the amount of 1000 to 3000 conventional units and with the deprivation of the right to hold certain positions or to practice certain activities for 2 to 5 years. (...)

Please provide examples of cases and attach case law if available.

Ex.1: A surgeon that requested MDL 2,000 from a patient for a surgery.

Ex.2: A senior inspector of the regional financial inspection Department established that the trader delivered goods indicating erroneous data in invoices. Increased prices of the goods were recorded in most of the bills, while in others the same information was absent. The inspector extorted from the trader \$ 200 in order to not include in the act of control the identified account deficiencies.

If available, please provide related statistical data on number of investigations, prosecutions and

convictions/acquittals. Please provide per annum figures, as available. Please describe how such information is collected and analysed.

2011 - 103 investigations of which 44 were sent to the court 2012 - 94 investigations of which 28 were sent to the court 2011-2012 - 2 convictions

National Anti-Corruption Centre: Progress report (January-June 2014)

Since October 2012 NAC was supposed to start working according to its original reform concept. However, absent coordination with NAC reform process, an amendment was featured into the Criminal Procedure Code (CPC), making it nearly impossible for NAC to investigate corruption crimes properly. Namely, **in order to be granted authority by the court to record the behavior of its suspects, NAC had to summon and inform them that a criminal case was opened, as well as to present its suspicions of crime.** Obviously, such a procedure made no sense for corruption investigation. The only exception allowed was for glaring offences, in which court's authority could be obtained within 24-48 hours. Thus, NAC was constrained to work within this regime of allowed "exception from the general rule", as the application of the "general rule" of informing the suspect about suspicion against him/her would have compromised investigation for obvious reasons.

Study on corruption cases archived in the courts for the period from 1 January 2010 to 30 June 2012 (Developed by the National Anti-Corruption Centre with the support of the Supreme Court of Justice and together with the experts of MIAPAC Project and EUHLPAM Mission, based on an extensive research on corruption cases sent to court and examined by national courts with a view to the implementation of p.7 and p.8 of the 2012-2013 Action Plan for the Implementation of the Anticorruption Strategy for 2011-2015)

It was also determined that the courts do not convict and sanction the acts of passive corruption, committed in other forms than receiving of undue remuneration, ignoring completely other 4 possible forms of this crime: requiring, accepting undue remuneration, the offer of such remuneration or promising it.

Supreme Court of the Republic of Moldova – Decision of the Plenary

On application of legislation on criminal liability for corruption offences No. 11 of 22 December 2014

1. In the course of judicial investigation, the court must determine the nature and duties of the defendant, the factual circumstances that highlight the actions of the public entity, foreign public entity, international official, public dignitary, in relation to duty tasks, purpose and/or reasons of their actions.
2. The judicial-criminal toolbox in passive corruption matters (art. 324 CC) aims primarily the incidence of illegal remuneration, which can be an expression of tangible or intangible entities, acting as the material object of crime or immaterial object of crime.

In particular, illegal remuneration may consist of: goods, services, privileges, benefits, in any form, and in the case of accepting, the remuneration may include offers or promises, in all cases having a free of charge nature. The free of charge nature is incident also in the cases when the remuneration covers a specific rebate, undue to the offender. Thus, it is important for the remuneration to be undue to the public entity, foreign public entity, international official, dignitary (hereinafter the corruptor), that is not legally due. If a public entity, foreign public entity, international official, dignitary person is entitled to solicit, accept or receive goods, services, privileges, benefits, offers or promises in any form, then art.324 of CC shall not retain. At the same time, if the perpetrator (public entity or dignitary) solicits and receives without record an amount of money required by law as an obligation or an amount greater than that established, the act is not passive corruption, but one of the offenses against property committed through embezzlement.

Thus, if the perpetrator has received money being entitled to this right, but failed to record the receiving thereof, passing it under his/her definitive possession, then this commission shall be deemed as embezzlement of someone's else property by use of official position (d) para. (2) 191 CC). If the offender receives a sum greater than that established by law or a sum of money which was not prescribed by law, the commission shall be deemed as swindling by use of official position (d) para. (2) art.190 CC), since the official position is used by public entity or dignitary to realize the fraud. However, if the offender does not extort the amount to be charged legally and requests, simultaneously, the payment of an additional fee to perform or fail to perform, delay or expedite the fulfilment of an action in the exercise of duty or contrary to the duty in question, this meets the components of the crime under art.324 of CC.

Also, it is absolutely imperative for illegal remuneration to constitute a consideration of conduct the corruptor undertakes to adopt, a conduct which alternatively expresses in: the fulfilment or non-fulfilment, delay or expedite fulfilment of an action in exercising of his/her duty or contrary to it. If illegal remuneration is not consideration to the conduct public entity, dignitary undertakes to adopt, the commission will not meet the elements of a crime under art.324 CC.

2.1. Illegal remuneration in the form of assets to be interpreted in accordance with Article 285 of the Civil Code. The assets are all goods susceptible to individual or collective approximation and property rights. Assets are tangible items in respect to which there may be civil rights and obligations. Therefore, the definition "asset" refers equally to goods as well as property rights, which may be real and compulsory. It has no relevance to classification the category to which the assets belong to: movable or immovable, tangible or intangible, divisible or indivisible etc. Also, it does not matter to classification if the asset constituting illegal remuneration is part of the goods which are in general civil circulation or is subject to a special circulation regime. Thus, it is possible that illegal remuneration in the form of goods refers to: narcotic or psychotropic substances, weapons or ammunition etc.

However, to be qualified as an asset, it is absolutely imperative that the object of illegal remuneration has economic value and is subject to approximation, in the form of some rights as part of a patrimony. Because organs, tissues and cells of human origin have no cost and material value (paragraph (3) and Article 27 para. (1) Article 28 of the Law on transplantation of organs, tissues and cells, no.42 / 2008), they cannot be the object of illegal remuneration in the form of assets within the meaning of paragraph (1) art.324 CC. Eventually, if the public entity, foreign public entity, international official, dignitary shall receive as remuneration illicit organs, parts thereof, tissues or cells of human origin, this shall fall under the scope of letter f) paragraph (3) Article 158 of CC.

Also for the reason of no economic value, under paragraph (1) art.324 CC, the category of assets does not include counterfeit banknotes. Thus, if the corruptor has accepted or received counterfeit banknotes to perform any action related to his/her duties in favor of the suborner or persons he/she represents, then the

actions committed by the corruptor shall meet the elements of passive corruption attempt (art. 27, para. (1) art.324 CC) because the perpetrator has not achieved his/her intention, because the bills he/she received or accepted are not authentic as the perpetrator would have wanted. In contrast, in these circumstances, the person who offers counterfeit bills will be subject to liability for attempted circulation of fake currency (27 and art.236 CC) and the person who gives counterfeit bills shall be held liable for the circulation of fake currency, “fait accompli”(art.236 CP), provided that at the time of the offense, he had knowledge the bills were fake.

2.2. Illegal remuneration in the form of services involves activities, other than those resulting in products, made in order to meet the needs of the corrupt or a person close to him/her. The category of illegal remuneration services includes: transportation, travel, insurance, communication, training, legal services, healthcare, advertising services, etc. It is possible that illegal remuneration services have a sexual nature (sexual intercourse, sexual act, including sexual indulgence in perverse forms). It does not matter who provides sexual services: the suborner or another person whose services are paid by the suborner.

If the corruptor requests sexual services by threat or coercion, and those services constitute the consideration of conduct the corruptor undertakes to adopt, then the actions committed should be framed in accordance with subparagraph c) para. (2) art.324 CC, without retaining the framing of art.173 CC. This is because, in such case there is a competition between a general and special law, while in line with art. 116 of CC *lex speciale* shall apply only, i.e. c) para. (2) art.324 of CC; or, extortion of sex services committed by a public entity, a foreign public entity, an international official, a dignitary, represents a particular case of sexual harassment.

2.3. Illegal remuneration in the form of privileges implies an exemption of obligations (to state) or, where appropriate, provision of rights or social distinctions which are granted in special circumstances.

2.4. Illegal remuneration in the form of benefits represents a benefit, a favor of financial or non-patrimonial nature, which unfairly improves the situation in relation to which the corruptor had been before the commission of the offence. Improper benefits may be materialized or dematerialized, consisting of: bonuses, holidays, money loans without interest, accelerating the treatment of a patient, better career prospects etc.

2.5. Illegal remuneration in the form of offers lies in its motion for goods, services, privileges or benefits in any form.

2.6. Illegal remuneration in the form of promises is the undertaking to give goods, provide services, privileges or benefits in any form.

2.7. In the context of paragraph (1) art.324 CC, illegal remuneration, regardless of the regulatory aspect of the harmful event, knows both a lower limit and an upper limit. It is essential that the value in money of illegal remuneration in accordance with paragraph (1) art.324 of the CC is less than 100 conventional units (c.u.), but not exceeding 2500 c.u., otherwise, it falls under the scope of paragraph (4) art. 324 CC (if the value in money of illegal remuneration is less than 100 u.c.) or d) paragraph (2) art.324 CC (if the value in money of illegal remuneration lies between 2500 and 5000 c.u.) After all, if the amount in money of illegal remuneration exceeds 5000 c.u.the liability shall be applied under b) paragraph (3) art.324 CC.

The courts will take into account that paragraph (4) of art.324 CC does not specify any lower limit for illegal remuneration. However, systematic interpretation of the provision of art.324 CC and paragraph (2) Article 11 of the Law on the Code of Conduct for Civil Servants, no.25 / 2008 in conjunction with point 1 of the Government Decision on determining the admitted amount of symbolic gifts as those provided out of

courtesy or on occasion of certain protocol events and approval of the Regulation on the evidence, evaluation, storage, use and refund of symbolic gifts, and those provided out of courtesy or on occasion of certain protocol events, no.134 /2013 allows us to conclude that the material benefit as a symbolic gift, provided out of courtesy or on occasion of certain protocol events, which amount does not exceed 1000 MDL, does not represent consideration of the conduct of a public entity, a dignitary undertakes to have. This is because, the material benefit as a symbolic gift offered out of courtesy (on occasion of a birthday, professional day, religious holidays etc.) or during certain protocol events is used in the sense of donation, so it is excluded in principle a certain consideration of the public entity, foreign public entity, international official or dignitary.

2.7. In the context of paragraph (1) art.324 of CC, illegal remuneration, regardless of the regulatory aspect of the harmful act, knows both a lower limit and an upper limit. It is essential that the value in money of illegal remuneration in accordance with paragraph (1) art.324 of the CC is less than 100 conventional units (c.u.), but not exceeding 2500 c.u., otherwise, it falls under the scope of paragraph (4) art. 324 CC (if the value in money of illegal remuneration is less than 100 u.c.) or d) paragraph (2) art.324 CC (if the value in money of illegal remuneration lies between 2500 and 5000 c.u.) After all, if the amount in money of illegal remuneration exceeds 5000 c.u. the liability shall be applied under b) paragraph (3) art.324 CC.

However, in the case of request, acceptance, receipt of undue, negligible, insignificant remuneration, the court must take into account that, in accordance with paragraph (2) Article 14 CC, is not a crime an act or omission which, although formally, contain signs of an offence under the criminal Code, but is unimportant, has no injurious degree of a crime. Thus, as examples of the receipt of an undue, negligible, insignificant, unimportant payment, can be: taking possession of a chocolate, a packet of cigarettes; a ticket to a show, film; single trip by public transportation without paying the fare etc.

Where appropriate, each asset or service must be evaluated in money, considering the prices or rates in question at the time of commission, and in their absence - on the basis of expert reports.

3. The objective element of passive corruption offence consists in the harmful event expressed only through action, which in its standard version (paragraph (1) art.324 CP) alternatively aims the following regulatory proceedings:

- 1) soliciting goods, services, privileges or benefits in any form, which are undue to the beneficiary;
- 2) accepting:
 - a) goods, services, privileges or benefits in any form, which are undue to the beneficiary;
 - b) offering or promising goods, services, privileges or benefits in any form, which are undue the beneficiary;
- 3) receiving goods, services, privileges or benefits in any form, which are undue to the beneficiary.

In the aggravated form in c) (2) art.324 CC, passive corruption involves under the regulatory proceeding of the harmful event the extortion of goods or services provided in the standard version.

3.1. The solicitation consists of a request, persistent request or a petition regarding the subject of illegal remuneration, which may manifest verbally, in writing or in conclusive form, being intelligible to the one to whom it is addressed, whether it was satisfied or not.

In the case of solicitation the initiative belongs exclusively to the corruptor, i.e. public entity or foreign public entity, international official or dignitary. Whether explicit or allusive, soliciting illegal remuneration must be univocal, manifesting the intent of the corruptor to condition to it the conduct related to his/her service obligations.

3.2. Accepting implies the consent or acquiescence of the corruptor of the object of illegal remuneration displayed by the suborner. In the event of acceptance, the initiative belongs exclusively to the suborner. Thus, the acceptance involves the realization of certain bilateral correlative actions. In chronological terms, acceptance is always an action committed by the suborner.

For the purposes of paragraph (1) art.324 CC, acceptance can occur alternately, through the following two forms:

- 1) acceptance of goods, services, privileges or benefits in any form, undue to the corruptor- corruptor's consent for suborner to give goods, services, privileges or benefits in any form, undue to the corruptor ;
- 2) acceptance of the offer or promise of goods, services, privileges or benefits in any form which is undue to the corruptor – corruptor's approval of the offer or acquiescence to suborner's promise to give goods, services, privileges or benefits in any form, undue to the corruptor.

The difference between the two forms of acceptance lies in the object of remuneration. If in the first form the acceptance is made in relation to certain goods, services, privileges or benefits in any form, undue to the corruptor, then in the second form, the acceptance is made in relation to a particular proposal coming from the suborner of giving the corruptor goods, services, privileges or benefits in any form, undue to the latter or is made in relation of suborner assuming an obligation to give the corruptor goods, services, privileges or benefits under any form, undue to the latter.

It has no relevance to the classification whether the object of illegal remuneration is or not determined in terms of nature, quality and quantity (parametric values of illegal remuneration), being sufficient if the public entity or foreign public entity to consent or approve the offer or promise on suborner's behalf. Assuming that the illegal remuneration was not specified, the corruptor manifests an indeterminate, intention, i.e. a general representation of value in money of the illegal remuneration , the nature or quality of the object of illegal remuneration. In this case, the classification will be made according to the parametric values of illegal remuneration subsequently received by the corruptor (the stage of passive corruption exhaustion). If passive corruption remains at the stage of consumption without involving the exhaustion stage, the acceptance of undetermined (inaccurate) illegal remuneration must be classified taking into account the principle of *in dubio pro reo*. In particular, if a patrimony has been accepted without knowing the nature and patrimonial amount, the act of corruption is classified in accordance with paragraph (4) art.324 CC.

3.3. Receiving means taking possession, acquisition, receipt of goods, services, privileges or benefits in any form, undue to the corruptor from the suborner (or a third party acting on its behalf) and not necessarily limited to the corruptor manually taking the object of illegal remuneration. Reception can be achieved by leaving the goods which make the object of remuneration in a place indicated by the suborner, where they can be retrieved anytime by the corruptor.

In the event that the goods are sent by post or a transfer of funds is made on the bank account of the public entity, public foreign entity, international official or dignitary, without accepting them in advance, to

exclude the reception, it is necessary that the public entity, the foreign public entity, international official or dignitary shall without delay express the will not to accept them, for example, by a denunciation to the criminal prosecution authority.

If the object of illegal remuneration was offered or received by close family relatives of the public entity, foreign public entity etc., with the consent of the latter or whether these people have not refused such acts and used their official position in favor of the suborner, then the act of the public entity or foreign public entity shall be deemed as passive corruption externalized through "reception".

If the event of reception arrangement, the initiative belongs to the suborner and is necessarily a bilateral act; or, the reception implies inevitably the suborner giving illegal remuneration.

To be in the presence of a reception arrangement, possession taking, acquisition, collection of illegal remuneration shall be spontaneous. This means either a relative concomitance between accepting the proposal and reception or non-existence of a time interval between accepting the proposal and receiving illegal remuneration, allowing for acceptance to disclose itself as a regulatory arrangement of a harmful act. In the absence of concomitance between acceptance and reception, the reception is deemed exhausted. In this case, the offense is deemed consumed since:

- the acceptance of goods, services, privileges or benefits in any form, undue to the corruptor;
- the acceptance of the offer or promise of goods, services, privileges or benefits in any form, undue to the corruptor;

The reception may take place before or after granting the requested service, provided it has been previously accepted.

3.4. The extortion as a regulatory proceeding of the harmful act in the context of the aggravated version letter c) (2) art. 324 CC, may be achieved by one of the following factual proceedings:

- putting the victim in a situation that determines him/her to transmit illegal remuneration to the corruptor, so as to prevent the occurrence of harmful effects for the illegitimate or legitimate interests of the victim (eg, creation of obstacles by driving instructors in the practical training of the student, for example by pressing the clutch, thereby unswitching the gears, leading to a score lower than needed to obtain a driving license);
- Threatening to harm the legitimate or illegitimate interests of the victim (not actual harm), if he/she does not transmit the illegal remuneration to the corruptor (e.g. police officer claiming the object of illegal remuneration accompanied by threats to the driver of the vehicle of drawing the administrative protocol for the violation of road safety rules or operation of means of transport);
- Failing to fulfil the request of the victim, so that he/she is forced to transmit the illegal remuneration to the corruptor, to avoid the harm to legitimate or illegitimate interests of the victim (eg, omission to submit for expertise to the scientific committee of the National Council for Accreditation and Attestation the dossier and PhD thesis for obtaining scientific degree, artificially invoking the impossibility to examine the scientific results obtained by the candidate to scientific degree: large number of theses under survey, some acts from the candidate's dossier improperly drafted by the candidate to the scientific degree etc.)

4. The passive corruption offence is a formal one and consumes from the time of commission of one regulatory arrangements designating harmful actions, i.e. from the time of soliciting, acceptance, receipt or extortion of the illegal remuneration in full. Although art.324 CC is not an outcome offence, there may

exist an attempt of passive corruption offence. Thanks to the enforcement of criminal resolution, soliciting, accepting, receiving, and even extortion of illicit remuneration involves by concept, successive acts having a length in time. Precisely because of the susceptibility to fractionation of the action realizing the objective element, we can justify the attempt of passive corruption offence. For example, if the public entity sends a message by e-mail, which contains the request of illegal remuneration in order to fulfil or not, to delay or expedite the fulfilment of an action within the scope of his/her duties or contrary to these duties, but did not reach the recipient due to circumstances that do not depend on the corruptor (for example, due to the fault of the information system), the committed acts will fall under art. 27 and paragraph (1) art.324 CC. We will also be in the presence of the offense specified in paragraph (1) art.324 CC, or where appropriate, c) paragraph (2) art.324 CC, in the case of an extended offence - when , in order to achieve the same criminal intent, the perpetrator solicits, accept, receives or extorts illegal remuneration not once, but in instalments, if, for reasons beyond the control of the perpetrator, he solicits, accepts, receives, extorts only a part of the remuneration.

5. Passive corruption offence can be committed only with direct intent, because the purpose of the offence is special, having an alternative nature, namely:

1) the purpose of fulfilment - in the interests of the suborner or persons he/she represents - by the corruptor of an action in the exercise of duty or contrary to it.

2) the purpose of non-fulfilment - in the interests of the suborner or persons he/she represents - by the corruptor of an action in the exercise of duty or contrary to it.

3) the purpose of delaying the fulfilment - in the interests of the suborner or persons he/she represents - by the corruptor of an action in the exercise of duty or contrary to it.

4) the purpose of expedite fulfilment - in the interests of the suborner or persons he/she represents - by the corruptor of an action in the exercise of duty or contrary to it.

Corruptor's acting in the interests of the persons he/she represents may have a contractual, legal basis, but not necessarily confined to them.

In the absence of any of these purposes, the act cannot be classified under art.324 CC, but there may operate administrative liability under article 315 of the Code of administrative offences, where the committed involve receiving (taking) in the exercise of duty illegal reward or material benefit, unless the act does not meet the constituent elements of an offence.

5.1. To qualify the offence under art.324 CC the actual realization of any particular purpose is not necessary. However, if the purpose is achieved and the offender performs, fails to perform, delays or expedites an action in the exercise of duty or contrary to it, then the offence specified in art. 324 CC may form a real association with one of the acts referred to in art.306 (imposing deliberate criminal liability on an innocent person), art.307 (pronouncing a sentence, decision, conclusion or decision contrary to the law), art.308 (illegal apprehension or arrest), Article 309 (coercion to make statements), art.332 (forgery of public documents) or other articles of the Criminal Code.

5.2. The courts must take into account that the offence of passive corruption will exist when the fulfilment or non-fulfilment, delay or expedite fulfilment of an action for which the corruptor solicits, accepts, receives, extorts illegal remuneration is within the scope of his/her duties or is contrary to them, thus it has to be established and specified in the indictment and, necessarily, must be shown the enactment or administrative act governing them.

We will be in the presence of passive corruption offense and assuming the soliciting, acceptance, receipt or extortion of illegal remuneration undue to the perpetrator, if the action to be done by the latter did not relate directly to his/her service duties, but on the quality, efficiency, completeness of his/her actions depended the final decision adopted by another entity or public official. In such case, the indictment shall contain the enactment or administrative act governing the obligation of the perpetrator to act promptly and qualitatively.

Conversely, if, in the case of claiming, acceptance, receipt or extortion of illegal remuneration undue to him/her the action to be executed by the offender was not within the powers of his office duties, but he/she stated that he/she was entitled to fulfil it in the interest of the suborner or the people he/she represents without actually having such a possibility, the act cannot be classified as passive corruption. In such circumstances, in the event of receiving illegal remuneration, the committed offense will form the components of fraud (art.190 CC).

5.3. Also, the actions of the perpetrator shall be deemed as passive corruption and where the conditions for receiving illegal remuneration were not conditioned in advance, but the public entity, the foreign public entity, international official, dignitary understands that they are intended in order to meet the interests of the suborner or persons he/she represents.

5.4. Passive corruption is a crime affecting the office duties and, in case the public entity, the foreign public entity, international official and dignitary solicits, accepts, receives or extorts illegal remuneration, then they also abuse the exercise of their duties. Therefore, passive corruption is a particular case of abuse of office and abuse of power. Therefore, between art.324 CC and 327 CC there is a competition between a special and general law, pursuant to art. 116 CC. So, when qualifying the offence art. 324 CC will apply only, but not a concurrence of offenses. The (real) concurrence of offences between art.324 CC and art. 327 CC will exist only in the case of factual realization of one of the purposes of passive corruption offence. This is because, the objective element of the offense will be overcome and we will be in the presence of two constituent contents.

6. Passive corruption is an offence with special subject: public entity or foreign public entity public (1) art.324 CC); international official (lit.a1) para. (2) art.324 CC); dignitary a) (3) art.324 CC).

6.1. According to paragraph (2) of art. 123 "public entity" means: the civil servant, including civil servant with special status (member of diplomatic service, customs service, defense, national security and public order bodies, other person who holds special or military degrees); employee of autonomous or regulatory public authorities, state or municipal enterprises, other legal entities of public law; employee of the cabinet with a public function; person authorized or granted by the State to provide public services on its behalf to fulfil public interest activities.

The term "public servant" is subsequent to the term "public entity" used in paragraph (1) art.324 CC and its interpretation is found within the extrapenal scope. The term "public servant with special status" used in paragraph (2) Article 123 CC, does not always designate a public official in the strict sense of the law. In some cases, this term refers to people who assimilate to a public servant and who hold special or military degrees.

The term "employee of autonomous or regulatory public authorities, state or municipal enterprises, other legal entities of public law" is also within extrapenal scope. Thus, in accordance with Annex 1 (Chapter I, Section II) Government Decision on the implementation of legislative acts, No. 1001 of 26.12.2011, autonomous public authorities are: 1) Court of Accounts; 2) Center for Human Rights; 3) Central Election

Commission; 4) The National Centre for the Protection of Personal Data; 5) The Coordinating Council of Audiovisual; 6) Competition Council; 7) Intelligence and Security Service; 8) National Integrity Commission; 9) State Protection and Guard Service; 10) The Council for the Prevention and Elimination of Discrimination and Ensuring Equality. Note that the technical-administrative staff of these authorities (technical staff, auxiliary staff) are not deemed as public entities for the purposes of para. (2) Article 123 CC.

Public regulatory authorities are: National Energy Regulatory Agency; National Regulatory Agency for Electronic Communications and Information Technology; National Agency for Regulation of Nuclear and Radiological Activities. In the purposes of paragraph (2) Article 123 CC are not public entities those who are part of the contractual staff of the three regulatory public authorities, performing ancillary activities.

For the purposes of paragraph (2) Article 123 CC, the employee of state or municipal enterprises, other legal entities of public law is the employee who is assimilated to civil servants, regardless of hierarchical level, except for employees performing auxiliary activities. By "other legal persons governed by public law" are meant public institutions and public authorities listed in Annex 1 to the Government Decision on the implementation of legislative acts, No. 1001 of 26.12.2011, and those that are not listed in this act (e.g. Medicines Agency, Department of State Supervision of Public Health, etc.), except for autonomous or regulatory public authorities.

Since the employee of state or municipal enterprise, other legal entities of public law, as a species of public entity, is identical with the term "employee in a company, institution or organization" used in Art.256 CC, the two incriminations are to be delineated. Thus, if an employee of the entities listed will also have the quality of a public entity, foreign public entity, international official or dignitary, the classification will apply in accordance with art.324 CC. On the contrary, the employee (staff member) of a state or municipal enterprise, other legal persons governed by public law, in relation to the offense committed, exercises only purely professional duties or technical auxiliary activities, the committed acts will fit under Art.256 CC. This is because the persons running purely professional tasks (e.g. doctors, teachers, cashiers, etc.) are not public entities, because their tasks are not producing legal effects (i.e., can not create, modify or extinguish legal relations).

In the exercise of their professional duties, such persons cannot emerge as public entities. Only if these persons under certain circumstances get to exercise duties producing legal effects (e.g., grant rights or exempt of obligations), the "sub-administrative" activity of doctors, teachers, cashiers etc. can turn into administrative activity. For example, if a medical leave certificate is issued by a physician or during the evaluation of students by the teaching staff they are exercising duties producing legal effects, reason for which, in relevant circumstances such individuals may develop as subjects of the offense under art.324 CC, provided that such persons are working in public institutions, otherwise, criminal liability shall apply under art.333 CC. Even more are not public entities, the administrative and technical staff of the state or municipal enterprises, public institutions or public authorities (technical staff, auxiliary staff). To these employees criminal liability shall be applied under Art.256 CC, provided that the action of receiving illegal remuneration of patrimonial nature is committed in the presence of a particular method - extortion.

The term "employee of the cabinet with dignitaries" must be reported to the provisions of paragraph (1) Article 5 of the Law on the Status of staff from the cabinet of dignitaries, no.89 from 07.05.2010. Thus, the cabinet chief, counsellor, assistant and secretary of the cabinet are public entities under paragraph (2) Article 123 CC.

For the purposes of paragraph (2) Article CC, "persons authorized or entrusted by the state to provide public services" are those persons who provide notary services.

For the purposes of paragraph (2) Article 123 CC, "persons authorized or entrusted by the state to perform activities of public interest" are: auditors; lawyers; bailiffs; judicial experts; interpreters and translators engaged by the Superior Council of Magistracy, Ministry of Justice, Prosecutor's office, courts, notaries, lawyers and bailiffs; mediators; authorized agents etc. It is possible to have other persons authorized or entrusted by the state to perform activities of public interest, persons who fall under the concept of paragraph (2) Article 123 CC. In such situations, the courts will exercise caution in the text of a regulatory act confirming that such persons meet the following two conditions:

- a) are authorized or entrusted by the state to perform their activities
- b) the delivered activities are public interest activities

The courts will scrutinize whether the acts of persons authorized or entrusted by the state to perform public interest activities meet the elements of passive corruption offense. Thus, for example a lawyer who requests, accepts or receives large fees for legal assistance, (i.e., to perform actions within his/her legal profession), taking advantage of his/her reputation, professional knowledge and consciousness with which he/she performs the duty does not fall under art.324 CC. On the contrary, a public lawyer or legal aid lawyer requested to provide qualified legal assistance at the expense of the legal assistance funds guaranteed by the state, realizes the objective element of passive corruption offence, if he/she solicits, accepts, receives or extorts fees from people who do not have sufficient financial means to pay and who meet the conditions stipulated in the Law on legal aid guaranteed by the state, no.198 of 26.07.2007.

A state representative in companies with state share is a public entity, making part of the category of authorized or entrusted by the state persons to fulfil public interest activities.

6.2. The term "foreign public entity" is defined in paragraph (1) art.1231 CC. The three categories of foreign public entities specified in paragraph (1) art.123 CC are:

- 1) any person appointed or elected, holding a legislative, executive, administrative or judicial office of a foreign state;
- 2) a person exercising a public office for a foreign country, including a public agency or public foreign enterprise;
- 3) a person holding the office of juror within the judicial system of a foreign state.

6.3. The term "international official" is defined by paragraph (2) art.1231 CC. According to the legislative definition, the international official refers to one of the following categories:

- 1) an official of a public international or supranational organization;
- 2) any person authorized by a public international or supranational organization to act on its behalf;
- 3) a member of a parliamentary assembly of an international or supranational organization;
- 4) any person exercising judicial functions in an international court, including the duties of the court officer

6.4. In accordance with paragraph (3) Article 123, CC, the "dignitary" means any of the following groups: 1) the person whose appointment or election is governed by the Constitution; 2) a person who is sworn in by appointment or by election by the Parliament, the President of the Republic of Moldova or the Government, under the law; 3) The person to whom a dignitary has delegated his/her powers.

The list of dignitaries is found in the Annex to law on the status of public dignitaries, No. 199 of 16.07.2010. If between paragraphs (3) art. 123 CC and Annex of the Law on the status of public dignitaries, will attest legislative inconsistencies, the courts will prioritize acceptance of a dignitary person in paragraph (3) art. 123 CC. This is because, according to paragraph (2) Article 4 of the Law on legislative acts, No.780 of 27.12.2001, the legislation must be consistent with the coding system and unification of the legislation. Another argument in favour of the public dignitary acceptance enshrined in para. (3) Article 123 CC, consists in the rule that where between two pieces of legislation with equal legal force emerges a conflict of rules that promote different solutions for the same object of regulation, the provisions of the former legislative act shall take precedence. For these reasons, courts will retain the quality of public dignitary for members of the Superior Council of Prosecutors amongst full professors, of law, although according to the Annex to law on the status of public dignitaries, there is no indication that a member of the Council of Prosecutors is a public dignitary. This is because according to paragraph (4) articles 81 of the Law on Prosecution, no.294 of 25.12.2008, they are elected by the Parliament by simple majority vote. So, they are public dignitaries under paragraph (3) Article 123 CC. On the contrary, pursuant to the criminal law the mayor is not a dignitary, although it is mentioned in the Annex of the Law on the status of public dignitaries. This is because, in accordance with paragraph (3) Article 112 of the Constitution of the Republic of Moldova, the election of mayors is set by law and is therefore not governed by the Constitution; The mere constitutional stipulation on the election of mayors is not equivalent to a regulation. Otherwise, we will be in the presence of a broad unfavourable interpretation, which will retain the breach of the legality principle (paragraph (2) Article 3 CC). Similarly, the President, First Vice-President, the Vice-President and General scientific secretary of the Academy of Sciences, although mentioned in the Annex to Law on the status of public dignitaries shall not be regarded as persons holding public office, because according to art.11-13 of the Law on Academy of Sciences of Moldova, nr.1181 of 07.27.2000, those listed are elected by the General Assembly of the Academy of Sciences.

7. Passive corruption committed by two or more people means soliciting, accepting, receiving illegal remuneration by two or more perpetrators (having special qualities of the subject of passive corruption offence), which according to official duties, have jurisdiction to solve the interest manifested by the suborner or the persons he/she represents and undertake concrete actions in favour thereof by use of public office. Where a public entity or a foreign public entity who solicited, accepted or received illegal remuneration, realizes that he/she cannot meet the interests of the suborner through his/her own office and transmits a part of the remuneration to another public entity persons or foreign public entity, with whom there had not been a prior agreement, then the first person can be prosecuted for the offense specified in paragraph (1) art.324 CC by concurrence with the offense referred to in paragraph (1) Art.325 CC. The second person will be liable only for the offense specified in paragraph (1) art.324 CC.

Whether the public entities or foreign public entities had entered into agreement before or after being addressed by a specific suborner, is not important. The important thing is that the agreement between two or more public or foreign public entities is set up before soliciting, accepting or receiving illegal remuneration at least by one of these entities. Thus, the aggravating circumstance will operate under b) paragraph (2) art.324 CC only if the following circumstances are cumulatively met:

- 1) the agreement on receiving illegal remuneration is two or more persons who have special qualities of the subject of the passive corruption offense;
- 2) The agreement anticipates soliciting, accepting, receiving illegal remuneration by such persons;
- 3) each of two or more persons undertake to fulfil or not fulfil, to expedite or refrain from performing certain actions related to the duties of his/her office or contrary to these duties in the interests of the suborner or persons he/she represents.

The offence is deemed consumed since the moment of soliciting, accepting or receiving illegal remuneration by at least one of the perpetrators, the fact known by the other, and whether or not the suborner understood that his/her interest is solved by two or more persons.

8. Qualifying the actions of the perpetrator as passive corruption in the interests of an organized criminal group or a criminal organization (c) paragraph (3) art.324 CC) may occur in cases when it is determined whether such actions fall under article 46 -47 CC, as known to the perpetrator. Aggravating circumstance specified in letter c) paragraph (3) art.324 CC will be retained in the classification regardless whether the corruptor is a member of organized criminal group or criminal organization (on own initiative or at the commission of these criminal entities) or is not a member of organized criminal group or criminal organization, acting in their charge.

(b) Observations on the implementation of the article

The reviewing experts noted that section 324 CC establishes passive bribery of public containing a basic provision (paragraph 1) and provisions for aggravated offences (paragraphs 2 and 3). In addition, the authorities have based themselves on the guidance provided by the Plenum of the Supreme Court of Justice in its decisions no.5 of 30 March 2009 “On the application of the legislation on criminal liability for passive and active corruption” and no. 11 of 22 December 2014 “On application of legislation on criminal liability for corruption offences”.

Section 324 CC uses the terms “public person” and “person holding positions of public dignity”, all of which are defined in article 123 CC.

It also refers to “requesting”, “accepting” or “receiving” services, privileges or advantages and covers cover the direct and indirect commission of the bribery offences (“directly or through an intermediary”).

In practice, however, cases of passive corruption committed in the form of only reception of undue remuneration are primarily referred to courts and adjudicated.

The concept of “undue advantage” is transposed in the domestic bribery provisions through the expression “goods, services, privileges or advantages of any kind to which [the public person] is not entitled”. The decision of the Plenum of the Supreme Court of Justice no. 11 of 22 December 2014 “On application of legislation on criminal liability for corruption offences” further analyzes the concept by referring to the term “illegal remuneration” and indicating that this also includes tangible or intangible benefits and can constitute the material or immaterial object of the crime.

The provisions on passive bribery specifies that the advantage may be intended for the public official himself or herself or another person (third party beneficiary). The Moldovan law explicitly covers both positive acts and omissions by a public official, provided that they are “within the scope of his or her authority” or “contrary to his or her duties.”

The reviewing experts concluded that the Republic of Moldova has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

- Ensure effective implementation of article 15(b) of the Convention in cases not only of receiving, but also of solicitation of an undue remuneration by the perpetrator.

Article 16. Bribery of foreign public officials and officials of public international organizations

Paragraph 1 of article 16

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code of the Republic of Moldova no. 985-XV of 18.04.2002: Article 123/1 Foreign public persons and international officials

- (1) Foreign public person shall mean any person who is appointed or elected to a legislative, executive, administrative or judicial office in a foreign State; any person who performs a public function in a foreign State, including for a foreign public authority or public undertaking; persons serving as jurors within the judicial system of a foreign State.
- (2) International official shall mean any official of an international or supranational public organization or any person authorized by such an organization to act on its behalf; any member of a parliamentary assembly of an international or supranational organization; or any person who performs judicial functions in an international court, including registry officials.

(b) Observations on the implementation of the article

The reviewing experts noted that the CC does not contain any provisions explicitly criminalizing bribery of foreign public officials and official of public international organizations. Instead, the general provisions of sections 324 and 325 CC – taken in conjunction with section 11 CC on territorial jurisdiction – could apply. Foreign public persons and international officials are defined in section 123/1 CC. Further clarifications are provided in Decision of the Plenum of the Supreme Court of Justice No. 11 of 22 December 2014 “On application of legislation on criminal liability for corruption offences” (paragraphs 6.2. and 6.3).

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 2 of article 16

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

See above.

(b) Observations on the implementation of the article

The reviewing experts noted that the CC does not contain any provisions explicitly criminalizing bribery of foreign public officials and official of public international organizations. Instead, the general provisions of sections 324 and 325 CC – taken in conjunction with section 11 CC on territorial jurisdiction – could apply. Foreign public persons and international officials are defined in section 123/1 CC. Further clarifications are provided in Decision of the Plenum of the Supreme Court of Justice No. 11 of 22 December 2014 “On application of legislation on criminal liability for corruption offences” (paragraphs 6.2. and 6.3).

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Article 17. Embezzlement, misappropriation or other diversion of property by a public official

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code of the Republic of Moldova no. 985-XV of 18.04.2002: Article 191. Embezzlement of another person’s property

(1) The appropriation of another person’s property, meaning the misappropriation of another person’s goods entrusted into the administration of the guilty person, shall be punished by a fine of up to 500 conventional units or by imprisonment for up to 3 years, in both cases with (or without) the deprivation of the right to hold certain positions or to practice certain activities for up to 3 years.

(2) The embezzlement of another person’s property committed: b) by two or more persons; c) causing considerable damage; d) by use of an official position, shall be punished by a fine in the amount of 500 to 1000 conventional units or by imprisonment for 2 to 6 years, in both cases with the deprivation of the right to hold certain positions or to practice certain activities for up to 5 years.

Article 240. Use of Means from Internal or External Loans Guaranteed by the State Contrary to their Purpose

(1) The use of means from internal or external loans guaranteed by the state contrary to their purpose if it causes large-scale damage, shall be punished by a fine in the amount of 1000 to 2000 conventional units or by imprisonment for up to 2 years, whereas a legal entity shall be punished by a fine in the amount of 1000 to 3000 conventional units with the deprivation of the right to practice certain activities.

Article 251. Appropriation, Alienation, Substitution, or Concealment of Sequestered or Confiscated Goods

The appropriation, alienation, substitution, or concealment of sequestered or confiscated goods or their use for other purposes by a person to whom such goods were entrusted or who was obliged, under the law, to ensure their integrity, shall be punished by fine in amount of 1000 to 1500 conventional units or by imprisonment for up to 3 years, in both cases with (or without) deprivation of the right to hold certain positions or to practice certain activities for up to 3 years, whereas the legal entity shall be punished by a fine in the amount of 1000 to 3000 conventional units with the deprivation of the right to practice certain activities.

Article 327. Abuse of Power or Abuse of Official Position

(1) The deliberate use by a public person of his/her official position for purposes of profit or other personal interests provided that such an action caused considerable damage to public interests or to the legally protected rights and interests of individuals or legal entities, shall be punished by a fine in the amount of 150 to 400 conventional units or by imprisonment for up to 3 years, in both cases with the deprivation of the right to hold certain positions or to practice a certain activity for up to 5 years. (...)

Please provide examples of cases and attach case law if available. Article 191. Embezzlement of another person's property

Ex. Manager "X" Ltd during March-May 2013, using his position and in collusion with other employees of the company, has stolen material goods worth MDL 280,000.

Article 251. Appropriation, Alienation, Substitution, or Concealment of Sequestered or Confiscated Goods

Ex. Representative of the joint stock company "Z", during 2011-2013, sold 44,832 kg of maize, that were sequestered.

If available, please provide related statistical data on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures, as available. Please describe how such information is collected and analysed.

Article 191. Embezzlement of another person's property

2011 - 139 investigations 2012 - 181 investigations
2013 - (until 06.06.2013) 65 investigations

Article 240. Use of Means from Internal or External Loans Guaranteed by the State Contrary to their Purpose

2011-2013 (until 06.06.2013) - there were no investigations

Article 251. Appropriation, Alienation, Substitution, or Concealment of Sequestered or Confiscated Goods

2011 - 19 investigations 2012 - 16 investigations

2013 (until 06.06.2013) - 3 investigations

Article 327. Abuse of Power or Abuse of Official Position

2011 - 126 investigations 2012 - 188 investigations

2013 (until 06.06.2013) - 53 investigations

Study on corruption cases archived in the courts for the period from 1 January 2010 to 30 June 2012 (Developed by the National Anti-Corruption Centre with the support of the Supreme Court of Justice and together with the experts of MIAPAC Project and EUHLPAM Mission, based on an extensive research on corruption cases sent to court and examined by national courts with a view to the implementation of p.7 and p.8 of the 2012-2013 Action Plan for the Implementation of the Anticorruption Strategy for 2011-2015)

At the same time, another important conclusion is on the CNA skills of conducting criminal investigation of corruption crimes after 1 October 2012, of which Article 191 paragraph (2) letter d) was excluded - appropriation of another person's property by use of an official position, paragraphs (4) and (5) - the same crime committed by use of an official position, aggravated by the large and the especially large scale. As the analysis suggests, their share is significant - 6% of the total sample studied (which also includes crimes other than corruption), or 7.5% of acts of corruption studied in the sample.

(b) Observations on the implementation of the article

The reviewing experts noted that particularly in the public sector, embezzlement is tackled through sections 240 (Use of means from internal or external loans guaranteed by the State contrary to their purpose); 327 (Abuse of power or abuse of official position) and 251 (Appropriation, alienation, substitution, or concealment of sequestered or confiscated goods).

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Article 18. Trading in influence

Subparagraph (a) of article 18

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

Criminal Code of the Republic of Moldova no. 985-XV of 18.04.2002: Article 326 Trading in influence

(1/1) Promising, offering or giving to a person, either personally or through an intermediary, of goods,

services or advantages listed in paragraph (1), for himself or herself or for anyone else, where this person has or claims to have some influence over a public person, a person holding a position of public dignity, a foreign public person or an international official, with the aim set out in paragraph (1), shall be liable to a fine of between 500 and 1500 conventional units or up to 3 years imprisonment, in the case of a natural person, and a fine of between 2000 and 4000 conventional units with disqualification from performing certain activities in the case of a legal entity. (...)

Supreme Court of the Republic of Moldova – Decision of the Plenary

On application of legislation on criminal liability for corruption offences

No. 11 of 22 December 2014

14. The judicial-penal toolbox in relation to criminal offenses also regards influence peddling (paragraph (1) 326 CC) and trading in influence (paragraph (11) 326 CC).

The term "influence" under art. 326 of CC is used in the sense of ability to modify the behaviour of decision makers in the desired direction, respectively, to induce a favour and take a favourable decision. At the same time, it is absolutely important so that the given influence emerges from other relations than legal relations of subordination, control, surveillance, etc., provided by law or under the law. The influence laid down in art 326 CC should spring, for instance, from the relations of kinship, affinity or friendship, trade relations, criminal relations, political relations etc. Therefore, the classification cannot be accepted under paragraph (1) 326 CC, assuming that, acceptance or receipt of illegal remuneration by a hierarchic superior to the decision maker, who will be determined by the former to make a favour and take a favourable decision. If the influence is exerted by the head to the subordinate, the control body to the controlled entity etc., then those committed will be qualified as abuse of power or abuse of office (art. 327 CC or, where appropriate, art. 312 of the Code of administrative offences).

14.1. Based on the provision of paragraph (1) art. 326 CC, perpetrator's influence on the decision maker may be real (if the person "has influence") or hypothetical (if the person "claims to have influence"). The courts must differentiate the influence peddling offence, in the event of sustained influence, on the one hand, from the swindling offence (art.190 CP), on the other hand. In this regard, account shall be taken of the fact that in case of swindling the remuneration is obtained as a result of deception, while in the case of trading in influence, the perpetrator gets the remuneration as a result of a promise that he/she will influence the decision maker whose office duties can meet the needs of the beneficiary. If the decision maker invoked by the perpetrator does not exist or is not competent to perform the act in which trader in influence is interested in, then the committed acts will form the components of extortion offence (art.190 CC). Also classification of swindling will be retained if the perpetrator had knowledge when he took advantage of the influence that the decision maker had fulfilled that act. This is because the action which is a harmful event of trading in influence offence (paragraph. (1) 326 CC) must be performed before the decision maker who was promised to intervene had performed the act of beneficiary's interest, or at the latest during its fulfilment.

14.2. To retain the classification of trading in influence offence (paragraph (1) 326 CC) in the event of a sustained influence, the influence on the decision maker must be credible and possible (in the mental attitude of the perpetrator). This means that the perpetrator when soliciting, accepting or receiving the illegal remuneration has no influence, but he/she acts with the intent to exercise such influence on the decision maker in the future, counting on certain circumstances (e.g., the perpetrator hoped that, after becoming a political party member he/she will be able to influence the decision makers by virtue of

collegiality). In the event of swindling the perpetrator has no influence on the decision maker, but unlike influence peddling, when taking the reward, the perpetrator does not intend to seek influence on decision makers and to exercise it. He/she acts exclusively with the intent to enter into the possession of the reward the beneficiary is giving to him/her.

To assess whether the sustained influence on the decision maker is credible and possible the courts will follow certain objective circumstances, such as: the relationship between the perpetrator and the decision maker invoked by the former; perpetrator's status, position, occupation etc.

In particular, the courts must consider the circumstances of an influence presented by the perpetrator belonging to the same field of activity as the decision maker. For example, if the customer hires a lawyer in consideration of connection which the latter has to a certain decision factor: prosecutor, judge, etc. (who is needed to solve certain problems) and the lawyer whom the client shared his reason for hire, confirmed this, with consent or acquiescence, the act meets the constitutive elements of trading in influence offence.

14.3. If the alleged perpetrator's influence on the decision maker is absurd and unrealistic (in the sense of realization and completeness), then the committed should be placed under art.190 CC (assuming the reception of "illegal remuneration") or art.190 CC - attempt (assuming the soliciting or acceptance of "illegal remuneration"), provided that the remuneration refers to movable assets, which have a definite cost and material value, are alien to the perpetrator and are the result of human labour. Where illegal remuneration consists of services, those committed will fall under art.196 CC if the services are large scale. Conversely, if under circumstances described "illegal remuneration" was extorted, the act will meet the components of extortion offence (Article 189 CC).

15. Material or immaterial object of trading in influence offence concerns the illegal remuneration that may consist of money, securities, services, privileges, or benefits and other goods. Illegal remuneration of influence peddling offence (paragraph (1) 326 CC), implicitly the trading in influence (paragraph(11) 326 CC), is identical in content to the illegal remuneration specific to passive corruption offence. This is because, money and securities designated in paragraph (1) 326 CC are particular cases of goods.

15.1. As in the case of passive corruption offence, in the case of influence peddling the solicited, accepted, received remuneration is undue because the perpetrator does not pay the influence peddler the value of money, securities, services, privileges, benefits or other goods. In addition, money, securities, services, privileges, or benefits other goods constitute a payment for the perpetrator 's intervention under the decision maker (public official, public dignitary, foreign public official or international official), as for the latter to perform or not, or delay or expedite the performance of an action. Thus, it will not retain the classification of art. 326 CC in case of free, unpaid influence on the decision maker to make him/her to perform or not, to delay or expedite the performance of an action, whether such actions have been committed or not. The exercise of unpaid influence, however, can lead to criminal liability under Article 327 or 328 CC or administrative liability under article 312, article 313, art.3131 of the Code of administrative offences, if such influence is committed by a public official or a public dignitary.

15.2. Illegal remuneration of the offense referred to in paragraph (1) 326 CC knows no quantified limits (maximum or minimum) assuming that claiming or accepting money, securities, services, privileges, advantages or other goods in any form, undue to the influence peddler. Only in the way the illegal remuneration is received there are certain quantified limits relevant to the legal classification: maximum limit for illegal remuneration under paragraph (1) art 326 CC is 2500 c.u.; amount in cash for illegal remuneration under c) paragraph (2) 326 CC lies between 2500 and 5000 c.u.; minimum limit of illegal remuneration under letter a) paragraph (3) 326 CC will exceed 5000 c.u.

The amount of illegal remuneration when trading in influence (paragraph (11) art. 326 CC) has no relevance to the classification, since none of the regulatory proceedings of the harmful event do not retain for the material or immaterial object certain quantified limits (minimum or maximum).

Although there is no minimum limit for illegal remuneration for influence peddling and trading in influence, if its value is too low, the provision of paragraph (2) Article 14 CC may apply: "It is not an offence the action or inaction that, although formally contains signs of an offence stipulated by this Code, but is unimportant, has no prejudicial degree of a crime".

16. The recipient of illegal remuneration may be: influence peddler or a third party (a person close to influence peddler or a person that will be useful in future trading in influence, giving some consideration).

If the influence peddler is given illegal remuneration, directly intended not only to him/her, but also the influenced decision-maker (public official or foreign public official), to induce him/her to commit certain actions, then the acts committed by the influence peddler will fall under paragraph (1) 326 CC and paragraph (5) and Article 42 paragraph (1) Art.325 CC, i.e. in influence peddling and complicity to active corruption. Under these circumstances, the influence peddler will be imputed under paragraph (11) 326 and paragraph (1) Art.325 CC.

If part of the remuneration is designated to public dignitary or influenced international official, the influence peddler will be held liable under paragraph (1) 326 CC and paragraph (5) 42 and lit .a1) paragraph (3) Art.325 CC, and the influence trader under paragraph (11) art. 326 and letter.a1) paragraph (3) Art.325 CC.

17. The objective element of the trading in influence offence is expressed only in the harmful event expressed through action which in its standard form (para. (1) 326 HP) alternatively concerns three regulatory proceedings:

- 1) soliciting money, securities, services, privileges, advantages or other goods in any form, undue to the trader in influence;
- 2) accepting money, securities, services, privileges, advantages or other goods in any form, undue to the trader in influence;
- 3) receiving money, securities, services, privileges, benefits or other goods in any form, undue to the trader in influence;

17.1. Accepting and receiving as regulatory proceedings of trading in influence have similar content to the harmful event of passive corruption offence made in the manner of acceptance and receipt of illegal remuneration. But soliciting as the regulatory proceeding of the harmful event of art. 326 CC differs from the contents of the term "solicit" used in paragraph (1) art.324 CC. In the context of paragraph (1) 326 CC, harmful event manifested by soliciting has a more extensive content, because, in addition to the request, persistent demand or claim regarding the object of illegal remuneration, it can be realized also by factual proceeding of extorting illegal remuneration.

17.2. The action of soliciting, accepting or receiving illegal remuneration must be made not later than the time when the influenced decision maker performs (fails to perform; delays; expedites) actions in the exercise of his/her office duties. There will be components of art. 326 CC, under the circumstances when the offender solicits, accepts or receives illegal remuneration after the decision maker has fulfilled his/her actions in the exercise of duties, the fact the offender had knowledge of. Where appropriate, those

committed should be placed under art.190 CC (assuming the receiving of "illegal remuneration") or attempt to art.190 CC (assuming the soliciting or accepting "illegal remuneration"). Conversely, if under circumstances described "illegal remuneration" was extorted, the action will meet the components of the blackmail offense (Article 189 CC).

17.3. The offense referred to in paragraph (1) art. 326 CC is formal and is consumed from the time of commission of one of regulatory proceedings designating the act of trading in influence, i.e. from the moment of soliciting, accepting, receiving in full the illegal remuneration.

17.4. (1) art. 326 CC will be retained in the classification, if the trader in influence has not exerted influence (although had the intent) on the decision makers (public official, public dignitary, foreign public or international civil servant).

If the trader in influence has managed to exert influence on a public official, public dignitary, foreign public official or international civil servant, to perform or fail to perform or to delay or expedite an action in the exercise of his/her duties, then the committed acts shall be classified according to d) paragraph (2) 326 CC in the way "influence peddling followed by promised influence".

18. The offense referred to in paragraph (1) art. 326 CC can occur through complex concurrence when the objective element is made through an intermediary provided that the latter acts on behalf of the trader in influence with the intention of helping him/her. In such circumstances, the intermediary acts as a legal accomplice whose acts are to be classified in accordance with paragraph (5) art. 42 paragraph (1) and 326 CC. The person who acted on behalf of the intermediary will act as the helper to the offence referred to in art. 326 CC.

19. The offense referred to in paragraph (1) art. 326 CC is committed only with direct intent, based on a qualified purpose, namely: 1) the purpose of making the decision maker to perform an action in the exercise of his/her duties, whether such action will be committed or not; 2) the purpose of making the decision maker fail to fulfil his/her duties, whether such action will be committed or not; 3) the purpose of making the decision maker delay an action in the exercise of his/her duties, whether such action will be committed or not; 4) the purpose of making the decision maker expedite the performance of an action, whether such action will be committed or not.

To retain the classification of (1) art. 326 CC, it is not necessary that one of special purposes is factually achieved. Factual realization of the purpose (i.e. if the decision maker has been influenced by the trader in influence, and as a consequence, performed, failed to perform, delayed or expedited the performance of an action in the exercise of his/her duties) implies the offense actually exhausted, the aggravating circumstance being retained in classification of d) paragraph (2) art. 326 CC, in the proceeding "influence peddling followed by obtaining the result sought").

20. The objective element of trading in influence offence is the harmful event expressed only through action which in its standard form (paragraph (11) 326 CC) aims alternatively three regulatory proceedings:

- 1) promising goods, services, privileges or benefits listed in (1) art. 326 CC, undue to the trader in influence;
- 2) offering goods, services, privileges or benefits listed in (1) art. 326 CC, undue to the trader in influence;
- 3) giving goods, services, privileges or benefits listed in (1) art. 326 CC, undue to the trader in influence;

Promising, offering and giving, as regulatory proceedings of the harmful event of trading in influence have a content similar to the harmful event of active corruption offence. (art. 325 CC).

20.1. The offense referred to in paragraph (11) of art. 326 CC and is consumed once is committed the act of promising, offering or giving illegal remuneration in full to the trader in influence or third party (a person close to the trader in influence or person which will be useful in the future to the trader in influence, offering him/her certain consideration).

20.2. If trading in influence is achieved through involvement of intermediaries it retains the classification of joint participation, holding the intermediary liable for complicity in trading in influence (paragraph (5) and art. 42 paragraph (11) art. 326 CC) if acted on behalf of the trader in influence with the intent of helping him/her.

21. The trading in influence offence (paragraph (11) 326 CC) is committed only with direct intent, based on a qualified purpose identical to the offense referred to in paragraph (1) 326 CC. To retain the classification of paragraph (11) art. 326 CC it is not necessary that one of special purposes is factually achieved. Factual realization of the purpose generates the criminal liability of the trader in influence in accordance with the aggravating circumstance from d) paragraph (2) art. 326 CC.

22. The subject of influence peddling (paragraph (1) art. 326 CC) and trading in influence offence (para. (11) art. 326 CC) can be any natural person who at the time of the offense had reached the age of 16. Subject of the offenses referred to in art. 326 CC, can be a legal entity, except for public authorities.

(b) Observations on the implementation of the article

The reviewing experts noted that trading in influence is criminalized through section 326 CC, as the latter was amended to also include the active form of the conduct. Third party beneficiaries, the indirect commission of the offences, as well as the concept of “supposed influence” (“where this person has or claims to have some influence”) are also covered.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Subparagraph (b) of article 18

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

...

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code of the Republic of Moldova no. 985-XV of 18.04.2002: Article 326 Trading in influence

(1) Requesting, accepting or receiving, directly or through an intermediary, of money, securities, goods, services or advantages of any kind, for himself or herself or for anyone else, by any person having or claiming to have some influence over a public person, a person holding a position of public dignity, a foreign public person or an international official, with a view to having that public person or official perform or refrain from performing an act in the exercise of his/her duties or delay or facilitate the performance of such an act, irrespective of whether these acts have or have not been performed, shall be liable to a fine of between 500 and 1500 conventional units or up to 5 years imprisonment, in the case of a natural person, and a fine of between 2000 and 4000 conventional units with disqualification from performing certain activities in the case of a legal entity.

Please provide examples of cases and attach case law if available.

Ex.1: Lawyer extorted and received MDL 16 000 from a man to "persuade" some prosecutors to make a favorable decision regarding his client.

Ex.2: An employee of the Police Inspectorate requested Euro 500 claiming to have influence on the prosecutor investigating a criminal case started against the denouncer for driving intoxicated.

If available, please provide related statistical data on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures, as available. Please describe how such information is collected and analysed.

2011 - 90 investigations of which 51 were sent to the court 2012 - 108 investigations of which 48 were sent to the court 2011-2012 - 15 convictions

(b) Observations on the implementation of the article

The reviewing experts noted that trading in influence is criminalized through section 326 CC, as the latter was amended to also include the active form of the conduct. Third party beneficiaries, the indirect commission of the offences, as well as the concept of "supposed influence" ("where this person has or claims to have some influence") are also covered.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Article 19. Abuse of functions

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code of the Republic of Moldova no. 985-XV of 18.04.2002:

Article 327. Abuse of Power or Abuse of Official Position

(1) The deliberate use by a public person of his/her official position for purposes of profit or other personal interests provided that such an action caused considerable damage to public interests or to the legally protected rights and interests of individuals or legal entities shall be punished by a fine in the amount of 300 to 800 conventional units or by imprisonment for up to 3 years, in both cases with the deprivation of the right to hold certain positions or to practice a certain activity for 2 to 5 years.

(2) The same actions:

b) committed by a person holding a position of public dignity;

c) causing severe consequences;

shall be punished by a fine in the amount of 1000 to 2000 conventional units or by imprisonment for 2 to 6 years, in both cases with the deprivation of the right to hold certain positions or to practice a certain activity for 5 to 10 years.

(3) Abuse of power or abuse of an official position committed in the interest of an organized criminal group or a criminal organization

shall be punished by imprisonment for 3 to 7 years with the deprivation of the right to hold certain positions or to practice certain activities for 10 to 15 years.

If available, please provide related statistical data on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures, as available. Please describe how such information is collected and analysed.

2011 - 32 investigations of which 14 were sent to the court 2012 - 38 investigations of which 11 were sent to the court 2011-2012 - 2 convictions.

(b) Observations on the implementation of the article

The reviewing experts noted that the act of the abuse of functions is criminalized through section 327 CC (Abuse of power or abuse of official position by a public person). The provision also sets forth a requirement of “causing considerable damage to public interests or to the legally protected rights and interests of individuals or legal entities”, which is not foreseen in article 19 of the Convention.

The reviewing experts concluded that the Republic of Moldova has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

- Consider amending the domestic legislation in a way that allows for the criminalization of abuse of functions regardless of the damage caused.

Article 20. Illicit enrichment

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

(a) Summary of information relevant to reviewing the implementation of the article

Constitution of the Republic of Moldova - Article 46 The Right of Private Property and Its Protection

(...)

(3) No assets legally acquired may be confiscated. The effective presumption is that of legal acquirement.

(4) Goods destined for, used or resulted from crimes or offenses may be confiscated only as established by law.

(...)

In June 2011 the Minister of Justice filed a complaint with the Constitutional Court to interpret paragraph (3) of article 46 from the Constitution of the Republic of Moldova. The complaint referred in essence to the possibility to reverse the burden of proof in case of civil servants and other persons that are paid from the state budget.

In its findings the court mentioned that the presumption mentioned in article 46 par. (3) from the Constitution of the Republic of Moldova doesn't preclude the investigation of the illegal character of the acquired property, the burden of proof being on the one that claims this character. (Judgment of the Constitutional Court no. 21 from 20.10.2011).

The Ministry of Justice prepared a draft law on amending and supplementing certain legislative acts. The law was adopted by the Parliament on December 23, 2013.

Criminal Code

Article 330/2 Illicit enrichment

(1) "Ownership by a person holding a position of responsibility or a public person, personally or through third parties, of assets when their value substantially exceeds the acquired income, and it was established, on the basis of proofs, that these assets couldn't have been legally obtained, shall be punished by a fine of 6000 to 8000 conventional units or by imprisonment for 3 to 7 years, in both cases with the deprivation of the right to hold certain positions or to practice certain activities for a term of 10 to 15 years.

(2) The same actions committed by a person holding position of public dignity, shall be punished by a fine of 8000 to 10000 conventional units or by imprisonment for 7 to 15 years, in both cases with the deprivation of the right to hold certain positions or to practice certain activities for a term of 10 to 15 years."

CONSTITUTIONAL COURT, DECISION No. 21 of 20 Oct 2011

"On Interpreting Article 46 para.(3) of the Constitution"(Notification no. 17b/2011)

In the sense of paragraph (3) of article 46 of the Constitution, the constitutional principle of presumption of illegal acquisition of property establishes general protection that applies to all persons, including equally and in the same amount to civil servants and other employees paid from the state budget.

(b) Observations on the implementation of the article

The reviewing experts noted that section 330/2 CC criminalizes illicit enrichment, which is defined as "ownership by a person holding a position of responsibility or a public person, personally or through third parties, of assets, the value of which substantially exceeds the acquired income, as long as it is established, on the basis of proofs, that these assets could not have been legally obtained". The burden of proof rests

with the prosecution as the provision does not *de lege* require the official to reasonably explain his/her wealth in relation to his/her income.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

(c) Successes and good practices

- The provision criminalizing illicit enrichment (section 330/2 CC) which is seen as an exemplary one, although not extensively tested in practice.

Article 21. Bribery in the private sector

Subparagraph (a) of article 21

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code of the Republic of Moldova no. 985-XV of 18.04.2002: Article 334 Giving bribes

(1) Promising, offering or giving a bribe, directly or through an intermediary, to an arbitrator elected or appointed to settle a dispute, a manager of a business or social organization or other non-governmental organization, or a person working for such an organization, a participant to a sport event or a betting event of goods, services, privileges or advantages of any kind to which he or she is not entitled, for himself or herself or for anyone else, with a view to having him or her perform or refrain from performing an act, delay or facilitate the performance of an act, in the exercise of his or her duties or contrary thereto, or in a sport event or a betting event, shall be punishable with a fine of between 1000 and 2000 conventional units or up to 3 years' imprisonment in the case of a natural person, and a fine of between 4000 and 8000 conventional.

(4) The bribe giver shall be exempt from criminal liability if the bribe was extorted from him/her or if he/she denounces himself/herself without knowing that criminal investigative bodies knew about the crime he/she committed.

National Anti-Corruption Centre: Progress report (January-June 2014)

Peculiarities of high-level corruption. Analysis focused on checking the violations of the restriction to be directly involved or to favour the private businesses by the high-ranking government officials. Cases identified were mainly due to the lack of sanctions and weak legislation enforcement by the public administration, even at the central level. Analysis by NAC revealed more instances of high-

ranking officials' capacity of share-holders in different private business, creating the risk of conflict of interest, especially when their own or their close family's business is proxy to their activity in the public administration.

Please provide examples of cases and attach case law if available.

If available, please provide related statistical data on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures, as available. Please describe how such information is collected and analysed.

2012 - 1 investigation

(b) Observations on the implementation of the article

The reviewing experts noted that the active and passive bribery in the private sector are criminalized under sections 333 and 334 CC. These provisions do not expressly require the act of bribery to have been committed "in the course of economic, financial or commercial activities", but may also involve bribery acts in the sphere of "social or other non-governmental organizations". The provisions cover not only persons with managerial functions, but also persons generally "working for the organization". The indirect commission of the offences and instances involving third party beneficiaries are covered in both provisions.

The reviewing experts took into account an analysis of the NAC (July 2014) which focused on checking the violations of the restriction to be directly involved or to favour the private businesses by the high-ranking government officials. As reported, cases identified were mainly due to the lack of sanctions and weak legislation enforcement by the public administration, even at the central level. The analysis by NAC revealed more instances of high-ranking officials' capacity of share-holders in different private business, creating the risk of conflict of interest, especially when their own or their close family's business is proxy to their activity in the public administration.

The reviewing experts concluded that the Republic of Moldova has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

- Ensure more effective enforcement of section 334 CC on the criminalization of active bribery in the private sector.

(d) Successes and good practices

- The fact that the scope of section 334 CC on active bribery in the private sector goes beyond the scope of article 21 of the Convention in that it is not limited "in the course of economic, financial or commercial activities", but may also cover cases involving "social or other non-governmental organizations".

Subparagraph (b) of article 21

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as

criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

...

(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code of the Republic of Moldova no. 985-XV of 18.04.2002: Article 333 Taking bribes

(1) Requesting, accepting or receiving, directly or through an intermediary, by an arbitrator elected or appointed to settle a dispute, a manager of a business or social organization or other non-governmental organization, or a person working for such an organization, by a participant to a sport event or a betting event of goods, services, privileges or advantages of any kind to which he or she is not entitled, for himself or herself or for anyone else, or accepting an offer or promise thereof, in order to perform or refrain from performing an act, or delay or facilitate the performance of an act, in the exercise of his or her duties or contrary thereto, or in a sport event or a betting event, shall be liable to a fine of between 1000 and 3000 conventional units or up to 3 years' imprisonment and in both cases shall be disqualified from holding office or from engaging in certain activities for a period of 2 to 5 years. (...)

Please provide examples of cases and attach case law if available.

Ex. Teacher of a driving school extorted MDL 2 000 from a student to facilitate obtaining of a category B driving license.

If available, please provide related statistical data on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures, as available. Please describe how such information is collected and analysed.

2011 - 2 investigations of which 1 was sent to the court 2012 - 2 investigations of which 1 was sent to the court.

(b) Observations on the implementation of the article

The reviewing experts noted that the active and passive bribery in the private sector are criminalized under sections 333 and 334 CC. These provisions do not expressly require the act of bribery to have been committed “in the course of economic, financial or commercial activities”, but may also involve bribery acts in the sphere of “social or other non-governmental organizations”. The provisions cover not only persons with managerial functions, but also persons generally “working for the organization”. The indirect commission of the offences and instances involving third party beneficiaries are covered in both provisions.

In the area of enforcement though, as reported by NAC in the Study on corruption cases archived in the courts for the period from 1 January 2010 to 30 June 2012, the frequency of cases of bribery in the private sector for which criminal charges were raised in the period under review or indictment was issued, is extremely low compared to other corruption-related offences. The reviewing experts pointed out this finding as an indicator of weak enforcement of the relevant provisions of the CC.

The reviewing experts concluded that the Republic of Moldova has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

- Ensure more effective enforcement of section 333 CC on the criminalization of passive bribery in the private sector.

(d) Successes and good practices

- The fact that the scope of section 333 CC on passive bribery in the private sector goes beyond the scope of article 21 of the Convention in that it is not limited “in the course of economic, financial or commercial activities”, but may also cover cases involving “social or other non-governmental organizations”.

Article 22. Embezzlement of property in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code of the Republic of Moldova no. 985-XV of 18.04.2002:

Articles 191, 240, 251

Article 196. Causing Material Damage through Deception or Abuse of Trust

(1) Causing material damage on a large scale to an owner through deception or abuse of trust, provided that the act does not constitute a misappropriation, shall be punished by a fine of up to 200 conventional units or by community service for 180 to 240 hours, in both cases with (or without) the deprivation of the right to hold certain positions or to practice certain activities for 2 to 5 years. (...)

Article 335. Abuse of Official Positions

(1) The deliberate use of an official position by a manager of a business or social organization or other non-governmental organization, or a person working for such an organization of his/her job position for purposes of profit or for other personal interests provided that such an action caused considerable damage to public interests or to the legally protected rights and interests of individuals or legal entities, shall be punished by a fine in the amount of 150 to 400 conventional units or by imprisonment for up to 3 years in both cases with the deprivation of the right to hold certain positions or to practice certain activities for 2 to 5 years. (...).

Please provide examples of cases and attach case law if available.

If available, please provide related statistical data on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures, as available. Please describe how such information is collected and analysed.

Article 335. Abuse of Official Positions
2011 - 32 investigations
2012 - 40 investigations
2013 (until 06.06.2013) - 5 investigations

(b) Observations on the implementation of the article

The reviewing experts noted that embezzlement in the private sector is criminalized through sections 191 (Embezzlement of another person's property); 196 (Causing material damage through deception or abuse of trust); 335 (Abuse of official positions by a manager of a business or social organization or other non-governmental organization, or a person working for such an organization) of the CC.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Article 23. Laundering of proceeds of crime

Subparagraph 1 (a) (i) of article 23

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code of the Republic of Moldova no. 985-XV of 18.04.2002:

Article 243. Money Laundering

(1) Money laundering committed by:

- a) the conversion or transfer of goods by a person who knew or should have known that such goods were illegal earnings in order to conceal or to disguise the illegal origin of goods or to help any person involved in the commission of the main crime to avoid the legal consequences of these actions;
- (...)

Law on prevention and combating money laundering and terrorism financing

Nr. 190 - XVI

Chapter I

GENERAL PROVISIONS

Article 1. Objective of the law

The following law establishes measures on prevention and combating money laundering and terrorism financing, having as objective the protection of natural and legal persons' legitimate rights and interests, as well as those of the state.

Article 2. Domain of application of the law

The provisions of this law cover actions of prevention and combating money laundering and terrorism financing, committed, directly or indirectly, by the citizens of Republic of Moldova, foreigners, stateless persons, resident and non-resident legal persons on the territory of the Republic of Moldova, as well as the actions committed outside the Republic of Moldova, in accordance with international treaties.

Article 3. Main notions

For the purpose of this Law the following main notions signify (mean):

money laundering – actions, stipulated in art.243 of the Criminal Code oriented towards legalization of both the source and provenience of illicit proceeds or towards concealing of the origin of or affiliation with such proceeds;

terrorism financing – actions, stipulated in art.279 of the Criminal Code oriented towards the directly or indirectly making available or intentional collection by any natural or legal person by any means of goods of any nature, obtained by any means for providing welfare or financial support of any nature for the purpose of using this goods or services or in the knowledge that they will be used partly or wholly in terrorist activities;

goods – financial means, assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, documents or other legal instruments in every form, including electronic or digital form, certifying a title or a right, inclusively every share (interest) regarding these assets;

illicit proceeds – goods, designed, used or resulted directly or indirectly, from the perpetration of a crime, every benefits from these goods as well as every goods converted or transformed, partially or integrally from goods designed, used or resulted from the perpetration of a crime and benefits from these goods;

beneficial owner– natural person who ultimately controls a natural or a legal person or the person on whose behalf a transaction is being conducted or an activity is being carried out and /or holds direct or indirect proprietary right or controls at least 25% of shares or of the right to vote of the legal person;

politically exposed persons – natural persons, who are or have been entrusted with prominent public functions at the national and international level, as well as their direct family members and persons known as close associates;

„*natural persons that are entrusted with important public functions at the international level*” – head of states, of government, senior government members, members of parliament, senior politicians, judicial or military officials, senior executives of the state owned corporations, royal family members;

„*natural persons, who are or have been entrusted with prominent public functions at the national level*” - natural persons, who are or have been entrusted with prominent public functions in accordance

with the provisions of the Law nr. 199 from 16.07.10 on the statute of the persons entrusted with public function, inclusively senior executives of the state owned corporations;

„Direct members of the families of political exposed persons *are the* wife/husband, children and their husband/wife and parents.

„*close associates of the political exposed persons* – natural persons known as beneficiary owners of a legal person together with the natural persons that are or have been entrusted with prominent public functions at the national and international level or about whom is known that have close business relations with those persons, as well as the natural persons known as being the single beneficial owner of a legal person about which is known that was established on behalf of a natural person that are or have been entrusted with prominent public functions at the national and international level.”;

„*suspect transaction or activity* - a suspicious activity or transactions arises when a reporting entity knows suspects, or has reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted”.

business relationship – business management, representation or every professional or commercial relationships, which were expected, at the time when the contact is established, to have an element of duration;

freezing – temporary prohibition of the transfer, liquidation, conversion, placement or movement of goods or temporary assuming of custody or control over the good;

shell bank – financial institution, having no physical presence, not exercising an actual management and not being unaffiliated to any regulated financial group.

NAC statistics 2014

Receiving, analyzing and dissemination of information

The process of receiving and analyzing the forms can be divided into two categories depending on the type of reporting entities, which reflects entities within the banking and non-banking financial sector.

During the reporting period in the address of the FIU were received in total 2,134,554 transactions from the reporting entities. It should be noted that a significant share in supplying forms to the address of the FIU is held by the banking sector expressed by 14 banks, which constitutes 99.49% of the total forms received.

A. Thus, this year the banking institutions reported 2,123,699 transactions out of which transactions were recorded 515 530 limited transactions, 985 174 cash transactions and 622 995 suspicious transactions.

In contrast, in 2013 the banking institutions reported 2,002,983 transactions of which 486 271 limited transactions, 974 068 cash transactions and 849 725 suspicious transactions.

Following the analysis of the forms received during the reporting period were drafted 272 analytical briefs and subsequently recorded 230 analytical reports.

Thus, in 2014, after analyzing the transactions received by banking institutions were prepared 216 analytical reports recorded in the register of analytical reports on transactions received from reporting entities, which were based on 153 suspicious transactions, 36 limited transactions and 27 cash transactions.

According to the object of investigations by each type of transactions mentioned out of 153 suspicious transactions, the subjects were as follows:– 12 locals, 12 foreigners, 69 local businesses and 57 foreign businesses.

Out of 27 cash transactions – 6 were locals, 4 foreigners, 17 – local businesses.

Out of 36 limited transactions as subjects were – 4 locals, 2 – foreigners, 31 local businesses.

If the number of limited and cash transactions increased compared to 2013, due to intensification of lending and investment operations, then the reduction of the number of suspicious transactions by 26% is due to strengthening the qualitative analysis of transactions in banking institutions as a result of working sessions on compliance to the requirements to legislation on preventing and combating money laundering conducted by FIU staff during the year.

The value of suspicious transactions in USD and EURO registered an increase of 6% and 46% compared to last year due to the intensification of economic relations with the European Union.

B. In relation to the nonbanking financial sector is shown a variety of reporting entities reporting 10855 transactions, of which transactions were registered 4530 limited transactions, 5874 cash transactions and 451 suspicious transactions.

Following the analysis of each reporting entity within the financial nonbanking sector is established:

Insurance companies reported 866 forms on transactions made, of which 56 in cash, 367 - limited and 443 - suspicious.

Savings and loan associations reported 529 forms on cash transactions.

Microfinance organizations reported 634 forms on transactions made, of which 131 - limited and 503 - in cash.

Freelancers on the securities market reported 165 forms on transactions made, including 112- limited ones, 45 – in cash and 8 - suspicious.

Public Notaries reported 8227 forms on transactions made, of which 3680 were limited and 4547 - in cash.

Leasing companies reported 434 forms on transactions made, of which 240 - were limited and 194 - in cash.

Moreover, in 2014 following the analysis of transactions received from institutions of the nonbank financial sector were drawn 14 analytical reports recorded in the register of analytical reports on transactions received from reporting entities, of which 6 reports were prepared under analysis of 6 limited operations having as subjects 3 foreign legal entities, 1 foreigner and 2 local businesses natural and 8 analytical reports based on cash transactions having locals as subjects.

Furthermore, in this period was verified the legality of declaring currency brought into the country in the amount of 966mln. lei, of which 28.18 million EUR and 28 million USD.

During the given period FIU officers drafted 449 decisions on offences for non-compliance to legislation on preventing and combating money laundering and terrorist financing, the fines amounting 4,4mln lei, of which was received the amount of 2,2mln lei.

During the given period under precautionary measures applied by the FIU were adopted 241 decisions to cease operations in bank accounts being suspended funds totaling approximately 8.77 million dollars, 33,14mln lei, 5.69 million euros and 6.08 mln RUB.

Following the examination of forms received from reporting entities were registered 230 reports in the Register of information on activities and transactions received from reporting entities, marking a 4% increase compared to last year.

As a result of financial investigations, were disseminated by the FIU to law enforcement agencies 60 materials for review according to remit and 18 files were recorded in the Register of offenses R2, with the prospect of pending prosecution.

As a result 44 criminal cases were initiated, of which 20 criminal cases were initiated by CPD of NAC and 24 criminal cases were initiated by the Anti-Corruption Prosecutor's Office.

Note that of the total number of criminal cases initiated based on materials of the FIU, 35 criminal cases were initiated on the basis of the crime provided by art. 243 CC (money laundering).

Thus, there is positive trend compared to last year, when based on materials provided by the FIU were initiated 38 criminal cases, 25 by the Anticorruption Prosecutor's Office and 13 by NAC. Of these, 31 criminal cases were initiated on the basis of the crime provided by art. 243 CC.

It is to be mentioned that within criminal cases initiated under the FIU materials is being investigated the activity of 38 legal entities and 11 individuals, also in 26 criminal cases involve companies registered in the "off-shore" in 7 cases are investigated unlawful actions involving companies registered in other states and in 16 criminal cases involving only local individuals and businesses.

According to the nature of activities performed by the subjects of criminal cases we can separate 13 criminal cases that involved the import/export on the territory of Moldova, 20 criminal cases in which is being investigated the financial transit activity through bank accounts, 8 cases on involvement of local companies and 4 criminal cases investigating other activities.

Moreover, due to the materials disseminated by IFPS were calculated tax liabilities amounting to 208,5mln lei, received to date the amount 6,18mln lei.

In the prosecution of offenses detected by the FIU, both the prosecution body of of NAC and Anticorruption Prosecutor's Office, as precautionary measures have seized several bank accounts totaling 5.75 million lei, 8.52 million USD and 145,000 EUR. Also were seized 95 real estate assets totaling 663000 lei and 4 movable assets totaling 6.61 million lei.

CASE DESCRIPTION OF MONEY LAUNDERING CRIMES OF HIGH SOCIAL IMPACT DETECTED BY NAC OFFICERS IN 2014

- Criminal case initiated on elements of the crime referred to in art. 243 of the Criminal Code, committed by persons running the business of Ltd "M" who provided fictitious transport services (not provided by fact), being operated the procurement on 10 mln lei and delivery on 9.5 million lei, the funds being liquefied through fuel vouchers of domestic oil companies within the period 2013-2014.

- Criminal case initiated in accordance with the elements of the crime referred to in art. 243 para. (3) b) of the Criminal Code on the fact of money laundering in extremely large proportions. According to accumulated material, LLC "H" made deliveries in October-November 2013 which amounted to 11.4 million lei and 13.5 million lei on procurement, the deliveries being made to several resident companies however all purchases were made from LTD "A", the company, which according to the Tax Authority database as of 25.10.2013 was canceled as VAT payer. Moreover, to the bank accounts of LLC "H" were made cash inflows of about 12.7 million lei from different companies for different goods. In addition, cash outflows totaling approximately 10.9 million lei, from the bank accounts of LLC "H" were made in the address LLC "A", having as destination the recharge phone cards. Thus, companies that purchased goods and services without documents of origin legislated them through fictitious purchases from LLC "H", which in turn had no documents of origin for the goods and services thereof.

-The criminal case initiated on 20/01/2014 according to the elements of the crime referred to in art. 243 of the Criminal Code on the fact of money laundering in particularly large amount. Thus, to the company account,, X "LLC, the founders from Egypt transferred the amount of 300 000 USD, the destination of money not being identified. Subsequently, to the BC "M" addressed a citizen of Ukraine (having power of attorney and other fake documents), presenting a new extract from the state register of legal entities, mentioning that he is the new manager of the company,, X "LLC and with a request to transfer the account balance to another account at BC ,, C " (300 000 USD in accordance with the payment order presented). Note that during the assembly, both founders were represented by a citizen from Egypt, empowered by the power of attorney issued in December 2013 in Moldova and legally notarized.

-Criminal case initiated on 02/10/2014 according to the elements of the crime referred to in art. 243 of the Criminal Code on the fact of money laundering by persons managing the business of nonresident company "T LLC", manifested through mediation of Moldovan citizens' travel to USA by means of the cultural exchange program "Work & Travel". Thus to the "T LLC" company's accounts were made, within the years 2010-2013, transfers totaling 5.93 million dollars. Moreover, at the expense of "T LLC" the funds were distributed to US sponsors, who facilitated the employment of Moldovan employees in the form of bonuses, premiums and to personal accounts "T LLC " decision makers.

- Criminal case initiated on 02/17/2014 under the elements of the crime referred to in art. 243 of the Criminal Code on the fact of money laundering through accounts opened within the BC "M" financial institution. Based on the orders issued by the Courts of Central Sector, Ciocana, Riscani, Buiucani of mun. Chisinau, courts from Comrat, Causeni, Drochia, Ungheni, Telenesti and the Economic Territorial Court the bailiff received jointly the funds from the accounts companies from Russian Federation, based on „debtors' failure to comply with the obligations in relation to the "creditors" as stipulated in the loan contracts. Subsequently, under writs of execution issued by courts, within March 2011 - February 2014, the funds were collected through 19 banks registered in different regions of the Russian Federation from about 89 nonresident companies registered in the Russian Federation. After the forced execution of funds by the bailiff direct from the correspondent bank accounts held at BC "M" by companies registered in the Russian Federation, the funds amounting to 698 billion Russian rubles were converted into USD, EURO and transferred for the benefit of non-resident companies registered in offshore zones.

- Criminal case initiated on 02/21/2014 under elements of the crime referred to in art. 243 of the Criminal Code on the fact of money laundering by persons managing the non-resident company "S" LP, using fictitious contracts in the commission of disguise actions and distortion of the origin of illicit funds. The circulation of funds of illegal origin is 4 million USD.

- Criminal case initiated on 18/03/2014 under the elements of the crime referred to in art. 243 of the Criminal Code on the fact of money laundering by persons who manage "P" LTD company's business. Thus, in order to camouflage the intention of obtaining illicit proceeds with their subsequent concealment or disguising the subsequent illicit origin of the property, and in order to hide the lack of detected goods, the managers of LTD "P", for the period of 2013, made deliveries on unsecured invoices (lack of goods) to the address of "R" Ltd. amounting to 50 million lei, with the intention of obtaining illicit proceeds with subsequent concealment or disguising the illicit origin of goods.

-The criminal case initiated on 04/08/2014 under elements of the crime referred to in art. 243 of the Criminal Code on the fact of money laundering by a high official of Ukraine, manifested by transferring funds from the citizen's account (UA) opened in the bank X (UA) to the account of another citizen (UA) opened in BC "S" JV (MD) amounted to 14.3 million dollars, money which was subsequently collected in cash.

- Criminal case initiated on 08/05/2014 under elements of a crime referred to in art. 243 of the Criminal Code on the fact of money laundering by decision makers of SRL "G" which by creating an illegal platform for sale of goods through the internet, disguises the origin and legalizes the funds. The circuit of illicit origin funds is 1 mln USD.

- Criminal case initiated on 05/17/2014 under elements of a crime referred to in art. 243 of the Criminal Code on the fact of money laundering by the founders of the company "A" LLC, which in the period 2012-2013 made imports of raw materials through an offshore company, amounting to 3.7 million dollars, beneficial owner thereof being the administrator of "A" LLC.

- Criminal case initiated on 17/06/2014 under elements of a crime referred to in art. 243 of the Criminal Code on the fact of money laundering by the founders of LLC, "CP" LLC and "A" LLC, by legalization of illegally obtained goods and cash, proceeds of the crimes of smuggling and tax evasion through the offshore company "S". Thus, to the address of the non-resident company were made transfers in the amount of 32.5 million lei, 3 million USD and 110,000 EURO.

Other older cases

Ex. 1: In December 2009 „Y” Ltd has purchased around 700 tons of fresh garlic from the People's Republic of China at the price of 1520 USD per ton. The payment has been performed via the company „X” Ltd, while the funds have been borrowed from the director and other members of management of the company „Y” Ltd. In the Yliciovsk sea port of Ukraine the management of „Y” Ltd included distorted data into the invoices and thus diminished the price of goods in the customs by 5,2 million MDL. Then the goods have been imported into the Republic of Moldova and sold in big lots using an unregistered (cloned) cash machine. The illicitly obtained funds have been legalized later by the repayment of fake debts to the director and to the management of „Y” Ltd.

Ex. 2: „Z” Ltd has organized and performed the „export” of cigarettes to the USA using the postal shipments via national post operators. The parcels with cigarettes were officially exported and declared to the customs authority as shipments to the non-resident company „X” Ltd registered in the off-shore zone (Seychelles) with the purpose of commercial activity.

At the same time each parcel had the data of real beneficiaries - private individuals from the USA and this fact has been confirmed by the postal accompanying documents, with the destination "gift" or "non-commercial".

By this fraudulent scheme „Z” Ltd has illicitly exported cigarettes for dozens of millions US dollars, the

proceeds being left on the accounts of off-shore companies and never declared neither to the tax authorities of the Republic of Moldova, nor to those of the USA.

Further the proceeds were legalized on the territory of USA by investment into mobile and immobile property. During the criminal pursuit on the accounts of „Z” Ltd opened with the national banking institutions have been sequestered around 470 thousand US dollars derived from the said illegal activity.

If available, please provide related statistical data on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures, as available. Please describe how such information is collected and analysed.

2011 - 8 investigations 2012 - 12 investigations

(b) Observations on the implementation of the article

The reviewing experts noted that the laundering of proceeds of crime is criminalized through section 243 CC, which sets forth all the constituent elements required by article 23 of the Convention. Money-laundering is further defined in article 3 of the Law No. 190-XVI on prevention and combating money laundering and terrorism financing as “actions, stipulated in article 243 of the Criminal Code oriented towards legalization of both the source and provenience of illicit proceeds or towards concealing of the origin of or affiliation with such proceeds”.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Subparagraph 1 (a) (ii) of article 23

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

...

(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code of the Republic of Moldova no. 985-XV of 18.04.2002: Article 243. Money Laundering

(1) Money laundering committed by: (...)

b) the concealment or disguise of the nature, origin, location, disposal, transmission, or movement of the real property of the goods or related rights by a person who knew or should have known that such were illegal income;

(...)

(b) Observations on the implementation of the article

The reviewing experts noted that the laundering of proceeds of crime is criminalized through section 243 CC, which sets forth all the constituent elements required by article 23 of the Convention. Money-

laundering is further defined in article 3 of the Law No. 190-XVI on prevention and combating money laundering and terrorism financing as “actions, stipulated in article 243 of the Criminal Code oriented towards legalization of both the source and provenience of illicit proceeds or towards concealing of the origin of or affiliation with such proceeds”.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Subparagraph 1 (b) (i) of article 23

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

...

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code of the Republic of Moldova no. 985-XV of 18.04.2002: Article 243. Money Laundering

(1) Money laundering committed by: (...)

c) the purchase, possession or use of goods by a person who knew or should have known that such goods were illegal earnings;

(...)

(b) Observations on the implementation of the article

The reviewing experts noted that the laundering of proceeds of crime is criminalized through section 243 CC, which sets forth all the constituent elements required by article 23 of the Convention. Money-laundering is further defined in article 3 of the Law No. 190-XVI on prevention and combating money laundering and terrorism financing as “actions, stipulated in article 243 of the Criminal Code oriented towards legalization of both the source and provenience of illicit proceeds or towards concealing of the origin of or affiliation with such proceeds”.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Subparagraph 1 (b) (ii) of article 23

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

...

(b) Subject to the basic concepts of its legal system: ...

(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

(a) Summary of information relevant to reviewing the implementation of the article

Article 243. Money Laundering

(1) Money laundering committed by: (...)

d) the participation in any association, agreement, complicity through assistance, help or advice in order to commit the actions set forth in letters a)-c); shall be punished by a fine in the amount of 1000 to 2000 conventional units or by imprisonment for up to 5 years, in both cases with (or without) the deprivation of the right to hold certain positions or to practice certain activities for 2 to 5 years, whereas a legal entity shall be punished by a fine in the amount of 7000 to 10,000 conventional units with the deprivation of the right to practice certain activities or by the liquidation of the legal entity. (...)

(b) Observations on the implementation of the article

The reviewing experts noted that the laundering of proceeds of crime is criminalized through section 243 CC, which sets forth all the constituent elements required by article 23 of the Convention. Money-laundering is further defined in article 3 of the Law No. 190-XVI on prevention and combating money laundering and terrorism financing as “actions, stipulated in article 243 of the Criminal Code oriented towards legalization of both the source and provenience of illicit proceeds or towards concealing of the origin of or affiliation with such proceeds”.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Subparagraphs 2 (a) and 2 (b) of article 23

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

The provisions of article 243 from the CC does not limit its provisions to certain predicate offences, thus applying to the widest range of predicate offences.

(b) Observations on the implementation of the article

The reviewing experts noted that section 243 CC applies to the widest range of predicate offences for money-laundering purposes.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Subparagraph 2 (c) of article 23

2. For purposes of implementing or applying paragraph 1 of this article: ...

(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(a) Summary of information relevant to reviewing the implementation of the article

Article 23 Criminal Code of the Republic of Moldova no. 985-XV of 18.04.2002: Article 243. Money Laundering

(...)

(4) Illegal actions shall also be acts committed outside the territory of the country provided that such acts include the constitutive elements of a crime in the state where they were committed and may be the constitutive elements of a crime committed in the territory of the Republic of Moldova.

There is no principle or textual argument that excludes foreign criminal activity as predicate for the money laundering offence. Article 243 covers foreign predicate offences, provided the dual criminality condition is met.

(b) Observations on the implementation of the article

The reviewing experts noted that section 243 CC applies to the widest range of predicate offences, also those committed outside the territory of the country, provided that the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the Moldovan law had it been committed within the territory of the Republic of Moldova.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Subparagraph 2 (d) of article 23

2. For purposes of implementing or applying paragraph 1 of this article:

...

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(a) Summary of information relevant to reviewing the implementation of the article

The provision of comprehensive information on Moldova's legislation on money-laundering during the review process was sufficient for the fulfilment of this reporting requirement.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Subparagraph 2 (e) of article 23

2. For purposes of implementing or applying paragraph 1 of this article: ...

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.

(a) Summary of information relevant to reviewing the implementation of the article

There are no principles or fundamental legal objections to the criminalization of self-laundering. ML offence still does not provide for a formal, coverage of self-laundering as the last, substantial amendment of Art. 243 CC did not directly touch upon this issue. Nonetheless the ML offence had been reformulated closely following the standards of the Palermo Convention, according to which the ML offence should normally embrace, without any further specification, the laundering of own proceeds unless a country declares it contrary to its fundamental legal principles and explicitly provides, pursuant to Art. 6(2)e of the Palermo Convention, that the ML offence do not apply to persons who committed the predicate offence. The Moldovan authorities claimed that they opted not to take the opportunity provided in Art. 6(2)e and hence self-laundering must necessarily be, even if implicitly, covered by Moldovan law.

This argumentation was equivocally supported by the Moldovan practitioners the evaluators met on-site. As a result, one conviction of ML so far achieved by the Moldovan courts was also related to a self-laundering case (where the predicate offence was drug trafficking).

b) Observations on the implementation of the article

The reviewing experts were of the view that the explanations provided by the Moldovan authorities do not seem to be sufficient for the purposes of the UNCAC review. First, for purposes of legal clarity and certainty, it may be useful to have in the ML legislation a clear provision on self-laundering (the Moldovan authorities admit the lack of such a provision). Secondly, the interpretation they offer has a narrow scope of application (organized crime), hence the jurisprudence refers to a drug trafficking case.

(c) Challenges in implementation and recommendations

- Consider, for purposes of legal certainty and clarity, the inclusion of a provision in the domestic legislation to explicitly cover self-laundering.

Article 24. Concealment

Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code of the Republic of Moldova no. 985-XV of 18.04.2002: Article 49. Favoring

The favoring of a criminal as well as hiding the means or tools of the commission of a crime, its traces, or goods obtained through criminal means implies criminal liability under art. 323, provided that such acts were not promised in advance.

Article 323. Supporting a Crime

(1) Supporting, without promising in advance, a serious, especially serious, or exceptionally serious crime shall be punished by a fine in the amount of 200 to 500 conventional units or by imprisonment for up to 3 years.

(2) The husband (wife) and close relatives of the person who committed the crime shall not be subject to criminal liability.

Article 199. Acquisition or Marketing of Goods Known to Have Been Obtained by Criminal Means

The acquisition or marketing of goods, without an advance promise, known to have been obtained by criminal means, shall be punished by a fine in the amount of 200 to 400 conventional units or by community service for 120 to 180 hours. (...)

(b) Observations on the implementation of the article

The reviewing experts noted that the criminalization of concealment is covered not through an ad hoc provision, but through the application of other criminalization provisions of the CC such as section 49 on “Favouring of a criminal” and section 323 on “Supporting a crime”.

The reviewing experts concluded that the Republic of Moldova has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

- Consider introducing in the domestic legislation an ad hoc provision criminalizing concealment (article 24).

Article 25. Obstruction of justice

Subparagraph (a) of article 25

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code of the Republic of Moldova no. 985-XV of 18.04.2002: Article 309. Coercion to Testify

(1) Coercing a person, by threats or other illegal acts, to testify, to conclude a plea bargaining agreement, coercing in the same way an expert to offer a conclusion, or coercing a translator or an interpreter to provide an incorrect translation or interpretation committed by the person who discovers the offence, criminal investigation officer, prosecutor or the judge, if it does not constitute torture, inhuman or degrading treatment, shall be punished by imprisonment for 2 to 6 years or by a fine in the amount of 800 to 1000 conventional units, in both cases with the deprivation of the right to hold certain positions or to practice a certain activity for up to 5 years.

Article 314. Determining to submit false statements, to formulate false conclusions or make incorrect translation

(1) Determination, by coercion or promise, by offering or giving goods, services or other patrimonial or non-patrimonial advantages, of the witness or injured party to submit false statements, of the expert to formulate false conclusions or statements, of the interpreter or translator to make incorrect interpretations or translations as well as evasion from submitting statements, drawing conclusions or declarations, from making interpretations and translations in the prosecution or adjudication in national or international court, shall be punished by a fine of 200 to 500 conventional units or by imprisonment up to 3 years. (...)

(b) Observations on the implementation of the article

The reviewing experts noted that article 25(a) of the Convention is sufficiently implemented through sections 309 (Coercion to testify) and 314 (Determining to submit false statements, to formulate false conclusions or make incorrect translation) CC.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Subparagraph (b) of article 25

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

...

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code of the Republic of Moldova no. 985-XV of 18.04.2002:

Article 303. Interference with the Dispense of Justice and with Criminal Investigations

(1) Interference in any form with the examination of cases by the national or international courts in order to hinder the comprehensive, complete, and objective examination of a specific case or in order to obtain an illegal court decision, shall be punished by a fine in the amount of 200 to 500 conventional units or by community service for 180 to 240 hours or by imprisonment for up to 2 years.

(2) Interference in any form with the activities of criminal investigative bodies or international court staff, in order to hinder the speedy, complete, and objective investigation of a criminal case, shall be punished by a

fine of up to 350 conventional units or by community service for 180 to 240 hours.

(3) The actions set forth in par. (1) or (2) committed with the use of an official position, shall be punished by a fine in the amount of 400 to 600 conventional units or by imprisonment for up to 4 years, in both cases with the deprivation of the right to hold certain positions or to practice certain activities for up to 3 years.

Article 349. Threats or Violence against a Person Holding a Position of Responsibility or a Person Performing a Civic Duty

(1) The threat of murder, of bodily injury or of damage to health or of the destruction of goods belonging to person holding a position of responsibility or his/her close relatives for the purpose of ceasing his/her official duties or of changing the nature of such duties for the benefit of the person making the threat or of another person and a threat against a person performing a civic duty or against his/her close relatives due to his/her participation in the prevention or suppression of a crime or an antisocial act, shall be punished by a fine in the amount of 300 to 1000 conventional units or by community service for up to 180 hours or by imprisonment for up to 2 years.

(1/1) The use of violence that does not threaten the life or health of a person holding a position of responsibility or of his/her close relatives or the destruction of his/her goods for the purpose of ceasing his/her official duties or of changing the nature of such duties for the benefit of the person using violence or of another person and the same actions on a person performing a civic duty or on his/her close relatives due to his/her participation in the prevention or suppression of a crime or an antisocial act, shall be punished by a fine in the amount of 500 to 1000 conventional units or by community service for 180 to 240 hours or by imprisonment for up to 3 years.

(2) The actions set forth in par. (1) or (11) involving:

- a) violence dangerous to the life or health of persons mentioned in par. (1);
- b) the destruction of goods through methods dangerous to the life or health of several persons;
- c) large-scale material damage;
- d) other severe consequences; shall be punished by imprisonment for 4 to 8 years.

(b) Observations on the implementation of the article

The reviewing experts noted that article 25(b) is adequately implemented through sections 303 (Interference with the dispense of justice and with criminal investigations) and 349 (Threats or violence against a person holding a position of responsibility or a person performing a civic duty).

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Article 26. Liability of legal persons

Paragraphs 1 and 2 of article 26

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

(a) Summary of information relevant to reviewing the implementation of the article

GENERAL PART

(...)

Article 21. Subject of the Crime (...)

(3) A legal entity, except for public authorities, shall be subject to criminal liability for an act set forth in criminal law provided that one of the following conditions is applicable:

- a) the legal entity is guilty of failure to comply or improper compliance with direct legal provisions defining obligations or prohibitions to perform a certain activity;
- b) the legal entity is guilty of carrying out an activity that does not comply with its founding documents or its declared goals;
- c) the act that causes or threatens to cause considerable damage to a person, to society, or to the state was committed for the benefit of this legal entity or was allowed, sanctioned, approved, or used by the body or the person empowered with the legal entity's administrative functions.

(4) Legal entities, except for public authorities, shall be criminally liable for crimes punishable in line with the special part of this Code applicable to legal entities.(...)

(...)

SPECIAL PART

Article 243. Money Laundering

(1) Money laundering committed by:

a) the conversion or transfer of goods by a person who knew or should have known that

such goods were illegal earnings in order to conceal or to disguise the illegal origin of goods or to help any person involved in the commission of the main crime to avoid the legal consequences of these actions;

b) the concealment or disguise of the nature, origin, location, disposal, transmission, or movement of the real property of the goods or related rights by a person who knew or should have known that such were illegal income;

c) the purchase, possession or use of goods by a person who knew or should have known that such goods were illegal earnings;

d) the participation in any association, agreement, complicity through assistance, help or advice in order to commit the actions set forth in letters a)-c);

shall be punished by a fine in the amount of 1000 to 2000 conventional units or by imprisonment for up to 5 years, in both cases with (or without) the deprivation of the right to hold certain positions or to practice certain activities for 2 to 5 years, whereas a legal entity shall be punished by a fine in the amount of 7000 to 10,000 conventional units with the deprivation of the right to practice certain activities or by the liquidation of the legal entity.

(...)

Article 325. Active bribery

(1) Promising, offering or giving a bribe, directly or through an intermediary, to a public person or foreign public person, in the form of goods, services, privileges or advantages of any kind to which he or she is not entitled, for himself or herself or for anyone else, with a view to having him or her perform or refrain from performing an act, or delay or facilitate the performance of an act, in the exercise of his or her duties or contrary thereto,

shall be punishable by imprisonment for up to 6 years with a fine of between 2000 to 4000 conventional units in the case of a natural person, and in case of a legal entity by a fine of between 6000 to 10000 conventional units with disqualification from performing certain activities.

(2) The same actions committed:

- b) by two or more persons;
- c) on a large scale

shall be punished by imprisonment from 3 to 7 years with a fine of between 4000 to 6000 conventional units in the case of a natural person, the legal entity shall be punished by a fine of between 10000 to 14000 conventional units with disqualification from performing certain activities.

(3) The actions set forth in par. (1) or (2) committed:

- a) on an especially large scale;
- a1) with a person holding position of public dignity or international official;
- b) in the interests of organized criminal group or a criminal organization

shall be punished by imprisonment for 6 to 12 years with a fine in the amount of 6000 to 8000 conventional units in the case of a natural person, the legal entity shall be punished by a fine of between 14000 to 18000 conventional units with disqualification from performing certain activities or the liquidation of the legal entity.

(4) The person who promised, offered, or provided the goods or services listed in art. 324 shall be exempted from criminal liability provided that the goods or services were extorted from him/her or if the person denounces himself/herself without knowing that criminal investigative bodies knew about the crime he/she committed.

Article 326 Trading in influence

(1) Requesting, accepting or receiving, directly or through an intermediary, of money, securities, goods, services or advantages of any kind, for himself or herself or for anyone else, by any person having or claiming to have some influence over a public person, a person holding a position of public dignity, a foreign public person or an international official, with a view to having that public person or official perform or refrain from performing an act in the exercise of his/her duties or delay or facilitate the performance of such an act, irrespective of whether these acts have or have not been performed,

shall be liable to a fine of between 2000 and 3000 conventional units or up to 5 years imprisonment, in the case of a natural person, and a fine of between 4000 and 6000 conventional units with disqualification from performing certain activities in the case of a legal entity.

(1/1) Promising, offering or giving to a person, either personally or through an intermediary, of goods, services or advantages listed in paragraph (1), for himself or herself or for anyone else, where this person has or claims to have some influence over a public person, a person holding a position of public dignity, a foreign public person or an international official, with the aim set out in paragraph (1),

shall be liable to a fine of between 2000 and 3000 conventional units or up to 3 years imprisonment, in the case of a natural person, and a fine of between 3000 and 5000 conventional units with disqualification from performing certain activities in the case of a legal entity.

(2) The same actions set forth in par. (1) or (1/1) committed:

- b) by two or more persons;

c) with the receipt of goods or advantages on a large scale;

shall be punished by a fine in the amount of 3000 to 4000 conventional units or by imprisonment for 2 to 6 years, the legal entity shall be punished by a fine of between 5000 to 10000 conventional units with disqualification from performing certain activities.

(3) The actions set forth in par. (1), (1/1) or (2) committed:

a) with the receipt of goods or advantages on an especially large scale;

b) in the interest of an organized criminal group or a criminal organization;

shall be punished with a fine in the amount of 4000 to 6000 conventional units or by imprisonment for 3 to 7 years, the legal entity shall be punished by a fine of between 7000 to 12000 conventional units with disqualification from performing certain activities or the liquidation of the legal entity.

(4) The person who promised, offered, or provided the goods or services listed in par. (1) shall be exempted from criminal liability provided that the goods or services were extorted from him/her or if the person denounces himself/herself without knowing that criminal investigative bodies knew about the crime he/she committed.

Article 334 Giving bribes

(1) Promising, offering or giving a bribe, directly or through an intermediary, to an arbitrator elected or appointed to settle a dispute, a manager of a business or social organization or other non-governmental organization, or a person working for such an organization, a participant to a sport event or a betting event of goods, services, privileges or advantages of any kind to which he or she is not entitled, for himself or herself or for anyone else, with a view to having him or her perform or refrain from performing an act, delay or facilitate the performance of an act, in the exercise of his or her duties or contrary thereto, or in a sport event or a betting event,

shall be punishable with a fine of between 1000 and 2000 conventional units or up to 3 years' imprisonment in the case of a natural person, and a fine of between 4000 and 8000 conventional units with disqualification from performing certain activities in the case of a legal person.

(2) The same action committed:

b) by two or more persons;

c) on a large scale;

shall be punished by a fine in the amount of 2000 to 4000 conventional units or by imprisonment for up to 5 years, and a fine of between 8000 and 12000 conventional units with disqualification from performing certain activities in the case of a legal person.

(3) The actions set forth in par. (1) or (2) committed:

a) on an especially large scale;

b) in the interests of an organized criminal group or a criminal organization;

shall be punished with a fine in the amount of 6000 to 8000 conventional units or by imprisonment for 3 to 7 years, the legal entity shall be punished by a fine of between 12000 to 14000 conventional units with disqualification from performing certain activities or the liquidation of the legal entity.

(4) The bribe giver shall be exempted from criminal liability if the bribe was extorted from him/her or if he/she denounces himself/herself without knowing that criminal investigative bodies knew about the crime he/she committed.

(...)

Chapter VI

**PROCEDURES FOR CRIMINAL INVESTIGATIONS AND HEARING CASES
INVOLVING CRIMES COMMITTED BY LEGAL ENTITIES Article 520.**

Article 520. General Provisions

A criminal investigation and hearing cases involving crimes committed by legal entities shall comply with the usual procedures with additions and exceptions provided in this Chapter.

Article 521. Criminal investigation of a legal entity

- (1) If a legal entity is to be held criminally liable, a criminal investigation shall be conducted with the participation of its legal representative.
- (2) Should a criminal investigation initiated against a legal entity be conducted for the same act or for related acts and with regard to its legal representative, the criminal investigative body shall appoint a representative of the legal entity to represent it in the capacity of an accused.
- (3) The legal representative or, as the case may be, the appointed representative of the legal entity shall represent it in the course of procedural actions provided in this Code.
- (4) Only coercive measures applicable to a witness may be applied to the legal representative or, as the case may be, to the appointed representative of the legal entity subject to criminal investigation.

Article 522. Territorial competence

- (1) If crimes are committed by legal entities the territorial competence shall be determined by:
 - 1) the place of the commission of the crime;
 - 2) the place the perpetrator was detected;
 - 3) the place of the domicile of a perpetrator who is an individual;
 - 4) the venue of the legal entity;
 - 5) the place of domicile or the venue of the victim.
- (2) The provisions in arts. 40 and 42 shall correspondingly apply to hearing cases on crimes committed by legal entities.

Article 523. Judicial control of a legal entity

- (1) In order to ensure the efficient unfolding of a criminal proceeding and upon a motion of the prosecutor, the

investigative judge or as the case may be the court, if it deems it necessary, may decide to place a legal entity under judicial control.

(2) By deciding on the measure provided in para. (1), the legal entity may be enjoined to meet one or several of the following obligations:

1) to deposit bail set by the investigative judge or by the court, the amount of which may not be less than 1000 conventional units;

2) not to practice certain activities if the crime was committed in the course of practicing or in relation to practicing these activities;

3) not to issue certain checks or to use payment cards.

(3) The ruling of the investigative judge or, as the case may be, of the court on placing a legal entity under judicial control may be appealed within the timeframe and in the manner provided in arts. 308–311.

(b) Observations on the implementation of the article

The reviewing experts noted that section 21 CC provides for the criminal liability of legal entities, except for public authorities, in respect of acts causing or threatening to cause considerable damage to a person, to society or to the state and committed for the benefit of this legal entity or allowed, approved or used by the body or the person empowered within the legal entity's administrative functions. Legal entities are also criminally liable for crimes punishable in line with the special part of the CC. Article 521 et seq. CPC introduce special rules applicable to criminal proceedings against legal persons to allow charges initially brought against legal persons to be extended to their legal representatives for the same or related offences.

While legal provisions are in place to implement article 26 of the Convention, the reviewing experts found it difficult to assess whether these legal provisions were effectively enforced in practice given that no case examples of criminal proceedings against legal entities were provided.

(c) Challenges in implementation and recommendations

- Ensure effective enforcement and implementation of the domestic provisions regulating the criminal liability of legal persons.

Paragraph 3 of article 26

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code of the Republic of Moldova no. 985-XV of 18.04.2002:

Article 21. Subject of the Crime (...)

(5) The criminal liability of a legal entity does not exclude the liability of the individual for the crime

committed.

Please provide examples of implementation, including recent cases where both natural and legal persons were liable

Please provide any available statistics of such cases. Please provide per annum figures as available

(b) Observations on the implementation of the article

The reviewing experts noted that section 21 CC provides for the criminal liability of legal entities, except for public authorities, in respect of acts causing or threatening to cause considerable damage to a person, to society or to the state and committed for the benefit of this legal entity or allowed, approved or used by the body or the person empowered within the legal entity's administrative functions. Legal entities are also criminally liable for crimes punishable in line with the special part of the CC. Article 521 et seq. CPC introduce special rules applicable to criminal proceedings against legal persons to allow charges initially brought against legal persons to be extended to their legal representatives for the same or related offences.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 4 of article 26

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions

(a) Summary of information relevant to reviewing the implementation of the article

CRIMINAL CODE of the Republic of Moldova no. 985-XV of 18.04.2002

GENERAL PART

(...)

Article 63. Categories of punishments applicable to legal entities

(1) The following punishments may be applied to legal entities:

- a) fine;
- b) deprivation of the right to practice certain activities;
- c) liquidation.

(2) Fines shall be applied as a main punishment.

(3) The deprivation of the right to practice certain activities and the liquidation of the legal entity may be applied both as main and complementary punishments.

Article 64. Fines

(...)

(4) In cases set forth in article 21 par. (3), the amount of the fine for legal entities shall be set within the limits of 500 and 20,000 conventional units depending on the nature and the seriousness of the crime committed, the extent of the damage caused, and considering the economic and financial condition of the legal entity. In the case of malicious circumvention by a legal entity from payment of the fine set, the court may substitute the unpaid amount of the fine with an execution upon the property of the entity.

(...)

Article 73. Deprivation of a legal entity of the right to practice certain activities

(1) The deprivation of the right of a legal entity to practice certain activities consists in setting a prohibition to make specific transactions; to issue shares or other bonds; to receive subventions, facilities, and other advantages from the state or to practice other activities.

(2) The deprivation of the right to practice certain activities may be limited to a certain territory or to a certain period of the year and shall be set for a term of up to 5 years or for an unlimited term.

Article 74. Liquidation of a legal entity

(1) The liquidation of a legal entity consists in its closure with the consequences provided by civil legislation.

(2) The liquidation of a legal entity shall be imposed when the court finds that the seriousness of the crime committed makes it impossible to preserve such a legal entity and for it to continue its activities.

(b) Observations on the implementation of the article

The reviewing experts noted that sanctions against legal persons include fines, deprivation of the right to practice certain activities and liquidation (section 63 CC).

While legal provisions are in place to implement article 26 of the Convention, the reviewing experts found it difficult to assess whether these legal provisions were effectively enforced in practice given that no case examples of criminal proceedings against legal entities were provided.

(c) Challenges in implementation and recommendations

- Ensure effective enforcement and implementation of the domestic provisions regulating the criminal liability of legal persons.

Article 27. Participation and attempt

Paragraph 1 of article 27

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code of the Republic of Moldova no. 985-XV of 18.04.2002: Article 42. Participants

(1) Participants shall be considered the persons who contribute to the commission of a crime either as the authors, organizers, instigators, or as accomplices.

(...)

(3) An organizer shall be considered the person who organizes the commission of a crime or manages its commission as well as the person who creates an organized criminal group or a criminal organization or manages the criminal activity thereof.

(4) An instigator shall be considered a person who by any means makes another person commit a crime.

(5) An accomplice shall be considered a person who contributes to the commission of a crime by giving advice, indications, or information and by offering means or tools or eliminating obstacles as well as the person who promises in advance that he/she will favour the criminal, hide the means or tools used to commit the crime or traces thereof or the goods obtained through criminal means, or the person who promises in advance to purchase or sell such goods.

(...)

(b) Observations on the implementation of the article

The reviewing experts noted that the general provisions of the CC regulate the different forms of participation in the commission of a criminal offence (section 42).

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 2 of article 27

2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code of the Republic of Moldova no. 985-XV of 18.04.2002: Article 25. Stages of Criminal Activity

(1) A crime shall be considered consummated if the act committed contains all the constitutive elements of a crime.

(2) An inchoate crime shall be considered the preparation for a crime and the attempt to commit a crime.

(3) The liability for the preparation of a crime and the attempt to commit a crime shall be determined according to the respective article from the Special Part of this Code, with reference to art. 26 and 27, and in line with the provisions of art. 81.

Article 27. Attempt to Commit a Crime

The attempt to commit a crime shall be considered the intentional action or inaction directly oriented towards the commission of the crime, provided that due to reasons independent of the perpetrator's will, the crime failed to produce the expected effect.

Article 81. Application of Punishment for an Inchoate Crime

(1) When setting punishment for an inchoate crime, due consideration of the circumstances that prevented

completion of crime shall be taken into account.

(2) The punishment for the preparation of a crime that does not constitute recidivism shall not exceed one half of the maximum term of the most severe punishment set by the corresponding article of the Special Part of this Code for the consummated crime.

(3) The punishment for an attempt to commit a crime that does not constitute recidivism shall not exceed three quarters of the maximum term of the most severe punishment set by the corresponding article of the Special Part of this Code for the consummated crime.

(4) Life imprisonment shall not be applied for the preparation of a crime and the attempt to commit a crime.

(b) Observations on the implementation of the article

The reviewing experts noted that the general provisions of the CC regulate the attempt to commit a crime and its preparation (sections 25-27 and 81).

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 3 of article 27

3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code of the Republic of Moldova no. 985-XV of 18.04.2002: Article 26. Preparation for a Crime

(1) The preparation for a crime shall be considered the preliminary agreement to commit the crime, the purchase, manufacture, or adjustment of devices or tools, or the intentional creation by other means of conditions for its commission, provided that due to reasons independent of the perpetrator's will, the crime failed to produce the expected effect.

(2) Only persons guilty of preparation for a less serious crime, serious crime, extremely serious crime, or exceptionally serious crime shall be subject to criminal liability.

(b) Observations on the implementation of the article

The reviewing experts noted that the general provisions of the CC regulate the attempt to commit a crime and its preparation (sections 25-27 and 81). Only persons guilty of preparation for a less serious crime, serious crime, extremely serious crime, or exceptionally serious crime shall be subject to criminal liability (section 26, paragraph 2 CC).

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Article 29. Statute of limitations

Article 29

Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code of the Republic of Moldova no. 985-XV of 18.04.2002: Article 60. Criminal Liability Limitation Period

- (1) A person shall be exempted from criminal liability if the following terms have expired from the date of the commission of the crime:
 - a) 2 years from the commission of a minor crime;
 - b) 5 years from the commission of a less serious crime;
 - c) 15 years from the commission of a serious crime;
 - d) 20 years from the commission of an extremely serious crime;
 - e) 25 years from the commission of an exceptionally serious crime.
- (2) The limitation period shall cover the date of the commission of the crime and the date of the final court decision.
- (3) If a person commits a new crime, the limitation period shall be calculated for each crime separately.
- (4) The limitation period shall be interrupted if, prior to the expiry of the terms specified in par. (1), the person commits a crime for which a punishment of imprisonment for more than 2 years may be applied hereunder. In such a case, the calculation of the limitation period shall start the moment the new crime was committed.
- (5) The limitation period shall be suspended if the person who committed the crime avoids a criminal investigation or trial. In these cases, the limitation period shall resume the moment of the person's seizure or confession. However, a person may not be subject to criminal liability if 25 years have elapsed since the date of the commission of the crime and the limitation period has not been interrupted by the commission of a new crime.
- (6) The application of the limitation period to a person who commits an exceptionally serious crime shall be decided by the court. If the court shall find it impossible to apply the limitation period and exempt the person from criminal liability, life imprisonment shall be replaced by imprisonment for 30 years.
- (7) The terms of the criminal liability limitation period shall be reduced by half for persons who were juveniles at the date of the commission of the crime.
- (8) The limitation period shall not apply to persons who commit crimes against the peace and security of humanity, war crimes, crimes of torture, inhuman or degrading treatment or other crimes set forth in international treaties to which the Republic of Moldova is a party.

(b) Observations on the implementation of the article

The reviewing experts noted that, pursuant to section 60 CC, the statute of limitations period ranges from 2 years for the commission of a minor crime to 25 years for the commission of an exceptionally serious crime. Most of the corruption offences are either less serious crimes (statute of limitations period of 5 years) or serious crimes (statute of limitations period of 15 years). The reviewing experts noted that in most cases the aggravated forms of corruption-related offences were considered as serious crimes and that a number of basic forms of such offences (for example, trading in influence, abuse of official position,

bribery in the private sector, embezzlement, money-laundering) were qualified, in terms of sanctioning, as less serious crimes. Therefore they recommended the inclusion of these basic forms of corruption-related offences in the category of serious crimes (see article 16, paragraph 4 CC) in order to prolong existing statute of limitations periods.

According to the Moldovan law, the statute of limitations period runs from the time of the commission of the offence until the day when the judgement becomes legally enforceable. If the person commits a further offence, the period of limitation will be calculated for each offence separately. The statute of limitations period may be suspended when the perpetrator avoids the criminal investigation or trial; or interrupted when, prior to the expiration of the relevant period, the perpetrator commits a crime for which a punishment of imprisonment of more than 2 years may apply.

The reviewing experts concluded that the Republic of Moldova has, in general, adequately implemented the provision under review. However, they made recommendations regarding the sanctioning policies against certain corruption-related offences (see under article 30, paragraph 1, of the Convention), which would also have an impact on the prolongation of existing statute of limitations periods.

Article 30. Prosecution, adjudication and sanctions

Paragraph 1 of article 30

1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code of the Republic of Moldova no. 985-XV of 18.04.2002:

Article 16. Classification of Crimes

- (1) Depending upon their prejudicial nature and degree, the crimes set forth herein are classified into the following categories: minor, less serious, serious, especially serious, and exceptionally serious.
- (2) Minor crimes are considered acts for which criminal law provides for a maximum punishment by imprisonment for a term of up to 2 years inclusively.
- (3) Less serious crimes are considered acts for which criminal law provides for a maximum punishment by imprisonment for a term of up to 5 years inclusively.
- (4) Serious crimes are considered acts for which criminal law provides for a maximum punishment by imprisonment for a term of up to 12 years inclusively.
- (5) Extremely serious crimes are considered crimes committed with intent for which criminal law provides for a maximum punishment by imprisonment for a term of more than 12 years.
- (6) Exceptionally serious crimes are considered crimes committed with intent for which criminal law provides for life imprisonment.

Article 75. General Criteria for Specifying Punishment

- (1) An equitable punishment within the limits set by the Special Part of this Code and in strict compliance with the provisions of the General Part of this Code shall be applied to a person found guilty of the commission of a crime. When determining the category and the term of punishment, the court shall take into consideration the seriousness of the crime committed, its motive, the personality of the guilty person, the circumstances of the case that mitigate or aggravate liability, the impact of the punishment on the

rehabilitation and re-education of the guilty person, as well as the living conditions of his/her family.

(2) The more severe punishment among the alternatives provided for by law for the commission of a crime shall be applied only when a milder punishment among the specified ones cannot ensure the achievement of the purpose of the punishment.

(3) Punishment for a minor or less serious crime shall be applied to a juvenile when it is assessed that educational measures are not sufficient for that juvenile's rehabilitation.

Article 76. Mitigating Circumstances

(1) When determining a punishment, the following shall be considered as mitigating circumstances:

- a) commission for the first time of a minor or a less serious crime;
- b) commission of a crime by a juvenile;
- c) commission of a crime due to difficult personal or family circumstances; d) commission of a crime by a person with limited mental capacity;
- e) prevention by the guilty person of prejudicial consequences of the crime committed, voluntary repair of the damage caused, or the elimination of the damage caused;
- f) self-denunciation, active contribution to solving the crime and to identifying the criminals, or admitting guilt;
- g) the illegality or immorality of the victim's actions if such were the reason for the crime; h) the commission of a crime as a result of physical or mental coercion that does not exclude the criminal nature of the act, or given the financial, work or other dependence;
- i) the commission of a crime by a person in a state of intoxication caused by the involuntary or forced consumption of substances mentioned in article 24, or by the consumption of these substances not being aware of their effects;
- j) the commission of a crime in excess of the legal limits of legitimate defence, capturing a criminal, a state of extreme necessity, reasonable risk or as a result of executing an order or command from a superior;
- k) the serious impact of the crime committed on its perpetrator or the heavy burden of the punishment applied to him/her due to his/her advanced age, health condition, or other circumstances;
- l) expiry from the moment of the commission of the crime of at least 2/3 of the criminal liability limitation period provided for this crime or excess of the reasonable timeframe for hearing the case, considering the nature of the act, provided that the delay was not caused by the perpetrator.

(2) The court may consider other circumstances not specified in par. (1) as mitigating circumstances.

(3) By determining the punishment, the court shall not consider as mitigating a circumstance defined by law as a constitutive element of the crime.

Article 77. Aggravating Circumstances

(1) When determining punishment, the following shall be considered as aggravating circumstances:

- a) the commission of a crime by a person who previously was convicted for a similar crime or of other acts relevant to the case;
- b) severe consequences caused by the commission of the crime; c) the commission of a crime with any form of participation;
- d) the commission of a crime due to social, national, racial, or religious hatred;
- e) the commission of a crime against a person known to be a juvenile or against a pregnant woman or by taking advantage of the victim's known or obvious helpless condition caused by advanced age, disease, physical or mental handicap, or another factor;
- f) the commission of a crime against a person in connection with his/her professional or social duties;
- g) the commission of a crime using juveniles, persons in difficulty, mentally retarded persons, or persons dependent on the perpetrator;
- h) the commission of a crime through extremely cruel acts or humiliation of the victim;
- i) the commission of a crime by means that pose a great social danger;
- j) the commission of a crime by a person in a state of intoxication caused by the consumption of substances mentioned in article 24. The court has the right, depending upon the nature of the crime, not to consider this as an aggravating circumstance;
- k) the commission of crime with the use of weapons, ammunition, explosive substances, or similar devices, specially prepared technical devices, noxious and radioactive substances, medical and other chemical/pharmaceutical preparations, and the use of physical and mental coercion;
- m) the commission of a crime by taking advantage of a state of emergency, natural calamities, and mass

disorders;

n) the commission of a crime by abusing someone's trust.

(2) If the circumstances mentioned in par. (1) are also set forth in the corresponding articles of the Special Part of the this Code as evidence of these criminal components, they may not be concurrently considered as aggravating circumstances.

Study on corruption cases archived in the courts for the period from 1 January 2010 to 30 June 2012 (Developed by the National Anti-Corruption Centre with the support of the Supreme Court of Justice and together with the experts of MIAPAC Project and EUHLPAM Mission, based on an extensive research on corruption cases sent to court and examined by national courts with a view to the implementation of p.7 and p.8 of the 2012-2013 Action Plan for the Implementation of the Anticorruption Strategy for 2011-2015)

As a **result of the judicial review** of corruption cases, first instance courts have pronounced verdicts of conviction in 60% of cases, of termination of criminal proceedings in 31% of cases, and adopted verdicts of acquittal in 9% of cases. In the process of **individualization of punishment** by the courts, it was found that judges applied excessively certain provisions of CC which significantly reduced the criminal punishment. Thus, in every third examined case (27%-29%) courts decide to exempt from criminal liability and subject to administrative liability (Article 55 of the CC).

In four out of five corruption cases on which verdicts of conviction were pronounced (81-71%), judges applied a plea bargain agreement and reduced by one third the maximum punishment (Art. 80 of the CC). In every third case on which verdicts of conviction were pronounced (26-27%), courts decided to apply milder punishments in connection with certain exceptional circumstances, in which case the courts may impose penalties under the limit provided by law and may not apply the complementary mandatory punishments (such as deprivation of the right to hold a certain position for a period of up to 5 years (Article 79 of the CC). In every third case (33-29%) courts decided to suspend the enforcement of the punishment of imprisonment.

Based on information provided by the National Anti-Corruption Centre on court practice after the period covered by the aforementioned study, a tendency was observed to substitute the application of article 80 CC with article 364/1 CPC. Thus, there is the possibility of applying by the courts Article 364/1 CPC together with Article 76 and Article 79 CC. In other words, the fact that the person acknowledges committing the acts listed in the indictment (Article 364/1 par. (1) CPC) could be considered by the courts as a mitigating circumstance (Article 76 par. (1) f) CC – admitting guilt) and then considering the same circumstance as an exceptional one and apply Article 79 CC – similar practice to the one when applying Article 80 CC.

The **administrative sanctions** imposed with respect to 27%-29% of defendants were fines of approximately MDL 2.500. As regards **criminal punishments** to which 60% of the defendants who were convicted for acts of corruption were subject: 78%-86% paid criminal fines totaling on average MDL 10,600-11,800, 35%-31% were applied the mandatory complementary punishment with the deprivation of the right to hold certain positions (the other two thirds of the convicted were not prevented from returning to public service), 34% were sentenced to custodial sentences (imprisonment) with suspension of punishment execution for a period of 1,5-1,8 years and only in 1.5% of cases (3 cases) custodial sentences (imprisonment) were applied with actual execution for an average term of 7 months. Custodial sentences (imprisonment) with actual execution were enforced only for influence peddling, not for passive corruption and abuses committed by the civil servants.

The Criminal College of the Supreme Court of Justice

The [aforementioned] study reveals that the criminal corruption files on court dockets are, according to indictment data, files on influence peddling (49%), abuse of power or abuse of office (17%), passive

corruption and receipt of illicit remuneration by a public officer (16%). The cases of forms of active corruption and bribery are less (4.5%).

It was established that merits courts issued sentences for conviction in 60% of the cases, for cessation of the criminal trial - 31% of the cases and for acquittal in 9% of the cases.

When issuing conviction sentences, courts:

- in each third examined case (27-29%) ordered the exemption from criminal liability and the triggering of the contraventional liability according to the provisions of Art. 55 of the Criminal Code;
- in four of five corruption cases (81%), the cases were examined in the procedure regarding the agreement on the recognition of guilt, regulated by the provisions of Arts. 504-509 of the Criminal Procedure Code.

In each third case (26-27%), courts, pursuant to the provisions of Art. 79 of the Criminal Code, applied softer punishments, below the limit provided by law, or did not apply the mandatory complementary punishments (for instance deprivation from the right to occupy a certain function over a term of up to 5 years).

In each third case (33-29%), courts ordered the suspension of the punishment execution according to the provisions of Art. 90 of the Criminal Code.

The judicial practice study demonstrates that, in corruption cases, sometimes courts interpret criminal law rules related to punishment individualization in an erroneous and non-uniform manner, consequently establishing punishments which are unjustified by reference to corruption effects.

In order for courts to correctly and uniformly apply the punishment individualization principle in corruption cases, the Criminal College of the Supreme Court of Justice recommends courts to take into account the following explanations:

According to Art.75 of the Criminal Code, the punishment judicial individualization is made by the court and consists in the establishment and application of the punishment provided for in the sanction, for the perpetrated offence, depending on the seriousness of the perpetrated offence, the personality of the perpetrator, the concrete circumstances in which the offence was perpetrated.

In case of corruption offences, the “seriousness of the perpetrated offence” concept must be understood in the sense that such offences, as compared to other offence categories, are particularly dangerous to society as they manifest in state authority, power or public service structures, which discredit and compromise their activity.

Please note that the punishments established by court must be not only legal, *i.e.* observe the legal judicial individualization framework, but at the same time must be fair, *i.e.* observe the proportionality criterion, supposing the establishment of the punishment quantum depending on the offence seriousness and the author’s guilt. At the same time, the provision of Art.61 of the Criminal Code, according to which the punishment being applied shall reach its purpose to reestablish social equity and prevent the perpetration of new offences by other persons, must be observed.

The practice of applying punishment measures, highlighted in the Study, demonstrates that courts do not ensure the exercise of the punishment purpose, considering the dimension of such offence category.

Thus, by convicting persons for corruption offences, courts must ensure the application of the punishment expressly provided for in the sanction, including subject to the application of complementary punishments, which are mandatory.

The same principle shall apply upon establishing the punishment also when corruption cases are examined in special procedures – the agreement on the recognition of guilt (Art. 509 of the Criminal Procedure Code) or the recognition of perpetrated deeds (Art. 3641 of the Criminal Procedure Code).

According to the Study, in 26-27% of the criminal cases, courts established, based on Art. 79 of the Criminal Code, punishments below the minimum limit provided by the sanction of such criminal rule or applied another softer punishment category.

According to punishment individualization criteria, generally the application of Art. 79 of the Criminal Code also in case of perpetrating corruption offences is not excluded. But please note that according to para. (1) of Art. 79 of the Criminal Code, the court may apply a punishment below the minimum limit provided by criminal law for such offence or a softer punishment in another category, only when exceptional circumstances were established in such case. We shall specify that the application of Art. 79 of the Criminal Code is not mandatory even if such exceptional circumstances were established.

One or several mitigating circumstances provided by Art. 76 of the Criminal Code may not be deemed as exceptional. As provided by Art. 79 of the Criminal Code, there must be such circumstances, conditions, peculiarities, situations or states of things, in the case, in the circumstances in which the offence was perpetrated or in the perpetrator personality data, that represent an exception or are deemed to be unusual.

Usual circumstances are those predominating and characterizing most of the citizens and cannot be deemed to be exceptional.

The persons perpetrating corruption offences have the capacity as special subject and are persons having a special responsibility as compared to other offence perpetrators so that establishing several circumstances as exceptional also compel courts to pay particular attention.

Thus, in corruption cases, the application of a punishment softer than that provided in the sanction based on Art.79 of the Criminal Code may only take place as an exception.

According to Art.76 of the Criminal Code, by reference to Art.78 para.(1) of the Criminal Code, the presence of mitigating circumstances gives the right to reconsider the main punishment, starting the reduction from the maximum sanction. The mitigating circumstances, once established in the case and used as basis in order to establish the main punishment, may no longer be invoked as motivation to apply the provisions of Art.90 of the Criminal Code – suspension of the conditioned execution of the applied punishment.

If the sanction of the criminal rule provides for the deprivation from the right to occupy certain functions or exercise a certain activity as a complementary punishment, courts are not entitled to remove it by reference to Art. 78 para.(2) or Art. 79 of the Criminal Code, as it would breach the provisions of Art. 61 para.(2) of the Criminal Code stipulating that “the purpose of the punishment is to reestablish social equity, correct the sentenced person and prevent the perpetration of new offences both by the convicted and other persons.”

The offence perpetrator who used the status of the position and the advantages it grants to facilitate the corruption offence must be deprived from the right to hold such function and in this manner the purpose of the criminal punishment applied to the convicted person shall reach its purpose.

According to Art. 55 of the Criminal Code, the discharge from criminal liability, subject to triggering contraventional liability, may occur in case of a person who perpetrated a less serious offence when they recognized their guilt, remedied the prejudice caused by the offence and it was established that it may be corrected without incurring criminal liability.

Courts must consider that passive and active corruption offences, by reference to the provisions of Art.16 of the Criminal Code, are classified into serious or particularly serious offences. In cases of perpetrating them, i.e. corruption offences in the private sector, influence peddling, public interests are damaged, the image of state institutions and of the entire society is affected, non-material damages which, irrespective of whether the guilty person was convicted, cannot be deemed as totally remedied.

Also, courts shall consider that the “remedied the caused prejudice” expression refers to the material prejudice.

For the abovementioned reasons, the provisions of Art. 55 providing that criminal liability for the perpetrated offence may be replaced with another form of liability, extra-penal, triggering the cessation of the criminal trial subject to the application of a civil sanction, are not applicable to corruption cases.

When corruption cases are examined in the special procedures provided in case of the agreement on the recognition of guilt (Art. 509 of the Criminal Procedure Code) or the recognition of the perpetrated deed (Art. 3641 of the Criminal Procedure Code), the fact of recognizing guilt, which triggers the incidence of the simplified procedure, cannot be valorized as a judicial mitigating circumstance provided by Art. 76 para. (1) letter f) of the Criminal Code, as it would mean that the same *de jure* situation is granted a double legal valence.

Judging corruption cases, when individualizing the punishment, courts incorrectly indicate, pursuant to the provisions of Art. 76 para. (2) of the Criminal Code, that the absence of the criminal record of the persons with responsibility functions or public persons is a mitigating circumstance. But the legislation in force regulating the status of various public persons provides, as a condition for their appointment, election, in the position, the absence of the criminal record. Therefore, the absence of the criminal record cannot be deemed to be a mitigating circumstance or a positive parameter characterizing the person.

The Study data indicate that courts, when individualizing the punishment, established that the non-registration of the accused, a public person, in the records of narcologists or psychiatrists is a mitigating circumstance. Such circumstances cannot be deemed as mitigating circumstances because, in principle, cannot be characteristic to the legal person.

(b) Observations on the implementation of the article

The reviewing experts took into account the study which was brought to their attention on corruption cases archived in the courts for the period from 1 January 2010 to 30 June 2012, conducted by the NAC with the support of the Supreme Court of Justice, as well as subsequent court practice brought to their attention. They were of the view that the data analyzed in the study reflected a picture of an inconsistent, and to a large degree extremely lenient, practice regarding the sanctions imposed for corruption offences. Case examples shed limited light on enforcement of convention-related offences. The reviewing experts made certain recommendations in order to assist the Moldovan authorities in reviewing and ensuring better implementation of the sanctioning regime regarding corruption and, to a great extent, echo similar recommendations of the study.

The reviewingng experts concluded that the Republic of Moldova has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

- Revise the sanctions for corruption as offences with a view to increasing the punishments and treat all of them, depending on the case (basic/aggravated forms), as serious or particularly serious crimes

(see section 16, paragraphs 4-5 CC). This, in turn, would also prolong existing statute of limitations periods and would further make applicable to them Law No. 105 of 16 May 2008 on the protection of witnesses and other participants in criminal procedure;

- Amend legislation to ensure consistent court practice in avoiding the combined application of section 364/1 CPC (The trial based on the evidence collected during the criminal investigation phase), and especially its paragraph 8, or section 80 CC (Application of Punishment in Cases of Plea Bargaining) with sections 76 paragraph 1(f) (Mitigating Circumstances/Admitting guilt) and 79 (Application of a Punishment Milder Than the One Provided by Law) CC, and thus preventing the cumulative qualification of mitigating and exceptional circumstances when individualizing the sanctions in corruption cases;
- Amend legislation (section 55 CC) so that the perpetrators of such offences as bribery in the private sector, abuse of official position and embezzlement are not exempted from criminal liability and, instead, are subject to administrative liability;
- To enhance the effectiveness and level of sanctions in the enforcement of the offences established in accordance with the Convention, in line with the guidance provided by the Plenum of the Supreme Court of Justice in its decisions;
- Increase the number of in-service training sessions for judges and prosecutors at the National Institute of Justice on investigation and trial of corruption cases, including individualization of punishments.

Paragraph 2 of article 30

2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Constitution of the Republic of Moldova: Article 16. Equality

(...)

(2) All citizens of the Republic of Moldova shall be equal before the law and public authorities, regardless of the race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, property or social origin.

Deputies:

Constitution of the Republic of Moldova: Article 70. Incompatibilities and immunities (...)

(3) The deputy may not be apprehended, arrested, searched, except for the cases of flagrant crimes, or sent to court without the prior consent of the Parliament, after his/her hearing.

Law no. 39 of 07.04.1994 on the statute of deputies in the Parliament refers in Chapter II to the Parliamentary immunity.

Article 10

(1) The deputy cannot be detained, arrested, searched except in cases of flagrant crime, or sent to court on a criminal or contravention case without prior approval by the Parliament after his/her hearing.

(2) The request for detention, arrest, search or sending to criminal or contravention court is addressed to the President of Parliament (Speaker) by the Prosecutor General. President of the Parliament notifies deputies in

a public hearing within 7 days of its submission and immediately sends it for examination to the Committee on legal matters, appointments and immunities, which, within 15 days, shall determine the existence of reasonable grounds for approval of the demand. The decision of the Committee is approved by secret vote of at least half plus one of its members.

(3) Prosecutor General will give to the Committee all the requested documents. In case of refusal the Committee will make an appeal in the Parliament.

(4) The committee's report is subject to review and approval by the Parliament within 7 days of its submission.

(5) Parliament decides on the request of the Prosecutor General with the secret vote of the majority of elected deputies.

(6) The criminal action may be brought against a deputy only by the Prosecutor General.

Article 11

(1) In case of flagrant offenses, the deputy may be detained at home for a period of 24 hours only with prior approval of the Prosecutor General. He shall inform promptly the President of the Parliament about the detention.

(2) If Parliament considers that there are no grounds for detention, it orders the annulment of that measure.

(...)

Article 81(Amended) Incompatibilities and Immunities

(1) The office of the President of the Republic of Moldova shall be incompatible with the holding of any other remunerated position.

(2) The President of the Republic of Moldova shall enjoy immunity. The President of the Republic of Moldova shall not be held legally liable for the opinions expressed in the exercise of his/her mandate.

(3) Based on the majority of at least two thirds of the votes cast by its members, the Parliament may decide to indict the President of the Republic of Moldova in the event the latter commits an offence. The Supreme Court of Justice shall be ascribed the power of prosecution under the law. The President shall be legally removed from office at the date of ultimate delivery of the court sentencing.

Judges:

Law no. 544 of 20.07.1995 on the statute of judges: Article 19 Inviolability of judges

(...)

(4) The criminal investigation against the judge can be initiated only by the Attorney General or his first Deputy, in his absence by a deputy under a decree issued by the Attorney General, with the consent of the Superior Council of Magistracy, pursuant to the provisions of Criminal Procedure Code. If the judge commits the offenses specified in art. 243 (money laundering), 324 (passive bribery), 326 (trading in influence) and 330/2 (illicit enrichment) of the Criminal Code, and in the case of flagrante delicto, the consent of the Superior Council of Magistracy to initiate criminal investigation is not necessary.

(5) The judge may not be detained, subject to seizure, arrested, searched without the consent of the Superior Council of Magistracy. The consent of the Superior Council of Magistracy is not required in case of flagrant offences and offences specified in art. 324 (Passive corruption) and art. 326 (Trading in influence) from Criminal Code of the Republic of Moldova.

(b) Observations on the implementation of the article

Under article 81 of the Constitution, the President of the Republic of Moldova enjoys immunity and shall

not be held liable for any personal opinions expressed while discharging his/her duties. Only the Parliament may indict the President (on the basis of a two-thirds majority vote) if he/she commits an offence. In that case, the Supreme Court of Justice is competent to try the President. If convicted, the President is removed from office on the date the sentence becomes final.

According to article 10 of Law No. 39-XIII of 7 April 1994 on the statute of deputies in the Parliament, the deputy cannot be detained, arrested, searched except in cases of flagrant crime, or sent to court on a criminal or contravention case without prior approval by the Parliament after his/her hearing. The request for detention, arrest, search or sending to criminal or contravention court is addressed to the President of Parliament by the Prosecutor General.

According to article 19 of Law No. 544 of 20 July 1995 on the statute of judges, the judge may not be detained, subject to seizure, arrested, and searched without the consent of the Superior Council of Magistracy. The consent of the Superior Council of Magistracy is not required in case of flagrant offences and offences specified in articles 324 (passive corruption) and 326 (trading in influence) CC.

Although not strictly falling within the scope of the current review cycle of the Convention, the reviewing experts discussed during the country visit with interlocutors the important issue of corruption in the judiciary, in conjunction with the implementation of article 30, paragraph 2, of the Convention on immunities. NAC provided statistics for 2014 indicating considerable progress in the fight of corruption in this field: NAC detected and investigated eight cases of corruption involving judges and sent to courts four cases. The reviewing experts welcomed these developments and expressed support for further improvements, including consistent practice to ensure that investigative measures are allowed before the lifting of immunity takes place. One of the setbacks that need to be addressed is the fact that Law No. 325 of 23 December 2013 regarding professional integrity testing excluded judges from the notion of “public entities” (subject to it are now only the employees of the courts).

The reviewing experts concluded that the Republic of Moldova has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

- Ensure consistent practice allowing investigative action aimed at securing criminal evidence with regard to public officials enjoying immunity before the lifting of such immunity takes place.

Paragraph 3 of article 30

3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Procedure Code of the Republic of Moldova no.122 of 14.03.2003: Article 51 Prosecutor

(...)

(3) While performing his/her duties as part of a criminal proceeding, the prosecutor shall be independent and subordinate only to the law. The prosecutor shall also execute the written orders of a higher-level prosecutor on removing the breaches of law and omissions admitted while performing and/or leading the criminal investigation.

(31) Instructions given by the higher-level prosecutor may be appealed by the prosecutor at the Prosecutor General and his/her deputies. Prosecutor General and his/her deputies decide on the appeal, by a reasoned order, within a period of 15 days.

(...)

Article 274 Initiating a Criminal Investigation

(...)

(5) Should the prosecutor refuse to initiate a criminal investigation, he/she shall confirm the refusal in a reasoned order and shall notify thereof, within the shortest period of time, but no more than 15 days, the person who filed the notification. Should the prosecutor consider that there are no grounds for initiating a criminal investigation, he/she, by order, shall abrogate the order to initiate the criminal investigation and orders the refusal to initiate criminal investigation and dismissal of the criminal case.

(...)

Article 284. Discharging a Person from a Criminal Investigation

(...)

(2) A person shall be discharged from a criminal investigation if he/she is a suspect or accused, and it is found that:

- 1) the act was not committed by the suspect or accused;
- 2) there is one of the circumstances mentioned in art. 275 points 1)-3), including the situation when the act constitutes a contravention;
- 3) there is present at least one of the cases specified in art. 35 of the Criminal Code (2) The prosecutor, at the recommendation of the criminal investigation body, or ex officio, if he/she states the grounds specified in para. (2), shall issue a reasoned order discharging the person from the criminal investigation.

(...)

Article 285. Termination of a Criminal Investigation

(...)

(2) A criminal investigation shall terminate in the cases of non-rehabilitation of the person listed in art. 275 section 4)-9) of this Code and if there is at least one of the cases listed in art. 53 from the Criminal Code or if it is established that:

- 1) the preliminary request was withdrawn by the injured party or if the parties have reconciled when a criminal investigation may be initiated only based on a preliminary complaint or if criminal law allows reconciliation;
- 2) the person has not reached the age to be held criminally liable;
- 3) the person committed the prejudicial act in a state of irresponsibility and coercive medical measures are not necessary;

(...)

(4) The termination of a criminal investigation shall be ordered by the prosecutor ex officio or at the suggestion of the criminal investigative body.

(...)

Article 299/1. Complaints about the Criminal Investigative Actions of the Prosecutor

(1) The persons specified in art. 298 (suspect/accused, his/her legal representative, the defense counsel, an injured party, a civil party, a civilly liable party and their representatives and other persons whose legal rights and interests were injured by the criminal investigation body and body that performs special investigation activity) may file complaints against the actions, inactions and acts performed or ordered by the prosecutor leading the criminal investigation or personally conducting, or against the actions, inactions and acts that were performed or given based on the orders of that prosecutor.

(...)

Article 80 Criminal Code. Application of Punishment in Cases of Plea Bargaining

When an accused person enters a plea-bargaining agreement and the court accepts this agreement, the punishment for the imputed crime shall be reduced by one third of the maximum punishment set for this crime.

Study on corruption cases archived in the courts for the period from 1 January 2010 o 30 June 2012 (Developed by the National Anti-Corruption Centre with the support of the Supreme Court of Justice and together with the experts of MIAPAC Project and EUHLPAM Mission, based on an extensive research on corruption cases sent to court and examined by national courts with a view to the implementation of p.7 and p.8 of the 2012-2013 Action Plan for the Implementation of the Anticorruption Strategy for 2011-2015)

In nine out of ten cases (91%) prosecutors ask the court to apply certain articles of the CC that mitigate the situation of the defendant. In all cases when the prosecutor asked for the application of these provisions (180 cases), this was about:

- 81% - the application of section 80 CC, which provides for the reduction by one-third of the sentence in case of plea bargaining agreements;

(b) Observations on the implementation of the article

The reviewing experts, while taking into account the spirit and rationale of the relevant provision of the UNCAC, noted the excessive percentage of corruption cases where plea-bargaining agreements were used and argued in favour of limiting the scope of application of article 80 CC to avoid instances of abuse in practicing this legal option.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review, but made a recommendation about its excessively frequent use, as they expressed serious concerns over this trend which may undermine the possibility of imposing sanctions that take into account the gravity of the offence (see article 30, paragraph 1 of the Convention).

(c) Challenges in implementation and recommendations

- While taking into account the spirit and rationale of article 30, paragraph 3, of the UNCAC, limit the scope of the application of the provisions of article 80 CC when examining corruption cases and make its application subject to the cooperation with the competent authorities in identifying other persons involved in the commission of corruption offences.

Paragraph 4 of article 30

4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Procedure Code of the Republic of Moldova no.122 of 14.03.2003:

Article 190. Provisional Release under judicial control or on bail

Provisional Release under judicial control or on bail may be ordered by the investigative judge or, as the case may be, by the court at the request of the prosecutor.

A person preventively arrested under the conditions of art. 185 or the attorney may request, during the entire course of a criminal proceeding, to be temporarily released under judicial control or on bail.

Article 191. Provisional Release under Judicial Control

(...)

(3) The provisional release under judicial control shall imply one or several obligations as follow:

- 1) not to leave the place of his/her domicile other than under the conditions set by the investigative judge or, as the case may be, by the court;
- 2) to notify the criminal investigative body or, as the case may be, the court about any change of domicile;
- 3) not to appear in specifically determined places;
- 4) to appear whenever summoned by the criminal investigative body or, as the case may be, by the court;
- 5) not to contact specific persons;
- 6) not to commit any actions preventing the finding of the truth in a criminal proceeding; 7) not to drive vehicles or not to practice a profession used by him/her in the commission of the crime;
- 8) to leave his/her passport with the investigative judge or the court. (...)

Article 192/1. Rules regarding the Release on Bail

(...)

(2) The amount of bail shall be set by the investigative judge or by the court ranging from 300 to 100,000 conventional units depending on the financial condition of the respective person and the seriousness of the crime.

(b) Observations on the implementation of the article

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 5 of article 30

5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.

(a) Summary of information relevant to reviewing the implementation of the article

Article 237. Contacts with the prison probation service and representatives of public associations

The prison administration favours contacts of convicts with prison probation service and representatives of public associations that can provide medical, legal or psychological assistance to convicts, and may contribute to their adaptation and social reintegration.

Article 302. Obligations of administration of the place of detention at the preparation of release

(1) In case of early release on parole, in order to prepare for release, with at least 6 months before expiry of the prison sentence, convicts serving their sentence under common conditions and do not have disciplinary sanctions are transferred to the socialization conditions.

(2) At least three months before the expiry of the prison sentence, administration of the place of detention informs local public administration authorities and territorial agency for employment about the forthcoming release of the convict, about education, ability to work and his specialty.

(3) The administration of the place of detention provides an explanation of the legislation in force on the use of labor, the employment mode and the right to benefit of an indemnity. If the convicted person wishes to be placed in employment through the National Agency for Employment of the place of residence, administration of the place of detention, within 5 days, sends the application to the regional office for employment . (...)

The Execution Code provides that the execution of the punishment by application of a fine, of the punishment consisting in deprivation of the right to hold certain positions or to carry out a certain activity, deprivation of the military degree, a special title, qualification (classification) and of state distinctions, punishment in form of unpaid community work, conditional suspension of punishment execution, conditional release from punishment before term, replacement of the non-enforced part of the punishment with a milder one, release from punishment of minors, postponement of the execution of the punishment for pregnant women and women with children under the age of 8, as well as of execution of punishment applied to legal entities are ensured by the execution agencies (art. 170 EC RM). The execution agency supervises and performs probation measures for people for which the punishment execution has been suspended, who have been conditionally released from punishment before term, including those related to obeying of restrictions established by court for the provided period (art.art.279, 281, 288). All decisions related to the execution of educational constraint measures are sent by the court to the Probation Service in the area of residence of the minor (art.311 EC RM).

(b) Observations on the implementation of the article

The reviewing experts noted that the Execution Code No.443 of 24 December 2004 provides for measures for the reintegration of convicted persons into society, including the conditional release from punishment taking into account the gravity of the offence. The execution agency supervises and performs probation measures for convicted persons who have been conditionally released from punishment before term.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 6 of article 30

6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Procedure Code of the Republic of Moldova no.122 of 14.03.2003: Article 200. Provisional Suspension from Office

(1) Provisional suspension from office consists of provisionally and justifiably prohibiting the accused/defendant from performing his/her official duties or practicing activities he/she deals with or practices in the interest of public service.

(2) The payment of the salary to a person suspended from office shall be interrupted; however, the duration of provisional suspension from office applied as a coercive procedural measure shall be included in the total length of service of the person.

(3) Provisional suspension from office shall be decided by the administration of the institution employing the suspect/accused in line with the law at the request of the prosecutor managing or, as the case may be, personally conducting the criminal investigation. The decision of the administration of the institution on suspension from office may be appealed to the investigative judge.

(b) Observations on the implementation of the article

The reviewing experts noted that the provisional suspension from office is foreseen in section 200 CPC and consists of provisionally and justifiably prohibiting the accused/defendant from performing his/her official duties or practicing activities he/she deals with or practices in the interest of public service.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Subparagraph 7 (a) of article 30

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(a) Holding public office;

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code of the Republic of Moldova no. 985-XV of 18.04.2002: Article 62. Categories of Punishments Applicable to Individuals

- (1) The following punishments may be applied to individuals who commit crimes: (...)
b) deprivation of the right to hold certain positions or to practice certain activities; (...)

Article 65. Deprivation of the Right to Hold Certain Positions or to Practice Certain Activities

- (1) The deprivation of the right to hold certain positions or to practice certain activities shall be the prohibition to hold a position or to practice an activity used by the convict to commit the crime.
(2) The deprivation of the right to hold certain positions or to practice certain activities may be set by the court for a term from 1 to 5 years, and in cases expressly provided in the Special part -for a term from 1 to 15 years.
(3) The deprivation of the right to hold certain positions or to practice certain activities may be applied as a complementary punishment also in cases when it is not provided as a punishment for the crimes set forth in the Special Part of this Code if, considering the nature of the crime committed by the guilty person while

exercising his/her official duties or practicing certain activities, the court shall find it impossible for the person to preserve his/her right to hold certain positions or to practice those activities.

(4) When applying the deprivation of the right to hold certain positions or to practice certain activities as a punishment complementary to a fine or to community service, its term shall be calculated from the date of final decision, and when it is applied as a punishment complimentary to imprisonment, its term shall be calculated from the moment the main punishment is executed.

(b) Observations on the implementation of the article

The reviewing experts noted that section 65 CC defines the conditions for the deprivation of the right to hold certain positions or to practice certain activities as a result of conviction. According to statistics provided by the Moldovan authorities, only 63% of persons convicted of corruption offences were also punished by dismissal and deprivation of the right to occupy certain positions (where this punishment was *ex lege* mandatory) .

The reviewing experts concluded that the Republic of Moldova has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

- Ensure effective implementation of section 65 CC on the deprivation of the right to hold certain positions or to practice certain activities as a result of conviction in corruption cases.

Subparagraph 7 (b) of article 30

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

...

(b) Holding office in an enterprise owned in whole or in part by the State.

(a) Summary of information relevant to reviewing the implementation of the article

See above under subparagraph 7(a) of article 30.

(b) Observations on the implementation of the article

The reviewing experts noted that section 65 CC defines the conditions for the deprivation of the right to hold certain positions or to practice certain activities as a result of conviction. According to the NAC Progress Report of July 2014, in 31%-35% of cases of conviction, the complementary punishment of deprivation of the right to hold a certain position or engage in certain activities was imposed, which means that two thirds of all persons convicted for corruption may return to the position they previously held.

The reviewingng experts concluded that the Republic of Moldova has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

- Ensure effective implementation of section 65 CC on the deprivation of the right to hold certain positions or to practice certain activities as a result of conviction in corruption cases.

Paragraph 8 of article 30

8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.

(a) Summary of information relevant to reviewing the implementation of the article

Law No.25 from 22.02.2008 on the civil servants' code of conduct: Article 6. Professionalism

The civil servant shall perform his/her duties with responsibility, and shall demonstrate competence, efficiency, promptness, and correctness.

The civil servant shall be accountable for the performance of his/her duties to his/her immediate superior, hierarchical superiors and the public authority he/she works for.

Article 7. Loyalty

The civil servant shall serve loyally the public authority he/she works for, as well as the legal interests of the citizens.

The civil servant shall abstain from any action or fact that can prejudice the image, prestige or legal interests of the public authority.

Article 13/1. Liability for the infringement of provisions of this law.

(1) Infringement of provisions from this law, except art. 11 para. (1) and art. 12, constitutes a misconduct to which will be applied the provisions of the legislation on public function and statute of the civil servant. (...)

(b) Observations on the implementation of the article

The reviewing experts noted that Law No. 25-XVI of 22 February 2008 on the “Code of conduct for civil servants” provides for the liability of civil servants for misconducts while performing duties that may give rise to the exercise of disciplinary powers.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 10 of article 30

10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Execution Code of the Republic of Moldova No.443 of 24.12.2004:

Article 237. Contacts with the prison probation service and representatives of public associations

The prison administration favours contacts of convicts with prison probation service and representatives of public associations that can provide medical, legal or psychological assistance to convicts, and may contribute to their adaptation and social reintegration.

Article 302. Obligations of administration of the place of detention at the preparation of release

(1) In case of early release on parole, in order to prepare for release, with at least 6 months before expiry of the prison sentence, convicts serving their sentence under common conditions and do not have disciplinary sanctions are transferred to the socialization conditions.

(2) At least three months before the expiry of the prison sentence, administration of the place of detention informs local public administration authorities and territorial agency for employment about the forthcoming release of the convict, about education, ability to work and his specialty.

(3) The administration of the place of detention provides an explanation of the legislation in force on the use of labour, the employment mode and the right to benefit of an indemnity. If the convicted person wishes to be placed in employment through the National Agency for Employment of the place of residence, administration of the place of detention, within 5 days, sends the application to the regional office for employment . (...)

(b) Observations on the implementation of the article

The reviewing experts noted that the Execution Code No.443 of 24 December 2004 provides for measures for the reintegration of convicted persons into society, including the conditional release from punishment taking into account the gravity of the offence. The execution agency supervises and performs probation measures for convicted persons who have been conditionally released from punishment before term.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Article 31. Freezing, seizure and confiscation

Subparagraph 1 (a) of article 31

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code of the Republic of Moldova No. 985-XV of 18.04.2002:

Article 106. Special confiscation

(1) Special confiscation is the forced and free transfer to the state of property or goods used in the commission of a crime or that resulted from crimes. If the goods used in the commission of a crime or that resulted from crimes no longer exist or cannot be found, their monetary equivalent shall be seized.

(2) The following goods shall be subject to special confiscation:

- a) goods resulting from an act set forth in this Code as well as other revenues that accrue from these goods, except for goods and revenues subject to return to their legal owners;
- b) goods used or intended for use in the commission of a crime, if they belong to the criminal;
- c) goods provided to determine the commission of a crime or to pay the criminal;
- d) goods obtained through the commission of a crime, if they are not to be returned to the injured person or not intended for his/her compensation;
- e) goods possessed contrary to legal provisions;
- f) goods converted or transformed, partially or integrally, from goods resulting from crimes and from revenues accrued from such goods;
- g) goods used or intended for financing terrorism.

(2¹) If the goods resulting or obtained through the commission of a crime and revenues accrued from such goods are added to the legally obtained goods, subject to confiscation shall be that part of such goods or their equivalent that corresponds to the value of goods resulting or obtained from the commission of the crime and of the revenues accrued from such goods.

(3) Special confiscation shall be applied to persons who commit acts set forth in this Code. Special confiscation may also be applied to goods specified in par. (2), which, however, belong to other persons who accepted them knowing about their illegal origin.

(4) Special confiscation may be applied even in cases when a criminal punishment is not set for the criminal.

(5) Special confiscation shall not be applied for crimes committed through a press agency or any other type of mass media.

Article 106/1. Extended confiscation

(1) Are subject to confiscation and other goods than those mentioned in art. 106 if the person is convicted for the offenses referred to in articles 158, 165, 206, 208/1, 208/2, 217-217/4, 218-220, 236-240, 243, 248-253, 256, 260/3, 260/4, 279, 280, 283, 284, 290, 292, 302, 324-329, 330/2, 332-335/1 and if the offense was committed for financial interest.

(2) Extended confiscation is ordered if the following conditions are met:

- a) the value of goods acquired by convicted person for 5 years before and after the commission of the offense, until the adoption of the sentence, substantially exceeds the legally acquired income;
- b) the court finds, based on the evidence presented in the case, that those assets derived from criminal activity as that provided in par. (1).

(3) When applying the provisions of par. (2) there shall be taken into account also the value of assets transferred by the convicted person or a third person to a family member, to legal entities over which the convicted person has control or to other persons who knew or should have known about the illegal acquisition of the assets.

(4) When determining the difference between lawful income and the value of acquired assets there will be taken into account the value of assets at the time of their acquisition and the expenses made by the convicted person, including persons referred to in par. (3).

(5) If the assets that are subject to confiscation no longer exist or were intermingled with property acquired from legitimate sources, instead of those assets shall be confiscated money and goods that cover their value.

(6) There also shall be confiscated assets and money that derived from the use of assets that are subject to confiscation, including assets into which the proceeds of criminal activities have been transformed or converted, as well as income or profits arising from those assets.

(7) The confiscation shall not exceed the value of the property acquired during the period referred to in par. (2) a), that exceeds the level of legitimate income of the convicted person.

Constitution

Article 46

Right to Private Property and Its Protection

.....

(3) No assets legally acquired may be seized. The legal nature of the acquirement of assets is presumed.

CONSTITUTIONAL COURT, DECISION No. 21 of 20 Oct 2011
“On Interpreting Article 46 para.(3) of the Constitution”(Notification no. 17b/2011)

In the sense of paragraph (3) of article 46 of the Constitution, the constitutional principle of presumption of illegal acquisition of property establishes general protection that applies to all persons, including equally and in the same amount to civil servants and other employees paid from the state budget.

(b) Observations on the implementation of the article

The reviewing experts noted that section 106, paragraph 1 CC defines confiscation as “the forced and free transfer to the state of property or goods used in the commission of a crime or that resulted from crimes”. Section 106, paragraph 2 CC provides that the following may be confiscated: goods resulting from a criminal act, as well as other revenues that accrue from these goods, except for goods and revenues subject to return to their legal owners; goods used or intended for use in the commission of a crime, if they belong to the criminal; goods provided to determine the commission of a crime or to pay the criminal; goods obtained through the commission of a crime, if they are not to be returned to the injured person or not intended for his/her compensation; goods possessed contrary to legal provisions; and goods converted or transformed, partially or integrally, from goods resulting from crimes and from revenues accrued from such goods.

Subject to confiscation is also property equivalent to the proceeds of crime when such proceeds can no longer be found in the convicted person’s assets. It may be ordered in the absence of conviction (section 106, paragraph 4 CC). This can be done in the event of a person’s death or incapacity or of an amnesty, but there are no explicit provisions in the CC to that effect. Confiscation may also be applied in administrative cases.

The reviewing experts welcomed the legislative developments in this area, especially the tool of extended confiscation, but noted the lack of information on the enforcement of the legal provisions and the fact that the volume of confiscated property is low in comparison with the number of convictions. Thus, they stressed that capacity building and extensive training is needed for all personnel involved in seizure and confiscation of assets, namely NAC investigators, prosecutors and judges.

The reviewing experts concluded that the Republic of Moldova has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

- Ensure enforcement of the domestic provisions on seizure and confiscation and provide for training for all personnel involved in seizure and confiscation of assets, namely NAC investigators, prosecutors and judges.

(d) Successes and good practices

- The fact that confiscation may be ordered in the absence of conviction (section 106, paragraph 4 CC).

Subparagraph 1 (b) of article 31

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

...

(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code of the Republic of Moldova no. 985-XV of 18.04.2002: Article 106. Special confiscation

See above.

(b) Observations on the implementation of the article

The reviewing experts noted that section 106, paragraph 1 CC defines confiscation as “the forced and free transfer to the state of property or goods used in the commission of a crime or that resulted from crimes”. Section 106, paragraph 2 CC provides that the following may be confiscated: goods resulting from a criminal act, as well as other revenues that accrue from these goods, except for goods and revenues subject to return to their legal owners; goods used or intended for use in the commission of a crime, if they belong to the criminal; goods provided to determine the commission of a crime or to pay the criminal; goods obtained through the commission of a crime, if they are not to be returned to the injured person or not intended for his/her compensation; goods possessed contrary to legal provisions; and goods converted or transformed, partially or integrally, from goods resulting from crimes and from revenues accrued from such goods.

Subject to confiscation is also property equivalent to the proceeds of crime when such proceeds can no longer be found in the convicted person’s assets. It may be ordered in the absence of conviction (section 106, paragraph 4 CC). This can be done in the event of a person’s death or incapacity or of an amnesty, but there are no explicit provisions in the CC to that effect. Confiscation may also be applied in administrative cases.

The reviewing experts welcomed the legislative developments in this area, especially the tool of extended confiscation, but noted the lack of information on the enforcement of the legal provisions and the fact that the volume of confiscated property is low in comparison with the number of convictions. Thus, they stressed that capacity building and extensive training is needed for all personnel involved in seizure and confiscation of assets, namely NAC investigators, prosecutors and judges.

The reviewing experts concluded that the Republic of Moldova has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

- Ensure enforcement of the domestic provisions on seizure and confiscation and provide for training for all personnel involved in seizure and confiscation of assets, namely NAC investigators, prosecutors and judges.

(d) Successes and good practices

- The fact that confiscation may be ordered in the absence of conviction (section 106, paragraph 4 CC).

Paragraph 2 of article 31

2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Procedure Code of the Republic of Moldova No.122 of 14.03.2003:

Article 126. Grounds for Seizing Objects or Documents

- (1) The criminal investigative body shall have the right to seize any objects or documents important for the criminal case if the evidence obtained or the operative investigative materials refer precisely to the place and the person holding them.
- (2) The seizure of documents containing information that is a state, trade, banking secret and the seizure of information on telephone conversations shall be allowed only upon the authorization of the investigative judge.
- (3) The seizure of objects or documents in other circumstances shall be based on a reasoned ruling by the criminal investigative body.

Article 202. Measures for securing the recovery of damages, eventual special confiscation of goods and for guaranteeing the execution of a punishment by fine

- (1) A criminal investigative body ex officio or the court, at the request of the parties, may undertake during a criminal proceeding measures for securing the recovery of damages caused by the crime, eventual special confiscation of goods and for guaranteeing the execution of a punishment by fine.
- (2) Measures for securing the recovery of damages, eventual special confiscation of goods and for guaranteeing the execution of a punishment by fine consist in seizing movable and real property in line with arts. 203-210.
(...)
- (3/1) Measures for securing the eventual special confiscation of goods can be taken over the assets of the suspect, accused, defendant that are listed in art. 106 par. (2) from the Criminal Code, as well as over the goods of other persons who accepted them knowing about their illegal origin.
(...)

Article 203. Seizure

Seizure of goods is a coercive procedural measure consisting of inventorying the goods and prohibiting the owner or possessor from disposing of those goods or, if necessary, to use such goods. Upon seizing bank accounts and deposits, any operations with those accounts or deposits shall be terminated. Seizure of goods shall be done to secure the recovery of damage caused by the crime, to secure a civil action and an eventual special confiscation of the goods or of their value, goods intended or used in the commission of a crime or resulting from the commission of the crime.

Article 204. Goods Subject to Sequestration

- (1) The goods of the suspect/accused/defendant, and of the civilly liable party may be subject to sequestration in cases provided for in the law irrespective of the nature of the goods and of the person keeping them.
- (2) Goods of the suspect/accused/defendant that are the common property of spouses or the family may be subject to sequestration. Should there be enough evidence that this common property was obtained or expanded by criminal means, all such property of the spouse or family or its largest part may be subject to sequestration.
- (3) Food products of the owner, the possessor of the goods and of their family members; fuel; specialty literature; professional tools; tableware and kitchen utensils regularly used and of low value and other objects and essential goods may not be subject to sequestration, even though they can be subsequently sequestered.
- (4) The goods of enterprises, institutions and organization except for the share of collective property that was illegally obtained and that may be separated without prejudicing their economic activity may not be subject to sequestration.

Article 205. Grounds for Sequestration

(1) Goods may be sequestered by a criminal investigative body or by the court only if the evidence collected supports the justified assumption that the suspect/accused/defendant or other persons keeping the goods subject to sequestration may conceal, damage or dispose of them.

(2) Sequestering goods shall be based on an order of a criminal investigative body and the authorization of an investigative judge or, as the case may be, on a court ruling. The prosecutor shall ex officio or at the request of a civil party address to the investigative judge a motion accompanied by the order of the criminal investigation body on the sequestration of goods. The investigative judge shall authorize in a resolution the sequestration of goods while the court shall decide on the requests of the civil party or of any other party, provided there is sufficient evidence to support the circumstances set forth in para. (1).

(3) The order of the criminal investigative body or, as the case may be, the court ruling on sequestering goods shall refer to material goods subject to sequestration to the extent such goods are established in the course of the investigation of the criminal case and the value of those goods is necessary and sufficient to secure a civil action.

(4) Should there be obvious doubt about the voluntary submission of goods to be sequestered, the investigative judge or, as the case may be, the court along with the authorization for sequestering material goods shall also authorize a search.

(5) In flagrant crimes or urgent cases, the criminal investigative body shall be entitled to sequester goods based on its own order without the authorization of the investigative judge who shall be mandatorily notified thereof immediately or not later than within 24 hours from the moment of this procedural action. Upon receipt of the respective information, the investigative judge shall verify the legality of the sequestration and confirm its results or shall declare it invalid. Should the sequestration be declared illegal, the investigative judge shall order the total or partial revocation of the sequestration.

Article 206. Assessing the Value of Goods to Be Sequestered

(1) The value of the goods to be sequestered shall be assessed based on the average market price in the respective locality, and no ratios shall be applied.

(2) The value of the goods sequestered to secure a civil action filed by a civil party or by the prosecutor shall not exceed the value of the civil action.

(3) By identifying the share of the goods to be sequestered of each of several accused persons or defendants or of several persons liable for their actions, the degree of these persons' participation in the commission of the crime shall be considered. The entire property of one of these persons may be sequestered to secure a civil action.

(b) Observations on the implementation of the article

The reviewing experts noted that the CPC provides for the seizure of criminal assets (sections 202-210). Seizure orders are intended to secure items for the purposes of the investigation. Section 126 sets out in general terms the right of the investigating authorities to seize assets that are important for conducting the criminal case. Sequestration is used to redress any damage and ensure the payment of fines as well as to confiscate property intended for, used for or resulting from the commission of an offence. It applies to movable and immovable assets, bank accounts and bank deposits. It is only carried out on the authorization of an investigating judge or by court order.

The reviewing experts welcomed the legislative developments in this area, especially the tool of extended confiscation, but noted the lack of information on the enforcement of the legal provisions and the fact that the volume of confiscated property is low in comparison with the number of convictions. Thus, they

stressed that capacity building and extensive training is needed for all personnel involved in seizure and confiscation of assets, namely NAC investigators, prosecutors and judges.

The reviewing experts concluded that the Republic of Moldova has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

- Ensure enforcement of the domestic provisions on seizure and confiscation and provide for training for all personnel involved in seizure and confiscation of assets, namely NAC investigators, prosecutors and judges.

Paragraph 3 of article 31

3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Procedure Code of the Republic of Moldova No.122 of 14.03.2003: Article 208. Storage of seized goods

(1) Seized goods, as a rule, shall be taken, except for real property and large objects. (2) Precious metals, precious stones and articles thereof, securities and bonds shall be transmitted for storage to the Main State Tax Inspectorate in the line with the set procedure; cash in national and foreign currency shall be deposited into the deposit account of the court competent to try the respective criminal case; other seized objects shall be sealed and kept by the body on whose request the goods were seized, or shall be transmitted for storage to a representative of the executive authority of the local public administration.

(3) Seized goods that were not taken shall be sealed and left for storage by the owner or possessor or an adult member of his/her family who receives an explanation of the liability provided in art. 251 of the Criminal Code for the appropriation, alienation, substitution or concealment of these goods and who signs the written receipt.

Execution Code of the Republic of Moldova no.443 of 24.12.2004: Article 293. Special confiscation.

(1) The court that, according to article 106 of the Criminal Code, ordered confiscation of goods used in the commission of a crime or resulting from the crime or their value sends its decision to the bailiff in whose territorial jurisdiction, established by the territorial chamber of bailiffs, are located the goods.

(2) The bailiff lifts and transmits the goods subject to confiscation to the competent tax authority, as established by the Government. In case of confiscating drugs, psychotropic substances and precursors, weapons and ammunition, the bailiff lifts and transmits them to the competent body.

(3) The bailiff, within five days, informs the court that issued the decision on lifting and transmission of confiscated objects to the competent bodies.

(b) Observations on the implementation of the article

The reviewing experts noted that there is no specialized body to deal with the management of frozen, seized or confiscated property. However, the tax authorities are responsible for registering, assessing the value of and selling seized and confiscated property. The storage of seized goods until selling them is entrusted to the Main State Tax Inspectorate (section 208 CPC). The reviewing experts highlighted the

necessity for the establishment of a specialized agency to deal with the administration of frozen, seized or confiscated property.

The reviewing experts concluded that the Republic of Moldova has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

- Consider the establishment of a specialized body for the administration of frozen, seized or confiscated property.

Paragraph 4 of article 31

4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code of the Republic of Moldova no. 985-XV of 18.04.2002: Article 106. Special confiscation

(...)

(2) The following goods shall be subject to special confiscation: (...)

f) goods converted or transformed, partially or integrally, from goods resulting from crimes and from revenues accrued from such goods;

(...)

Please provide examples of implementation

If available, please provide information (statistics, types of cases, outcome) on related cases or other processes. Please provide per annum figures, as available.

(b) Observations on the implementation of the article

The reviewing experts noted that section 106, paragraph 1 CC defines confiscation as “the forced and free transfer to the state of property or goods used in the commission of a crime or that resulted from crimes”. Section 106, paragraph 2 CC provides that the following may be confiscated: goods resulting from a criminal act, as well as other revenues that accrue from these goods, except for goods and revenues subject to return to their legal owners; goods used or intended for use in the commission of a crime, if they belong to the criminal; goods provided to determine the commission of a crime or to pay the criminal; goods obtained through the commission of a crime, if they are not to be returned to the injured person or not intended for his/her compensation; goods possessed contrary to legal provisions; and goods converted or transformed, partially or integrally, from goods resulting from crimes and from revenues accrued from such goods.

Subject to confiscation is also property equivalent to the proceeds of crime when such proceeds can no longer be found in the convicted person’s assets. It may be ordered in the absence of conviction (section 106, paragraph 4 CC). This can be done in the event of a person’s death or incapacity or of an amnesty, but there are no explicit provisions in the CC to that effect. Confiscation may also be applied in administrative cases.

The reviewing experts welcomed the legislative developments in this area, especially the tool of extended confiscation, but noted the lack of information on the enforcement of the legal provisions and the fact that the volume of confiscated property is low in comparison with the number of convictions. Thus, they stressed that capacity building and extensive training is needed for all personnel involved in seizure and confiscation of assets, namely NAC investigators, prosecutors and judges.

The reviewing experts concluded that the Republic of Moldova has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

- Ensure enforcement of the domestic provisions on seizure and confiscation and provide for training for all personnel involved in seizure and confiscation of assets, namely NAC investigators, prosecutors and judges.

(d) Successes and good practices

- The fact that confiscation may be ordered in the absence of conviction (section 106, paragraph 4 CC).

Paragraph 5 of article 31

5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code of the Republic of Moldova no. 985-XV of 18.04.2002: Article 106. Special confiscation

(...)

(2¹) If the goods resulting or obtained through the commission of a crime and revenues accrued from such goods are added to the legally obtained goods, subject to confiscation shall be that part of such goods or their equivalent that corresponds to the value to the value of goods resulting or obtained from the commission of the crime and of the revenues accrued from such goods.

(...)

(b) Observations on the implementation of the article

The reviewing experts noted that section 106, paragraph 1 CC defines confiscation as “the forced and free transfer to the state of property or goods used in the commission of a crime or that resulted from crimes”. Section 106, paragraph 2 CC provides that the following may be confiscated: goods resulting from a criminal act, as well as other revenues that accrue from these goods, except for goods and revenues subject to return to their legal owners; goods used or intended for use in the commission of a crime, if they belong to the criminal; goods provided to determine the commission of a crime or to pay the criminal; goods obtained through the commission of a crime, if they are not to be returned to the injured person or not intended for his/her compensation; goods possessed contrary to legal provisions; and goods converted or transformed, partially or integrally, from goods resulting from crimes and from revenues accrued from such goods.

Subject to confiscation is also property equivalent to the proceeds of crime when such proceeds can no longer be found in the convicted person's assets. It may be ordered in the absence of conviction (section 106, paragraph 4 CC). This can be done in the event of a person's death or incapacity or of an amnesty, but there are no explicit provisions in the CC to that effect. Confiscation may also be applied in administrative cases.

The reviewing experts welcomed the legislative developments in this area, especially the tool of extended confiscation, but noted the lack of information on the enforcement of the legal provisions and the fact that the volume of confiscated property is low in comparison with the number of convictions. Thus, they stressed that capacity building and extensive training is needed for all personnel involved in seizure and confiscation of assets, namely NAC investigators, prosecutors and judges.

The reviewing experts concluded that the Republic of Moldova has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

- Ensure enforcement of the domestic provisions on seizure and confiscation and provide for training for all personnel involved in seizure and confiscation of assets, namely NAC investigators, prosecutors and judges.

(d) Successes and good practices

- The fact that confiscation may be ordered in the absence of conviction (section 106, paragraph 4 CC).

Paragraph 6 of article 31

6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

(a) Summary of information relevant to reviewing the implementation of the article

See above.

(b) Observations on the implementation of the article

The reviewing experts noted that section 106, paragraph 1 CC defines confiscation as "the forced and free transfer to the state of property or goods used in the commission of a crime or that resulted from crimes". Section 106, paragraph 2 CC provides that the following may be confiscated: goods resulting from a criminal act, as well as other revenues that accrue from these goods, except for goods and revenues subject to return to their legal owners; goods used or intended for use in the commission of a crime, if they belong to the criminal; goods provided to determine the commission of a crime or to pay the criminal; goods obtained through the commission of a crime, if they are not to be returned to the injured person or not intended for his/her compensation; goods possessed contrary to legal provisions; and goods converted or transformed, partially or integrally, from goods resulting from crimes and from revenues accrued from such goods.

Subject to confiscation is also property equivalent to the proceeds of crime when such proceeds can no longer be found in the convicted person's assets. It may be ordered in the absence of conviction (section

106, paragraph 4 CC). This can be done in the event of a person's death or incapacity or of an amnesty, but there are no explicit provisions in the CC to that effect. Confiscation may also be applied in administrative cases.

The reviewing experts welcomed the legislative developments in this area, especially the tool of extended confiscation, but noted the lack of information on the enforcement of the legal provisions and the fact that the volume of confiscated property is low in comparison with the number of convictions. Thus, they stressed that capacity building and extensive training is needed for all personnel involved in seizure and confiscation of assets, namely NAC investigators, prosecutors and judges.

The reviewing experts concluded that the Republic of Moldova has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

- Ensure enforcement of the domestic provisions on seizure and confiscation and provide for training for all personnel involved in seizure and confiscation of assets, namely NAC investigators, prosecutors and judges.

(d) Successes and good practices

- The fact that confiscation may be ordered in the absence of conviction (section 106, paragraph 4 CC).

Paragraph 7 of article 31

7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Procedure Code of the Republic of Moldova no.122 of 14.03.2003: Article 41. Competence of the Investigative Judge

The investigative judge shall secure judicial control over a criminal investigation by: (...)

3) authorizing a search; bodily search; seizure of goods; lifting of objects containing state, trade or banking secrets, or exhumation;

Article 128. Procedure for searching or lifting objects and documents

(...)

(5) During the performance of a search, upon presenting the order, the representative of the criminal investigative body shall request the submission of the objects and documents specified in the order. Financial institutions may not invoke banking secrets as a reason to refuse to submit the documents requested. (...)

Law No. 190-XVI of 26.07.2007 on the prevention and combating of money laundering and the financing of terrorism:

Article 12. Limitation of the effect of secrets defended by law

(...)

(2) The transmission by the reporting entities of information (documents, materials, other data) to the Office for Prevention and Fight against Money Laundering, to criminal investigation authorities, prosecutors' offices, courts and other competent authorities, in cases provided by this law, shall not be qualified as disclosure of the commercial, banking or professional secret. (3) The legislative provisions on commercial, banking or professional secret, cannot impede the agencies mentioned under paragraph (2) of this article, with the scope to execute this law, from receiving or withdrawing the information (documents, materials, other data) about financial and economic activities and transactions of natural or legal persons.

By Law no.179/2014, article 14 of Law No.190/2007 was supplemented with the following new provision:

“(1³) Administrative court or, where appropriate, the appeal court may suspend the freezing decision of suspicious transaction or activity of the Office for Prevention and fight against money laundering and the resolution of the instruction judge on the prolongation of freezing term, only of applicant's request and only if the following conditions are met:

- a) the reasons given by the applicant as support to the appeal are relevant and well founded;
- b) the applicant provides arguments that dispute circumstances requires urgent arrangement for suspension of attacked decision in order to avoid serious and irreparable damage to the interest of the applicant
- c) the applicant's potential damage exceeds the public interest pursued by the attacked decision.”

(b) Observations on the implementation of the article

The reviewing experts took into account the legal framework and mechanisms available within the domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

As reported by the national authorities, the suspension existed and acted only in relation to money-laundering and terrorism financing. Law No. 179/2014 removed the “automatic” suspension and supplemented article 14 of Law No.190/2007 with a new provision making such suspension subject to specific conditions.

In case of other crimes (including the corruption crimes), pursuant to the provision of article 203 paragraph (1) from the Criminal Procedure Code “...*Upon seizing bank accounts and deposits, any operations with those accounts or deposits shall be terminated.*”

Concerning the FIU's ability to freeze transactions, the reviewing experts took into account the legislative amendment reported. It should be mentioned that the new provision was introduced after the country visit and therefore it was not possible for the reviewers to review its application. However, the reviewers recommended that the national authorities monitor the application of section 14 of Law No. 190/2007, as supplemented by Law No.179/2014, concerning the suspension of freezing of accounts on specific conditions, in order to ensure that the interpretation and application of the provision does not hamper the effectiveness of investigation of crimes that fall under the remit of UNCAC.

The reviewing experts concluded that the Republic of Moldova has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

- Monitor the application of article 14 of Law No. 190-XVI/2007, as supplemented by Law No.179/2014, concerning the suspension of freezing of accounts on specific conditions, in order to

ensure that the interpretation and application of the provision does not hamper the effectiveness of investigation of crimes falling under the remit of the UNCAC.

Paragraph 8 of article 31

8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code of the Republic of Moldova No. 985-XV of 18.04.2002:

Article 106/1. Extended confiscation

(1) Are subject to confiscation and other goods than those mentioned in art. 106 if the person is convicted for the offenses referred to in articles 158, 165, 206, 208/1, 208/2, 217-217/4, 218-220, 236-240, 243, 248-253, 256, 260/3, 260/4, 279, 280, 283, 284, 290, 292, 302, 324-329, 330/2, 332-335/1 and if the offense was committed for financial interest.

(2) Extended confiscation is ordered if the following conditions are met:

a) the value of goods acquired by convicted person for 5 years before and after the commission of the offense, until the adoption of the sentence, substantially exceeds the legally acquired income;

b) the court finds, based on the evidence presented in the case, that those assets derived from criminal activity as that provided in par. (1).

(3) When applying the provisions of par. (2) there shall be taken into account also the value of assets transferred by the convicted person or a third person to a family member, to legal entities over which the convicted person has control or to other persons who knew or should have known about the illegal acquisition of the assets.

(4) When determining the difference between lawful income and the value of acquired assets there will be taken into account the value of assets at the time of their acquisition and the expenses made by the convicted person, including persons referred to in par. (3).

(5) If the assets that are subject to confiscation no longer exist or were intermingled with property acquired from legitimate sources, instead of those assets shall be confiscated money and goods that cover their value.

(6) There also shall be confiscated assets and money that derived from the use of assets that are subject to confiscation, including assets into which the proceeds of criminal activities have been transformed or converted, as well as income or profits arising from those assets.

(7) The confiscation shall not exceed the value of the property acquired during the period referred to in par. (2) a), that exceeds the level of legitimate income of the convicted person.

Constitution

Article 46

Right to Private Property and Its Protection

.....

(3) No assets legally acquired may be seized. The legal nature of the acquirement of assets is presumed.

CONSTITUTIONAL COURT, DECISION No. 21 of 20 Oct 2011

“On Interpreting Article 46 para.(3) of the Constitution”(Notification no. 17b/2011)

In the sense of paragraph (3) of article 46 of the Constitution, the constitutional principle of presumption of illegal acquisition of property establishes general protection that applies to all persons, including equally and in the same amount to civil servants and other employees paid from the state budget.

(b) Observations on the implementation of the article

The reviewing experts noted that section 106/1 CC regulates extended confiscation, which is generally defined as “confiscation not only of assets associated with the specific crime, but of additional assets which the court determines are the proceeds of other, unspecified crimes”. Through extended confiscation, the state takes away those assets, which go beyond the legal means and which can be generally attributed to illicit sources. The time-limit for assessing the lifestyle of the defendant is extended to five years prior and after the commission of crime, before adopting the judgment”. Section 106/1 CC establishes a rebuttable presumption of the illicit origin of the property of the defendant which does not contradict article 46, paragraph 3, of the Constitution.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

(c) Successes and good practices

- The legal option of extended confiscation as foreseen in the CC (section 106/1).

Paragraph 9 of article 31

9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code of the Republic of Moldova no. 985-XV of 18.04.2002: Article 106. Special confiscation

(...)

(3) Special confiscation shall be applied to persons who commit acts set forth in this Code. Special confiscation may also be applied to goods specified in par. (2), which, however, belong to other persons who accepted them knowing about their illegal origin.

(...)

Criminal Procedure Code of the Republic of Moldova no.122 of 14.03.2003:

Article 202. Measures for securing the recovery of damages, eventual special confiscation of goods and for guaranteeing the execution of a punishment by fine

(...)

(3/1) Measures for securing the eventual special confiscation of goods can be taken over the assets of the suspect, accused, defendant that are listed in art. 106 par. (2) from the Criminal Code, as well as over the goods of other persons who accepted them knowing about their illegal origin.

(...)

(b) Observations on the implementation of the article

The reviewing experts noted that section 106, paragraph 3 CC authorizes the confiscation of property that belongs to third parties and has been used for or resulted from the commission of an offence, but only when the third parties are aware of the illegal nature of the property.

The reviewing experts concluded that the Republic of Moldova has, in general terms, implemented adequately the provision under review, reiterating, however, the lack of information on the enforcement of

the legal provisions on confiscation, including protection of bona fide third parties in confiscation proceedings.

Article 32. Protection of witnesses, experts and victims

Paragraph 1 of article 32

1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.

(a) Summary of information relevant to reviewing the implementation of the article

Law No. 105 of 16.05.2008 on the protection of witnesses and other participants in criminal procedure:

Chapter I

GENERAL PROVISIONS

Article 1. Scope

The present Law provides for ensuring the safety of participants in criminal proceedings, whose lives, bodily integrity, freedom or property are at risk on account of information that they have and accepted to provide to the judicial bodies and which amounts to conclusive evidence of serious, particularly serious or exceptionally serious crimes.

Article 2. Key notions

(1) For the purpose of the present Law, the following key notions shall mean:

1) *protected person* – a person who has entered into a protection agreement under the terms of the present Law and who has one of the following procedural statuses:

a) a witness in a criminal case that concerns a serious, particularly serious or exceptionally serious crime and that is in the criminal investigation or trial phase, as per Art.90 of the Code of Criminal Procedure;

[Art.2(1)§1a amended by LP99 of 12 June 2014, OG174-177/04 Jul.14 art.407]

b) an aggrieved party in a criminal case that concerns a serious, particularly serious or exceptionally serious crime and that is in the criminal investigation or trial phase, as per Art.59 of the Code of Criminal Procedure;

[Art.2(1)§1b amended by LP99 of 12 June 2014, OG174-177/04 Jul.14 art.407]

c) a victim in a criminal case that concerns a serious, particularly serious or exceptionally serious crime and that is in the criminal investigation or trial phase, and who accepts to cooperate before the commencement of criminal proceedings;

[Art.2(1)§1c amended by LP99 of 12 June 2014, OG174-177/04 Jul.14 art.407]

d) a suspect, accused or indictee who accepts to give testimony that may represent conclusive evidence of a serious, particularly serious or exceptionally serious crime, or to provide information about preparations for serious, particularly serious or exceptionally serious crimes;

e) a convict serving a custodial sentence or life sentence who accepts to give testimony that may represent conclusive evidence of a serious, particularly serious or exceptionally serious crime, or to provide information about preparations for serious, particularly serious or exceptionally serious crimes;

[Art.2(1)§1e amended by LP99 of 12 June 2014, OG174-177/04 Jul.14 art.407]

f) a person who doesn't have any procedural status, but who accepts to provide information about preparations for

serious, particularly serious or exceptionally serious crimes.

Note. Upon the request of the persons referred to at subsections a) through f), the status of protected person may be also extended to their close relatives and family members, under the conditions of the present Law;

2) *state of danger* – a state experienced by the persons referred to in §1, whose lives, bodily integrity, freedom or property are at risk as a result of their providing information or accepting to cooperate within criminal proceedings;

3) *acceptance to cooperate* – the consent of the persons referred to in §1 to provide information that represents conclusive evidence of serious, particularly serious or exceptionally serious crimes or other information before the commencement of criminal proceedings;

4) *witness program* - a set of protective measures applied by the body authorized with the protection of witnesses, with the consent of the protected person, for the purpose of protecting the life, bodily integrity and health thereof, under the conditions of the present Law, taking into account the personality of the witness, the information that he or she possesses, and the real or potential threat;

5) *protective measures* – the measures referred to at Art.14 and 14¹, applied as part of the witness protection exclusively by the body competent with the protection of witnesses;

[Art.2(1)§5 amended by LP99 of 12 June 2014, OG174-177/04 Jul.14 art.407]

6) *urgent measures* - specific activities carried out by the criminal investigation body, by the prosecutor conducting the case or the hierarchically superior prosecutor, by the administration of the detention facility or, where appropriate, by the body authorized with the protection of witnesses, as soon as it is discovered that the person is in a state of danger;

7) *protection agreement* - a confidential written agreement between the protected person and the body authorized with witness protection regarding the measures to be taken in order to protect the person, regarding the duties of the parties and the circumstances for the termination of witness protection;

8) *maximum security of confidentiality* - ensuring of security of information in conformity with Law 245-XVI from 27 November 2008 on State Secret;

[Art.2(1)§8 amended by LP99 of 12 June 2014, OG174-177/04 Jul.14 art.407]

[Art.2(1)§8 amended by LP66 of 7 April 2011, OG110-112/08 Jul.11 art.299]

9) *close relatives* - the persons listed in Art.6 §41 of the Code of Criminal Procedure;

10) *family members* - direct relatives, relatives by affinity, legal guardian, custodian, ward, fiance, fiancée, domestic partners;

11) *order on the application of protective measures* - an order by the prosecutor or a court decision to apply measures to protect participants in proceedings, issued under the terms of the Code of Criminal Procedure;

12) *decision by the competent body* - an order issued by the head of the body authorized with the protection of witnesses.

[Art.2(1)§12 amended by LP99 of 12 June 2014, OG174-177/04 Jul.14 art.407]

13) *protected person in detention* – a person placed under arrest, in remand, or who is serving a custodial or life sentence and who has entered into a protection agreement under the present Law;

[Art.2(1)§13 amended by LP99 of 12 June 2014, OG174-177/04 Jul.14 art.407]

14) *detention facility* – a place where persons are held while under arrest, in remand, or serving a custodial or life sentence;

[Art.2(1)§14 amended by LP99 of 12 June 2014, OG174-177/04 Jul.14 art.407]

15) administration of the detention facility – the managing body of the detention facility.

[Art.2(1)§15 amended by LP99 of 12 June 2014, OG174-177/04 Jul.14 art.407]

(2) Other notions and expressions used in the present Law are equivalent in meaning with the notions and expressions used in the Criminal Code, the Code of Criminal Procedure and the Code of Enforcement.

Article 3. Grounds for placing participants in criminal proceedings into witness protection

[Art.3 title reworded by LP99 of 12 June 2014, OG174-177/04 Jul.14 art.407]

The following are the grounds for including participants in criminal proceedings into a witness protection program:

[Art.3 paragraph reworded by LP99 of 12 June 2014, OG174-177/04 Jul.14 art.407]

a) the existence of a state of danger experienced by the persons referred to in Art.2§1);

b) the act of giving testimony or accepting to give testimony regarding a serious, particularly serious or exceptionally serious crime, or of accepting to provide information prior to the commencement of the criminal proceedings;

c) testimony that amounts to conclusive evidence that helps to detect crimes or objectively judge a criminal case that concerns a serious, particularly serious or exceptionally serious crime.

[Art.3c) amended by LP99 of 12 June 2014, OG174-177/04 Jul.14 art.407]

Article 5. Body authorized with the protection of witnesses

The body authorized with the protection of witnesses and other participants in criminal proceedings works as a subdivision of the Ministry of the Interior.

Article 6. Duties of the competent body

(1) The competent body has the following duties:

- a) ensures the enforcement of decisions to apply protective measures, issued in conformity with Art.215(2) of the Code of Criminal Procedure;
- b) issues decisions to apply protective measures;
- c) identifies necessary and adequate solutions to apply optimal protective measures;
- d) develops, jointly with the protected person or with his/her legal representative under the conditions of Art. 23(2), the protection program;
[Art.6(1)d) amended by LP99 of 12 June 2014, OG174-177/04 Jul.14 art.407]
- e) prepares the protection agreement, which will be signed by the head of the competent body and the protected person or his/her legal representatives under the conditions of Art. 23(2);
[Art.6(1)e) amended by LP99 of 12 June 2014, OG174-177/04 Jul.14 art.407]
- f) organizes a database of its own for the persons in witness protection and the applied protective measures, ensuring a maximum security of confidentiality;
- g) applies protective measures according to the protection program;
- h) carries out other actions provided in the protection program;
- i) applies, when appropriate, urgent measures or assistance measures set out in the present Law;
- j) manages funds provided from the State Budget and from foreign sources that are necessary for implementing the protection program;
- k) carries out special investigative measures in conformity with the provisions of the legislation in force;
[Art.6(1)k) introduced by LP99 of 12 June 2014, OG174-177/04 Jul.14 art.407]
- l) verifies, at any time, how the decisions on the application of protective measures are being executed and how the urgent measures and assistance measures are being applied by the administration of detention facilities under the conditions of art. 9.
[Art.6(1)l) introduced by LP99 of 12 June 2014, OG174-177/04 Jul.14 art.407]

(2) If there are no other ways to discharge their duties, the competent body may change the identity of its employees or its immovable property and moveable assets used by the employees in the process of implementing certain measures, in conformity with the present Law.

(3) The competent body cooperates with witness protection authorities from other countries, and ensures continuous training for its employees.

(4) The competent body issues departmental acts concerning the management of databases, modalities of ensuring maximum security of confidentiality, and other acts for an effective application of protective measures. The departmental acts issued by the competent body must be in agreement with the unanimously recognized relevant international documents, the Constitution of the Republic of Moldova, and the Code of Criminal Procedure.

Chapter V

PROTECTION PROGRAM

Article 23. Conditions for placement into protection program

(1) A person is placed into a protection program if all of the following conditions are met:

- a) the person submits a request in writing;
- b) the person has one of the statuses listed in art.2(1)§1;
- c) the person experiences a state of danger as defined in Art.2(1)§2;
- d) the prosecutor or the court issues a reasoned order to apply protective measures in the manner prescribed by art.215 of the Code of Criminal Procedure.

(2) Placing a minor or a person with limited legal capacity into a protection program is conditioned on the written consent of their legal representatives.

Article 24. Initiation of the procedure of placement into protection

(1) A person who experiences a state of danger may submit to the prosecutor conducting the case or, where appropriate, to the court a request to be included into a protection program.

(2) Upon examining the request in a confidential manner, the prosecutor or, as the case may be, the court shall issue an order to apply protective measures.

(3) After ascertaining a state of danger on his/her/its own initiative, the prosecutor or, as the case may be, the court has a duty to examine the case in a confidential manner, with the participation of the person at risk, issuing an order to apply protective measures.

(4) If the prosecutor refuses to examine a request for placement into protection or to issue an order to apply protective measures, the person may challenge the refusal at the investigative judge.

(5) If the court refuses to examine the request or to issue an order to apply protective measures, the person may challenge the refusal according to Art.453(2) of the Code of Criminal Procedure.

(6) The prosecutor or the court may recommend the competent body to apply a particular protective measure.

Article 25. Order on the application of protective measures

(1) An order to apply protective measures issued by the prosecutor or the court shall contain the following:

a) information about the person in conformity with Art.358(1) of the Code of Criminal Procedure, which shall apply in the corresponding manner. In addition to the information required by Art.358(1), the criminal record shall also be attached;

b) reference to the written request from the person to be protected;

c) the person's procedural status or the lack of it;

d) description of the case undergoing criminal investigation or in the trial phase;

e) the information and accounts provided by the person, their probative conclusiveness, the circumstances in which the person came to know the information or have the evidence to be provided;

f) information to prove the state of danger;

g) estimated possibilities of recovering the damage caused by the offense;

h) information on the person's financial standing;

I) recommendation to apply a particular protective measure, where applicable.

(2) The prosecutor or the court may include further relevant information in the order, as the case may require.

(3) The order to apply protective measures shall be immediately submitted to the competent body or within 24 hours the latest, in the manner prescribed by Art.215 of the Code of Criminal Procedure, and it shall be subject to mandatory execution.

Article 26. Decision by the competent body

(1) A decision by the competent body shall contain:

a) the date of issuing the decision to apply protective measures;

b) information on the person included into the program;

c) information about the factual content of the case undergoing criminal investigation or being in the trial phase;

d) the potential threat faced by the person in protection;

e) the protective measures to be applied.

(2) The decision to apply protective measures to protect a person experiencing a state of danger shall be issued by the head of the competent body within reasonable time, but no later than 30 days from the date of issuing the order to apply protective measures.

(3) If the order to apply protective measures fails to meet the requirements laid down in the present Law, the head of the competent body shall issue a decision to request remediation. The body that issued the order shall comply within 3 days.

Article 27. Protection agreement

(1) Within 3 days from the date of issuing the decision, the head of the competent body shall conclude an agreement in writing to protect the person at risk.

(2) If the protected person's family members are also at risk, an agreement shall be signed with each person separately.

(2¹) If the person at risk or his/her family member refuses to sign the protection agreement, he/she shall provide reasons in writing.

[Art.27(2¹) introduced by LP99 of 12 June 2014, OG174-177/04 Jul.14 art.407]

(3) Once the agreement is signed, the person gains the status of a protected person.

(4) The protection agreement for a minor shall be signed by the minor and his/her legal representative. If the legal representative refuses to sign or, in certain cases, is not able to sign, the agreement shall be signed by a representative of the guardian authority. If the legal representative or the representative of the guardian raises objections to the content of the agreement, including to a protective measure, such agreement shall not be signed until contradictions are removed. In such cases, the competent body may refer the order on the application of protective measures to the prosecutor or the court. In all cases, the minor's interest shall have priority.

(5) A protection agreement shall contain:

a) general provisions about the parties to the agreement, the date and place of signature;

b) the protective measures applied, their conditions and duration;

c) the rights and obligations of the protected person as set out by the present Law;

[Art.27(5)c) amended by LP99 of 12 June 2014, OG174-177/04 Jul.14 art.407]

d) the obligations of the competent body;

e) information about the contact person or persons assigned and the conditions in which they will work;

f) a clause stating that the agreement is done in a single copy, which shall be kept by the competent body in a manner of maximum security of confidentiality.

(6) If new elements occur in the process of the criminal investigation or trial in addition to those contained in the initial order, a new order may be issued under the present Law which can lead to the modification of the protection agreement or the creation of a new one.

Article 28. Protection program

(1) A protection program shall follow confidential techniques and methods developed by the competent body.

(2) The documents concerning the placement of a person into a protection program shall be kept in a manner of maximum security of confidentiality.

Article 29. Termination of a protection program

(1) A protection program shall be terminated in one of the following situations:

a) the protected person submits a request in writing;

b) the person refuses to give testimony during the criminal proceedings;

c) the person gives false testimony during the criminal proceedings, as confirmed by a final court decision convicting the person of perjury;

d) the protected person fails to observe the obligations set out in the protection agreement;

e) the circumstances disappeared that caused the placement of the person into protection;

f) the protected person died.

(2) In the cases listed in par.(1), the protection program shall be terminated by decision of the prosecutor or the court.

(3) In the cases referred to in par.(1) a), d), e) and f), the protection program may be terminated by decision of the head of the competent body.

[Art.29(3) amended by LP99 of 12 June 2014, OG174-177/04 Jul.14 art.407]

(4) At once or within 3 days after the adoption of the decision to terminate the program, the prosecutor or the court shall communicate this to the competent body. In the situation referred to in par.(1)f), the program can further apply to the family members depending on the circumstances of the case.

Chapter VI

SUPERVISION OF IMPLEMENTATION OF PROTECTIVE MEASURES

Article 30. Prosecutorial supervision

(1) The Prosecutor General and his/her specially authorized deputies shall supervise the enforcement of laws by the bodies authorized to apply urgent measures, protective measures and assistance measures.

(2) The prosecutor vested with supervisory authority has the right to access information that represents state secret, granted in the manner prescribed by the law.

Article 31. Supervision by the investigative judge

(1) In the case referred to in Art.24(4) and in other cases when the person believes that his/her rights have been violated, he/she may lodge a complaint with the investigative judge within 10 days.

(2) The complaint shall be examined within 10 days, in a confidential manner and in conformity with Art.313 of the Code of Criminal Procedure.

(3) The decision of the investigative judge shall be binding for the body authorized to apply urgent measures, protective measures and assistance measures.

(b) Observations on the implementation of the article

The reviewing experts noted that the Republic of Moldova has in place witness protection measures foreseen in both the CPC and Law No. 105 of 16.05.2008 on the protection of witnesses and other participants in criminal procedure. The latter provides for ensuring the safety of witnesses and other participants in criminal proceedings, whose lives, bodily integrity, freedom or property are at risk on account of information that they have and accepted to provide to the judicial bodies and which amounts to conclusive evidence of serious, particularly serious or exceptionally serious crimes. The Law includes specific provisions on the conditions for placement into the witness protection programme and on specific protective measures that can be implemented under the programme. The reviewing experts recommended the inclusion of corruption offences in the category of at least serious crimes (see article 16, paragraph 4 CC) with a view to making the provisions of Law No. 105 applicable to them as well.

The reviewing experts concluded that the Republic of Moldova has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

- Include all corruption offences in the category of at least “serious crimes” (section 16, paragraph 4 CC) with a view to making the provisions of Law No. 105 of 16 May 2008 on the protection of witnesses and other participants in criminal procedure applicable to them as well.

Subparagraph 2 (a) of article 32

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(a) Summary of information relevant to reviewing the implementation of the article

Law No. 105 of 16.05.2008 on the protection of witnesses and other participants in criminal procedure:

Article 15. Protection of identity data of the protected persons

(1) Protection of identity data of the protected persons shall be ensured by not disclosing information concerning such data.

(2) The decision to apply protective measures and the protection agreement shall stipulate the proportion of non-disclosure of identity data and, where appropriate, a period of application of the measures.

Article 17. Change of place of residence, work or study

(1) Changing the place of residence involves relocating a person to take up permanent residence in another town or

village in the Republic of Moldova. Based on intergovernmental agreements on international assistance in criminal justice matters, a person may settle in a foreign country.

[Art.17(2) repealed by LP99 of 12 June 2014, OG174-177/04 Jul.14 art.407]

(3) If need be, the competent body may propose to the person to change his or her place of work or study in conformity with the legislation in force. If such a measure is applied, the competent body has a duty to help the person identify and secure a new job or place of study.

(4) The terms of changing the place of residence, work or study shall be laid down in the protection agreement.

Article 18. Change of identity, change of physical appearance

(1) Changing identity involves changing personal data and, where appropriate, involves changes of social, legal, ethnic and other nature. The protected person or his/her legal representative under Art.23(2) shall be the one to determine the degree of identity changes.

[Art.18(1) amended by LP99 of 12 June 2014, OG174-177/04 Jul.14 art.407]

(2) The new identity may not influence in any way the person's status or his/her social, cultural and political rights.

(3) After the period of the protective measure has expired, the person may take up back his or her old identity or keep the new one..

(4) The protected person may not restore his/her initial identity if in his/her new identity he/she has significantly changed the status of a third party by marriage, maternity, paternity etc.

(5) Identity may be changed only if the protected person owes no obligations to third parties. If it has been found after the application of such measure that the protected person owes obligations to third parties, which he/she knowingly failed to tell the competent body about, a time limit shall be imposed for the person to settle the obligations. If the person refuses to settle said obligations, alternative protective measures shall be applied for him or her.

(6) If the protected person has committed an offense before the identity change, the competent body, upon the request of the court, shall ensure his/her court appearances court and the use of the initial identity, and the court may decide to apply special means for hearing the person in conformity with Art.110 of the Code of Criminal Procedure.

(7) Changing physical appearance involves performing surgical or other interventions accepted by the protected person or his/her legal representative under Art.23(2), for the purpose of altering some visible parts of the body. An appearance change must not affect the cultural and religious convictions of the persons. It shall be used only when all the other measures have been deemed inefficient and only with the explicit consent of the protected person or his/her legal representative under Art.23(2).

[Art.18(7) amended by LP99 of 12 June 2014, OG174-177/04 Jul.14 art.407]

Article 19. Installation of alert systems

Installing an alert system involves equipping a place of residence or other rooms with devices to promptly alert the competent body and/or the police about an imminent threat to which the person is exposed.

Article 20. Change of telephone number

(1) Changing a telephone number shall be done by changing the fixed-line or mobile telephone number of the protected person.

(2) In case of a telephone number change, the name of the protected person may be erased, by decision of the competent body, from the lists of the telephone service provide.

Criminal Procedure Code of the Republic of Moldova no.122 of 14.03.2003:

Title VI MEASURES OF CONFIDENTIALITY, PROTECTION AND OTHER PROCEDURAL MEASURES

Chapter II PROTECTIVE MEASURES

Article 215. Obligation of the criminal investigative body and the court to undertake measures ensuring the security of participants in the proceeding and other persons

(1) Should there be sufficient grounds to consider that the injured party, a witness or other persons participating in the proceeding or the members of their families or their close relatives may be or have been threatened with death, violence, the damage or destruction of their goods or with other illegal acts, the criminal investigative body and the court shall be obliged to undertake the measures provided in the legislation to protect the lives, health, honour, dignity and the goods of these persons and to identify the persons guilty of making the threats and subject them to liability.

(2) A request for protection of the persons specified in para. (1) shall be filed and settled by the criminal investigative body or by the court in a confidential manner. A judgment on providing state protection shall

be immediately transmitted to the body vested with such authority by the Law on the protection of witnesses and other participants in criminal procedure.

(b) Observations on the implementation of the article

The reviewing experts noted that the Republic of Moldova has in place witness protection measures foreseen in both the CPC and Law No. 105 of 16.05.2008 on the protection of witnesses and other participants in criminal procedure. The latter provides for ensuring the safety of witnesses and other participants in criminal proceedings, whose lives, bodily integrity, freedom or property are at risk on account of information that they have and accepted to provide to the judicial bodies and which amounts to conclusive evidence of serious, particularly serious or exceptionally serious crimes. The Law includes specific provisions on the conditions for placement into the witness protection programme and on specific protective measures that can be implemented under the programme. The reviewing experts recommended the inclusion of corruption offences in the category of at least serious crimes (see article 16, paragraph 4 CC) with a view to making the provisions of Law No. 105 applicable to them as well.

The reviewing experts concluded that the Republic of Moldova has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

- Include all corruption offences in the category of at least “serious crimes” (section 16, paragraph 4 CC) with a view to making the provisions of Law No. 105 of 16 May 2008 on the protection of witnesses and other participants in criminal procedure applicable to them as well.

Subparagraph 2 (b) of article 32

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

...

(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.

(a) Summary of information relevant to reviewing the implementation of the article

Law No. 105 of 16.05.2008 on the protection of witnesses and other participants in criminal procedure:

Article 16. Hearing employing special means

Hearing with the employment of special means shall be done pursuant to Art.110 and 110¹ of the Code of Criminal Procedure.

[Art.16 amended by LP99 of 12 June 2014, OG174-177/04 Jul.14 art.407]

Criminal Procedure Code of the Republic of Moldova no.122 of 14.03.2003:

Article 110. Special methods for hearing a witness and for his/her protection

(1) Should there be sound reasons to consider that the life, corporal integrity or freedom of a witness or of his/her close relatives are in danger due to his/her testimony in a criminal case on a serious, especially serious or exceptionally serious crime and if there are the necessary technical means, the investigative judge

or, as the case may be, the court may allow that the respective witness be heard via the technical means provided in this article without being physically present at the venue of the criminal investigative body or in the courtroom.

(2) Hearing a witness in line with para. (1) shall be based on a reasoned order by the investigative judge or, as the case may be, by the court ex officio or at the justified request of the prosecutor, attorney, respective witness or any other interested person.

(3) A witness heard in line with this article shall be allowed to convey information about his/her identity that is not genuine. Information on the actual identity of the witness and other relevant data that establish a causal relationship between the committed act and the witness shall be recorded by the investigative judge in a separate transcript kept in the respective court in a sealed envelope, under conditions of maximum confidentiality.

(4) A witness testifying in line with this article shall be assisted by the respective investigative judge.

(5) A witness may be heard via a closed teleconference with his/her image and voice distorted so that he/she is not recognized.

(6) The accused/defendant and his/her defense counsel and the injured party shall be provided with the opportunity to address questions to a witness examined under para. (5).

(7) The testimony of a witness, heard in line with this article, shall be recorded via technical video means and recorded in the transcript prepared in line with the provisions of arts. 260 and 261. The video tapes with the testimony of the witness, sealed with the court seal, are stored in the original in the court along with a copy of the transcript of the testimony.

(8) The testimony of a witness heard in line with this article may be used as a source of evidence only to the extent it is confirmed by other evidence.

(9) Undercover agents may be heard as witnesses under this article.

(b) Observations on the implementation of the article

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 3 of article 32

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

Law No. 105 of 16.05.2008 on the protection of witnesses and other participants in criminal procedure:

Article 17. Change of place of residence, work or study

(1) Changing the place of residence involves relocating a person to take up permanent residence in another town or village in the Republic of Moldova. Based on intergovernmental agreements on international assistance in criminal justice matters, a person may settle in a foreign country.

[Art.17(2) repealed by LP99 of 12 June 2014, OG174-177/04 Jul.14 art.407]

(3) If need be, the competent body may propose to the person to change his or her place of work or study in conformity with the legislation in force. If such a measure is applied, the competent body has a duty to help the person identify and secure a new job or place of study.

(4) The terms of changing the place of residence, work or study shall be laid down in the protection agreement.

Article 33. International cooperation

(1) International cooperation in the field of witness protection shall be done according to the standards of the international legal assistance in criminal justice matters.

(2) Based on reciprocal agreements between the Republic of Moldova and other states, the competent body has

the authority to conclude agreements to send a protected person to the respective country or to accept foreign persons into the Republic of Moldova.

The Division for witness protection that is subordinated to the General Police Inspectorate does not have cooperation agreements with other states for relocating the persons protected under the Law No. 105 of 16.05.2008 on the protection of witnesses and other participants in criminal procedure. At the moment, there are initiated negotiations with the similar division from the Ministry of Internal Affairs of Romania.

(b) Observations on the implementation of the article

The reviewing experts noted that the ad hoc domestic legislation on witness protection refers to the legal requirements and standards set forth in the law on international legal assistance in criminal matters (see below under the respective chapter of the country review report). The authorization for the relocation of witnesses to another country is provided in article 33, paragraph 2, of Law No. 105 of 16 May 2008. No relevant practice exists so far with the exception of negotiations for the conclusion of a relevant agreement with Romania.

The reviewing experts concluded that the Republic of Moldova has, at the level of legal standards, adequately implemented the provision under review and encouraged the Moldovan authorities to consider the conclusion of agreements or arrangements for the relocation of witnesses.

(c) Challenges in implementation and recommendations

- Consider the conclusion of agreements or arrangements for the relocation of witnesses.

Paragraph 4 of article 32

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

Criminal Procedure Code of the Republic of Moldova no.122 of 14.03.2003: Article 58. Victim

(...)

(5) A victim, immediately upon being identified, benefits according to the law of the right to protection and compensation, as well as the right to make a request regarding the application of the protection measures.

Article 90. Witness

(...)

(12) A witness shall have the right: (...)

4) to be informed about all available protective measures in line with the provisions of this Code and the Law on the protection of witnesses and other participants in criminal procedure;

5) to be informed about the possibility of testifying via a teleconference with his/her image and voice distorted so that he/she cannot be recognized;

6) to request that the criminal investigative body register identity information in a separate transcript to be stored in a sealed envelope to avoid the access of the accused to such data;

(...)

See above.

(b) Observations on the implementation of the article

The reviewing experts reiterated their observations on the adequacy of implementing witness protection measures also for victims insofar as they are witnesses.

In particular:

The reviewing experts noted that the Republic of Moldova has in place witness protection measures foreseen in both the CPC and Law No. 105 of 16.05.2008 on the protection of witnesses and other participants in criminal procedure. The latter provides for ensuring the safety of witnesses and other participants in criminal proceedings, whose lives, bodily integrity, freedom or property are at risk on account of information that they have and accepted to provide to the judicial bodies and which amounts to conclusive evidence of serious, particularly serious or exceptionally serious crimes. The Law includes specific provisions on the conditions for placement into the witness protection programme and on specific protective measures that can be implemented under the programme. The reviewing experts recommended the inclusion of corruption offences in the category of at least serious crimes (see article 16, paragraph 4 CC) with a view to making the provisions of Law No. 105 applicable to them as well.

The reviewing experts concluded that the Republic of Moldova has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

- Include all corruption offences in the category of at least “serious crimes” (section 16, paragraph 4 CC) with a view to making the provisions of Law No. 105 of 16 May 2008 on the protection of witnesses and other participants in criminal procedure applicable to them as well.

Paragraph 5 of article 32

5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Procedure Code of the Republic of Moldova no.122 of 14.03.2003: Article 58 Victim

(...)

(3) A victim has the following rights:

- 1) to get an affidavit from a criminal investigative body confirming that he/she filed a complaint, or a copy of the transcript of the written complaint;
- 2) to submit documents, objects and other means of evidence supporting his/her complaint;
- 3) to file an additional complaint;

(...)

- 5) to request that the criminal investigative body acknowledge him/her as an injured party in a criminal case;
- 6) to submit a request to be acknowledged as a civil party in a criminal proceeding; (...)

Article 60. Rights and obligations of an injured party (1) An injured party shall have the following rights:

(...)

- 2) to make statements and provide explanations;
- 3) to submit documents and other sources of evidence as part of the criminal case to be presented in the hearing;

- 4) to request the recusal of the person conducting the criminal investigation, of the judge, prosecutor, expert, interpreter, translator or court secretary;
- 5) to object to actions of the criminal investigative body or of the court and to request that his/her objections be included in the transcript of the respective action;
- 6) to review all the transcripts of the procedural actions he/she participated in and to request their completion or the inclusion of his/her objections in the respective transcript;
- 7) to review the materials in the criminal case file as of the moment of completion of the criminal investigation and to copy out any information from the case file;
- 8) to participate in the hearing, including in the examination of case materials; 9) to speak during the judicial arguments about the damage caused;
- (...)
- 11) to file complaints about the actions and decisions of the criminal investigative body and to contest the judgment of the court related to the damage caused;
- (...)
- 14) to object to complaints of other participants in the proceeding brought to his/her attention by the criminal investigative body or learned about from other circumstances;
- 15) to participate in the case hearing under ordinary means of appeal; (...)

(b) Observations on the implementation of the article

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Article 33. Protection of reporting persons

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Law No. 90-XVI from 25.04.2008 on the prevention and combating of corruption:

Article 18. Information in good faith about the commission of corruption acts and those related to corruption, acts of corrupt behavior, violation of the rules on declaration of income and property and violation of legal obligations on conflict of interest

(1) The civil servant, persons holding position of public dignity and other persons who provide services of public interest that learned about the commission of corruption acts and those related to corruption, acts of corrupt behaviour, violation of the rules on declaration of income and property and violation of legal obligations on conflict of interest has the right to report in good faith on this, in verbal or written form, the hierarchical superior, specialized department, the head of the public authority or institution, the authority authorized to check the veracity of personal interest statements, criminal investigation body, the prosecutor, NGOs and the media.

(2) The civil servant who informs in good faith about the commission of corruption acts and those related to corruption, acts of corrupt behaviour, violation of the rules on declaration of income and property and violation of legal obligations on conflict of interest benefit from the measures set by Law no. 25-XVI from 22 February 2008 on the Code of Conduct for Civil Servants, necessary to ensure their protection.

Law No. 25-XVI from 22 February 2008 on the Code of conduct for civil servants:

Article 12/1. Protection measures.

(1) The civil servant who informs in good faith about the commission of corruption acts and those related to corruption, acts of corrupt behaviour, violation of the rules on declaration of income and property and violation of legal obligations on conflict of interest benefit from the following protection measures, applied separately or cumulatively, as follows:

a) presumption of good faith until proven otherwise;

b) the confidentiality of personal data;

c) the transfer according to the provisions of Law no. 158-XVI from 4 July 2008 on the public office and status of civil servant.

(2) For the information in good faith referred to in para. (1) the civil servant cannot receive a disciplinary sanction.

(3) For failure to apply the protection measures under letter. c) para. (1) and failure to comply with the provision of paragraph. (2) are responsible the hierarchical superior, specialized department, the head of the public authority or institution and the head of the authority authorized to check the veracity of personal interest statements.

Contravention Code of the Republic of Moldova no.218 of 24.10.2008:

Article 314/1. Non-insurance of protection measures for the civil servant

Non-insurance of established by law measures to protect the civil servant who informs in good faith about the commission of corruption acts and those related to corruption, acts of corrupt behaviour, violation of the rules on declaration of income and property and violation of legal obligations on conflict of interest is punishable by a fine of 50 to 150 conventional units applied to the person holding position of responsibility.

GOVERNMENT

Decision No. 707 of 09.09.2013

On approving the Framework Regulation on whistleblowers

Published on: 13.09.2013 in the Official Gazette. No. 198-204 Article No: 808

In order to implement the provisions of the art. 18 and art. 26 of the Law no. 90-XVI of 25 April 2008 on preventing and combating corruption (Official Gazette of the Republic of Moldova, 2008, nr.103-105, art.391), as amended and supplemented, art. 12/1 of Law no. 25-XVI of 22 February 2008 on the Code of Conduct for Civil Servants (Official Gazette of the Republic of Moldova, 2008, no. 74-75, art. 243), as amended and supplemented, as well as the action 4.3.3 position 2 from the Action Plan on implementation of the Strategy of Justice Sector Reform for the period 2011-2016, approved by the Parliament Decision No. 6 of 16 February 2012 (Official Gazette of the Republic of Moldova, 2012, no. 109-112, art. 371), the Government DECIDES:

1. To approve the Framework Regulation on whistleblowers (as attached).
2. The public authorities shall approve internal regulations on whistleblowers.

I. General provisions

1. The present Regulation establishes the procedure for submission and verification of the warnings on illegalities committed within the public authorities, as well as the application of protection measures towards the individuals who voluntarily warn, in good faith and in public interest about the illegalities committed.
2. In the sense of the present Regulation, the terms used have the following meaning:

- *warning* - information regarding the commitment of corruption acts and corruption related acts, acts of corruptive behaviour, about violation of the rules on declaration of income and property and violation of legal obligations on conflict of interest, voluntarily made, in good faith and in public interest, in written or verbal form towards the persons and / or bodies responsible for receiving, recording and processing of such information;

- *whistleblowers* - the civil servant, including civil servants with special status, persons holding positions of public dignity and other persons providing public services, that inform voluntarily, in good faith and in public interest regarding the commitment of corruption acts and corruption related acts, acts of corruptive behaviour, about violation of the rules on declaration of income and property and violation of legal obligations on conflict of interest;

- *specialized structure* – the subdivision of internal security/internal control within public authorities or subdivision designated by the head of the public authority.

3. At the reception, registration and examination of the warnings, as well as at the application of the protection measures, shall be taken into account the following principles:

1) *principle of good faith*, according to which the whistleblower benefits from the protection measures only in case he made a complaint, being sure of the reality of the state of facts, or that the act represents a violation of law;

2) *principle of confidentiality*, according to which the upper hierarchical ruler of the whistleblower, the head of the public authority or of the specialized structure within the public authority are required to maintain the confidentiality of the personal data of the individual who makes the warning, as well as any other data from the content of the warning, which may result in disclosure of the identity, regardless of whether the person who made the warning later discloses such information to third parties;

3) *principle of responsibility*, according to which the person making the warning is obliged to support it with evidence, if he disposes of them;

4) *principle of unabusiv sanctioning*, according to which there cannot be sanctioned the person making a warning in good faith, but which, subsequently the researches made, is proved to be unfounded.

II. The procedure of submission and review of the warning

4. The civil servants, including civil servants with special status, persons holding positions of public dignity and other persons providing public services, that have found out about the fact that within the public authorities were committed corruption acts and corruption related acts, acts of corruptive behaviour, about violation of the rules on declaration of income and property and violation of legal obligations on conflict of interest, has the right to inform voluntarily and in good faith about it (to make a warning in this effect).

5. The warning may be submitted alternatively or cumulatively towards the following persons or bodies:

- 1) the upper hierarchical ruler of the whistleblower;
- 2) the specialized structure from the public authority;
- 3) the criminal investigation body;
- 4) the head of the public authority;
- 5) the National Integrity Commission;
- 6) the prosecutor;
- 7) NGOs and the media.

6. All the warnings are examined by the specialized structure if, following the check of their content, it appears that they are within its competence. If a warning is submitted to the upper hierarchical ruler of the whistleblower or to the head of the public authority, the information received is then sent to the specialized structure for examination and for taking the required measures.

7. The warning can be made in verbal or written form and includes:

- 1) name and surname of the whistleblower and subdivision in which he/she operates;
- 2) name and surname of the person whose alleged wrongdoing is reported;
- 3) description of alleged wrongdoing;
- 4) any evidence (documents / files) on the alleged illegality;
- 5) the date when it was made and signature of the whistleblower.

8. The information provided at the section 7 from the present Regulation will be registered, by the responsible person from the specialized structure, in a Special Register, according to the annex of the present Regulation. The responsible person from the specialized structure will ensure the confidentiality of the data entered in the special Register.

9. The specialized structure, within 3 working days from the receipt of the warning or of the information under section 6 of the present Regulation, shall verify the content of the warning and shall decide if it is within its competence, sending, as appropriate, the information towards the competent body or institution, indicating the information from the warning, the confirmative documents, from which, at the whistleblower's request, are excluded any data related to the whistleblower.

10. The information contained in the warning is examined by the specialized structure in term of up to 30 days from the date of registering the information in the Special Register, and the results are communicated in written form to the whistleblower.

II. Protection measures

11. The whistleblower benefits from the following protection measures, applied alternatively or cumulatively, as follows:

- 1) the presumption of good faith until contrary evidence;
- 2) the confidentiality of the personal data;
- 3) transfer to another subdivision of the public authority.

12. The whistleblower who made the warning in good faith will not be disciplinary sanctioned, even if, subsequently the researches, it turned out to be unfounded.

13. The upper hierarchical ruler of the whistleblower, the head of the public authority and the specialized structure are responsible for applying the protection measures provided in section 11 of the present Regulation.

IV. Liability for breaching the provisions of the present Regulation

14. The whistleblower who has made a warning of which he knew or was, in a reasonably way, ought to know that it is false, bears disciplinary or criminal liability, as appropriate.

15. Failure to ensure the measures referred to in the section 11 of the present Regulation for whistleblower's protection, as well as the application of these measures with the violation of the provision of the legislation in force, attracts criminal, administrative or civil liability, as appropriate.

As of June 23 2006, the duty unit of NAC launched the national anticorruption hotline (257-257 subsequently 080055555), which operates 24 hours a day, all calls of citizens are registered in the Register of information received at the national anti-corruption hotline, which was intended to prevent and combat corruption, by reacting promptly to the complaints of citizens on corruption offenses, provision of advice and necessary information.

During 2014 were received 2088 calls from citizens (+ 36.38% compared with 2013).

Also, people who called the hotline were provided necessary information and advice.

(b) Observations on the implementation of the article

The reviewing experts noted that article 18 of Law No. 90-XVI of 25 April 2008 on the prevention and combating of corruption and article 12/1 of Law No. 25-XVI of 22 February 2008 on the "Code of conduct for civil servants" provide for protection measures for any civil servant who informs in good faith about the commission of corruption acts and those related to corruption, acts of corrupt behaviour, violation of the rules on declaration of income and property and violation of legal obligations on conflict of interest.

Government decision No. 707 of 9 September 2013 on "Approving the framework regulation on whistleblowers" stipulates in article 5 that the civil servant has the right to inform voluntarily and in good faith alternatively or cumulatively to the following persons or bodies: the upper hierarchical ruler of the whistleblower; the specialized structure from the public authority; the criminal investigation body; the head of the public authority; the National Integrity Commission; the prosecutor; and NGOs and the media (this provision addressed concerns raised in the past relating to the obligation of public officials to report suspicions of corruption only to their superiors).

According to article 11 of Government decision No. 707, the whistleblower benefits from the following protection measures, applied alternatively or cumulatively: the presumption of good faith until contrary evidence; the confidentiality of the personal data; and transfer to another subdivision of the public

authority. The whistleblower who reported in good faith is not disciplinary sanctioned, even if, the report turned out to be unfounded at a subsequent stage. Furthermore, during the criminal investigation and court proceedings, the reporting persons may be interviewed in accordance with a special procedure under section 110 CPC which provides for anonymity.

No specific information concerning the use of this law was provided in relation to offences established in accordance with the Convention.

The reviewing experts concluded that the Republic of Moldova has taken steps geared towards adequately implementing the provision under review, but they also favoured the expansion of the scope of application of the relevant legal framework.

(c) Challenges in implementation and recommendations

- Consider extending the legal framework offering protection against unjustified treatment to persons other than civil servants, persons holding positions of public dignity and other persons providing public services.

Article 34. Consequences of acts of corruption

With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

(a) Summary of information relevant to reviewing the implementation of the article

Law no. 90-XVI from 25.04.2008 on the prevention and combating of corruption: Article 23 Removal of consequences of corruption acts

- (1) In case of commission of corruption acts, money, valuables or any other goods that were given to determine the commission of the offense or to reward the criminal or goods obtained through the commission of an offense, if they are not returned to the injured person, to the extent that they do not serve for the compensation shall be forfeited, and if the goods are not found, the convict is obliged to pay their equivalent in money. In all these cases, taking precautionary measures is mandatory.
- (2) The adopted decisions, concluded contracts and other actions or any clauses of a convention affected by an act of corruption, are null and void from the very moment of their adoption and do not have any legal effect for none of the parties, independently on their knowledge of such acts.
- (3) Any party to a convention whose consent was affected by an act of corruption can reclaim the implementation of such convention, as determined by the law, without affecting one's right for compensation of damages.

There is a new Law on public procurements:

Law no.131 of 03 July 2015 on public procurements:

Article 18 Personal situation of the bidder or candidate

- (1) The contracting authority shall exclude from the procedure for awarding the procurement contract any bidder or candidate which it is aware that, in the past 5 years, has been convicted, by final judgment of a court, for participation in activities of a criminal organization or group, **corruption, fraud and / or money laundering**.

(...)

Article 40 Corruption in public procurement proceedings

(1) The Contracting Authority shall reject the bid in case the supplier submitting it offers or agrees to offer, directly or indirectly, to any person holding a position of responsibility or employees of the Contracting Authority, a favour in any form, an employment offer, or to provide any other service as remuneration for certain actions, decisions or use of certain procurement procedures to his advantage.

(2) The rejection of the bid and the grounds for the rejection shall be indicated in the report on the procurement procedure and communicated promptly to the respective supplier.

(3) The public Procurement Agency/contracting authority and/or the supplier shall report promptly to the competent authority each case of corruption or attempted corruption acts on the part of the supplier or a representative of the Contracting Authority.

(4) The public procurement contracts awarded as result of the corruptive acts confirmed by the definitive court decision shall be considered null and void.

(...)

Article 65. Examination, evaluation and comparison of tenders

(...)

(3) The contracting authority shall not accept the offer if:

(...)

f) was established the commission of corruption acts

(...)

Article 67. Cancellation of the procurement procedure

(1) The contracting authority - on its own initiative and at the request of the Public Procurement Agency, following a review - shall cancel the award of the public procurement contract, if it takes this decision before the transmission of the communication regarding the result of the public procurement procedure in the following cases:

(...)

e) was established the commission of a corruption act, confirmed by the final judgment of the court;

(...)

(b) Observations on the implementation of the article

The reviewing experts noted that Law No. 90-XVI of 25 April 2008 on the prevention and combating of corruption provides that the adopted decisions, concluded contracts and other actions or any clauses of a convention affected by an act of corruption, are null and void from the very moment of their adoption and do not have any legal effect for none of the parties, independent of their knowledge of such acts (article 23, paragraph 2). In addition, the new Law No.131 of 3 July 2015 provides for the exclusion of the bidder due to participation, among others, in corruption and money-laundering offences, the rejection of the bid in a procurement process as a result of acts of corruption and the cancellation of a procurement procedure

involving corruption acts.

Law No. 96-XVI of 13 April 2007 on public procurements provides for the rejection of the bid in a procurement process as a result of acts of corruption on the part of suppliers (article 30).

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Article 35. Compensation for damage

Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

(a) Summary of information relevant to reviewing the implementation of the article

Law no. 90-XVI from 25.04.2008 on the prevention and combating of corruption: Article 23/1 Responsibility and repairing the damages

(1) A person who has suffered a damage as the result of an act referred to in art. 256, 324, 325, 327, 332, 333, 334, 335 of the Criminal Code is entitled to compensation for that damage according to the Civil Code.

(2) After the damage was repaired from the corresponding budget, the defendant has the right of recourse against the responsible person in the amount of compensation paid.

(b) Observations on the implementation of the article

The reviewing experts noted that Law No. 90-XVI also provides for the right of a person who has suffered damage as the result of criminal acts to compensation for that damage (article 23/1).

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Article 36. Specialized authorities

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

(a) Summary of information relevant to reviewing the implementation of the article

Law No. 1104-XV of 06.06.2002 on National Anti-corruption Centre Article 1 National Anti-corruption Centre

(1) National Anti-Corruption Centre (hereinafter Centre) is a specialized body to prevent and fight corruption, corruption related acts and deeds of corruptive behavior.

(2) Centre is a legal entity of public law, fully financed by the state budget, has treasury accounts, seal with the State Emblem of the Republic of Moldova and other necessary attributes.

(3) Centre is a non-political body, doesn't assist and support any political party.

(4) Centre is independent in its activity and obeys only to the law. Centre has organizational, functional and operational under conditions established by law.

Law No. 294-XVI of 25.12.2008 on Prosecutor's office: Article 25 Specialized prosecutor's office

(1) In the category of specialized prosecutor's offices are included prosecutor's offices that work in certain specific areas.

(2) Anti-corruption prosecutor's office specializes in fighting corruption offenses and exercises its duties on the entire territory of the country.

(...)

NAC statistics 2014

In 2014, NAC officers detected and investigated 668 offenses, with 17.40% more compared to 2013.

Of the total offenses detected:

- **corruption and corruption related offenses – 498 offences** compared to 2013 their number also **increased by 21.17%.**
- **money laundering - 45**, representing an increase of **12.50%** compared to 2013.
- **other types** of crimes detected - **125**, including 47 offenses of forgery of official documents, 20 crimes of acquisition by fraud or breach of trust property, 58 crimes of another kind (failure to comply with the execution, favoring crime, theft of assets, economic crimes, etc.).
- Prosecution on 523 offences detected by NAC was initiated and conducted by NAC investigators, 139 – by other prosecutors (Prosecutor General, Anticorruption Prosecutor's Office, Transport Prosecutor's Office, District Prosecutor Offices), 5 of them by the investigators of the Ministry of Internal Affairs, 1 – Customs Service.

Following successful investigations conducted by NAC officers a full spectrum of corruption and corruption related crimes committed by officials could be counteracted, namely:

- passive corruption, art. 324 CC. - 139 offenses;
- influence peddling, art. 326 CC. - 106;
- excess of power or excess of duties, 328 CC - 81;
- abuse of power or abuse of office, art. 327 CC - 36;
- active corruption, art. 325 CC - 45;
- forgery of public documents, art. CC. - 28;
- negligence in duty, art. 329 CC - 26;
- misuse of duties, art. 335 CC - 20;
- unlawful appropriation of another's property, using official position - 12;
- taking bribes, art. 333 CC - 4;

- illicit enrichment, art. 330 C.P. - 1.

Among the positions held by officials identified and prosecuted by NAC for the commission of corruption and corruption related offences were the following:

- Judges, courts - 7 criminal cases;
- inspector judge, Superior Council of Magistracy - 1;
- prosecutor, Prosecutor's Office - 1;
- ministers, vice ministers - 4;
- directors, deputy directors of national agency (ies) - 3;
- heads of autonomous institutions within authorities - 3;
- heads
- lawyers - 27;
- bailiffs - 10;
- directors, deputy directors of organizations - 56;
- doctors - 10;
- lecturers, teachers - 10;
- tax inspectors, auditors, review advisors - 11 etc.

There were also revealed corruption and corruption related offences committed by 57 individuals. Types of corruption offenses most often committed by individuals were trading in influence on police officers, other responsible persons in official positions and active corruption.

In 2014 NAC's work was mainly oriented to fight against serious and extremely serious crimes, the following serious and extremely serious crimes were documented: serious and extremely serious crimes – 66,02%, less serious crimes – 22.01%, minor offences – 11.98%

In 2014, NAC officers detected and investigated offences committed by 8 judges:

- Criminal case under Art. 324 paragraph (3) (a) of the Criminal Code on the fact of passive corruption committed by **Chairman of Glodeni Court**, who extorted and received from the citizen T.P. an amount of 10,000 lei, to adopt a favorable sentence on the criminal case initiated on the fact of citizen's driving under influence *Transmitted to Glodeni Court*;
- Criminal proceedings on the basis of art. 307 para. (1) **against Causeni District Court judge** on the illegal actions expressed by knowingly issuing a judgment against the law. In February 2014, two criminal cases initiated against the judge under art. 324 (passive corruption), art. 326 (influence peddling). Criminal case transferred to Botanica Court;

Criminal case on the fact of influence peddling committed by the inspector judge of the **Judicial Inspection of the Superior Council of Magistracy**, CV, who solicited 10,000 euros from the citizen to influence the determination of a case. Pending:

Criminal case on Riscani District Court Judge, Chisinau. Case run at Anticorruption Prosecutor's Office;

Criminal case on the **Economic Court of Appeal judges**, on unlawful decisions and judgments. Case run by Anticorruption Prosecutor's Office.

During 2014 were sent for review to courts criminal cases initiated and investigated by NAC in relation to 4 judges, as follows:

- criminal case under Art. 324 para. (3) (a) of the Criminal Code on the fact of passive corruption committed by a judge of Telenesti Court, who claimed funds from the defendant's lawyer, to remove the summons to court of the complainant.

On 04/08/2014, the judge was sentenced to 7 years in prison with execution, by the Buiucani court, with deprivation of the right to hold public office for 10 years and a fine of 160,000 lei.

- 2 criminal cases on the fact of passive corruption committed by a judge of Causeni court, under art. 324 paragraph (2) (c) CC and on the fact of influence peddling committed by an assistant of the same court, pursuant to art. 326 paragraph (2) b) CC, manifested by solicitation and receiving from the citizen of 300 liters of diesel and 100 liters of gasoline as fuel tickets and cash in the amount of 500 lei for judgements on closing some administrative matters.

On 02.03.2014, criminal cases were sent to Botanica Court.

- criminal case under art. 324 para. (3) (a) CC on the fact of passive corruption committed by a **judge of Criuleni Court, in collusion with a lawyer**, who extorted and received 2,000 euros from a citizen, in order to adopt an acquittal sentence in respect of two citizens accused of ill-treating a citizen.

On 06/26/2014, the judge was condemned by Ciocana Court, Chişinău to 8 years imprisonment with execution and payment of the fine in the amount of 40,000 lei.

The lawyer was sentenced to 7 years and 6 months imprisonment with execution.

- criminal case under art. 324 paragraph (3) a) CC on the fact of passive corruption committed by a judge of the Court of Appeal in insolvency proceedings relating to "P" Ltd, as if in May 2012 he solicited and received from the company's administrator a conditioner.

Moreover, NAC continuously monitors the progress of hearings on criminal cases of corruption. During 2014, on the NAC website www.cna.gov.md were published and publicized 133 court rulings on the conviction for corruption and corruption related acts, adopted by the court in the proceedings.

(b) Observations on the implementation of the article

The reviewing experts noted that the National Anti-corruption Centre is a specialized body in the prevention and fight against corruption. The Centre is the successor of the former Centre for Combating Economic Crimes and Corruption (CCECC) which had been established in 2002 and was reformed and renamed in 2012. NAC has organizational, functional and operational independence in accordance with the terms, established by the law (Law No. 1104-XV of 6 June 2002 on National Anti-corruption Centre). Unlike its predecessor, the competences of NAC include preventing and fighting corruption, money-

laundering and terrorism funding, and conducting anti-corruption expertise on draft laws, supervising and assisting public institutions in conducting internal corruption risk assessments, and elaborating integrity plans. NAC also holds the Secretariat of the Working Group for Monitoring the Implementation of the National Anti-corruption Strategy.

As reported during the country visit, NAC is also responsible for conducting professional integrity tests for public officials, in cooperation with the Security and Information Service (Law No. 325 of 23 December 2013 regarding professional integrity testing), and in line with Law No. 325. Early results of the new law have already become visible, with 62 denunciations of active corruption in 2014, compared to only four in the previous year.

As reported by the NAC (progress report of July 2014), the NAC has been confronted with a series of challenges related to:

- Unstable political support for NAC activities geared towards fighting corruption, i.e. with regard to NAC institutional independence guarantees;
- Legislative obstacles to increase the effectiveness of activities to prevent and combat corruption, such as: half a year delay in adoption of the NAS Action Plan 2014-2015; long time (1,5 years) practical blocking of investigation activities due to the need to inform the suspect prior to documenting a corruption crime; continuous delays in adjusting the legal framework needed for effective carrying out of integrity testing of public agents, as well as removing the suspending effect of the appeals filed against the freezing of accounts as part of financial investigations; and
- Insufficient budgeting of NAC activities, especially for prevention, analytical and investigation activities.

The National Integrity Commission (NIC), set up in December 2012, is responsible for the supervision of the mechanism for the implementation of three policies aiming to prevent corruption in public service: declaration and control of incomes and assets, conflict of interests, and incompatibilities. Nevertheless, in the absence of an adequate legal framework, the competences of NIC remain blurry and the roles of the commission members unspecified. NIC efficiency is also undermined by such factors as limited access to the databases of other state bodies and absence of international treaties that would allow efficient control of assets of public servants abroad. However, certain legal measures have been undertaken to remedy these inconsistencies. In order to enable it to perform its duties and make it a politically independent body, an inter-ministerial working group elaborated a series of draft laws aimed at the reform of NIC. These would give it extended competences, as, for example, the right to apply sanctions, pass cases on to legal courts, as well as classifying as invalid contracts signed in situations of a conflict of interest. More precisely, the draft law envisages combining the declaration of income and assets with the declaration of personal interests and regulating the modalities and conditions for submitting them.

In the field of prosecution of corruption, article 25 of Law No. 294-XVI of 25 December 2008 established specialized prosecutor's offices with anti-corruption tasks. During the country visit, reference was made to ongoing efforts to reform the prosecution service with measures such as the consolidation of the competences of the Prosecutor's Office, new procedures for the selection and nomination of the General Prosecutor and clear regulation of cases where the prosecution is entitled to perform investigative acts.

The reviewing experts concluded that the Republic of Moldova has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

- Overcome legislative obstacles to increase the effectiveness of NAC activities to prevent and combat corruption; consistently preserve the institutional independence guarantees of NAC, especially in light of its broad mandate, and increase its resources;
- Continue and complete ongoing efforts to reform NIC, as well as the judiciary and especially the

prosecution service; and ensure effective implementation of the relevant reforms.

Article 37. Cooperation with law enforcement authorities

Paragraph 1 of article 37

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code of the Republic of Moldova no. 985-XV of 18.04.2002: Article 325. Active bribery

(...)

(4) The person who promised, offered, or provided the goods or services listed in art. 324 shall be exempted from criminal liability provided that the goods or services were extorted from him/her or if the person denounces himself/herself without knowing that criminal investigative bodies knew about the crime he/she committed.

Article 326 Trading in influence

(...)

(4) The person who promised, offered, or provided the goods or services listed in par. (1) shall be exempted from criminal liability provided that the goods or services were extorted from him/her or if the person denounces himself/herself without knowing that criminal investigative bodies knew about the crime he/she committed.

Article 334 Giving bribes

(...)

(4) The bribe giver shall be exempted from criminal liability if the bribe was extorted from him/her or if he/she denounces himself/herself without knowing that criminal investigative bodies knew about the crime he/she committed.

Supreme Court of the Republic of Moldova – Decision of the Plenary

On application of legislation on criminal liability for corruption offences

No. 11 of 22 December 2014

24. Exemption from criminal liability for the commission of corruption offences is possible only in relation to active bribery offence (Art.325 CC) and trading in influence offence (paragraph (11) art. 326 CC). Thus, the exemption of criminal liability provision enshrined in paragraph (4) Art.325 CC and paragraph (4) art. 326 CC, will operate for the person who promised, offered or gave goods or services listed in art.324 CC, art 326 CC respectively, in either of the following two assumptions:

1) the goods or services have been extorted from him/her.

2) the person self-denunciated, not knowing that the prosecuting authority is aware of the offence committed by him/her.

Assuming the extortion of the illegal remuneration, the suborner (in the case of offense from art.325 CC) and the trader in influence (offence under paragraph (11) 326 CC) will be exempt from criminal liability if the following conditions are met: 1) the corruption initiative belongs to the corruptor / trader in influence; 2) there was a constraint from the corruptor / trader in influence; 3) the constraint implies real nature, suppressing or limiting the freedom or capability for self-determination of the person on whom it is exercised, forcing him/her to a conduct imposed by the corruptor / trader in influence; 4) The constraint is antecedent in relation to the promise, offering or giving illegal remuneration.

In case of self-denunciation, in order for provision in paragraph (4) art. 325 CC or (4) art. 326 CC to operate, it is necessary to comply with the conditions laid down in art.264 CPC. Regardless of the reasons of self-denunciation: repentance, fear of being held to criminal liability, revenge on the corrupt person who has not kept his/her promise etc.

Exemption from criminal liability under the provision of paragraph (4) Art.325 CC or paragraph (4) art. 326 CC has to be confirmed by an order of refusing to initiate criminal proceedings, from which it appears that self-denunciation was made in circumstances where the prosecution is not aware of this fact or not having the knowledge that the prosecuting authority is aware of the offense he/she committed it.

In the event that the requirements for exemption of criminal liability are not met, the perpetrators of corruption offenses which have actively contributed to the identification of other persons involved in acts of corruption or who have pleaded guilty, according to the letter f) para. (1) art .76 CP will benefit from mitigation of the criminal punishment.

The courts will retain that unlike self-denunciation of the suborner and trader in influence which causes the exemption of criminal liability, self-denunciation of the corruptor and influence peddler will be relevant only in mitigating the sentence thereof (letter f) paragraph (1) art. 76 CC).

(b) Observations on the implementation of the article

In reviewing the implementation of article 37 of the Convention, the reviewing experts examined an issue of special defence for the perpetrator of active bribery in the public and private sectors, as well trading in influence, as reported by the Moldovan authorities. In particular, sections 325, paragraph 4, 334, paragraph 4, and 326, paragraph 4 CC provide for a special defence which releases the bribe-giver and the influence-peddler from criminal liability on the condition that either the bribe and service/exercise of influence were extorted from him/her or that the person denounces himself/herself without knowing that criminal investigative bodies knew about the crime he/she committed. The reviewing experts were, however, concerned about the automatic nature of the defence, which precludes the consideration of the particular situation at stake by the prosecutor, for example, the motives that the perpetrator may have for reporting the offence and invoking effective regret. In the light of these misgivings and in the absence of safeguards against misuse of the defence of effective regret, the reviewing experts encouraged the national authorities to consider whether an amendment in the text of the provisions in the form of optional wording (“*may* be exempt from criminal liability”), coupled with the option of mitigating punishment/circumstances, could be conducive to a more flexible application of the relevant provisions on a case-by-case basis and could allow the public prosecutor to “weigh” in each case the acts of the perpetrators.

The reviewing experts concluded that the Republic of Moldova has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

- Consider whether an amendment in the form of optional wording in the text of the special defence contained in sections 325, paragraph 4, 326, paragraph 4 and 334, paragraph 4 CC (“*may be exempt from criminal liability*”), coupled with the option of mitigating punishment/circumstances, could be conducive to a more flexible application of the relevant provisions on a case-by-case basis and could allow the public prosecutor to “weigh” in each case the acts of the perpetrator.

Paragraph 2 of article 37

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code of the Republic of Moldova no. 985-XV of 18.04.2002: Article 76. Mitigating Circumstances

- (1) When determining a punishment, the following shall be considered as mitigating circumstances:
(...)
e) prevention by the guilty person of prejudicial consequences of the crime committed, voluntary repair of the damage caused, or the elimination of the damage caused;
f) self-denunciation, active contribution to solving the crime and to identifying the criminals, or admitting guilt;
(...)
(2) The court may consider other circumstances not specified in par. (1) as mitigating circumstances.
(...)

(b) Observations on the implementation of the article

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 3 of article 37

3. Each State Party shall consider providing for the possibility, in accordance with the fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

According to the provisions of the Criminal Procedure Code of the Republic of Moldova there is no such possibility. If the person that committed a crime cooperates with the criminal investigation body it can be considered just as a mitigating circumstance.

(b) Observations on the implementation of the article

In reviewing the implementation of article 37 of the Convention, the reviewing experts examined an issue of special defence for the perpetrator of active bribery in the public and private sectors, as well trading in influence, as reported by the Moldovan authorities. In particular, sections 325, paragraph 4, 334, paragraph 4, and 326, paragraph 4 CC provide for a special defence which releases the bribe-giver and the influence-peddler from criminal liability on the condition that either the bribe and service/exercise of influence were extorted from him/her or that the person denounces himself/herself without knowing that criminal investigative bodies knew about the crime he/she committed. The reviewing experts were, however, concerned about the automatic nature of the defence, which precludes the consideration of the particular situation at stake by the prosecutor, for example, the motives that the perpetrator may have for reporting the offence and invoking effective regret. In the light of these misgivings and in the absence of safeguards against misuse of the defence of effective regret, the reviewing experts encouraged the national authorities to consider whether an amendment in the text of the provisions in the form of optional wording (“*may be exempt from criminal liability*”), coupled with the option of mitigating punishment/circumstances, could be conducive to a more flexible application of the relevant provisions on a case-by-case basis and could allow the public prosecutor to “weigh” in each case the acts of the perpetrators.

The reviewing experts concluded that the Republic of Moldova has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

- While noting the recommendation under article 30, paragraph 3 of the UNCAC on the need for a very careful application of the discretionary prosecutorial powers, consider whether an amendment in the form of optional wording in the text of the special defence contained in sections 325, paragraph 4, 326, paragraph 4 and 334, paragraph 4 CC (“*may be exempt from criminal liability*”), coupled with the option of mitigating punishment/circumstances, could be conducive to a more flexible application of the relevant provisions on a case-by-case basis and could allow the public prosecutor to “weigh” in each case the acts of the perpetrator.

Paragraph 4 of article 37

4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Law No. 105 from 16.05.2008 on the protection of witnesses and other participants in criminal procedure:

Article 1. Sphere of regulation

This law provides safety of participants in criminal procedure, whose life, corporal integrity, freedom or property are threatened as the result of the possession by these persons of information that they agreed to provide to judicial bodies and that constitutes a conclusive evidence of the commission of serious, extremely serious or exceptionally serious crimes.

Article 2. Basic terms

(1) For the purpose of this law the following terms mean:

protected person - person with whom was concluded a protection agreement according to this (...)

d) suspect, accused, defendant who agrees to make statements which may constitute conclusive evidence

regarding a serious, extremely serious or exceptionally serious crimes or to provide information on preparing of serious, extremely serious or exceptionally serious crimes; convicted person while serving a custodial sentence who agrees to make statements which may constitute conclusive evidence regarding a serious, extremely serious or exceptionally serious crimes or to provide information on preparing of serious, extremely serious or exceptionally serious crimes;
(...)

(b) Observations on the implementation of the article

The reviewing experts reiterated their observations on the adequacy of implementing witness protection measures also for persons referred to in article 37 of the Convention.

In particular:

The reviewing experts noted that the Republic of Moldova has in place witness protection measures foreseen in both the CPC and Law No. 105 of 16 May 2008 on the protection of witnesses and other participants in criminal procedure. The latter provides for ensuring the safety of witnesses and other participants in criminal proceedings, whose lives, bodily integrity, freedom or property are at risk on account of information that they have and accepted to provide to the judicial bodies and which amounts to conclusive evidence of serious, particularly serious or exceptionally serious crimes. The Law includes specific provisions on the conditions for placement into the witness protection programme and on specific protective measures that can be implemented under the programme. The reviewing experts recommended the inclusion of corruption offences in the category of at least serious crimes (see article 16, paragraph 4 CC) with a view to making the provisions of Law No. 105 applicable to them as well.

The reviewing experts concluded that the Republic of Moldova has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

- Include basic forms of corruption-related offences – currently treated in terms of sanctioning as “less serious” crimes - in the category of serious crimes (see section 16, paragraph 4 CC) in order to make applicable to them as well the provisions of Law No. 105 of 16 May 2008 on the protection of witnesses and other participants in criminal procedure, including persons referred to in article 37 of the Convention.

Paragraph 5 of article 37

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

The Government of the Republic of Moldova may conclude agreements with the governments of other States.

Also, according to article 3 from the Law no. 371-XVI of 01.12.2006 on international legal assistance in criminal matters, if there is no international treaty, international legal assistance may be granted on the principle of reciprocity through diplomatic channels. The lack of reciprocity does not prevent the performance on the territory of the Republic of Moldova of a request for legal assistance if: a) the request

for legal assistance is necessary because of the nature of the act or compelling nature of the fight against certain forms of serious crime; b) the application for legal aid can help improve the situation of the defendant or convicted person or his social reintegration; c) the request for legal assistance may serve to clarify the legal situation of a citizen of the Republic of Moldova.

(b) Observations on the implementation of the article

The reviewing experts noted that the national authorities referred to the legal requirements and standards set forth in the law on international legal assistance in criminal matters (see below under the respective chapter of the country review report).

The reviewing experts concluded that the Republic of Moldova has, at the level of legal standards, adequately implemented the provision under review.

Article 38. Cooperation between national authorities

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or

(b) Providing, upon request, to the latter authorities all necessary information.

(a) Summary of information relevant to reviewing the implementation of the article

Law No. 1104-XV of 06.06.2002 on National Anti-corruption Centre Article 3 Principles of activity

Centre performs its activity according to principles of: (...)

i) collaboration with other public authorities, NGO's and citizens.

Article 6. Rights of the Centre

(...)

e) to demand and receive from public authorities, from natural persons and legal entities documents, information and data that is necessary to perform its duties of prevention and analysis of corruption acts and corruption related acts, as well as for examining the request or information about the contraventions or crimes that are in its competence, registered accordingly; (...)

j) to demand and receive from public authorities the necessary informational and consultative support in order to perform anti-corruption expertise of draft legislative acts and draft normative acts of the Government, as well as other legislative initiatives registered in the Parliament;

Law No. 320 of 27.12.2012 on the activity of the Police and the status of the policeman: Article 6. Police cooperation with local and central public administration authorities, mass-media, civil society and international organizations

(1) Police cooperates with other law enforcement bodies in the way established by the legislation and the normative acts of the Ministry of Internal Affairs and General Police Inspectorate.
(...)

**Law No. 753-XIV of 23 December 1999 on the Information and Security Service of the Republic of Moldova:
Article 12. Collaboration of the Service with national and foreign institutions**

(1) The Service performs its activity in collaboration with public authorities from the Republic of Moldova, with enterprises, institutions and organizations, regardless of the type of property. (2) The way and conditions of the Service's collaboration with other public administration authorities are established in the agreements concluded with these authorities or in the common normative acts.

**Law No. 90-XVI of 25 April 2008 on the prevention and combating of corruption:
Article 14. Other bodies and persons with tasks in the domain of prevention and combating of corruption**

(...)
(2) Public administration authorities periodically evaluate the legal instruments and administrative measures in order to determine their adequacy for the prevention and combating of corruption, organizing, in the limits of their competence:
a) internal control of compliance by the civil servants, persons holding positions of public dignity and other persons who provide public services, with the legal provisions in order to prevent corruption acts;
b) reception of information from different sources (audience, anonymous letters, trusted phone number, email etc.) regarding the commission of corruption acts or acts of corruptive behaviour by the employees, administrative examination of this information and taking the necessary measures, including the presentation of the relevant materials to the specialized body;
c) trimestrial presentation to the National Anti-corruption Centre of informational reports on measures that were taken, including those performed together with other authorities, as well as proposals for improving the existing situation.
(3) Public administration authorities, NGO's, other civil society representatives perform, together or separately, activities in the domain of prevention of corruption by the exchange of information, of experts, by researching and identifying the causes of corruption, training of personnel, systematic organization of informative campaigns to raise awareness of the population, production and distribution of publicity materials regarding the risks of corruption, realizarea și difuzarea materialelor publicitare privind riscurile corupției, creating some social-economic initiatives and by other actions in this domain.

(b) Observations on the implementation of the article

The reviewing experts noted that, while the Republic of Moldova has done considerable work in terms of building a legal and institutional anti-corruption framework, implementation is often staggering. Another problem is the lack of a comprehensive vision of anticorruption-related reforms, which leads to duplication of efforts, for instance, the lack of synchronization of the National Anti-corruption Strategy and the Justice Sector Reform Strategy. Much of the inconsistency also exists in the competences of the anti-corruption institutions, including the NAC and the Anticorruption Prosecutor's Office (which functions under the General Prosecutor's Office). The reviewing experts were of the view that such institutional fragmentation generates competition, rather than cooperation and further increases institutional overlap and reduces institutional anti-corruption efficiency in practice.

The reviewing experts concluded that the Republic of Moldova has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

- Further enhance the cooperation between NAC and other stakeholders involved in the anti-

corruption processes, especially in the areas of conducting anti-corruption trainings, as well as corruption investigation, prosecution and trial.

Article 39. Cooperation between national authorities and the private sector

Paragraph 1 of article 39

1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Law No. 190-XVI of 26.07.2007 on the prevention and combating of money laundering and the financing of terrorism:

Article 8. Reporting of activities and transactions that fall under the incidence of the present law

- (1) The reporting entities are obliged to inform immediately the Service for Prevention and Combating of Money Laundering about any suspect activity or transaction of money laundering and financing of terrorism which is being prepared, performed or finalized. The data regarding the suspect activities or transactions are reflected in a special form which is sent to the Service for Prevention and Combating of Money Laundering no later than in 24 hours from the moment of receiving the request.

(...)

Law No. 1104-XV of 06.06.2002 regarding the National Anti-corruption Centre: Article 6. Rights of the Centre

(...)

- e) to request and receive from public authorities, from legal entities and natural persons documents, information and data that are necessary to perform the duties of prevention and analysis of corruption acts and corruption related acts, as well as to examine the request or information regarding the contraventions or crimes that are in its competence, that are registered accordingly;

(...)

Law No. 90-XVI of 25 April 2008 on the prevention and combating of corruption: Article 10. Cooperation between private sector and public authorities

Prevention of corruption with the involvement of the private sector will ensure:

- a) reduction of the entrepreneurs' dependency on administrative pressure when given licences, authorizations and permits;
- b) promoting cooperation between the investigation divisions and private law legal entities;
- c) increasing the responsibility of private law legal entities for the correct, honorable and adequate performance of the entrepreneurs' activity, so as they prevent the conflict of interests and encourage the application of good commercial practices between enterprises, as well as in their contractual relations with the state;
- d) establishing efficient norms in the accounting and audit domain in order to prevent corruption by excluding the possibility of keeping false accounting documents, of registering some false expenses, using false documents etc.

(b) Observations on the implementation of the article

The Moldovan authorities referred to provisions of the domestic legislation aimed at promoting the cooperation of national competent authorities and the private sector, especially the provisions of Law No. 190-XVI of 26.07.2007 on the prevention and combating of money laundering and the financing of terrorism dealing with the reporting of any suspicious activity or transaction of money-laundering.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 2 of article 39

2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

On its Plenary meeting from 25.10.2013 the Parliament approved the Regulation on the system of anti-corruption hotlines. According to the Regulation, the levels of anti-corruption hotlines are designed to operate simultaneously and to complement each other in the specialized central public administration authorities and autonomous administrative authorities, in order to receive by phone information on corruption and related acts or acts of corruptive behaviour, to examine the information and undertake the necessary measures, including the presentation of materials to the competent body.

Public authorities promote anti-corruption hotlines by information campaigns, using various ways: printed materials (posters, brochures, flyers, banners, etc.) video/audio clips, web page of the authority.

The system of anti-corruption telephone lines is functioning in accordance with the Law no. 252 of October 25, 2013 for approving the Regulation for functioning of the anti-corruption telephone lines system.

According to the document, in public institutions are installed anti-corruption telephone lines which are divided into three categories: national anti-corruption line; specialized anti-corruption institutional lines and institutional information lines. By Order no. 66 of April 23, 2014 was approved the Regulation for functioning of the national anti-corruption line of the National Anticorruption Centre (NAC), which establishes the purpose and principles and the procedure of registering the information at the national anti-corruption line. The national anticorruption line (0800 55555) is managed by NAC, it can be called for free and works non-stop, the operators answer to phone calls. All information received at the National Anti-corruption line is recorded in the Register of phone calls.

During the first 9 months of 2015 at the national line were taken 1957 calls, of which 4,24% (83) were within the competence of the Centre, and 95,75% of calls were made to obtain counselling (858) or were within the competence of other institutions (1016). Compared to the same period of 2014, the total number of calls received at the national anti-corruption line as well as the number of calls within the competence of the Centre hasn't suffered many changes, but it has nearly doubled compared to the first 9 months of 2013 - 1011 calls totally, within the Centre's competence – 78 calls (7,67%).

Specialized anticorruption lines are established only in central public authorities which have a internal security subdivision. Local authorities are not obliged to install such a phone line. Therefore, 17 public authorities have established specialized anticorruption lines, have designated people responsible for their operation and have established registers for recording the calls. Also, 47 public authorities established

institutional information lines (the Trust Line) where people can inform about corruption acts, corruption related acts and the acts of corrupt behaviour.

See also under article 33 of the Convention.

(b) Observations on the implementation of the article

The Moldovan authorities referred to provisions of the domestic legislation aimed at promoting the cooperation of national competent authorities and the private sector, especially the provisions of Law No. 190-XVI of 26.07.2007 on the prevention and combating of money laundering and the financing of terrorism dealing with the reporting of any suspicious activity or transaction of money-laundering.

According to some interlocutors, challenges remain in the cooperation between authorities and the private sector, including civil society.

In practice, anti-corruption hotlines are in place to enable citizens to report corruptive acts, yet the reviewers have no basis for assessing the effectiveness of this concept.

Statistics were provided, but the reviewers had no solid basis for assessing the effectiveness of this concept.

The reviewing experts concluded that the Republic of Moldova has taken steps geared towards adequately implementing the provision under review, but encouraged the national authorities to further facilitate their cooperation with the private sector, including civil society.

(c) Challenges in implementation and recommendations

- Facilitate and encourage further co-operation between the national authorities and the private sector, including the civil society, to more effectively detect, investigate and prosecute corruption.

Article 40. Bank secrecy

Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

(a) Summary of information relevant to reviewing the implementation of the article

Law No. 550-XIII of 21.07.1995 on financial institutions: Article 22 Bank secrecy and fiduciary obligations

(...)

(5) The information that constitutes bank secrecy shall be provided by the bank, to the extent that providing this information is justified by the purpose for which it is requested, in the following cases:

(...)

c) at the request of the criminal investigation body, with the authorization of the investigative judge, regarding the specific criminal case;

d) at the request of the court, with the purpose to solve a case that is examined;

(...)

Criminal Procedure Code of the Republic of Moldova no.122 of 14.03.2003: Article 126 Grounds for seizing objects or documents

(...)

(2) The seizure of documents containing information that is a state, trade, banking secret and the seizure of information on telephone conversations shall be allowed only upon the authorization of the investigative judge.

Article 128 Procedure for searching for or seizing objects and documents

(...)

(5) By performing a search and upon presenting the order, the representative of the criminal investigative body shall request the submission of the objects and documents specified in the order. Financial institutions may not invoke banking secret as a reason to refuse to submit the documents requested. Should the objects and documents be submitted voluntarily, the person conducting the criminal investigation shall be limited to their seizure and shall not undertake any other investigative measures.

(...)

Law No. 190-XVI of 26.07.2007 on the prevention and combating of money laundering and the financing of terrorism:

Article 12. Limitation of the effect of secrets defended by law

(...)

(2) The transmission by the reporting entities of information (documents, materials, other data) to the Office for Prevention and Fight against Money Laundering, to criminal investigation authorities, prosecutors' offices, courts and other competent authorities, in cases provided by this law, shall not be qualified as disclosure of the commercial, banking or professional secret. (3) The legislative provisions on commercial, banking or professional secret, cannot impede the agencies mentioned under paragraph (2) of this article, with the scope to execute this law, from receiving or withdrawing the information (documents, materials, other data) about financial and economic activities and transactions of natural or legal persons.

By Law No.179/2014, article 14 of Law No.190-XVI/2007 was supplemented with the following new provision:

“(1³) Administrative court or, where appropriate, the appeal court may suspend the freezing decision of suspicious transaction or activity of the Office for Prevention and fight against money laundering and the resolution of the instruction judge on the prolongation of freezing term, only of applicant's request and only if the following conditions are met:

- a) the reasons given by the applicant as support to the appeal are relevant and well founded;
- b) the applicant provides arguments that dispute circumstances requires urgent arrangement for suspension of attacked decision in order to avoid serious and irreparable damage to the interest of the applicant
- c) the applicant's potential damage exceeds the public interest pursued by the attacked decision.”

(b) Observations on the implementation of the article

The reviewing experts took into account the legal framework and mechanisms available within the domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

As reported by the national authorities, the suspension existed and acted only in relation to money-laundering and terrorism financing. Law No. 179/2014 removed the “automatic” suspension and supplemented article 14 of Law No.190/2007 with a new provision making such suspension subject to specific conditions.

In case of other crimes (including the corruption crimes), pursuant to the provision of article 203 paragraph (1) from the Criminal Procedure Code “...*Upon seizing bank accounts and deposits, any operations with those accounts or deposits shall be terminated.*”

Concerning the FIU's ability to freeze transactions, the reviewing experts took into account the legislative amendment reported. It should be mentioned that the new provision was introduced after the country visit

and therefore it was not possible for the reviewers to review its application. However, the reviewers recommended that the national authorities monitor the application of section 14 of Law No. 190/2007, as supplemented by Law No.179/2014, concerning the suspension of freezing of accounts on specific conditions, in order to ensure that the interpretation and application of the provision does not hamper the effectiveness of investigation of crimes that fall under the remit of UNCAC.

The reviewing experts concluded that the Republic of Moldova has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

- Monitor the application of article 14 of Law No. 190-XVI/2007, as supplemented by Law No.179/2014, concerning the suspension of freezing of accounts on specific conditions, in order to ensure that the interpretation and application of the provision does not hamper the effectiveness of investigation of crimes falling under the remit of the UNCAC.

Article 41. Criminal record

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

In criminal proceeding, the person responsible for criminal investigation requests, through F-246 claim, the criminal record. The information technologies Service of the Ministry of Internal Affairs issue the extras on convictions on the territory of the Republic of Moldova and other countries (example: the Republic of Moldova citizens that were convicted on the territory of the Community of Independent States). There is a Convention of the Community of Independent States (CIS) of 22.05.2009 on cooperation in the exchange of information through interstate data bases of the CIS member countries, managed by the main analytical-informational centre of the Ministry of Internal Affairs of the Russian Federation.

Law No. 216-XV of 29.05.2003 on fully automated information system for recording crimes, criminal cases and persons who have committed crimes:

Article 4 Functions of the system

The System has the following functions: (...)

2) ensures at a state level the unique record:

a) of crimes and persons that have committed them (including persons that live in the Republic of Moldova and have committed crimes on the territory of other states), as well as the punishment that is applied

(...)

4) ensures the exchange of information of criminal character between the criminal investigative bodies and other public authorities (mutual exchange of data between the departmental information systems), as well as with similar bodies from other countries;

(...)

Criminal Code of the Republic of Moldova no. 985-XV of 18.04.2002: Article 11. Application of Criminal Law in space

(...)

(7) Criminal punishments and criminal records for crimes committed outside the territory of the Republic of Moldova shall be taken into consideration hereunder in individualizing the punishment for a new crime committed by the same person on the territory of the Republic of Moldova as well as in settling issues related to amnesty in conditions of reciprocity based on a court decision.

(b) Observations on the implementation of the article

The reviewing experts noted that, according to article 11, paragraph 7 CC, criminal punishments and criminal records for offences committed outside the territory of the Republic of Moldova are taken into consideration in individualizing the punishment for a new crime committed by the same person within the national territory. From the operational point of view, an automated information system for recording crimes, criminal cases and persons who have committed crimes is in place (established by Law. No. 216-XV of 29.05.2003). The Convention of the Community of Independent States (CIS) of 22.05.2009 on cooperation in the exchange of information among the CIS member countries is also of relevance in this context.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Article 42. Jurisdiction

Subparagraph 1 (a) of article 42

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(a) The offence is committed in the territory of that State Party; or

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code of the Republic of Moldova No. 985-XV of 18.04.2002: Article 11. Application of Criminal Law in space

(1) All persons who committed crimes on the territory of the Republic of Moldova shall be held criminally liable under this Code.

(...)

(b) Observations on the implementation of the article

The reviewing experts noted that, under the relevant provisions of the general part of the Criminal Code which apply to all criminal offences, jurisdiction is first established over acts committed within the territory of Moldova by Moldovan or foreign citizens or stateless persons (principle of territoriality - paragraph 1 of section 11 CC).

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Subparagraph 1 (b) of article 42

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

...

(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code of the Republic of Moldova No. 985-XV of 18.04.2002: Article 11. Application of Criminal Law in space

(...)

(5) Crimes committed in the territorial waters or the air space of the Republic of Moldova are considered to be committed in the territory of the Republic of Moldova. The person who committed a crime on a sea craft or aircraft registered in a harbour or airport of the Republic of Moldova and located outside the water or air space of the Republic of Moldova, may be subject to criminal liability under this Code provided that the international treaties to which the Republic of Moldova is a party do not provide otherwise.

(6) Persons who commit crimes on board a military sea craft or aircraft belonging to the Republic of Moldova, irrespective of its location, shall be held criminally liable under this Code.

(...)

(b) Observations on the implementation of the article

The reviewing experts noted that, under the relevant provisions of the general part of the Criminal Code which apply to all criminal offences, jurisdiction is first established over acts committed within the territory of Moldova by Moldovan or foreign citizens or stateless persons (principle of territoriality - paragraph 1 of section 11 CC). The principle also covers offences committed in the territorial waters and air space of Moldova, aboard a Moldovan vessel or aircraft while in foreign waters or air space, or aboard a Moldovan military vessel or military aircraft, regardless of the location of such vessel or aircraft (paragraphs 5 and 6 of section 11 CC). The principle of territoriality also applies if only part of the offence was committed in Moldova (section 12, paragraph 2 CC).

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Subparagraph 2 (a) of article 42

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State Party; or

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code of the Republic of Moldova No. 985-XV of 18.04.2002: Article 11. Application of Criminal Law in space

(...)

(3) If not convicted in a foreign state, foreign citizens and stateless persons without permanent domiciles in

the territory of the Republic of Moldova who commit crimes outside the territory of the Republic of Moldova shall be criminally liable under this Code and shall be subject to criminal liability in the territory of the Republic of Moldova provided that the crimes committed are adverse to the interests of the Republic of Moldova, to the rights and interests of the citizens of the Republic of Moldova, to the peace and security of humanity, or constitute war crimes including crimes set forth in the international treaties to which the Republic of Moldova is a party.
(...)

(b) Observations on the implementation of the article

The reviewing experts noted that, as regards offences committed abroad, section 11 CC establishes jurisdiction over: criminal offences committed by foreign citizens or stateless persons not resident in Moldova, if the offences are detrimental to the interests of the Republic of Moldova, to the rights and interests of the citizens of the Republic of Moldova, or if they are mentioned in the international treaties to which Moldova is a party, provided that the perpetrators of the offences have not been subjected to punishment in another State (paragraph 3).

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Subparagraph 2 (b) of article 42

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

...

(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code of the Republic of Moldova No. 985-XV of 18.04.2002: Article 11. Application of Criminal Law in space

(...)

(2) Citizens of the Republic of Moldova and stateless persons with permanent domiciles in the territory of the Republic of Moldova who commit crimes outside the territory of the country shall be criminally liable under this Code.

(...)

(b) Observations on the implementation of the article

The reviewing experts noted that, as regards offences committed abroad, section 11 CC establishes jurisdiction over: criminal offences committed by Moldovan citizens or stateless persons ordinarily resident in Moldova (paragraph 2).

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision

under review.

Subparagraph 2 (c) of article 42

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

...

(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph (a) (i) or (ii) or (b) (i), of this Convention within its territory; or

(a) Summary of information relevant to reviewing the implementation of the article

See above.

(b) Observations on the implementation of the article

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Subparagraph 2 (d) of article 42

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

...

(d) The offence is committed against the State Party.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code of the Republic of Moldova No. 985-XV of 18.04.2002: Article 11. Application of Criminal Law in space

(...)

(3) If not convicted in a foreign state, foreign citizens and stateless persons without permanent domiciles in the territory of the Republic of Moldova who commit crimes outside the territory of the Republic of Moldova shall be criminally liable under this Code and shall be subject to criminal liability in the territory of the Republic of Moldova provided that the crimes committed are adverse to the interests of the Republic of Moldova, to the rights and interests of the citizens of the Republic of Moldova, to the peace and security of humanity, or constitute war crimes including crimes set forth in the international treaties to which the Republic of Moldova is a party.

(...)

(b) Observations on the implementation of the article

The reviewing experts noted that, as regards offences committed abroad, section 11 CC establishes jurisdiction over: criminal offences committed by foreign citizens or stateless persons not resident in Moldova, if the offences are detrimental to the interests of the Republic of Moldova, to the rights and interests of the citizens of the Republic of Moldova, or if they are mentioned in the international treaties to

which Moldova is a party, provided that the perpetrators of the offences have not been subjected to punishment in another State (paragraph 3).

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 3 of article 42

3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code of the Republic of Moldova No. 985-XV of 18.04.2002: Article 13. Extradition

(1) Citizens of the Republic of Moldova and persons who have been granted political asylum in the Republic of Moldova who commit a crime abroad may not be extradited and shall be subject to criminal liability under this Code.

(...)

Law No. 371-XVI of 01.12.2006 on international legal assistance in criminal matters: Article 44. Transfer of criminal proceedings in case of extradition refusal

The refusal of extradition of its own citizen or of the political refugee shall oblige the Republic of Moldova upon the request of the requesting state, to submit the case to its competent authorities so as to be able to exercise the criminal investigation and the trial should such a need arise. The requesting state is to transmit free of charge to the Prosecutor General's office, within the criminal investigation phase, or to the Minister of Justice, within the trial phase, the criminal case, the information and the objects regarding the crime. The requesting state will be informed about the outcome of its request.

(b) Observations on the implementation of the article

The reviewing experts noted that, according to section 13 CC, citizens of the Republic of Moldova and persons who have been granted political asylum in the Republic of Moldova who commit a crime abroad may not be extradited and shall be subject to criminal liability under this Code. This provision allows the establishment of jurisdiction for the application of the axiom "*aut dedere aut judicare*".

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 4 of article 42

4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code of the Republic of Moldova No. 985-XV of 18.04.2002: Article 13. Extradition

(...)

(2) Foreign citizens and stateless persons who commit crimes outside the territory of the Republic of Moldova but who are in the territory of the country may be extradited based only on an international treaty to which the Republic of Moldova is a party or in conditions of reciprocity based on a court order, only if there aren't serious reasons to believe that they may be subjected to the death penalty, torture or other inhuman or degrading treatment.

Law No. 371 of 01.12.2006 on international legal assistance in criminal matters

Article 44. Transfer of criminal proceedings in case of refusal extradition

Refusal to extradite its own nationals or political refugee obliges Moldova, the Requesting State, submit the case to its competent authorities so as to allow for the prosecution and trial if necessary. For this purpose, the applicant is free to send General Prosecutor in criminal prosecution, or the Ministry of Justice, the judicial phase of criminal cases, and information relating to the offense. The Requesting State shall be informed on his application.

(b) Observations on the implementation of the article

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 5 of article 42

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

(a) Summary of information relevant to reviewing the implementation of the article

Such consultation is possible between the competent authorities from the Republic of Moldova and authorities from another state based on agreements that were concluded.

(b) Observations on the implementation of the article

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 6 of article 42

6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

See above.

(b) Observations on the implementation of the article

The reviewing experts noted the exercise of national criminal jurisdiction in line with the aforementioned provisions.

IV. International cooperation

(a) Successes and good practices

- The existence of a comprehensive legal framework on international cooperation in criminal matters which encompasses all forms of international cooperation;
- The flexible interpretation of the dual criminality requirement in both extradition and MLA proceedings based on the underlying conduct of the offence (article 43, paragraph 2).

(b) Challenges in implementation and recommendations

- Continue efforts to put in place and render fully operational an information system compiling in a systematic manner information on extradition and mutual legal assistance cases, with a view to facilitating the monitoring of such cases and assessing in a more efficient manner the effectiveness of implementation of international cooperation arrangements; in doing so, devote more human resources and make a greater effort to maintain statistics regarding compliance with chapter IV of the UNCAC.

Article 44. Extradition

Paragraph 1 of article 44

1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Procedure Code No. 122 of 14.03.2003:

Article 544. Executing a Request for the Extradition of Persons who are on the Territory of the Republic of

Moldova

(1) The foreign citizen or stateless person under criminal investigation or convicted in a foreign state for the commission of an act subject to punishment in that state may be extradited to this foreign state upon the request of the competent authorities, in view of prosecuting or executing the sentence pronounced for the act committed or of pronouncing a new sentence.

(2) The foreign citizen or stateless person convicted in a foreign state for the commission of an act subject to punishment in that state may be extradited to the foreign state that has taken over the execution upon the request of the competent authorities of the state, in view of executing the sentence pronounced for the act committed or of pronouncing a new sentence.

(3) Extradition for the purpose of criminal investigation shall be granted only if the act is punishable under the legislation of the Republic of Moldova and the maximum punishment is at least one year of imprisonment or if, after a similar inversion of things, the act would be subject to such punishment under the legislation of the Republic of Moldova.

(4) Extradition for the purpose of executing a sentence shall be granted only if extradition under para (3) is admissible and if a punishment depriving of liberty is to be executed. Extradition shall be granted if the term of detention to be served or the cumulation of the detention terms to be executed is of at least six months unless an international treaty provides otherwise.(...)

Law No. 371 of 01.12.2006 on international legal assistance in criminal matters:

Part 1. The extradition from the Republic of Moldova

Article 42. Persons subject to extradition and people who cannot be extradited

(1) can be extradited from the Republic of Moldova, at the request of a foreign citizen or stateless person prosecuted or sentenced in that State.

(2) may not be extradited from the Republic of Moldova:

- a) citizens of the Republic of Moldova;
- b) persons who have been granted asylum;
- c) persons granted political refugee status;
- d) foreign persons in the Republic of Moldova enjoys immunity from jurisdiction, the conditions and limits set out in international treaties;
- e) foreign persons summoned from abroad to hear the parties, witnesses or experts before a court or a prosecuting body, the immunities provided by international treaty.

Article 43. Refusal to extradite

(1) In considering the request for extradition to the Republic of Moldova within the meaning possible refusal, refusal under the conditions specified in the Code of Criminal Procedure to art.546, will take into account the situation following fields:

- a) the person whose extradition is sought to be tried in the requesting State by an extraordinary court established for a particular case and if the person whose extradition is requested would be tried in the requesting State by a court that not provide essential procedural guarantees and protection of rights of defense;
- b) the offense for which extradition is requested is a violation of military discipline and not common law offense;
- c) the penalty provided for the offense is capital punishment laws of the requesting Party. Notwithstanding this rule, extradition of the person may be granted only if the requesting State gives assurance, deemed sufficient by the Republic of Moldova, that capital punishment will not run and should be switched.

(2) refusal to extradite an unconvicted person in Moldova decided by the Attorney General, and the person convicted, the justice minister.

Article 45. Dual criminality

(1) Extradition may be permitted under the Criminal Procedure Code art.544 par. (3), only if the offense for which accused or convicted person whose extradition is sought is provided as a crime so law of the State, as and the law of the Republic of Moldova.

(2) Notwithstanding the provisions of par. (1), extradition may be granted if the offense is not prescribed by law for this act of Moldova if the requirement of dual criminality is excluded by an international treaty to which Moldova is hand.

(3) differences between the legal classification and the name given to the same offense by the laws of two states is not relevant if the international treaty or, failing that, a declaration of reciprocity otherwise stated.

Article 47. *The severity of punishment*

(1) Extradition shall be granted by the Republic of Moldova for criminal prosecution or trial only for offenses punishable by deprivation of liberty of more than a year, according to Moldovan legislation and the requesting State.

(2) Extradition for enforcement of criminal sanctions is granted extradition only if permitted under par. (1) and to be performed if a custodial sentence. In this case, extradition shall be granted if the period of detention to be executed or overlapping periods of detention to be made is at least 6 months if the international treaty to which Moldova is party provide otherwise.

(3) A person sentenced to a term of imprisonment with conditional suspension of the sentence may be extradited in case of cancellation of conviction, with conditional suspension and sending the convict to serve their sentence determined by a court if the sentence remains to be done meet the requirements of seriousness under par. (2) and there are no legal impediments to extradition.

(4) If the offense for which extradition is requested is punishable by death by the law.

Please provide examples of implementation, including cases where dual criminality issues were raised and resolved

Extradition requests:

2012 - 59

2013 - 94

2014 - 77

(b) Observations on the implementation of the article

The reviewing experts noted that extradition is regulated in the Criminal Procedure Code (CPC) and Law No. 371/2006 on “international legal assistance in criminal matters”.

The Republic of Moldova generally requires dual criminality for extradition, in line with article 45, paragraph 1, of Law No. 371/2006. As an exception, dual criminality is not required if its application is excluded by an international treaty to which the Republic of Moldova is a party (article 45, paragraph 2, of Law No. 371/2006). The national authorities also adopt a flexible approach when interpreting the dual criminality requirement by focusing on the underlying conduct and not on the denomination of the offence in question.

The punishment threshold for the identification of extraditable offences is deprivation of liberty of one year or, if extradition is requested for purposes of enforcement of a sentence, a period of at least 6 months of such a sentence (article 47, paragraphs 1-2 of Law No. 371/2006). Corruption offences generally comply with this minimum penalty.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 2 of article 44

2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

Law No. 371 of 01.12.2006 on international legal assistance in criminal matters:

Article 45. Dual criminality rule

(...)

(2) By derogation from the provisions of paragraph (1), the extradition can be granted in the situation when the criminal action is not regulated by the legislation of the Republic of Moldova if for this action the double criminality requirement is excluded by an international treaty to which the Republic of Moldova is a party to.

(...)

(b) Observations on the implementation of the article

The reviewing experts noted that the Republic of Moldova generally requires dual criminality for extradition, in line with article 45, paragraph 1, of Law No. 371/2006. As an exception, dual criminality is not required if its application is excluded by an international treaty to which the Republic of Moldova is a party (article 45, paragraph 2, of Law No. 371/2006). The national authorities also adopt a flexible approach when interpreting the dual criminality requirement by focusing on the underlying conduct and not on the denomination of the offence in question. This was identified as a good practice by the reviewing experts.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 3 of article 44

3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.

(a) Summary of information relevant to reviewing the implementation of the article

No relevant implementing provision in the national legislation. The Moldovan authorities noted, however, that in practice it is not a problem for not having this provision in the domestic law, because pursuant to the Criminal Code, the punishment for a minor offence (up to 2 years imprisonment) and also the punishment for corruption and corruption-related offences fulfil the threshold of 1 year imprisonment for the extraditable offences.

(b) Observations on the implementation of the article

The reviewing experts noted that, according to the Moldovan law, the accessory extradition, foreseen in article 44, paragraph 3, of the Convention, is not feasible. Thus, if an extradition request refers to more than one offence, each of them should be an extraditable offence in line with the national legislation.

The reviewing experts were satisfied with the explanations provided by the Moldovan authorities and, despite the lack of a specific provision on accessory extradition in the domestic legislation, they concluded that in practice the Republic of Moldova has implemented the provision under review.

Paragraph 4 of article 44

4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Procedure Code No. 122 of 14.03.2003:

Article 541. General Conditions for Extradition

(...)

(2) The request for extradition shall be made based on any international treaty to which the Republic of Moldova and the requested state are parties or based on written obligations under conditions of reciprocity.

(...)

Law No. 371 of 01.12.2006 on international legal assistance in criminal matters

Article 4. Reasons for refusal of international legal assistance

(...)

(2) According to point 1) part (1) Article 534 of the Criminal Procedure Code the following crimes are not considered offenses of political nature:

(...)

g) any other crime whose political character nature has been excluded by the international treaties, which the Republic of Moldova is a party to.

Article 45. Dual criminality rule

(...)

(2) By derogation from the provisions of paragraph (1), the extradition can be granted in the situation when the criminal action is not regulated by the legislation of the Republic of Moldova if for this action the double criminality requirement is excluded by any international treaty to which the Republic of Moldova is a party to.

(3) The existent distinctions between the legal classification and title given to the same crime by the legislation of both states shall not be relevant unless through the international treaty or if absent through the reciprocity declarations is not provided otherwise.

(b) Observations on the implementation of the article

The political nature of the offence in question is included among the grounds for refusal (section 546, paragraph 2(e) CPC), but, as reported during the country visit, corruption offences are not deemed as political crimes and the national authorities would use the Convention as a legal basis to ensure extradition is not denied.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 5 of article 44

5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

Constitution of the Republic of Moldova:

Article 19 Legal status of foreign citizens and stateless persons

(...)

(2) Foreign citizens and stateless persons may be extradited only in compliance with an international convention, in terms of reciprocity or on the ground of a decision delivered by a court.

(...)

Criminal Procedure Code no. 122 of 14.03.2003:

Article 541. General Conditions for Extradition

(...)

(2) The request for extradition shall be made based on any international treaty to which the Republic of Moldova and the requested state are parties or based on written obligations under conditions of reciprocity.

(...)

Law No. 158 of 06.07.2007 on the ratification of the United Nations Convention against Corruption:

Article 1.

(...)

Pursuant to the provisions of paragraph 6 (a) of Article 44 of the Convention, the Republic of Moldova considers this convention as legal basis for cooperation with other states parties to the Convention in matters of extradition.

(...)

Law No. 371 of 01.12.2006 on International Legal Assistance in Criminal Matters:

Article 51. Verification of compliance of the request on extradition with the provisions of the international treaty

(1) The Prosecutor General's Office or depending on the case the Ministry of Justice shall urgently proceed on verifying the compliance of the request for extradition with the provisions of the international treaty in order to acknowledge whether:

a) there is an international treaty to which the Republic of Moldova and the requesting state are parties or there are written obligations of reciprocity;

(...)

(b) Observations on the implementation of the article

The reviewing experts noted that the Republic of Moldova makes extradition conditional on the existence of a treaty and considers the UNCAC as a legal basis for extradition or can also grant extradition on the basis of "written obligations of reciprocity" (article 51 of Law No. 371/2006). No extradition cases based solely on the UNCAC have been assessed by a national court.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision

under review.

Paragraph 6 of article 44

6. A State Party that makes extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

(a) Summary of information relevant to reviewing the implementation of the article

Law No. 158 of 06.07.2007 on the ratification of the United Nations Organization Convention against corruption:

Article 1.

(...)

Pursuant to the provisions of paragraph 6 (a) of Article 44 of the Convention, the Republic of Moldova considers this convention as legal basis for cooperation with other states parties to the Convention in matters of extradition.

(...)

(b) Observations on the implementation of the article

The Republic of Moldova makes extradition conditional on the existence of a treaty and considers the UNCAC as a legal basis for extradition. However, no relevant notification has been submitted by the national authorities to the Secretary-General of the United Nations in line with article 44, paragraph 6(a) of the Convention. No extradition cases based solely on the UNCAC have been assessed by a national court.

The reviewing experts concluded that the Republic of Moldova has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

- Notify the Secretary-General of the United Nations that the UNCAC can be used as a legal basis for extradition.

Paragraph 7 of article 44

7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

(a) Summary of information relevant to reviewing the implementation of the article

According to the Criminal Procedure Code the extradition is done based on an international treaty to which the Republic of Moldova and the requested state are parties or based on written obligations of reciprocity.

(b) Observations on the implementation of the article

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review (see also above).

Paragraph 8 of article 44

8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Procedure Code No. 122 of 14.03.2003:

Article 541. General Conditions for Extradition

- (1) The Republic of Moldova may address a foreign state with a request for extradition of a person in whose regard a criminal investigation was conducted in connection with crimes for which criminal law provides for the maximum punishment of at least one year of imprisonment or any other more severe punishment or in whose regard a sentence was issued convicting him/her to imprisonment for at least six months in case of extradition for execution, unless international treaties provide otherwise.
- (2) The request for extradition shall be made based on any international treaty to which the Republic of Moldova and the requested state are parties or based on written obligations under conditions of reciprocity.
- (3) If the person whose extradition is requested is under criminal investigation, the General Prosecutor's Office shall be the authority competent to examine all the necessary materials and to file the request for extradition. If the person whose extradition is requested has been convicted, the Ministry of Justice shall be the competent authority. The request for extradition shall be transmitted directly to the competent body of the requested state or via diplomatic channels if so provided in an international treaty.
- (4) Extradition shall be allowed only if as a result of the commission of a crime an arrest warrant or any other document of similar legal force is presented or on the decision of the competent authority of the requesting state which is executable and which orders the detention of the person whose extradition is requested and describes the applicable laws.

Article 546. Refusal to Extradite

- (1) The Republic of Moldova shall not extradite its own citizens and persons granted the right to asylum.
- (2) Extradition shall also be refused if:
 - 1) the crime was committed in the territory of the Republic of Moldova;
 - 2) a national court or a court of a third state has already pronounced in regard of the respective person a judgment of conviction, acquittal or the termination of the criminal proceeding for the crime for which extradition is requested, or the criminal prosecution body has issued an order on the termination of the proceeding, or national bodies are conducting a criminal investigation of this act;

- 3) the criminal liability limitation period has expired in line with the national legislation or amnesty was granted;
- 4) in line with the law, a criminal investigation may be initiated only based on a preliminary complaint of a victim and there is no such complaint;
- 5) the crime for which extradition is requested is considered in national law to be a political crime or an act related to such a crime;
- 6) the Prosecutor General, the Minister of Justice or the court resolving the issue of extradition has serious reasons to believe that:
 - a) the request for extradition was addressed with a view to pursuing or punishing a person for reasons of race, religion, sex, nationality, ethnic origin or political opinions;
 - b) there is a risk that the situation of the person may be exacerbated due to the reasons specified in letter a);
 - c) if the person is extradited, he/she will be subject to torture, inhumane or degrading treatment or will not have access to a fair trial in the requesting state;
 - 7) the person whose extradition is requested was granted the status of a refugee or political asylum;
 - 8) the state requesting extradition does not ensure reciprocity in extradition.
- (3) If the act for which extradition is requested is punished by law in the requesting state by capital punishment, the extradition of the person may be refused if the requesting state does not provide guarantees, construed as sufficient, that capital punishment will not be applied to the extraditable person under criminal investigation or convicted.
- (4) If the Republic of Moldova refuses extradition, upon the request of the requesting state, the possibility shall be examined to take over the criminal investigation in regard of the person who is a citizen of the Republic of Moldova or a stateless person.

Law No. 371 of 01.12.2006 on international legal assistance in criminal matters:

Article 43. Refusal to extradite

- (1) In considering the request for extradition to the Republic of Moldova within the meaning possible refusal, refusal under the conditions specified in the Code of Criminal Procedure to art.546, will take into account the situation following fields:
 - a) the person whose extradition is sought to be tried in the requesting State by an extraordinary court established for a particular case and if the person whose extradition is requested would be tried in the requesting State by a court that not provide essential procedural guarantees and protection of rights of defense;
 - b) the offense for which extradition is requested is a violation of military discipline and not common law offense;
 - c) the penalty provided for the offense is capital punishment laws of the requesting Party. Notwithstanding this rule, extradition of the person may be granted only if the requesting State gives assurance, deemed sufficient by the Republic of Moldova, that capital punishment will not run and should be switched.
- (2) refusal to extradite an unconvicted person in Moldova decided by the Attorney General, and the person convicted, the justice minister.

(b) Observations on the implementation of the article

The reviewing experts noted that the punishment threshold for the identification of extraditable offences is deprivation of liberty of one year or, if extradition is requested for purposes of enforcement of a sentence, a period of at least 6 months of such a sentence (article 47, paragraphs 1-2 of Law No. 371/2006). Corruption offences generally comply with this minimum penalty.

The grounds for refusal of extradition requests, including the nationality of the person sought, are set out in section 546 CPC. Of relevance are also sections 42 and 43 of Law No. 371. The political nature of the offence in question is included among the grounds for refusal (section 546, paragraph 2(e) CPC). Extradition is precluded when the crime was committed in Moldova or the criminal liability limitation period has expired. Other grounds for refusal include the lack of reciprocity; the anticipated torture, inhumane or degrading or discriminatory treatment against the person sought in the requesting State; the granting of a status of refugee or political asylum to the person sought; the lack of preliminary complaint of a victim; immunity from jurisdiction; the trial of the case in the requesting State by an extraordinary court or a tribunal that do not provide essential procedural guarantees and protection of the rights of the defence; the nature of the offence as a military crime.

If the act for which extradition is requested is punished in the requesting State by capital punishment, extradition may be refused if the requesting State does not provide sufficient assurances that the capital punishment will not be imposed or, if imposed, will not be carried out.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 9 of article 44

9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Procedure Code No. 122 of 14.03.2003:

Article 544. Executing a Request for the Extradition of Persons who are on the Territory of the Republic of Moldova

(...)

(7) (...) The motion for the extradition of an arrested shall be resolved urgently.(...)

Article 545. Simplified Procedure for Extradition

(1) Upon the request of the competent authority of a foreign state to extradite a person, to provisionally arrest him/her in view of extradition or to extradite a foreign citizen or stateless person in whose regard an arrest warrant for extradition was issued may be granted without following the formal extradition procedures if the person consents to simplified extradition and his/her consent is confirmed by the court. If an arrested consents to his/her extradition under the simplified procedure, submission of the official request for extradition and the documents specified in Article 542 of this Code shall not be necessary.

(2) The requirements set in Article 543 shall not be invoked if the foreign citizen or stateless person, upon being informed of his/her rights, expressly waives his/her right to application of the rule of specialty and this fact is confirmed by the court.

(3) The investigative judge from the competent court shall examine in a hearing in which the prosecutor, the person whose extradition is required and his/her attorney shall participate, the identification details of the extraditable person, shall inform him/her about his/her right to a simplified procedure of extradition and shall record the statement made which shall be signed by all participants in the hearing.

(4) The consent given under paragraphs (1) and (2) may not be revoked once confirmed by the court.

Law No. 371 of 01.12.2006 on international legal assistance in criminal matters

Article 59. Simplified extradition

(1) The person whose extradition is requested is entitled to declare before a court that gives the benefits which would give the law to defend against the extradition request and give consent to be extradited and handed over to state authorities applicant. Declaration is recorded in the minutes signed by the presiding judges, court clerks, the person whose extradition is requested, the lawyer and the interpreter. Having established that the person whose extradition is requested is fully aware of the consequences of its choice, the court, taking into account the conclusions of the prosecutor, examining the existence of any impediment that would preclude extradition. If that simplified extradition is admissible, the court notes that fact by a conclusion and has also the necessary preventive measures to be taken until the surrender of the person whose extradition is requested. The conclusion is final, shall be made within 24 hours and is transmitted immediately, the certified copy, the Attorney General or the Minister of Justice to issue a legal decision.

(2) The consent given under par. (1) cannot be revoked once it has been confirmed by the court.

(3) In the case referred to. (1) submit a formal request for extradition and the documents referred to in Article 50 para.

(3) is not required if provided for by international treaty applicable in relation to the requesting State or if that state law allows such a simplified extradition procedure and it has been applied to requests for extradition by the Republic of Moldova.

(b) Observations on the implementation of the article

The reviewing experts noted that a simplified extradition procedure is foreseen in section 545 CPC and article 59 of Law No. 371/2006.

The length of extradition proceedings invariably depends on the complexity of the matter. No information has been provided regarding the average duration of the extradition process as a whole and at its different stages, including the appeal hearings. Given the piecemeal statistical data on extradition proceedings that were provided by the national authorities, the reviewing experts favoured a more systematic approach in compiling statistical information on extradition cases (see the general recommendation at the beginning of Chapter IV).

It was further explained by the national authorities during the country visit that regarding the applicable evidentiary requirements in extradition proceedings, the practice followed is to authorize extradition on the condition that the formal (see, for example, article 12, paragraph 2, of the European Convention on Extradition) and substantive requirements provided for by the applicable treaty or domestic legislation are present.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 10 of article 44

10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

Law No. 371 of 01.12.2006 on international legal assistance in criminal matters

Article 55. Provisional arrest. Court submission

(1) After the receipt of the request for extradition the Prosecutor General's Office or depending on the case the Ministry of Justice shall immediately take measures for the arrest of the person whose extradition is requested, according to the provisions of the Criminal Procedure Code. The representatives of the authority which carried out the apprehension, under the leadership of the competent prosecutor, within 72 hours after the receipt of the request for extradition and of the enclosed documents shall proceed to identify the person whose extradition is requested and who is to be handed the arrest warrant as well as the other documents transmitted by the authorities of the requesting state.

(2) After the identification, the court within the territorial circumscription of the Ministry of Justice shall be notified to decide on the provisional arrest in order to extradite the person whose extradition is requested and to continue the judicial proceeding on adjudicating the request for extradition. The motion on ordering provisional arrest shall be filed on behalf of the Prosecutor General.

(3) The provisional arrest in order to extradite a person extradition is ordered and prolonged by the investigating judge vested with adjudicating the request for extradition. The arrest is ordered through a court order which can be challenged with appeal in casation only along with the court decision delivered with regards to the request for extradition.

(4) The person whose extradition is requested and in respect of whom the provisional arrest was ordered shall be arrested by corresponding authorities of the Ministry of Internal Affairs.

(5) During the adjudication of the case the court shall re-adjudicate ex officio at every 30 days, the need to maintain the provisional arrest, ordering, depending on the case, its prolongation or replacement with the obligation not to leave the country of territory or with a reprimand measure alternative to the provisional arrest according to the Criminal Procedure Code.

(6) Each prolongation granted in accordance with paragraph (5) shall not exceed 30 days. The overall duration the provisional arrest cannot exceed 180 days.

(7) In case of admitting the request for extradition, the provisional arrest in order to extradite a person shall be prolonged at every 30 days until the transfer of the extradited person under condition of respecting time-frame provided by paragraphs (5) and (6). The provisional arrest ceases de jure if the extradited person is not taken over by the competent authorities of the requesting state within 30 days from the date agreed for arrest and surrender.

(8) Except for the case provided by paragraph (5) of Article 66, the court can order ex officio upon the motion of the Prosecutor General or based on the request of the person whose extradition is requested to cease the arrest in order to extradite a person if the extradited person will not be taken over by the competent authorities of the requesting state within 15 days from the date agreed for surrender, except for the case when the bilateral treaty does not foresee more favourable conditions for this person.

(9) If in respect to the person whose extradition is requested, the competent national court has issued a warrant on provisional arrest or a warrant on serving a prison penalty for criminal actions committed on the territory of the Republic of Moldova, the warrant on provisional arrest for extradition shall take effect from the data from which the provisions of the arrest warrant or of serving a prison punishment does not have any effect.

Article 56. Provisional arrest in case of urgency

(1) In urgent cases the Prosecutor General's Office or depending on the case the Minister of Justice can request ex officio or on the request of the requesting party the provisional arrest of the investigated person, even prior to the formulation and transmittal of the formal request on extradition.

(...)

Criminal Procedure Code No. 122 of 14.03.2003:

Article 547. Arresting a Person in View of Extradition

(...)

(1) The preventive arrest of the extraditable person may be replaced by any other preventive measure upon the request of the prosecutor or by the court ex officio in line with the procedural legislation in force if:

- a) the health of the person confirmed by a medical certificate prevents him/her from detention;
- b) a person and his/her family have their permanent domicile in the Republic of Moldova and there are no grounds to consider that he/she will evade extradition.

(2) In case of emergency, the person whose extradition is requested may be arrested prior to receipt of the request for extradition based on an arrest warrant issued for a term of 18 days which may be extended for up to 40 days based on a motion of the General Prosecutor's Office or upon the request of a foreign state or international court, provided that the request contains data on the arrest warrant or on the final judgment issued with regard to this person and the assurance that the request for extradition will be subsequently sent. The request shall refer to the crime for which extradition will be requested, the date and place where it was committed and, to the extent possible, the distinctive features of the person sought. The request for arrest may be addressed by mail, telegraph, telex, fax, or any other means of conveying written messages. The requesting authority shall be informed as soon as possible about the results of the examination of its request.

(3) The person arrested under the conditions of para.(2) shall be released if within 18 days from arrest the court deciding on the admissibility of the person's arrest does not receive the request for extradition and the respective documents. This term may be extended upon the request of the foreign state or international court; however, it shall not exceed 40 days from arrest. Provisional release is possible any time, provided that other measures aimed at avoiding the person's whose extradition is requested from evading prosecution may be applied to him/her.

(...)

(b) Observations on the implementation of the article

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 11 of article 44

11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

Constitution of the Republic of Moldova:

Article 18

Protection of the Republic of Moldova citizens (...)

(2) The citizens of the Republic of Moldova may not be extradited or expelled from the country.

Criminal Procedure code No. 122 of 14.03.2003:

Article 546. Refusal to extradite

(1) The Republic of Moldova shall not extradite its own citizens and persons granted the right to asylum.

(...)

Law No. 371 of 01.12.2006 on international legal assistance in criminal matters

Article 44. Transfer of criminal proceedings in case of extradition refusal

The refusal of extradition of its own citizen or of the political refugee shall oblige the Republic of Moldova upon the request of the requesting state, to submit the case to its competent authorities so as to be able to exercise the criminal investigation and the trial should such a need arise. The requesting state is to transmit free of charge to the Prosecutor General's office, within the criminal investigation phase, or to the Minister of Justice, within the trial phase, the criminal case, the information and the objects regarding the crime. The requesting state will be informed about the outcome of its request.

(b) Observations on the implementation of the article

The reviewing experts noted that the Republic of Moldova does not extradite its nationals by virtue of article 18 of the Constitution and, as mentioned above, section 546, paragraph 1, CPC. In line with article 44 of Law No. 371/2006 and according to the European Convention on Transfer of Proceedings in Criminal Matters, where a request for extradition is refused on the ground of nationality, the Moldovan authorities inform the requesting State about the possibility to take over the prosecution against this person. For taking over the proceedings, a formal request of the requesting State is needed, together with the transfer of the file of the case. However, if the postponement of extradition could lead to the expiry of the limitation period of the criminal case or could cause serious difficulties in establishing facts, the person sought may be extradited temporarily based on a reasoned request, under the conditions agreed jointly with the requesting State (section 548, paragraph 2 CPC). No information on examples of specific cases was provided.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 12 of article 44

12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

There is no provision in the legislation of the Republic of Moldova that would allow for the extradition of its own citizens under a certain condition.

(b) Observations on the implementation of the article

The reviewing experts noted that the domestic legislation does not allow the conditional surrender of nationals, but the obligation set forth in paragraph 11 of article 44 of the Convention is discharged through application of article 44 of Law No. 371/2006.

Paragraph 13 of article 44

13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.

(a) Summary of information relevant to reviewing the implementation of the article

Law No. 371 of 01.12.2006 on international legal assistance in criminal matters:

Article 109. Special provisions of admissibility

(1) On the territory of the Republic of Moldova the execution of the decision of foreign judicial instance is carried out on demand about recognition and the execution, formulated by the competent authorities of the state of condemnation.

(2) The request for recognition and execution is admitted, if besides the basic conditions established by para (2) of Article 558 of the Criminal Procedure Code, the following special conditions are met:

a) the sentenced person is a citizen of the Republic of Moldova or a person constantly living on its territory or is a foreign citizen or stateless person with a residence permit on its territory;

b) as regards the act on which the sentence has been announced, there is no criminal investigation initiated in the Republic of Moldova;

c) the execution of the decision in the Republic of Moldova can favour the social reintegration of the sentenced person;

d) the execution of the decision in the Republic of Moldova can favour the compensation of the damage caused by the offense;

e) the duration of the punishment or of the safety measures established by a decision is over one year.

(3) The decision of the foreign judicial instance can also be executed, if the sentenced person serves on the territory of the Republic of Moldova a punishment for a crime other than established by the sentence which execution is requested.

(4) The execution of a foreign court decision by which a punishment or a safety measure is disposed of is possible also when the authorities of the Republic of Moldova refuse the extradition of the sentenced person, even if the conditions stipulated in para (2) c)-e) are met.

Please provide examples of implementation

If applicable and available, please provide information on court or other recent cases in which such a sentence has been enforced

Requests for recognizing foreign judgements:

2012 - 22

2013 - 18

2014 - 15

(b) Observations on the implementation of the article

The reviewing experts noted that the Republic of Moldova does enforce foreign sentences, including in cases where extradition of nationals is rejected, in line with Chapter VI of Law 371/2006 and sections 558-559 CPC.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 14 of article 44

14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

(a) Summary of information relevant to reviewing the implementation of the article

Law No. 371 of 01.12.2006 on international legal assistance in criminal matters:

Article 55. Provisional arrest. Court submission

(1) After the receipt of the request for extradition the Prosecutor General's Office or depending on the case the Ministry of Justice shall immediately take measures for the arrest of the person whose extradition is requested, according to the provisions of the Criminal Procedure Code. The representatives of the authority which carried out the apprehension, under the leadership of the competent prosecutor, within 72 hours after the receipt of the request for extradition and of the enclosed documents shall proceed to identify the person whose extradition is requested and who is to be handed the arrest warrant as well as the other documents transmitted by the authorities of the requesting state.
(...)

Article 58. Procedure of examining the request for extradition

(1) Initially the court insures that the person whose extradition is requested is interviewed and is assisted free of charge by an interpreter and a lawyer providing legal assisted guaranteed by the state if there is no chosen lawyer. The presence of the prosecutor is mandatory. The procedure is public and if the person whose extradition is requested or the prosecutor does not oppose or if the interests of justice request so is oral and based on the adversarial principle.
(2) The person whose extradition is requested or the prosecutor on the basis of sufficiently justified reasons can request the court additional time which shall not exceed 8 days. The prosecutor is obliged to contribute to the presentation of data and documents needed to establish if the conditions of extradition are accomplished and to order the seizure and disclosure to the court of the objects specified in Article 12.
(3) After the questioning the person whose extradition is requested, can choose either to be voluntarily extradited, or for a continuation of the procedure in case of resistance to the extradition.

Article 60. Resistance to extradition of the person whose extradition is requested

(1) If the person whose extradition is requested opposes to extradition shall be able to formulate arguments orally and in writing, being also able to provide evidence.
(2) After interviewing the person whose extradition is requested, the dossier of the case can be provided to his/her defense lawyer so that a reasoned motion to the request for extradition could be presented within 8 days also indicating the evidentiary means admitted by the legislation of the Republic of Moldova, the number of witnesses being limited to two.
(3) The motion cannot be based on anything else than the fact that the arrested person is not the wanted one

or the conditions pertaining to extradition are not accomplished.

(4) Once filed, the motion on protest to extradition or once the time for filing the motion has expired, the prosecutor can request an additional time-frame up to 8 days for answering to the protest motion or to provide evidence according to the provisions of paragraph (2).

Article 63. Adjudication of the case

(...)

(8) Within 10 days from the delivery, the judgment on extradition can be challenged at the Court of Appeal Chisinau by the Prosecutor General as well as by the person whose extradition is requested. The appeal filed against the judgment through which the extradition was ordered can suspend the execution except the provisions relating to the provisional arrest for surrender.

(...)

(b) Observations on the implementation of the article

The reviewing experts noted that persons who are subject to extradition are guaranteed fair treatment at all stages of the proceedings, including enjoyment of all rights and guarantees provided by the domestic legislation. The non-discrimination clause is foreseen in the domestic legislation.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 15 of article 44

15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Procedure Code No. 122 of 14.03.2003:

Article 546. Refusal to extradite

(...)

(2) Extradition shall also be refused if:

(...)

6) the Prosecutor General, the Minister of Justice or the court resolving the issue of extradition has serious reasons to believe that:

a) the request for extradition was addressed with a view to pursuing or punishing a person for reasons of race, religion, sex, nationality, ethnic origin or political opinions;

b) there is a risk that the situation of the person may be exacerbated due to the reasons specified in letter a);

(...)

(b) Observations on the implementation of the article

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 16 of article 44

16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

Law No. 371 of 01.12.2006 on international legal assistance in criminal matters:

Article 46. Fiscal offenses

(1) In matters concerning fees and taxes, customs and exchange offices related ones the extradition shall be granted according to the applicable international treaty for criminal actions matching the crimes of the same nature, according to the legislation of the Republic of Moldova.

(2) The extradition cannot be refused on the reason that the legislation of the Republic of Moldova does not entail the same type of fees and taxes or it does not cover, for the cases envisioned by paragraph (1), the same kind of regulation as the legislation of the requesting state.

(b) Observations on the implementation of the article

The reviewing experts noted that, according to the domestic legislation, extradition would not be refused on the ground that the offence involves fiscal matters.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 17 of article 44

17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

(a) Summary of information relevant to reviewing the implementation of the article

Law No. 371 of 01.12.2006 on international legal assistance in criminal matters:

Article 54. Representation of the requesting state

The central authorities of the requesting state upon request can be authorized to assist, through a specially designated representative during the adjudication of the request for extradition from the Republic of Moldova, being legally vested to grant such permission.

Article 62. Additional information

(1) If the information communicated by the requesting state are proved to be insufficient to allow the Republic of Moldova to deliver a judgment for application of this law, the competent court shall request the supplementation of the needed information. A two month time-frame shall be granted in this respect.

(2) The request regarding the additional information as well as the answer are transmitted using one of the mechanisms provided by Article 50.

(b) Observations on the implementation of the article

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 18 of article 44

18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

(a) Summary of information relevant to reviewing the implementation of the article

By Parliamentary Decision No. 1183 of 14.05.1997, the European Convention on Extradition, signed in Paris on 13 December 1957, was ratified.

(b) Observations on the implementation of the article

The Republic of Moldova is bound by regional and international instruments, such as the European Convention on Extradition and its First and Second Additional Protocols, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the Convention on Cybercrime, and the United Nations Convention against Transnational Organized Crime. No further information was provided on bilateral extradition treaties.

The reviewing experts concluded that the Republic of Moldova has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

- Expand the network of bilateral treaties on extradition, especially with non-European States.

Article 45. Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.

(a) Summary of information relevant to reviewing the implementation of the article

Law No. 371 of 01.12.2006 on international legal assistance in criminal matters

Article 84. General Provisions

(...)

(2) The person sentenced in another state can be transferred on the territory of the Republic of Moldova, according to the present law and part 3 Chapter IX section III, Special part of the Criminal Procedure Code.

(...)

Criminal Procedure Code No. 122 of 14.03.2003:

Article 551. Grounds for transferring convicts

(1) Convicts shall be transferred based on the international treaty to which the Republic of Moldova and the respective state are parties and under the condition of reciprocity set out in a written agreement between the Ministry of Justice of the Republic of Moldova and the respective institution of the foreign state.

(2) The following may be grounds for transferring convicts:

- 1) request of a person convicted to imprisonment by a court from the Republic of Moldova to be transferred to another state in view of executing the punishment;
- 2) the request of a person convicted to imprisonment by a foreign court to be transferred to the Republic of Moldova in view of executing the punishment;
- 3) the request for transfer filed whether by the state of conviction or by the state of execution.

Article 552. Conditions for transfer

(1) Transfer shall be allowed under the following conditions:

- 1) the convict shall be a citizen of the state of execution or have his/her permanent domicile there;
- 2) the judgment of conviction shall be final;
- 3) the remaining duration of a punishment depriving of liberty shall be of at least six months from the date of receipt of the request for transfer or shall be undetermined;
- 4) the transfer is consented to by the convict or if due to the age, physical or mental condition of the convict one of the two states considers it necessary - by the legal representative of the convict;
- 5) the act for which the person was convicted constitutes a crime in line with the Criminal Code of the country of the convict's citizenship;
- 6) both states agreed upon the transfer.

7) the court deciding on the transfer is convinced that the transferred person will not be subject to an eventual risk on inhumane and degrading treatment in the state he/she is to be transferred to.

(2) The consent of the person in whose regard the sentence was pronounced shall not be requested for a transfer for the execution of his/her sentence if the person in whose regard the sentence was pronounced:

- 1) escaped from the state where the sentence was pronounced;
- 2) is the subject of an order on expulsion or deportation.

(3) In exceptional cases, the parties may agree on the transfer even if the remaining duration of the punishment is less than six months.

Please provide examples of implementation.

Requests for the transfer of sentenced persons: 2012 - 120

2013 - 110

2014 - 101

(b) Observations on the implementation of the article

The reviewing experts noted that the CPC (sections 551-557) and Law No. 371/2006 (Chapter V) govern the transfer of prisoners into and out of the country. The Republic of Moldova is a party to the European Convention on the Transfer of Sentenced Persons (1983) and its Additional Protocol (1997).

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Article 46. Mutual legal assistance

Paragraph 1 of article 46

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Procedure Code No. 122 of 14.03.2003

Article 531. Legal Regulation of International Legal Assistance

(1) Relationships with foreign countries or international courts related to legal assistance on criminal matters shall be regulated by this chapter and the provisions of the Law on International Legal Assistance on Criminal Matters. The provisions of the international treaties to which the Republic of Moldova is party and other international obligations of the Republic of Moldova shall have precedence over the provisions of this Chapter.

(...)

Law No. 371 of 01.12.2006 on international legal assistance in criminal matters:

Article 1. The purpose and regulation area

(...)

(3) The provisions of the present law are applied to the following forms of international legal cooperation in criminal matters:

- a) transmittal of records, data and information;
- b) notification of procedural acts;
- c) summoning of witnesses, experts and wanted persons;
- d) rogatory commissions;
- d1) joint investigation teams;
- e) transfer, upon request of criminal proceedings;
- f) extradition;
- g) transfer of convicted persons;
- h) recognition of judgments in criminal matters ruled by foreign courts;
- i) provision of information on criminal records.

Please provide examples of implementation.

Letters rogatory:

2013 - 290

(b) Observations on the implementation of the article

The reviewing experts noted that the Republic of Moldova has in place specific legislation for the provision of mutual assistance in criminal matters (Law No. 371/2006, Chapters I and II). The provisions of CPC (sections 531-540) are used as a supplementary legal framework for the provision of such assistance. The national authorities can also afford assistance on the basis of an applicable treaty (either bilateral or multilateral, including the Convention), or on basis of the principle of reciprocity. As reported, this overall legal framework permits judicial authorities to respond to MLA requests in the broadest possible sense.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 2 of article 46

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

According to para (4) of Article 21 of the Criminal Code, legal entities, except for public authorities, shall be criminally liable for crimes punishable in line with the special part of this Code applicable to legal entities.

(b) Observations on the implementation of the article

The reviewing experts noted that the Republic of Moldova has in place specific legislation for the provision of mutual assistance in criminal matters (Law No. 371/2006, Chapters I and II). The provisions of CPC (sections 531-540) are used as a supplementary legal framework for the provision of such assistance. The national authorities can also afford assistance on the basis of an applicable treaty (either bilateral or multilateral, including the Convention), or on basis of the principle of reciprocity. As reported, this overall legal framework permits judicial authorities to respond to MLA requests in the broadest possible sense, also in relation to legal persons which are criminally liable according to article 21, paragraph 4 CC.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Subparagraphs 3 (a) to 3 (i) of article 46

3. *Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

- (a) Taking evidence or statements from persons;*
- (b) Effecting service of judicial documents;*
- (c) Executing searches and seizures, and freezing;*
- (d) Examining objects and sites;*
- (e) Providing information, evidentiary items and expert evaluations;*
- (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;*
- (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;*
- (h) Facilitating the voluntary appearance of persons in the requesting State Party;*
- (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;*

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Procedure Code No. 122 of 14.03.2003:

Article 533. Volume of legal assistance

(1) International legal assistance may be requested or provided in the performance of certain procedural activities provided in the criminal procedure legislation of the Republic of Moldova and of the respective foreign state in particular:

- 1) notifying individuals or legal entities abroad about procedural acts or court judgments;
- 2) hearing persons as witnesses, suspects, accused, defendants, civilly liable parties;
- 3) on-site investigations, searches, seizures of objects and documents and their transmission abroad, sequestration, confrontations, presenting for identification, identification of telephone subscribers, wiretapping communications, expert reports, confiscation of goods obtained from the commission of crimes and other criminal investigative actions provided by this Code;
- 4) summoning witnesses, experts or persons pursued by criminal investigative bodies or by the court;
- 5) taking over the criminal investigation upon the request of a foreign state;
- 6) searching for and extraditing persons who committed crimes or to serve a punishment depriving them of liberty;
- 7) acknowledging and executing foreign sentences; 8) transferring convicts;
- 8) submitting information on criminal records; 9) other actions not contradicting this Code.

Law No. 371 of 01.12.2006 on international legal assistance in criminal matters:

Article 1. The purpose and regulation area

(...)

(3) The provisions of the present law are applied to the following forms of international legal cooperation in criminal matters:

- a) transmittal of records, data and information;
- b) notification of procedural acts;
- c) summoning of witnesses, experts and wanted persons;
- d) rogatory commissions;
- d1) joint investigation teams;
- e) transfer, upon request of criminal proceedings;

- f) extradition;
- g) transfer of convicted persons;
- h) recognition of judgments in criminal matters ruled by foreign courts;
- i) provision of information on criminal records.

(b) Observations on the implementation of the article

The reviewing experts noted that, in accordance with section 533 CPC, mutual legal assistance can be afforded in relation to a broad range of acts, including notifying individuals or legal entities abroad about procedural acts or court judgments; hearing persons as witnesses, suspects, accused, defendants or civilly liable parties; summoning of witnesses, experts or persons pursued by criminal investigative bodies or by the court; on site- investigations; the provision of information on criminal records; the service of documents; wiretapping; the search and seizure of objects and documents and their transmission abroad; and cooperation for confiscation purposes. In the absence of a treaty, cooperation is still possible albeit more limited, as it cannot involve coercive measures. The same rule applies in case of reciprocity.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Subparagraphs 3 (j) and 3 (k) of article 46

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

...

(j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;

(k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Procedure Code No. 122 of 14.03.2003:

Article 533. Volume of legal assistance

(1) International legal assistance may be requested or provided in the performance of certain procedural activities provided in

the criminal procedure legislation of the Republic of Moldova and of the respective foreign state in particular:

- 1) notifying individuals or legal entities abroad about procedural acts or court judgments;
- 2) hearing persons as witnesses, suspects, accused, defendants, civilly liable parties;
- 3) on-site investigations, searches, seizures of objects and documents and their transmission abroad, sequestration, confrontations, presenting for identification, identification of telephone subscribers, wiretapping communications, expert reports, confiscation of goods obtained from the commission of crimes and other criminal investigative actions provided by this Code;
- 4) summoning witnesses, experts or persons pursued by criminal investigative bodies or by the court;
- 5) taking over the criminal investigation upon the request of a foreign state;
- 6) searching for and extraditing persons who committed crimes or to serve a punishment depriving them of liberty;
- 7) acknowledging and executing foreign sentences;
- 8) transferring convicts;
- 8/1) submitting information on criminal records;
- 9) **other actions not contradicting this Code.**

(b) Observations on the implementation of the article

The reviewing experts noted that the forms of assistance stipulated in the provision of the Convention under review fall within the scope of “other actions not contradicting this Code [Moldovan CPC]”.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 4 of article 46

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party to this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Law No. 371 of 01.12.2006 on international legal assistance in criminal matters

Article 29. Immediate information transmittal

(1) The Moldovan central vested authorities can, without any prior request, transmit to the authorities of a state party to the European Convention on Legal Assistance in Criminal Matters, adopted in Strasbourg on April 20, 1959, as amended by two additional protocols, the information received within the operative investigation and criminal investigation activities in case it considers that this information could help the state-addressee to initiate a criminal proceeding or could serve as a basis for formulating a request on legal assistance. The information obtained during the operative or criminal investigation activities shall be transmitted by the criminal investigation authority to the prosecutor who will further present it to the Prosecutor General's Office in order to send it to the mentioned foreign state.

(...)

(b) Observations on the implementation of the article

The reviewing experts noted that the spontaneous transmission of information prior to an MLA request is regulated in Law No. 371/2006 (article 29).

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 5 of article 46

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restriction on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of the article

Law No. 371 of 01.12.2006 on international legal assistance in criminal matters:

Article 29. Immediate information transmittal

(...)

(3) The procedure on transmitting the information shall bear the form of a rogatory commission whose text shall expressly indicate the imposed conditions or the interdiction, thus notifying the foreign state which shall be obliged to respect them while using this category of information.

Article 6. Confidentiality

(1) The Republic of Moldova assures, within the limits of the law, upon the request of the requesting state, the confidentiality of requests on legal assistance and the documents attached to these. In case if the confidentiality condition cannot be fulfilled, the Republic of Moldova notifies the foreign state which is to decide hereupon.

(2) The provisions of para (1) are similarly applied in case the Republic of Moldova is the requesting state.

(b) Observations on the implementation of the article

The reviewing experts noted that the spontaneous transmission of information prior to an MLA request is regulated in Law No. 371/2006 (article 29).

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 8 of article 46

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

Article 534 of the Criminal Procedure Code envisages in an exhaustive manner the grounds for refusing international legal assistance among which there is no such reason as the fact that the information requested represents banking secrecy.

(b) Observations on the implementation of the article

The reviewing experts noted that bank secrecy is not included among the grounds for refusal of MLA requests set forth in article 534 CPC.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Subparagraph 9 (a) of article 46

9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Procedure Code No. 122 of 14.03.2003

Article 534. Rejecting International Legal Assistance

(1) International legal assistance may be rejected if:

(...)

7) in line with the criminal Code of the Republic of Moldova the act or acts invoked in the request do not constitute a crime;

(...)

Law No. 371 of 01.12.2006 on international legal assistance in criminal matters

Article 45. Dual criminality rule

(...)

(2) By derogation from the provisions of paragraph (1), the extradition can be granted in the situation when the criminal action is not regulated by the legislation of the Republic of Moldova if for this action the double criminality requirement is excluded by an international treaty to which the Republic of Moldova is a party to.

(...)

Law No. 595 of 24.09.1999 on the international treaties of the Republic of Moldova

Article 20. Application of International Treaties

Provisions of international treaties that by their content are applicable to legal relations without adopting special normative acts shall be subject to implementation and application in the legal and justice system of the Republic of Moldova. Relative normative acts shall be adopted for implementing other provisions of treaties.

(b) Observations on the implementation of the article

The reviewing experts noted that mutual legal assistance may be refused in the absence of dual criminality (section 534, paragraph 1(7) CPC). No distinction exists in the domestic legislation between coercive and non-coercive measures as a criterion for requiring dual criminality.

The reviewing experts concluded that the Republic of Moldova has partially implemented the provision under review.

Subparagraph 9 (b) of article 46

(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system,

render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

The coercive measures are stipulated in Title IV of the General Part of the Criminal Procedure Code:

Article 165. Notion of Detention

(1) Detention is the deprivation of a person's liberty for a short period of time, however, not longer than 72 hours, in places and under conditions set by law.

(...)

Please explain what measures you consider to be coercive; please attach any available definitions or relevant legal texts

Article 175. Notion and Categories of Preventive Measures

(1) The coercive measures by which a suspect/accused/defendant is prevented from certain negative actions targeted against a criminal proceeding or against securing the enforcement of a sentence are preventive measures.

(2) The preventive measures are aimed at ensuring a proper criminal proceeding or at preventing the suspect/accused/defendant from evading from a criminal investigation or the court so that he/she does not impede finding the truth or at ensuring court enforcement of the sentence.

(3) Preventive measures are:

- 1) an interdiction from leaving the locality;
- 2) an interdiction from leaving the country;
- 3) a personal guarantee;
- 4) the guarantee of an organization;
- 5) a temporary revocation of a license to operate means of transport;
- 6) transferring a service person under supervision;
- 7) transferring a juvenile under supervision;
- 8) provisional release under judicial control;
- 9) provisional release on bail;
- 10) house arrest;
- 11) preventive arrest.

(...)

Article 197. Other Coercive Procedural Measures

(1) In order to ensure the method set out in this Code for a criminal investigation, a case hearing and the enforcement of a sentence, the criminal investigative body, the prosecutor, the investigative judge or the court, based on their competence, shall have the right to apply to the suspect/accused/defendant other coercive procedural measures such as:

- 1) the obligation to appear;
- 2) summoning by force;
- 3) provisional suspension from office;
- 4) measures securing the recovery of the damage caused by the crime; 5) measures securing the execution of a punishment by fine.

(2) In cases set forth in this Code, the criminal investigative body or the court shall have the right to apply to the injured party, witness or to other participants in the proceedings the following coercive procedural measures:

- 1) the obligation to appear;
- 2) summoning by force;

3) court fine (applied only by the court).

Article 203. Sequestration

(1) Sequestering goods is a coercive procedural measure consisting of inventorying the goods and prohibiting the owner or possessor from disposing of those goods or, if necessary, to use such goods. Upon sequestering bank accounts and deposits, any operations with those accounts or deposits shall be terminated.
(...)

Please explain what matters you consider to be of a *de minimis* nature; please attach any available definitions or relevant legal texts

There are no provisions in the legislation of the Republic of Moldova with regard to minor problems. At the same time, this fact is not stipulated in Article 534 of the Criminal Procedure Code as grounds for refusal of international legal assistance.

(b) Observations on the implementation of the article

The reviewing experts noted that mutual legal assistance may be refused in the absence of dual criminality (section 534, paragraph 1(7) CPC). No distinction exists in the domestic legislation between coercive (e.g. taking a person into custody, conducting electronic surveillance, conducting a house search, seizing items or confiscating assets) and non-coercive measures (e.g. effecting service of judicial documents, taking voluntary witnesses statements, conducting crime scene analyses and obtaining criminal records or other publicly available material) as a criterion for requiring dual criminality. And this, despite the fact that the concept of “coercive procedural measures” is familiar with regard to domestic criminal proceedings (see Title V of CPC).

The reviewing experts concluded that the Republic of Moldova has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

- Specify in legislation the distinction between coercive and non-coercive measures as a criterion for determining the fulfilment of the dual criminality requirement in the MLA practice; and consider providing a wider scope of assistance that involves coercive measures without requiring dual criminality especially in cases of assistance - in the absence of applicable treaty - to States that are not members of the Council of Europe

Subparagraph 9 (c) of article 46

(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

(a) Summary of information relevant to reviewing the implementation of the article

See above. There are no provisions in the legislation of the Republic of Moldova with regard to minor problems. At the same time, this fact is not stipulated in section 534 of the Criminal Procedure Code as grounds for refusal of international legal assistance.

(b) Observations on the implementation of the article

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

(c) Challenges in implementation and recommendations

- Consider providing a wider scope of assistance that involves coercive measures without requiring dual criminality especially in cases of assistance - in the absence of applicable treaty - to States that are not members of the Council of.

Paragraph 10 of article 46

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

(a) Summary of information relevant to reviewing the implementation of the article

Law No. 371 of 01.12.2006 on international legal assistance in criminal matters

Article 22. Temporary transfer of detained witnesses

(1) Any detained person whose presence is requested by the requesting state for interviewing a witness or for a confrontation shall be temporarily transferred on the territory of this state under the condition of his return within the time-frame mentioned by the Republic of Moldova, and under the reserve of the provisions of Article 21 to the extent these can be applied accordingly.

(2) The transfer from the territory of the Republic of Moldova can be refused, if:

a) the detained person does not consent to be transferred;

b) the presence of detained person is necessary within ongoing criminal proceedings carried out on the territory of the requested state;

c) the transfer of detained person could prolong his/her detention period; or

d) his/her transfer onto the territory of the requesting state is hampered on other well-founded grounds.

(3) In the situation provided by paragraph (1), the transit of the detained person throughout the territory of a third state shall be granted after upon the request submitted by the Ministry of Justice of the requesting state to the Ministry of Justice of the state requested for transiting, being accompanied by all necessary documents.

(4) The Republic of Moldova will not grant the transfer of its citizens.

(5) The transferred person is detained on the territory of the requesting state and depending on the case, on the territory of the state requested for transiting, except for the case when the state requested for transfer shall demand the person's release.

(6) The period of time during which the detained person has been transferred according to the provisions of the present article shall be deducted from the duration of the punishment applied.

(7) The place of transfer is, as a rule, the state border crossing point of the Republic of Moldova. The prisoner is transferred and accepted under escort by the Department of Penitentiary Institutions of the Ministry of Justice which shall inform the Ministry of Justice or the General Prosecutor's Office, depending on the case.

(8) The provisions of para (7) are applied in the corresponding way in a case when the Republic of Moldova is the requesting state.

(b) Observations on the implementation of the article

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 11 of article 46

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article

See above.

(b) Observations on the implementation of the article

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 12 of article 46

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article

Law No. 371 of 01.12.2006 on international legal assistance in criminal matters

Article 21. Immunities

(...)

(3) Any person, regardless of nationality summoned to the central authorities of the Republic of Moldova which are conducting criminal proceedings in order to execute certain procedural actions on the territory of the Republic of Moldova neither shall be prosecuted nor detained or be subject to any other freedom restraining measure in the Republic of Moldova for prior to his/her departure from the territory of the foreign requested state for actions or convictions not mentioned in the summons.

(4) The immunity stipulated by the present article ceases according to the conditions set forth by the legislation.

(b) Observations on the implementation of the article

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 13 of article 46

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

(a) Summary of information relevant to reviewing the implementation of the article

Law No. 158 of 06.07.2007 on the ratification of the United Nations Organization Convention against corruption

Article 3.

(1) According to paragraph 13 of Article 46 of the Convention, the following central authorities are designated as responsible for the receipt of legal assistance requests, including the extradition requests:

- a) Prosecutor General's Office - in the criminal prosecution phase;
- b) Ministry of Justice - the trial phase and court decisions enforcement.

Law No. 371 of 01.12.2006 on international legal assistance in criminal matters

Article 7. Mechanism of Transferring Requests on Legal Assistance

(...)

(2) In case the legal assistance requests are transferred directly to the criminal prosecution bodies or the judicial authorities of the Republic of Moldova, the latter shall have the right to execute them only after getting the execution authorization from the central authorities.

(3) In case of emergency, the legal assistance request can be sent by post, including by electronic post, by telegraph, telex, fax or by any other adequate means of communication that leave written traces, by guaranteeing the further transmittal through official channels.

(b) Observations on the implementation of the article

The reviewing experts noted that the Republic of Moldova has designated as central authorities for MLA requests the Prosecutor General's Office (in the criminal prosecution phase) and the Ministry of Justice (in the trial phase and for court decisions enforcement). Such requests can be transmitted either directly to the central authority or through diplomatic channels or through Interpol (article 7 of Law No. 371/2006). However, no notification has yet been submitted to the Secretary-General of the United Nations regarding the designated central authority and the language(s) acceptable for submission of MLA requests.

The reviewing experts concluded that the Republic of Moldova has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

- Notify the Secretary-General of the United Nations of the central authority designated to deal with MLA requests.

Paragraph 14 of article 46

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

(a) Summary of information relevant to reviewing the implementation of the article

Law No. 158 of 06.07.2007 on the ratification of the United Nations Convention against corruption

Article 3.

(...)

(2) According to paragraph 14 of Article 46 of the Convention, the languages accepted for the legal assistance requests and for the documents attached are the Moldovan, English or Russian languages.

(b) Observations on the implementation of the article

The reviewing experts noted the languages accepted for MLA requests and supportive documentation, as set forth in the domestic legislation. However, no notification has yet been submitted to the Secretary-General of the United Nations regarding the language(s) acceptable for submission of MLA requests.

The reviewing experts concluded that the Republic of Moldova has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

- Notify the Secretary-General of the United Nations of the acceptable languages for the submission of MLA requests.

Paragraphs 15 and 16 of article 46

15. A request for mutual legal assistance shall contain:

(a) The identity of the authority making the request;

(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;

(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned; and (f) The purpose for which the evidence, information or action is sought.

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Procedure Code No. 122 of 14.03.2003

Article 537. Content and Form of the Rogatory Commission

(1) The rogatory letter shall be made in writing and shall include:

- 1) the name of the body addressing the letter;
- 2) the name and address, if known, of the institution to which the letter is sent;
- 3) the international treaty or reciprocity agreement based on which the assistance is requested;
- 4) reference to the criminal case in relation to which legal assistance is requested, information about the factual circumstances in which the actions were committed and their legal qualification, the text of the respective article of the Criminal Code of the Republic of Moldova and data about the damage caused by the respective crime;
- 5) data about the persons in whose regard the rogatory commission is requested including about their procedural capacity, date and place of birth, citizenship, domicile, occupation, and for legal entities the name and address and the last and first names and addresses of the representatives of these entities, if necessary;
- 6) the object of the rogatory commission letter and the data necessary to execute it, a description of circumstances that will be established; a list of documents, material evidence and other requested evidence, circumstances in relation to which the evidence is to be managed and the questions to be addressed to the persons to be heard.
- 7) the date when a reply to the rogatory commission is expected and as the case may be, the request that a representative of a criminal investigative body of the Republic of Moldova attend the respective procedural actions.

(...)

Article 542. Request for Extradition and Attached Documents

(1) A request for extradition shall be prepared in the state language and translated into the language of the requested state or into any other language in line with the provisions of or reservations to the applicable international treaty.

(2) A request for extradition shall include:

- a) the name and address of the requesting institution;
- b) the name and address of the institution requested;
- c) the international treaty or the reciprocity agreement based on which extradition is requested;
- d) the last, first names and patronymic of the person whose extradition is requested, information about his/her date and place of birth, citizenship and domicile;
- e) a description of the acts imputed to the person, specifications of the place and date of their commission, their legal qualification, information about the material damage caused;
- f) the place of detention of the person in the requested state.

(...)

(b) Observations on the implementation of the article

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 17 of article 46

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

(a) Summary of information relevant to reviewing the implementation of the article

Law No. 371 of 01.12.2006 on international legal assistance in criminal matters

Article 24. The obligation of execution

(...)

(2) The Republic of Moldova shall insure according to its legislation the execution of the rogatory letters addressed by competent law authorities of the requesting state.

Criminal Procedure Code No. 122 of 14.03.2003:

Article 540. Executing in the Republic of Moldova a Rogatory Commission Requested by a Foreign Body

(...)

(4) When executing the rogatory commission the provisions of this Code shall apply; however, upon a motion of the requesting party, a special procedure provided in the legislation of the foreign state may be

requested in line with the respective international treaty or under conditions of reciprocity provided that it does not conflict with national legislation and the international obligations of the Republic of Moldova.
(...)

Article 540. Searches, Seizures, Return of Objects or Documents, Sequestration and Confiscation

Rogatory commissions requesting search seizure or the return of objects or documents, and sequestration or confiscation shall be executed in line with the legislation of the Republic of Moldova.

(b) Observations on the implementation of the article

The reviewing experts noted that the execution of MLA requests is carried out in accordance with the Moldovan legislation. In case of execution of letters rogatory, a special procedure provided in the legislation of the foreign state may be requested in line with the respective international treaty or under conditions of reciprocity provided that it does not conflict with the Moldovan legislation and the international obligations of the Republic of Moldova (section 540, paragraph 4 CPC).

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 18 of article 46

18. Whenever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

Law No. 371 of 01.12.2006 on international legal assistance in criminal matters

Article 28. Hearing by video conference

(1) In case when a person who is on the territory of the Republic of Moldova territory has to be interviewed as witness or expert by the criminal investigation authorities or by a court of the foreign state or by an international court and it is not appropriate or possible for that person to come on the territory of that state, the latter can inquire that the interview take place by means of video conference according to the provisions of the present law .

(2) The inquiry stipulated by paragraph (1) can be accepted by the Republic of Moldova under the provisions of the Criminal Procedure Code regarding the special means of interviewing the witness and his protection, having the necessary technical means which would allow carrying out the interview by means of video conference.

(3) The request on interviewing by means of video conference, besides the information envisioned in paragraph (1) of Article 537 of the Criminal Procedure Code, shall specify, the reason of inappropriateness or impossibility for the witness or the expert to attend the interview as well as the name of the court or of the criminal investigation authority, and the names of persons that will participate at the interview.

(4) The witness or the expert shall be summoned according to the summoning procedure provided for in the Criminal Procedure Code.

(5) The interview by video conference shall be governed by the following rules:

a) the interview is carried out in the presence of a competent investigating judge, assisted, depending on the case by an interpreter; the investigating judge verifies the identity of the interviewee and is obliged to insure the observance of the fundamental principles governing the criminal procedure legislation. If the violation of this principles is acknowledged, the investigating judge shall immediately take measures to insure that the

interviewing process will be conducted in accordance with the legislation of the Republic of Moldova;

b) the competent central authorities of the Republic of Moldova and of the requesting state shall coordinate, upon necessity, the protection measures of the witness and the expert;

c) the interview is carried out directly by the competent authority of the requesting state or under its coordination, according to the national legislation;

d) the witness or the expert have the right to be assisted, depending on the case by an interpreter based on the legislation of the Republic of Moldova;

e) the person who was called to serve as the witness or the expert may invoke the right not to testify, granted by the legislation of the Republic of Moldova or of the requested state.

(6) Without affecting the measures agreed on protecting the witnesses, the depositions made by the witness or by the expert, interviewed according to the present article, are recorded by technical video means and mentioned in the protocol, drafted according to the provisions of the Criminal Procedure Code. The protocol is transmitted to the competent authority of the requesting state through central authorities, and also through diplomatic channels.

(7) The provisions of the present article can be applied and in cases of interviewing the accused or defendants if the specified person consents to it and if there is an agreement between the Republic of Moldova and the requesting state.

(b) Observations on the implementation of the article

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 19 of article 46

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of the article

Law No. 371 of 01.12.2006 on international legal assistance in criminal matters

Article 32. Special Principle of the Rogatory Commission

The Republic of Moldova shall use the documents and the information received from the requested state only in order to execute the objective of the rogatory commission.

(b) Observations on the implementation of the article

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 20 of article 46

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

Law No. 371 of 01.12.2006 on international legal assistance in criminal matters

Article 6. Confidentiality

(1) The Republic of Moldova assures, within the limits of the law, upon the request of the requesting state, the confidentiality of requests on legal assistance and the documents attached to these. In case if the confidentiality condition cannot be fulfilled, the Republic of Moldova notifies the foreign state which is to decide hereupon.

(2) The provisions of para (1) are similarly applied in case the Republic of Moldova is the requesting state.

(b) Observations on the implementation of the article

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 21 of article 46

21. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, public order or other essential interests;

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Procedure Code No. 122 of 14.03.2003

Article 534. Rejecting International Legal Assistance

(1) International legal assistance may be rejected if :

1) the request refers to crimes considered in the Republic of Moldova political crimes or crimes related to such crimes. The rejection shall not be admitted if a person is suspected, accused or was convicted for the

commission of certain acts provided for in Articles 5-8 of the Rome Statute of the International Criminal Court;

- 2) the request refers to an act exclusively constituting a violation of military discipline;
 - 3) the criminal investigative body or the court to which the request for legal assistance was addressed considers that its execution is of a nature to affect the sovereignty, security or public order of the state;
 - 4) there are grounds for believing that the suspect is being criminally pursued or punished due to his/her race, religion, citizenship, association with a certain group or certain political beliefs, or if his/her situation will be exacerbated for the aforementioned reasons;
 - 5) it is proven that the person will not have access to a fair trial in the requesting state;
 - 6) the respective act is punished by death as per the legislation of the requesting state and the requesting state provides no guarantee in view of not applying or not executing capital punishment;
 - 7) in line with the criminal Code of the Republic of Moldova the act or acts invoked in the request do not constitute a crime;
 - 8) in line with the national legislation the person may not be subject to criminal liability.
- (...)

Law No. 371 of 01.12.2006 on international legal assistance in criminal matters

Article 4. Grounds for refusal of legal aid international

(1) In considering the application for legal assistance to the Republic of Moldova will take into account the following circumstances, which in addition to those provided in the Code of Criminal Procedure to art.534, bring the refusal to grant the assistance requested:

- a) criminal proceedings in the requesting State does not or does not meet the European Convention on Human Rights and Fundamental Freedoms signed in Rome on November 4, 1950, or any other relevant international treaty ratified by Moldova in the field;
- b) the application for legal aid is made in a case pending before the courts extraordinary, other than those established by relevant international treaties, or the execution of a sentence imposed by such court;
- c) the act motivating the request for legal assistance subject to proceedings under this act or shall or may also be subject to criminal prosecution is the responsibility of the prosecution of Moldova;
- d) accept the application for legal aid may result in serious consequences for the person concerned due to age, health status or any other personal reason.

(2) For the purposes of the Criminal Procedure Code art.534 par. (1) item 1), are not considered political offenses:

- a) attempt on the life of a head of state or a member of his family;
- b) crimes against humanity under the Convention on the Prevention and Punishment of the Crime of Genocide adopted on 9 December 1948 the United Nations General Assembly, to which Moldova joined under Parliament Decision no.707-XII of September 10, 1991;
- c) offenses under the 1949 Geneva Convention for the Amelioration of the Wounded and Sick in Armed Forces in the campaign to Article 50, the 1949 Geneva Convention for the Amelioration of the Wounded, Sick and Shipwrecked maritime forces to Article 51, the 1949 Geneva Convention on treatment of prisoners of war to art.129 and the 1949 Geneva Convention on the Protection of Civilian Persons in Time of War in Article 147, to which Moldova joined under Decision Parliament nr.1318-twelfth of March 2, 1993;
- d) any similar violation of the laws of war which is not provided in the Geneva Conventions listed in item c);
- e) offenses under the Convention for the Suppression of Terrorism in Article 1, adopted in Strasbourg on January 27, 1997, other relevant international treaties;
- f) actions under the Convention against Torture and Other Cruel, Inhuman or Degrading adopted on December 17, 1984 the United Nations General Assembly;
- g) any other offense of a political character which was eliminated by international treaties to which Moldova is party.

(b) Observations on the implementation of the article

The reviewing experts noted that the grounds for refusal of MLA requests are set forth in article 534 CPC. Such grounds for refusal include: possible discriminatory treatment against the person sought in the requesting State on account of his/her race, religion, citizenship, association with a certain group or certain political beliefs; and the nature of the offence in question as an offence of political nature.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 22 of article 46

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

Article 534 of the Criminal Procedure Code envisages in an exhaustive manner the grounds for refusing international legal assistance among which there is no such reason/ground as the fact that the crime implies fiscal problems.

(b) Observations on the implementation of the article

The reviewing experts noted that the fiscal nature of MLA requests is not included among the grounds for refusal of MLA requests set forth in article 534 CPC.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 23 of article 46

23. Reasons shall be given for any refusal of mutual legal assistance.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Procedure Code No. 122 of 14.03.2003:

Article 534. Rejecting International Legal Assistance

(...)

(2) Any rejection of international legal assistance shall be reasoned.

(b) Observations on the implementation of the article

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 24 of article 46

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons

are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

(a) Summary of information relevant to reviewing the implementation of the article

There is no express provision in this regard. The authorities of the Republic of Moldova execute the requests for international legal assistance within the time-frame set by the requesting state.

(b) Observations on the implementation of the article

As reported during the country visit, a period of one month is an indicative average period for the execution of MLA requests by the Moldovan authorities, while four to six months are needed for the execution of letters rogatory. Generally, the timeframe depends on the volume and complexity of each case.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 25 of article 46

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

(a) Summary of information relevant to reviewing the implementation of the article

Law No. 371 of 01.12.2006 on international legal assistance in criminal matters

Article 27. Remit of objects, cases and documents

- (1) The Republic of Moldova can postpone the remit of objects, cases and documents which presentation is requested if these are necessary for an ongoing criminal proceeding.
- (...)

Article 67. Postponed surrender

- (1) The existence of criminal proceedings in the Republic of Moldova against the person whose extradition is requested or the fact that this person serves a prison punishment shall not impede the extradition.
- (2) In cases foreseen by paragraph (1) the surrender of the extradited can be postponed. In case of postponement, the extradition can become effective only when the trial has ended and in case of conviction to a prison punishment only after this has been executed or considered as executed.
- (3) The surrender of extradited person can be postponed also when on the basis of a forensic report it is acknowledged that the person has a disease that could jeopardize hi/her life.
- (4) In case the postponement of the surrender of the person whose extradition was approved, the court shall issue a provisional arrest warrant with a view to extradition. In case in the moment of admission of the of the request for extradition, the extradited person is covered by the provisions of a provisional arrest warrant or a sentence execution act issued by the competent law enforcement bodies of the Republic of Moldova, the provisional arrest warrant with a view to extradition enters into force on the date when the grounds for the postponement cease to exist.

(b) Observations on the implementation of the article

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 26 of article 46

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

(a) Summary of information relevant to reviewing the implementation of the article

The central authorities responsible for the receipt of requests for legal assistance shall consult the competent authorities from the requesting state with regard to the provision of assistance under certain conditions.

(b) Observations on the implementation of the article

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 27 of article 46

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Procedure Code No. 122 of 14.03.2003

Article 539. Summoning Witnesses, Experts or Persons Wanted Who are outside the Borders of the Republic of Moldova

(...)

(4) Witnesses, experts or persons wanted, irrespective of their citizenship, who appear before the body that summoned them in line with this article may be neither pursued nor detained nor subjected to any limitation of their individual freedom on the territory of the Republic of Moldova for acts or convictions preceding their crossing the state border of the Republic of Moldova.

(5) The immunity provided in para. (4) shall terminate if the person summoned does not leave the territory of the Republic of Moldova within 15 days from the date the respective body summoned him/her and informed him/her that his/her presence was not needed any longer or who subsequently returned to the Republic of Moldova. This time-frame shall not include the time during which the person summoned could not leave the territory of the Republic of Moldova due to reasons outside his/her will.

(...)

(b) Observations on the implementation of the article

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 28 of article 46

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

(a) Summary of information relevant to reviewing the implementation of the article

Law No. 371 of 01.12.2006 on international legal assistance in criminal matters

Article 11. Payment of Expenses

(1) The expenses for the execution of the request for legal assistance are covered, as a rule, by the requested state.

(2) The requesting state shall bear the following expenses:

a) compensations of witnesses and the expert's fees, their expenses related to transportation and accommodation in the requesting state;

b) expenses related to transfer of objects;

c) expenses related to the transfer of persons onto the territory of the requesting state; d) expenses related to the transit of persons from the territory of a third state;

e) expenses related to the video conference in order to execute the request for legal assistance;

f) other expenses which are considered by the requested state as extraordinary based on the human resources and technical means used for the execution of the request for legal assistance. (3) As a consequence of an agreement between requested Moldovan authorities and the foreign requesting authorities, in exceptional cases derogation from the provisions of para (1) can be taken.

(b) Observations on the implementation of the article

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Subparagraph 29 (a) of article 46

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(a) Summary of information relevant to reviewing the implementation of the article

Law No. 371 of 01.12.2006 on international legal assistance in criminal matters

Article 25. Objectives of the Rogatory Commission

(...)

(3) The Republic of Moldova shall transmit only certified copies or photocopies from the requested documents or case files. The copies from the documents or from the case files requested through an international letter rogatory are certified for compliance with the originals by the criminal investigation authority or by the court or by any other authority possessing the original documents or case files through the signature of the person authorized to make the copies and stamp them with the seal of the issuing authority. If the requesting state expressly requests the transmittal of original documents, such request shall be executed within the limits of possibility.

(...)

Criminal Procedure Code No. 122 of 14.03.2003:

Article 540i. Searches, Seizures, Return of Objects or Documents, Sequestration and Confiscation

Rogatory commissions requesting search seizure or the return of objects or documents, and sequestration or confiscation shall be executed in line with the legislation of the Republic of Moldova.

(b) Observations on the implementation of the article

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Subparagraph 29 (b) of article 46

29. The requested State Party: ...

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

(a) Summary of information relevant to reviewing the implementation of the article

Law No. 371 of 01.12.2006 on international legal assistance in criminal matters:

Article 29. Immediate information transmittal

(...)

(2) In the situation when the utilization of the transmitted information according to paragraph (1) is restricted and imposes certain conditions or this information constitutes commercial or bank secret, this information shall be transmitted only when approved by the investigating judge at the reasoned request of the prosecutor .

(...)

(b) Observations on the implementation of the article

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 30 of article 46

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to, or enhance the provisions of this article.

(a) Summary of information relevant to reviewing the implementation of the article

There are a number of agreements between the Government of the Republic of Moldova and Governments of other states:

1. Agreement between the Government of the Republic of Moldova and the Government of the Italian Republic on cooperation in the fight against organized crime;
2. Agreement between the Government of the Republic of Moldova and the Government of Latvia on cooperation in combating terrorism, trafficking of drugs, psychotropic substances and precursors and organized crime;
3. Agreement between the Government and the Government of the Republic of Poland on cooperation in combating organized crime and other types of crime;
4. Agreement between the Government of the Republic of Moldova and the Federal Governments of Austria on cooperation in combating criminality;
5. Agreement between the Government of the Republic of Moldova and the Government of the Republic of Belarus on cooperation in combating criminality;
6. Agreement between the Government of the Republic of Moldova and the Government of the Republic of Bulgaria on cooperation in combating organized crime, trafficking of drugs, psychotropic substances and precursors, terrorism and other types of serious crime;
7. Agreement between the Government of the Republic of Moldova and the Government of the Czech Republic on cooperation in combating organized crime, trafficking in drugs and psychotropic substances, terrorism and other types of serious crime;
8. Agreement between the Government of the Republic of Moldova and the Government of the Republic of Croatia on cooperation in combating organized crime, trafficking in drugs and psychotropic substances, terrorism and other types of serious crime;
9. Agreement between the Government of the Republic of Moldova and the Government of Estonia on cooperation in combating criminality;
10. Agreement between the Government of the Republic of Moldova and the Government of the

Republic of Uzbekistan on cooperation in combating criminality;

There are also multilateral agreements concluded within the Community of Independent States and the Organization of the Black Sea Economic Cooperation.

(b) Observations on the implementation of the article

The reviewing experts noted that the Republic of Moldova is bound by regional instruments on MLA (or with provisions on MLA), including: the European Convention on Mutual Assistance in Criminal Matters and its two Additional Protocols. Other multilateral conventions which are applicable in this field include the UNTOC and the 1988 Drug Trafficking Convention.

The reviewing experts concluded that the Republic of Moldova has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

- Expand the network of bilateral treaties on MLA, especially with non-European States.

Article 47. Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

Law No. 371 of 01.12.2006 on international legal assistance in criminal matters

Article 34. Obligation of acceptance of criminal investigation upon the request of a foreign state

The request of the central authorities of foreign states regarding the acceptance of criminal investigation of criminal cases which are under pre-trial proceedings, transmitted according to the Criminal Procedure Code, the present law and the international treaties, shall be examined by the Prosecutor General's Office which decides on its admissibility. The request of the competent court of a foreign state regarding the acceptance of criminal cases which are under trial proceedings, transferred according to the provisions of the Criminal Procedure Code, the present law and the international treaties is examined by the Ministry of Justice which decides on its admissibility.

Article 35. The grounds for acceptance of criminal investigation

- (1) The acceptance of criminal investigation and of the criminal cases under trial proceedings can be admitted if:
- a) the suspect, the accused or the defendant is citizen of the Republic of Moldova;

- b) the foreign citizen or the stateless person has a permanent residence in the Republic of Moldova;
- c) the person serves or shall serve a punishment involving deprivation of liberty in the Republic of Moldova;
- d) the person is under criminal investigation in the Republic of Moldova for the same crime; e) the action constitutes a crime according the legislation of the Republic of Moldova;
- f) the person who has committed a crime is criminally liable according to the legislation of the Republic of Moldova.

(2) The acceptance of criminal investigation or of the criminal cases under trial can be refused if:

- a) the action is not regulated by the Criminal Code of the Republic of Moldova;
- b) the person has been sentenced for the same action by a competent court of another state;
- c) the prescription period has expired according to the legislation of the Republic of Moldova, as well as its prolongation with 6 months according to the international provisions;
- d) the action has been committed beyond the territory of the requesting state;
- e) the person is not citizen of the Republic of Moldova or foreign citizen, or stateless person without permanent residence in the Republic of Moldova;
- f) there are grounds to believe that the request for acceptance of criminal investigation or of the criminal cases under trial are motivated by political, religious, racial or ethnic character;
- g) it is a matter of political, military offenses or crimes related to them;
- h) the criminal investigation contradicts the international commitments assumed by the Republic of Moldova.

(...)

Article 44. Transfer of criminal proceedings in case of refusal extradition

Refusal to extradite its own nationals or political refugee obliges Moldova, the Requesting State, submit the case to its competent authorities so as to allow for the prosecution and trial if necessary. For this purpose, the applicant is free to send General Prosecutor in criminal prosecution, or the Ministry of Justice, the judicial phase of criminal cases, and information relating to the offense. The Requesting State shall be informed on his application.

Case examples of the transfer of criminal proceedings:

a) In 2010, Slovenian authorities have forwarded the request to take over the criminal case that was in the judicial phase of the criminal proceedings, which was sent, under court jurisdiction, for review and issuing a judgment with regard to a citizen of the Republic of Moldova that committed a crime on the territory of Slovenia.

In 2012 the Moldovan court issued the conviction sentence, which was submitted to Slovenian authorities for information.

b) In 2011, the Polish authorities forwarded the request to take over the criminal case under judicial phase of the criminal process, which was sent, according to the remit to court for review and issuance of a judgment against a citizen of the Republic of Moldova, offense committed on the territory of Poland.

Considering that the person is serving his prison sentence person on the territory of Ukraine, the sentence thereto has not been issued to and is pending in the domestic court of Chisinau.

c) In 2012, the Ukrainian authorities have forwarded the request to take over the criminal case that was in the judicial phase of the criminal proceedings, which was sent, under court jurisdiction for review and issuing a judgment with regard to a citizen of the Republic of Moldova that committed a crime on the territory of Ukraine.

In 2012 the Moldovan court issued the conviction sentence, which was submitted to Ukrainian authorities for information.

Requests for transfer of criminal proceedings: 2012 - 8

2013 - 3

2014 - 3

(b) Observations on the implementation of the article

The reviewing experts noted that the transfer of criminal proceedings is regulated through Chapter III (articles 34-41) of Law No. 371/2006. The Republic of Moldova has also ratified the European Convention on the Transfer of Proceedings in Criminal Matters (1972). The competence on issues pertaining to the transfer of criminal proceedings is divided between two central authorities: for the pre/trial cases, the General Prosecutor's Office; and for the judicial stage, the Ministry of Justice.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Article 48. Law enforcement cooperation

Subparagraph 1 (a) of article 48

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(a) Summary of information relevant to reviewing the implementation of the article

Law No. 595 of 24.09.1999 on the international treaties of the Republic of Moldova:

Article 20. Application of International Treaties

Provisions of international treaties that by their content are applicable to legal relations without adopting special normative acts shall be subject to implementation and application in the legal and justice system of the Republic of Moldova. Relative normative acts shall be adopted for implementing other provisions of treaties.

There are a number of agreements between the Government of the Republic of Moldova and Governments of other states:

1. Agreement between the Government of the Republic of Moldova and the Government of the Italian Republic on cooperation in the fight against organized crime;
2. Agreement between the Government of the Republic of Moldova and the Government of Latvia on cooperation in combating terrorism, trafficking of drugs, psychotropic substances and precursors and organized crime;
3. Agreement between the Government and the Government of the Republic of Poland on cooperation in combating organized crime and other types of crime;
4. Agreement between the Government of the Republic of Moldova and the Federal Governments of Austria on cooperation in combating criminality;

5. Agreement between the Government of the Republic of Moldova and the Government of the Republic of Belarus on cooperation in combating criminality;
6. Agreement between the Government of the Republic of Moldova and the Government of the Republic of Bulgaria on cooperation in combating organized crime, trafficking of drugs, psychotropic substances and precursors, terrorism and other types of serious crime;
7. Agreement between the Government of the Republic of Moldova and the Government of the Czech Republic on cooperation in combating organized crime, trafficking in drugs and psychotropic substances, terrorism and other types of serious crime;
8. Agreement between the Government of the Republic of Moldova and the Government of the Republic of Croatia on cooperation in combating organized crime, trafficking in drugs and psychotropic substances, terrorism and other types of serious crime;
9. Agreement between the Government of the Republic of Moldova and the Government of Estonia on cooperation in combating criminality;
10. Agreement between the Government of the Republic of Moldova and the Government of the Republic of Uzbekistan on cooperation in combating criminality;

There are also multilateral agreements concluded within the Community of Independent States and the Organization of the Black Sea Economic Cooperation

Following the common actions performed by the law enforcement authorities from the Republic of Moldova and Romania, a plan of measures was realized aimed at improving the security on the western border of the Republic Moldova, by preventing and combating corruption acts.

In collaboration with the Romanian specialized authorities, following the performance of investigations and criminal procedure measures, which lasted six months, have been documented acts of corruptive behavior of Customs Service officers and Border Police officers both at the Leuseni Customs Bureau from the Republic of Moldova and Leuseni - Albita Customs Bureau from Romania. These actions consisted in systematic collections of undue payments, so as not to create impediments to carriers and persons that were crossing the border.

(b) Observations on the implementation of the article

The reviewing experts took into account all information provided by the national authorities, including information provided during the country visit, and noted that the national law enforcement authorities engage in cooperation with foreign counterparts to combat transnational crime, including UNCAC offences. In addition, at the domestic level, an inter-institutional cooperation mechanism is in place bringing together the following agencies: the Ministries of Justice and Foreign Affairs, the National Anti-Corruption Centre, the General Prosecutor's Office, as well as customs authorities and the Police. The use of memoranda of understanding for inter-institutional agreements is a well-established practice.

In this context, the Office for Prevention and Fight against Money Laundering of the National Anti-corruption Centre, has signed 42 cooperation agreements with similar services from 42 states. Also, the Office is a member of Egmont Group that allows the online exchange of information with 131 states through a secure line.

The Office for Prevention and Fight against Money Laundering cooperates with the MONEYVAL Committee, FATF and the Eurasian group on combating money laundering and financing of terrorism (EAG). The Republic of Moldova also participates in networks such as the Camden Assets Recovery Interagency Network (CARIN), the GUAM network (with Georgia, Ukraine and Azerbaijan), the Southeastern European Prosecutors Advisory Group (SEEPAG) and the Southeast European Law Enforcement Centre (SELEC). In July 2014, the Republic of Moldova signed an agreement with Eurojust. The cooperation agreement provides for the possibility for Moldova to second a Liaison Prosecutor to

Eurojust and for Eurojust to post a Liaison Magistrate to Moldova. In December 2014, the Republic of Moldova and Europol signed an Agreement on Operational and Strategic Cooperation.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

(c) Successes and good practices

- The participation of the country in several networks of law enforcement cooperation.

Subparagraph 1 (b) of article 48

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

...

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(a) Summary of information relevant to reviewing the implementation of the article

See above.

NAC statistics 2014

FIU is actively involved in several international investigations and participate in bilateral/multilateral working sessions in order to conduct joint measures aimed at exposing persons involved in money laundering activities using the domestic financial system and their modus operandi.

Thus, FIU participates in the investigation of several money laundering schemes on the international level, such as:

- Transit of funds through "Moldindconbank" JV, the investigation was supported by law enforcement agencies in 59 countries;

- Legalization in the territory of the Rep. of Moldova of funds obtained as a result of illegal actions in Germany, the Netherlands, Belgium and Great Britain, investigation is carried out with the involvement of those States;

- Money laundering by local society stakeholders during the years 2013-2014, evidenced by the accumulation of funds in the account from payments made via bank cards on several web pages with

subsequent transfer to companies registered in "off-shore" zones, investigation is carried out with active participation of authorities from 4 countries;

- money laundering manifested through legalization of funds through a financial pyramid by a group of Moldovan citizens, the investigation of this scheme is carried out in cooperation with law enforcement agencies in 4 countries.

It is to be mentioned that the head of FIU is a member of the International Working Group (composed of representatives of law enforcement agencies from 70 countries) on the recovery of assets of the former government of Ukraine.

Within this period, the FIU within the investigation of various types of funds' legalization has submitted 331 inquiries to similar units from other countries (which is 35% more in comparison to the same period of the last year), having received 215 responses. Moreover, the Service has received 16 inquiries from international counterparts, having provided 14 responses.

Thus, there is an increase in the number of inquiries submitted to similar foreign counterparts to 2013, which shows an increase in the complexity of the analytical work of the FIU and typologies identified.

About 43% of inquiries were sent to specialized agencies in Latvia, which shows a preferential regime of banking and financial services provided in this country.

During 2014 based on the Memorandum signed with the similar unit from Spain and complying with exchange of information principles of the Egmont Group, MD FIU for the first time disseminated ex officio information on suspicious transactions identified in the Republic of Moldova involving Spanish citizens, suspected of money laundering and embezzlement of public funds.

(b) Observations on the implementation of the article

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Subparagraph 1 (c) of article 48

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

...

(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(a) Summary of information relevant to reviewing the implementation of the article

Law No. 595 of 24.09.1999 on the international treaties of the Republic of Moldova:

Article 20. Application of International Treaties

Provisions of international treaties that by their content are applicable to legal relations without adopting special normative acts shall be subject to implementation and application in the legal and justice system of the Republic of Moldova. Relative normative acts shall be adopted for implementing other provisions of treaties.

There are a number of agreements between the Government of the Republic of Moldova and Governments of other states:

1. Agreement between the Government of the Republic of Moldova and the Government of the Italian Republic on cooperation in the fight against organized crime;
2. Agreement between the Government of the Republic of Moldova and the Government of Latvia on cooperation in combating terrorism, trafficking of drugs, psychotropic substances and precursors and organized crime;
3. Agreement between the Government and the Government of the Republic of Poland on cooperation in combating organized crime and other types of crime;
4. Agreement between the Government of the Republic of Moldova and the Federal Governments of Austria on cooperation in combating criminality;
5. Agreement between the Government of the Republic of Moldova and the Government of the Republic of Belarus on cooperation in combating criminality;
6. Agreement between the Government of the Republic of Moldova and the Government of the Republic of Bulgaria on cooperation in combating organized crime, trafficking of drugs, psychotropic substances and precursors, terrorism and other types of serious crime;
7. Agreement between the Government of the Republic of Moldova and the Government of the Czech Republic on cooperation in combating organized crime, trafficking in drugs and psychotropic substances, terrorism and other types of serious crime;
8. Agreement between the Government of the Republic of Moldova and the Government of the Republic of Croatia on cooperation in combating organized crime, trafficking in drugs and psychotropic substances, terrorism and other types of serious crime;
9. Agreement between the Government of the Republic of Moldova and the Government of Estonia on cooperation in combating criminality;
10. Agreement between the Government of the Republic of Moldova and the Government of the Republic of Uzbekistan on cooperation in combating criminality;

There are also multilateral agreements concluded within the Community of Independent States and the Organization of the Black Sea Economic Cooperation.

(b) Observations on the implementation of the article

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Subparagraph 1 (d) of article 48

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

...

(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;

(a) Summary of information relevant to reviewing the implementation of the article

**Law No. 595 of 24.09.1999 on the international treaties of the Republic of Moldova:
Article 20. Application of International Treaties**

Provisions of international treaties that by their content are applicable to legal relations without adopting special normative acts shall be subject to implementation and application in the legal and justice system of the Republic of Moldova. Relative normative acts shall be adopted for implementing other provisions of treaties.

There are a number of agreements between the Government of the Republic of Moldova and Governments of other states:

1. Agreement between the Government of the Republic of Moldova and the Government of the Italian Republic on cooperation in the fight against organized crime;
2. Agreement between the Government of the Republic of Moldova and the Government of Latvia on cooperation in combating terrorism, trafficking of drugs, psychotropic substances and precursors and organized crime;
3. Agreement between the Government and the Government of the Republic of Poland on cooperation in combating organized crime and other types of crime;
4. Agreement between the Government of the Republic of Moldova and the Federal Governments of Austria on cooperation in combating criminality;
5. Agreement between the Government of the Republic of Moldova and the Government of the Republic of Belarus on cooperation in combating criminality;
6. Agreement between the Government of the Republic of Moldova and the Government of the Republic of Bulgaria on cooperation in combating organized crime, trafficking of drugs, psychotropic substances and precursors, terrorism and other types of serious crime;
7. Agreement between the Government of the Republic of Moldova and the Government of the Czech Republic on cooperation in combating organized crime, trafficking in drugs and psychotropic substances, terrorism and other types of serious crime;
8. Agreement between the Government of the Republic of Moldova and the Government of the Republic of Croatia on cooperation in combating organized crime, trafficking in drugs and psychotropic substances, terrorism and other types of serious crime;
9. Agreement between the Government of the Republic of Moldova and the Government of Estonia on cooperation in combating criminality;
10. Agreement between the Government of the Republic of Moldova and the Government of the Republic of Uzbekistan on cooperation in combating criminality;

There are also multilateral agreements concluded within the Community of Independent States and the Organization of the Black Sea Economic Cooperation

(b) Observations on the implementation of the article

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Subparagraph 1 (e) of article 48

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

...

(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(a) Summary of information relevant to reviewing the implementation of the article

Law No. 595 of 24.09.1999 on the international treaties of the Republic of Moldova:

Article 20. Application of International Treaties

Provisions of international treaties that by their content are applicable to legal relations without adopting special normative acts shall be subject to implementation and application in the legal and justice system of the Republic of Moldova. Relative normative acts shall be adopted for implementing other provisions of treaties.

There are a number of agreements between the Government of the Republic of Moldova and Governments of other states:

1. Agreement between the Government of the Republic of Moldova and the Government of the Italian Republic on cooperation in the fight against organized crime;
2. Agreement between the Government of the Republic of Moldova and the Government of Latvia on cooperation in combating terrorism, trafficking of drugs, psychotropic substances and precursors and organized crime;
3. Agreement between the Government and the Government of the Republic of Poland on cooperation in combating organized crime and other types of crime;
4. Agreement between the Government of the Republic of Moldova and the Federal Governments of Austria on cooperation in combating criminality;
5. Agreement between the Government of the Republic of Moldova and the Government of the Republic of Belarus on cooperation in combating criminality;
6. Agreement between the Government of the Republic of Moldova and the Government of the Republic of Bulgaria on cooperation in combating organized crime, trafficking of drugs, psychotropic substances and precursors, terrorism and other types of serious crime;
7. Agreement between the Government of the Republic of Moldova and the Government of the Czech Republic on cooperation in combating organized crime, trafficking in drugs and psychotropic substances, terrorism and other types of serious crime;
8. Agreement between the Government of the Republic of Moldova and the Government of the Republic of Croatia on cooperation in combating organized crime, trafficking in drugs and psychotropic substances, terrorism and other types of serious crime;
9. Agreement between the Government of the Republic of Moldova and the Government of Estonia on cooperation in combating criminality;
10. Agreement between the Government of the Republic of Moldova and the Government of the Republic of Uzbekistan on cooperation in combating criminality;

There are also multilateral agreements concluded within the Community of Independent States and the Organization of the Black Sea Economic Cooperation

(b) Observations on the implementation of the article

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Subparagraph 1 (f) of article 48

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

...

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Law No. 595 of 24.09.1999 on the international treaties of the Republic of Moldova:

Article 20. Application of International Treaties

Provisions of international treaties that by their content are applicable to legal relations without adopting special normative acts shall be subject to implementation and application in the legal and justice system of the Republic of Moldova. Relative normative acts shall be adopted for implementing other provisions of treaties.

There are a number of agreements between the Government of the Republic of Moldova and Governments of other states:

1. Agreement between the Government of the Republic of Moldova and the Government of the Italian Republic on cooperation in the fight against organized crime;
2. Agreement between the Government of the Republic of Moldova and the Government of Latvia on cooperation in combating terrorism, trafficking of drugs, psychotropic substances and precursors and organized crime;
3. Agreement between the Government and the Government of the Republic of Poland on cooperation in combating organized crime and other types of crime;
4. Agreement between the Government of the Republic of Moldova and the Federal Governments of Austria on cooperation in combating criminality;
5. Agreement between the Government of the Republic of Moldova and the Government of the Republic of Belarus on cooperation in combating criminality;
6. Agreement between the Government of the Republic of Moldova and the Government of the Republic of Bulgaria on cooperation in combating organized crime, trafficking of drugs, psychotropic substances and precursors, terrorism and other types of serious crime;
7. Agreement between the Government of the Republic of Moldova and the Government of the Czech Republic on cooperation in combating organized crime, trafficking in drugs and psychotropic substances, terrorism and other types of serious crime;
8. Agreement between the Government of the Republic of Moldova and the Government of the Republic of Croatia on cooperation in combating organized crime, trafficking in drugs and psychotropic substances, terrorism and other types of serious crime;
9. Agreement between the Government of the Republic of Moldova and the Government of Estonia on cooperation in combating criminality;
10. Agreement between the Government of the Republic of Moldova and the Government of the Republic of Uzbekistan on cooperation in combating criminality.

There are also multilateral agreements concluded within the Community of Independent States and the Organization of the Black Sea Economic Cooperation

(b) Observations on the implementation of the article

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 2 of article 48

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

(a) Summary of information relevant to reviewing the implementation of the article

Both the theory and practice of investigation of crimes relating to the legalization of illicit incomes demonstrate that the most complex typologies and schemes involve transactions with entities of various jurisdictions and off-shore zones in order to conceal the origin of goods. In this context, the Office for Prevention and Fight against Money Laundering of the National Anti-corruption Centre, has signed 42 cooperation agreements with similar services from 42 states. Also, the Office is a member of Egmont Group that allows the online exchange of information with 131 states through a secure line.

Office for Prevention and Fight against Money Laundering cooperates with international organizations from its domain: MONEYVAL Committee (Selected Committee of Experts for the Evaluation of Measures Against Money Laundering), FATF (international Financial Action Task Force), CARIN (Inter-institutional Network for the Recovery of Assets), EAG (Euro-Asian Group of FATF type), Europol etc.

The Ministry of Internal Affairs of the Republic of Moldova has concluded a number of bilateral agreements with Ministries of Internal Affairs from other states (Georgia, Russian Federation, Lithuania, Austria, Armenia, Belarus, Romania, Tajikistan).

(b) Observations on the implementation of the article

The reviewing experts noted that the Republic of Moldova considers the UNCAC as a basis for law enforcement cooperation in respect of the offences covered by the Convention. The Ministry of Internal Affairs of the Republic of Moldova has concluded a number of bilateral agreements with Ministries of Internal Affairs from other States (Georgia, Russian Federation, Lithuania, Austria, Armenia, Belarus, Romania, and Tajikistan).

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 3 of article 48

3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.

(a) Summary of information relevant to reviewing the implementation of the article

Both the theory and practice of investigation of crimes relating to the legalization of illicit incomes demonstrate that the most complex typologies and schemes involve transactions with entities of various jurisdictions and off-shore zones in order to conceal the origin of goods. In this context, the Office for Prevention and Fight against Money Laundering of the National Anti-corruption Centre, has signed 42 cooperation agreements with similar services from 42 states. Also, the Office is a member of Egmont Group that allows the online exchange of information with 131 states through a secure line.

Office for Prevention and Fight against Money Laundering cooperates with international organizations from its domain:

MONEYVAL Committee (Selected Committee of Experts for the Evaluation of Measures Against Money Laundering), FATF (international Financial Action Task Force), CARIN (Inter-institutional Network for the Recovery of Assets), EAG (Euro-Asian Group of FATF type), Europol etc.

The Ministry of Internal Affairs of the Republic of Moldova has concluded a number of bilateral agreements with Ministries of Internal Affairs from other states (Georgia, Russian Federation, Lithuania,

Austria, Armenia, Belarus, Romania, Tajikistan).

(b) Observations on the implementation of the article

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Article 49. Joint investigations

Article 49

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Procedure Code No. 122 of 14.03.2003:

Article 540². Joint investigation teams

(1) The competent authorities from at least two state can establish together a joint investigation team with a precise objective and for a limited period of time, that can be extended with the agreement of all the parties with a view of carrying out criminal investigation in one or more of the states forming the team. The composition of the joint investigation team is mutually decided. (2) The joint investigation team can be created when:

1) as part of the ongoing criminal investigation in the requesting state there is need to carry out some difficult criminal investigations involving the mobilization of important means related also to other countries;
2) more states carry out criminal investigations which require coordinated and concerted actions in the respective states.

(3) The request to form a joint investigation team can be formulated by any state involved. The joint investigation team is formed in one of the states in which the criminal investigation is supposed to be carried out.

(4) The request to form a joint investigation team covers the authority that filed the request, the object and grounds of the request, the identity and nationality of the given person, the name and address of the recipient, if need be and proposals regarding its composition.

(5) The members of the joint investigation team appointed by the authorities of the Republic of Moldova are full-fledged members, while the members appointed by a foreign state are seconded members.

(6) The activity of the joint investigation team on the territory of the Republic of Moldova is carried out according to the following rules:

1) the leader of the joint investigation team is a representative of the authority that participates in the criminal investigation from the member state on which territory the team is functioning and acts within the limits of his competences according to its national law;

2) the actions of the team shall be carried out according to the legislation of the Republic of Moldova. The team members and the seconded members shall fulfil their tasks under the responsibility of the person provided for in point 1), taking into consideration the conditions set by their own authorities in the agreement on the team formation.

(7) The seconded members for the joint investigation team authorized to be present during any procedure related actions, except for the case when the team leader, due to special reasons, decide otherwise.

(8) When the joint investigation team follows to carry out procedural actions on the territory of the requesting state, the seconded members can require from the competent authorities to carry out the respective actions.

(9) A seconded member for the joint investigation team can, according to its national law and within the limits of its competences, provide to the team the information available to the state that seconded him/her, with a view to continuing the criminal investigation carried out by the team.

(10) The information obtained normally by a member or a seconded member within the framework of his/her participation in a joint investigation team and that cannot be obtained otherwise by the competent authorities of the involved state can be used:

1) with a view to the goal for which the team was established;

2) in order to discover, investigate and prosecute other crimes, with the consent of the state on which territory the information was obtained;

3) in order to prevent an imminent and serious danger for the public security, by observing the provisions of point 2);

4) for other purposes, if this is agreed between the states that formed the team.

(11) In case of joint investigation teams that operate on the territory of the Republic of Moldova, the seconded members of the team are assimilated with the members coming from the Republic of Moldova in what regards the crimes committed against them or by them.

(b) Observations on the implementation of the article

The reviewing experts noted that the Republic of Moldova makes use of joint investigation teams (JITs), using as legal framework section 540/2 CPC and article 20 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters. This framework regulates the establishment of joint investigation teams as well as their *modus operandi*. The competent authority to decide the formation of a joint investigation team is the Prosecutor General. The national authorities explained during the country visit that the recurring problems regarding the establishment of JITs are the language problems and the diversity of legal systems.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Article 50. Special investigative techniques

Paragraph 1 of article 50

1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.

(a) Summary of information relevant to reviewing the implementation of the article

CRIMINAL PROCEDURE CODE

Chapter III

MEANS OF PROOF AND EVIDENTIARY PROCEDURES

Section 5

Special investigation activity

Article 132¹. General provisions on special investigation activity

(1) Special investigation activity shall represent a set of criminal prosecution actions of public and/or secret character carried out by investigation officers within a criminal prosecution only under the conditions and in the manner provided for in this Code.

(2) Special investigation actions shall be ordered and carried out if the following conditions are cumulatively met:

1) the goal of the criminal process is impossible to achieve in another way and/or the evidence administration activity can be considerably prejudiced;

2) there is a reasonable doubt regarding the preparation or commitment of a serious, particularly serious or exceptionally serious crime, with exceptions set by law;

3) the action is necessary and proportional to the restriction of fundamental human rights and freedoms.

Article 132². Special investigation actions

(1) The following special investigation actions shall be taken for the purpose of detecting and investigating crimes:

1) upon authorization of the investigating judge:

a) searching of the domicile and/or installation in it of devices insuring surveillance and audio and video recording, and cameras;

b) surveillance of the domicile by using recording equipment;

c) interception and recording of communications or images;

d) retention, examination, handing over, search or seizure of postal deliveries;

e) monitoring of the connections of telegraph and electronic communications;

f) monitoring or control of financial transactions and of access to financial information;

g) documentation by means of technical equipment and methods, as well as location or prosecution through Global Positioning System (GPS) or other technical equipment;

h) information collection from electronic communication service suppliers;

2) upon prosecutor's authorization:

a) identification of the subscriber, owner or user of the electronic communication system or of the access point to an information system;

b) visual tracking;

c) control over transfer or receipt of money, services or other claimed, accepted, extorted or offered tangible or intangible assets;

d) undercover investigation;

e) cross border surveillance;

f) controlled delivery;

g) controlled procurement.

(2) While carrying out special investigation actions under the conditions of this Code, there shall be used information systems, video and audio recording devices, cameras, and other technical devices, including special technical means for obtaining information secretly.

(3) Special investigation actions shall be carried out by investigation officers of specialized units of the authorities listed in the Law on Special Investigation Activity.

Article 132³. Grounds for carrying out special investigation actions

(1) The following shall serve as grounds for carrying out special investigation actions:

1) available procedural documents of the criminal investigator, investigating prosecutor or judge in criminal cases under their procedure;

2) queries filed by international organizations and law enforcement bodies of other states in compliance with international treaties that the Republic of Moldova is party to;

3) rogatory commissions of law enforcement bodies of other states in compliance with international treaties that the Republic of Moldova is party to.

(2) The prosecutor shall coordinate, lead, and check the unfolding of the special investigation action or designate a criminal investigator for carrying out such actions.

Article 132⁴. Procedure for ordering special investigation actions

(1) The prosecutor conducting or exercising criminal investigation shall put the special investigation action through motivated ordinance to execution by specialized units of the authorities indicated in the Law on Special Investigation Activity.

(2) Authorized special investigation actions shall start on the date indicated in the disposition act or no later than on the expiry date of the authorization term.

(3) Special investigation actions provided for in Article 132² paragraph (1) item 1) can be authorized, as an exception, based on prosecutor's motivated ordinance in cases of flagrant offenses, as well as in circumstances that do not allow postponement, while the conclusion cannot be obtained without of an essential risk of delay that can lead to loss of evidence or put the safety of persons in immediate danger. The investigating judge is to be informed within 24 hours about the performance of such actions, by submitting to the latter all the materials justifying the need for carrying out special investigation actions. If there are sufficient grounds, the investigating judge shall confirm through motivated conclusion the legality of taking such actions.

(4) The investigating officer carrying out special investigation actions shall inform the prosecutor through a report upon completion of the special investigation action or within the timeframe set in the disposition, about the results achieved in the special investigation action.

(5) If the special investigation action is authorized by the investigating judge, the prosecutor shall submit to the latter all the materials collected by the investigation officer for legality check.

(6) If the report examination states that the conditions for extending the performance of special investigation action are not observed or the legitimate human rights and interests are disproportionately or obviously infringed by the ordered action, or if reasons lying at the basis of the interference have disappeared, the prosecutor or investigating judge shall order for termination of the action.

(7) Special investigation actions shall be ordered for a period of 30 days, with the possibility for grounded extension up to six (6) months, except for cases set in this Code. Each extension of the special investigation term cannot exceed 30 days. If the special investigation action authorization term is extended to six (6) months, repeated authorization of the special investigation action based on the same grounds and on the same subject shall be prohibited, except for cases of using undercover agents or in case of emerging new circumstances, examining facts related to the investigation of an organized crime and financing terrorism, as well as in case of searching for the accused.

(8) The prosecutor shall order termination of special investigation action as soon as the grounds and reasons justifying its authorization have disappeared, without the right to resume the given action.

(9) If the grounds for carrying out a special investigation action no longer exist, the criminal investigation officer or the investigator shall suggest to the prosecutor to immediately terminate the latter.

(10) Disposal of special investigation actions with regard to legal assistance relations between the attorney and its client shall be prohibited.

Article 132⁵. Recording of special investigation actions

(1) The officer carrying out special investigation actions shall prepare minutes for each action carried out, in which the latter shall enter:

- 1) venue, date and time of special investigation action start and completion;
- 2) position, first name and last name of the subject compiling the minutes;
- 3) first name, last name, and rank of persons who have participated in carrying out the action, and their addresses, objections, and explanations, if needed;
- 4) a detailed description of facts found out, as well as of actions carried out during the special investigation action;
- 5) a mention about taking photos, shooting videos, making audio recordings, using technical means within the special investigation action, conditions and manner of applying such means, objects that such means have been applied to, and the results achieved.

(2) The material bearer of information containing the results of special investigation actions shall be attached in a sealed envelope to the minutes.

(3) The minutes and material bearer of information shall be attached to the criminal case.

(4) Upon termination of the special investigation action or upon request of the prosecutor or investigating judge, the

investigating officer who has carried out the special investigation action shall pass to the latter the minutes, by attaching all the materials collected while carrying out the special investigation action to it.

(5) If the prosecutor or investigating judge finds out that the action has been carried out by obviously infringing the human rights and freedoms or the investigating officer has acted by exceeding the provisions of the ordinance/authorization conclusion, the prosecutor or investigating judge shall declare the minutes null and dispose through ordinance/conclusion for the material bearer of information collected while carrying out the special investigation action to be immediately destroyed.

(6) If the prosecutor or investigating judge finds out that the investigating officer obviously infringed the human rights and freedoms through the actions taken, the actions taken shall be declared null, informing about this the competent authorities. The prosecutor's ordinance shall be appealed to the hierarchically superior prosecutor. The conclusion of the investigating judge shall be irrevocable. When examining the legality of carrying out the special investigation action, the prosecutor or investigating judge shall consider the manner of carrying out the action, the observance of conditions and grounds based on which the special investigation action was disposed.

(7) If by ordinance/conclusion the legality of carrying out special investigation actions is confirmed, the prosecutor or investigating judge shall inform the persons subject to special investigation actions, in the event they authorized such action. During the criminal investigation, upon a motivated decision, the prosecutor or investigating judge can postpone informing the person subject to special investigation action, but not later than the moment of terminating the criminal investigation.

(8) From the moment of information, provided for in paragraph (7), the person subject to special investigation action shall have the right to familiarize with the minutes of the special investigation action and the material bearer of information, as well as with the ordinance of the prosecutor or investigating judge regarding the legality of the carried out action.

(9) The investigating judge may dispose, through motivated conclusion, for the use of data obtained as a result of carrying out special investigation actions from one criminal case in another one if the offense committed is of the same type or relates to terrorist offenses, organized crime or offenses affecting the state security, but no later than within 3 months from the moment of obtaining the information.

(10) Following the examination, data and information obtained as a result of carrying out special investigation actions which do not constitute subject matter of the investigation or do not contribute to the identification or location of persons, if not used in other criminal cases in compliance with paragraph (9), shall be archived at the premise of the investigating judge, in specially arranged places, by insuring its confidentiality, a copy of it being issued to the prosecutor. The investigating judge or the panel of judges can request ex-officio or upon request of the parties the sealed data if there is new evidence demonstrating that part of the latter relate to the fact forming the subject matter of investigation.

(11) One year after the moment when the decision remains irrevocable, the information obtained as a result of carrying out special investigation actions shall be destroyed by the prosecutor based on investigating judge's conclusion, who shall compile the minutes in this regard.

Article 132⁶. Investigating the domicile and/or installing surveillance devices and video/audio recorders and cameras in it

(1) Investigating the domicile and/or installing surveillance devices and video/audio recorders and cameras in it involves secret access inside the domicile, without notifying the owner and the possessor, for the purpose of studying the latter in order to discover trails of criminal activity, persons on search, and obtain other information required for proving factual circumstances, as well as for observing and recording the events occurring in the domicile.

(2) When investigating the domicile, the investigating officer shall examine all the visible objects and, with authorization from the investigating judge, can install in it audio and video recorders, cameras or other technical devices insuring the interception and remote recording of information or direct recording in the domicile.

(3) Investigating the domicile and/or installing surveillance devices and video/audio recorders and cameras in it shall be ordered with regard to persons on whom there is evidence or data available proving that they have committed or are preparing to commit an offense. Investigating the domicile and installing audio/video recorders and cameras in it can be also ordered with regard to another person if there is a reasonable doubt that the latter receives or conveys communications to the perpetrator or designed for the latter.

(4) When investigating the domicile and/or installing surveillance devices and audio/video recorders and cameras, the investigator shall prepare minutes in compliance with the provisions of this Code.

(5) Surveillance and audio/video recording and shooting with camera shall be ordered for a period of 30 days, with

a possibility for extension up to three (3) months, but no longer than the criminal investigation period.

Article 132⁷. Domicile surveillance by using technical recording devices

(1) domicile surveillance by using technical devices for audio/video recording involves the outside monitoring of the domicile without the consent of the owner or possessor, if there are grounds to consider that the actions, conversations, other sounds or events occurring in the given domicile may contain information about the circumstances of fact which is to be proved.

(2) Domicile surveillance by using technical devices for audio/video recording shall be ordered for 30 days, with the possibility to extend it to 3 months, but no longer than the criminal investigation period.

Article 132⁸. Interception and recording of communications

(1) The interception and recording of communications involve using technical devices by which one can find out the content of conversations between two or more persons, while recording the latter involves storing the information obtained as a result of interception on technical devices.

(2) The provisions of paragraph (1) shall exclusively apply to criminal cases having as subject matter criminal investigation or judging persons on which there are data or evidence proving that they have committed offenses provided for in the following articles of the Criminal Code: articles 135–145, 150, 151, 158, 164–165¹, art. 166 paragraphs (2) and (3), art. 166¹, 167, art. 171 par. (2) and (3), art. 172 par. (2) and (3), art. 175, 175¹, art. 186 par. (3)–(5), art. 187 par. (3)–(5), art. 188, 189, art. 190 par. (3)–(5), art. 191 par. (2) item d) and par. (3)–(5), art. 192¹ par. (3), art. 201¹ par. (3), art. 206, 207, 208¹, 208², art. 216 par. (3), art. 217 par. (3), art. 217¹ par. (3) and (4), art. 217³ par. (3), art. 217⁴ par. (2) and (3), art. 219 par. (2), art. 220 par. (2) and (3), art. 224 par. (3) and (4), art. 236, 237, art. 241¹ par. (2), art. 242¹–243, art. 244 par. (2), art. 248 par. (2)–(5), art. 259–261¹, 275, 278–279¹, art. 279² par. (3) item. b), art. 280, 282–286, 289–289³, art. 290 par. (2), art. 292, 295–295², art. 303 par. (3), art. 306–309, 318, 324–328, 333–335, art. 335¹ par. (2), art. 337–340, 342–344, art. 352 par (3), art. 362, 362¹, art. 368 par. (2), art. 370 par. (2) and (3). The list of crime components is exhausted and can only be amended by law.

(3) Subject to interception and recording shall be the communications of suspects, accused or other persons, including of those whose identification has not been established, on whom there are data reasonably leading to the conclusion that they either contribute in any ways to the preparation, commitment, favoring or concealment of crimes provided for in paragraph (2) or receive or convey information relevant and important for the criminal case.

(4) Subject to interception and recording shall be also the communications of victims, injured party, relatives and family members of the latter, as well as of the witness, if there is an imminent threat to the life, health or to other fundamental rights of the latter, if it is necessary to prevent an offence or if there is an obvious risk of irremediable loss or distortion of evidence. Interception and recording of communications for the purpose of this paragraph shall be ordered in compliance with the procedure provided for in art. 132⁴ and only with the consent in writing or upon preliminary request in writing of persons indicated in this paragraph. The action ordered in compliance with this paragraph is to be immediately terminated after the disappearance of the grounds lying on the basis of authorizing such action or upon express request of the person with regard to whom such action has been ordered.

Article 132⁹. Performance and certification of communication interceptions and recordings

(1) Communication interception and recording shall be performed by the criminal investigation body or by the investigation officer. The technical equipment for communication interception shall be insured by the authority empowered with such duties by law, using special technical means. The staff of units from within the institutions authorized by law, which technically insure the interception and recording of communications, as well as the persons listening to the recording, criminal investigation officers and the prosecutor shall keep the secret of communications and held liable for infringing such obligation.

(2) To insure the interception and recording of communications, the criminal investigation body or the prosecutor shall submit to the body empowered by law an extract from the conclusion of the investigating judge, certified by the latter, regarding the disposition on performing the interception and recording of communications. The letter supporting the extract from the investigating judge's conclusion shall include a mention about warning the person who will provide technical support in carrying out the special investigation action with regard to criminal liability involved. The extract from the conclusion shall include the name of the court institution and the name of the investigating judge, date and time of issuing the conclusion, data regarding the examination of the prosecutor's request for authorizing the action, identification data of the subscriber or of the technical unit through which the communications to be intercepted are held, length of interception, criminal investigation officer or body responsible

for implementing the conclusion, the signature of the investigating judge, and the seal of court institution.

(3) If other information, such as identification data of subscribers or of persons holding communications with the subjects of interception, and their location, as well as other data can be obtained during the interception and recording of communications, the investigating judge can dispose in the conclusion on carrying out the interception of communications for obtaining such information as well.

(4) The technical unit of the authority empowered by law to carry out the interception and recording of communications shall send to the criminal investigation body the signal of intercepted communications and other information indicated in the extract from the conclusion of the investigating judge in real time, without performing their recording.

(5) The information obtained during the interception and recording of communications can be listened to and visualized in real time by the criminal investigation body and the prosecutor.

(6) The information obtained during the interception and recording of communications shall be sent by the technical unit carrying out the interception of communications to the criminal investigation officer or to the prosecutor on material bearer of information packed, with the seal of the technical unit applied and the number of material bearer indicated on it.

(7) Within 24 hours after the expiry of the interception authorization term, the criminal investigation body or the prosecutor e, as the case may be, shall compile minutes on interception and recording of communication at the end of each authorization period.

(8) The minutes on interception and recording of communications shall include: the date, venue, and time of compilation, position of the person carrying out the special investigation action, number of criminal case within which the special investigation action has been carried out, a mention regarding the prosecutor's ordinance and investigating judge's conclusion regarding the authorization of the special investigation action, identity data and technical identification data of the subject whose communications have been intercepted and recorded, the period when the communications have been intercepted, a mention regarding the use of technical means, other information obtained as a result of the interception and recording of communications relating to identification and/or location of some subjects, the quantity and identification number of the material bearer on which the information has been recorded, number of recorded communications. The transcript of communications shall be attached to the minutes, and shall play an important role for the criminal case.

(9) The transcript of communications shall constitute an integral reproduction, in writing, on paper, of the communications intercepted and recorded which have an importance for the criminal case. The transcript of communications shall include the date, time and duration of communications, names of persons, if known, whose communications are shorthanded, as well as other data. The short handing of communications between the attorney and person defended by the latter shall be prohibited. Each page of the minutes on interception and short handing shall be signed by the person compiling it. The original copy on which the intercepted communications were recorded shall be attached to the minutes, including a mention about the packing and sealing of the latter.

(10) Intercepted and recorded communications shall be related in the language in which the communication took place. If the communication took place in a language other than the state language, it shall be translated into the language that the criminal proceeding is unfolded by a certified translator.

(11) At the end of the period authorized for communication interception and recording, the criminal investigation body shall submit the minutes of the communication interception and recording to the prosecutor together with the original tape where the information was recorded.

(12) After verifying the content of the minutes and transcripts with the recordings, the prosecutor shall decide, through ordinance, upon their pertinence for the criminal case and dispose over those communications that are to be copied on a separate tape.

(13) Intercepted and recorded communications shall be fully kept on the initial tape submitted to the criminal investigation body that authorized the special investigation action by the technical unit. The respective tape shall be kept with the investigating judge authorizing the special investigation action.

(14) Intercepted and recorded communications shorthand typed by the criminal investigation body which were assessed by the prosecutor as pertinent for the criminal case shall be copied by the technical unit from within the criminal investigation body on a separate tape which shall be attached to the materials of the criminal case and kept by the prosecutor conducting the criminal investigation.

(15) Within 48 hours from the end of the interception and recording authorization period the prosecutor shall submit to the investigating judge the minutes and original tape on which the communications have been recorded. The investigating judge shall state his/her conclusion on the observance of legal requirements upon interception and recording of communications by the criminal investigation body and decide which of the recorded communications

are to be destroyed, designating the persons responsible for destroying them. The destruction of information based on the conclusion of the investigating judge shall be stated by the responsible person in the minutes attached to the criminal proceeding.

Article 132¹⁰. Recording of images

Recording of images shall be performed under conditions and modalities for the interception and recording of communications provided for in articles 132⁸ and 132⁹, which shall be applied correspondingly.

Article 132¹¹. Verification of interception registration

The evidence obtained in conditions of articles 132⁸–132¹⁰ can be verified through technical expertise disposed by court institution upon request of the parties or ex-officio.

Article 133. Retention, examination, handing over, search or seizure of postal deliveries

(1) If there are reasonable grounds to presume that postal deliveries received by or sent to the suspect/accused may contain information of evidentiary importance in the criminal case on one or several serious offenses, particularly serious offenses or exceptionally serious offenses, and if evidence cannot be obtained through other evidentiary procedures, the criminal investigation body shall have the right to retain, examine, handover, search or seize postal deliveries of indicated persons.

(2) The following postal deliveries can be retained, examined, handed over, searched or seized: letters of any type, telegrams, radiograms, banderols, parcels, postal containers, postal orders, communications via fax and e-mail.

(3) The prosecutor conducting or carrying the criminal investigation shall prepare an ordinance about the retention, examination, handing over, search or seizure of postal deliveries and submit it to the investigating judge. The ordinance shall indicate: the reasons for disposing the retention, examination, handing over, search and seizure of postal deliveries, the name of postal institution attributed the obligation to retain postal deliveries, the last and first name of the person or persons whose postal deliveries shall be retained, the exact address of respective persons, type of postal deliveries retained, examined, handed over, searched or seized, and the action duration. The action authorization period shall be extended under the conditions of this Code.

(4) The ordinance on retention, examination, handing over, search and seizure of postal deliveries with the respective authorization shall be sent to the head of the postal institution, for whom its execution shall be mandatory.

(5) The head of postal institution shall immediately communicate to the body issuing the ordinance regarding the retention of postal deliveries indicated in the ordinance.

(6) The retention, examination, handing over, search or seizure of postal deliveries shall be cancelled by the criminal investigation body which issued the respective ordinance, by the hierarchically superior prosecutor, by the investigating judge, after the expiration of the authorization term, but no later than the end of the criminal investigation.

Article 134. Examination and custody of postal deliveries

(1) Representative of the criminal investigation body shall come to the postal office and inform the head of the given institution about the authorization to examine and seize postal deliveries, who shall sign it for confirmation, and then open and examine the postal deliveries.

(2) When identifying some documents and objects which might serve as evidence in criminal proceeding, the representative of the criminal investigation body shall seize them or make respective copies. If such documents or objects are not discovered, representative of the criminal investigation body shall order the handing over of the examined postal deliveries to the addressee.

(3) Pursuant to articles 260 and 261, a minutes about each examination and seizure of postal deliveries shall be prepared and specify who, where and when the postal delivery has been examined, seized or ordered to be handed back to the receiver; as well as type of postal deliveries and specifically which mail has been copied, and what technical equipment has been used for that purpose and what has been discovered afterwards. All participants, including the ones present during this procedural action shall be notified about the demand to ensure secrecy of correspondence, non-disclosure of information about criminal investigation, as well as criminal liability as provided for in articles 178 and 315 of the Criminal Code. This fact shall be registered in the minutes.

Article 134¹. Monitoring of telegraphic and electronic communication connections

(1) Monitoring of telegraphic and electronic communication connections, as well as of other types of communications shall include access and verification of all communication connections without any prior notice of the sender or receiver of communications transmitted to the institutions providing delivery of electronic correspondence or other communications, and of incoming and outgoing calls of the subscriber.

(2) Monitoring of telegraphic and electronic communication connections shall be ordered if there are credible grounds to assume that they contain or are likely to contain information about the factual circumstances that shall be proved thereof.

(3) Institutions providing services on delivery of electronic correspondence, incoming and outgoing calls or other communications shall inform the criminal investigation officer or the prosecutor about the fact they possess some communications that shall be checked. The criminal investigation officer or the prosecutor shall get cognizant of the communication content immediately but not later than 48 hours from receiving this information and hence adopt a decision to either seize or hand it over for further delivery provided that the communication content has been photographed, copied or recorded using any other technical mean.

(4) Seizure of connections shall be done only if there are grounds to consider that in the process of evidence administration the original will have higher weight than the photocopy or visual recording of the given communication.

Article 134². Monitoring or control of financial transactions and access to financial information

(1) Monitoring or control of financial transactions and access to financial information represent some operations that ensure either knowledge of the content of financial transactions conducted through financial institutions or other competent institutions, or obtaining from financial institutions of entries or information held by the latter regarding the deposits, accounts or transactions of a given person.

(2) Monitoring or control of financial transactions and access to financial information shall be ordered in case of criminal investigation initiated for crimes stipulated in articles 158, 165, 165¹, 189–192, 196, 199, 206, 208, 209, 217–217⁵, 220, 236, 237, 239–248, 251–253, 255, 256, 278, 279, 279¹, 283, 284, 290, 292, 3011, 302, 324–327, 330¹, 333, 334, 343, 352, 361 and 362¹ of the Criminal Code.

Article 134³. Documentation actions using technical methods and means, localization and surveillance through Global Positioning System (GPS) or other technical means

(1) The process of documentation with the help of technical means and methods, as well as localization or surveillance through Global Positioning System (GPS) or using other technical devices shall include revealing or recording of the actions of individuals, some real estate objects, transportation means and other objects using recording devices.

(2) When conducting localization or surveillance through Global Positioning System (GPS) or other technical means, one can use devices that determine the location of the person or object used by the latter.

Article 134⁴. Gathering of information from electronic communication service providers

Gathering of information from providers of electronic communication and computer data transfer services shall include collection of information transferred through technical telecommunication channels (telegraph, fax, paging, computer, radio and other channels) from telecommunication institutions, land and mobile phone operators, internet providers; secret recording of information transferred or received through technical telecommunication networks by the persons subjected to special investigation actions, as well as obtaining from service providers of information about users of telecommunication services, including roaming and about telecommunication services provided to them, which includes the following information:

- 1) holders of telephone numbers;
- 2) telephone numbers registered in the name of one person;
- 3) types of telecommunication services provided to the user;
- 4) source of communication (telephone number of the person/s called; last, first name and home address of the subscriber or registered user);
- 5) destination of communication (telephone number of the person called or number from which the call was routed,

redirected; last, first name of the subscriber or respective user);

6) type, date, hour and length of communication, including attempts of missed calls;

7) communication equipment of the user or another device used for communication ((IMEI of the mobile phone, name of Cell ID location);

8) place where the mobile communication equipment is located once communication started, geographic location of the Cell.

Article 134⁵. Identification of subscriber, owner or user of an electronic communication system or of an information system access point

(1) Identification of subscriber, owner or user of an electronic communication system or of an information system access point shall include requesting from an electronic service provider to identify the subscriber, owner or user of a telecommunication system, telecommunication mean or another point of access to an information system or to notify if a certain mean of communication or access point to an information system is being used or has been active on a certain date.

(2) In addition to the elements stipulated in article 255, the ordinance on initiation of special investigation actions shall also include the following:

1) identification data of the service provider holding such data as the one listed under paragraph (1) or keeping control of such data;

2) identification data of the subscriber, owner or user if such are known; grounds substantiating that the conditions for ordering a special investigation measure are met;

3) a note on the obligation of the person or service provider to immediately supply the requested information provided that confidentiality is respected.

(3) Service suppliers shall cooperate with criminal investigation bodies with the view to execute the ordinance of the prosecutor and provide them with the requested information as soon as such is found.

(4) Persons who are called to cooperate with criminal investigation bodies shall be demanded to maintain secrecy of the conducted operation. Breach of such duty shall be punished in compliance with the Criminal Code.

Article 134⁶. Visual surveillance

Visual surveillance shall include revealing and recording of the person's actions, of some real estate objects, vehicles and other objects.

Article 135. Control of transfer or receipt of money, services, or other tangible or intangible assets claimed, accepted, extorted or offered

(1) Control over the transfer or receipt of money, services or other tangible or intangible assets claimed, accepted, extorted or offered shall include surveillance and documentation of the handing over or rendering of money, services or other tangible or intangible assets to the person who claims, accepts, extorts or by the person offering them, as well as to or by their accomplices.

(2) Control of the transfer or receipt of money, services or other tangible or intangible assets claimed, accepted, extorted or offered can be conducted only by the investigation officers of the specialized units of the Ministry of Internal Affairs or the National Anticorruption Center.

(3) Although formally actions of passage or receipt of money, services or other tangible or intangible assets claimed, accepted, extorted or offered under control are qualified as crimes, taken separately do not constitute a crime and are being conducted only for the purpose of identifying the intentions or checking on the notification about commission of the crime which started before or without the involvement of the bodies mentioned under paragraph (2).

(4) Persons executing the act of passage or receipt of money, services or other tangible or intangible assets claimed, accepted, extorted or offered shall not bear any responsibility for their actions conducted under the control of empowered bodies.

Article 136. Undercover investigations

(1) Undercover investigation is authorized for a period necessary to discover the existence of a crime.

(2) Undercover investigation shall be authorized based on the ordinance and shall specify the following:

1) authorized special investigation measure;

2) period for which the given special investigation measure has been authorized;

- 3) identification attributed to the undercover investigation officer, as well as activities which s/he will conduct;
- 4) person or persons subject to special investigation measure or identification data of the latter if such is known.

(3) In case there is a need for the undercover officer to conduct special investigation actions stipulated under article 132² paragraph (1) item 1) letters a)–h), the prosecutor shall notify the investigation judge with the view to issue an authorization to conduct the given special investigation action.

(4) Undercover investigation officers shall be employees of the Ministry of Internal Affairs, Security and Intelligence Service, National Anticorruption Center, Penitentiary Institutions Department under the Ministry of Justice that are specially designated for this purpose and are persons engaged to conduct a concrete special investigation action. Undercover investigation officer shall conduct the special investigation action during a timeframe specified in the prosecutor's ordinance.

(5) Undercover investigation officer shall gather data and information which is then, in full, given to the prosecutor who has authorized the special investigation measure.

(6) Undercover investigation officer shall be banned to provoke commission of the crime.

(7) Public authorities can use or provide the undercover officer with any records or objects necessary to conduct the authorized special investigation measure.

(8) Undercover officer can be heard as witness within the criminal proceeding. In case of some grounded reasons, undercover officer can be heard under the conditions of the Law on protection of witnesses and other participants in the criminal proceedings.

Article 137. Activity and actions to protect an undercover investigation officer

(1) Undercover investigation officer shall conduct his/her activities in compliance with the goals and tasks specified in the prosecutor's ordinance.

(2) During the conducted activities, the undercover officer shall execute the authorized special investigation actions depending on the situation that emerges and according to his own convictions.

(3) Identification of the undercover officer shall be known only by the prosecutor and can be disclosed only with the written agreement of the investigation officer and pursuant to the Law on State Secret.

(4) In case of real danger to the life and health of the undercover officer, as well as if his/her identity has been discovered, the prosecutor shall immediately remove him/her from undercover mission.

(5) In case there is authentic data that the undercover officer has surpassed the limits of authorized actions that, in turn, has jeopardized or might jeopardize the accomplishment of the goals of special investigation actions, as well as if s/he committed serious violations of the law or committed a crime, his/her activity shall be discontinued immediately by the prosecutor.

(6) If needed, the undercover officer can be replaced with or without the discontinuation of the activity.

Article 138. Usage of data obtained by the undercover investigation officer

(1) Data and information obtained by the undercover officer can be used only as part of the given criminal case and in relation to the persons specified in the ordinance issued by the prosecutor.

(2) Data and information obtained by the underground officer regarding the preparation or commission of crimes other than the ones for which the special investigation action has been authorized shall be immediately forwarded to the prosecutor to open a criminal prosecution.

Article 138¹. Cross border surveillance

(1) If there are no other provisions in the international treaty applicable in the relationship with a foreign state, representatives of the criminal investigation body of a state which during a criminal prosecution conduct surveillance of a person alleged to have participated in the commission of a crime on the territory of another state allowing extradition or of a person in relation to whom there are serious reasons to believe that s/he might lead to identification or localization of the alleged participant in the commission of the crime shall be authorized to continue this surveillance on the territory of the Republic of Moldova on the basis of a preliminary request for legal assistance. Upon request, surveillance can be conducted by the competent authorities of the Republic of Moldova.

(2) The request for legal assistance envisaged in paragraph (1) shall be submitted to the General Prosecution Office.

(3) In case of urgency, if there is no time to request preliminary authorization of the Republic of Moldova, representatives of the foreign criminal investigation body acting as part of the criminal investigation shall be authorized to continue surveillance on the territory of the Republic of Moldova of a person suspected to have committed one of the crimes listed in paragraph (5) under the following conditions:

1) crossing of the border during surveillance shall be immediately brought to the attention of the General Prosecution Office through the Border Police of the Ministry of Internal Affairs;

2) request for legal assistance provided for in paragraph (1) listing the reasons that justify the need to cross the state border without preliminary authorization will be submitted with no delays.

(4) Surveillance envisaged in paragraphs (1) and (3) can be conducted under the following conditions:

1) representatives-observers of the foreign criminal investigation bodies shall respect the provisions of the RoM legislation, including of the present article;

2) apart from cases stipulated in paragraph (3), during surveillance representatives-observers of the foreign criminal investigation body shall be issued a document confirming that they have been authorized to do so;

3) representatives-observers of the foreign criminal investigation body shall justify their official capacity;

4) during surveillance, representatives-observers of the foreign criminal investigation body can hold service pistol which shall not be used other than for purposes of legitimate defense;

5) entering into the house of a person or other places inaccessible for the public is prohibited;

6) representatives-observers of the foreign criminal investigation body cannot apprehend or arrest the person under surveillance;

7) any operation shall be included in a report which will be then presented to the competent bodies of RoM;

8) at the request of RoM authorities, the authorities of the state to whom the representatives-observers of the criminal investigation body belong to shall contribute to conducting, in good conditions, the criminal investigation following the operation they participated in.

(5) Surveillance can be conducted only with regard to the crimes qualified as serious, very serious or exceptionally serious as defined in the Criminal Code.

Article 138². Controlled deliveries

(1) Controlled delivery represents movement under surveillance of objects, goods and other assets (including substances, payment means or other financial instruments) deriving from commission of a crime or which are meant to be used in perpetrating a crime on the territory of RoM or outside of its borders. The goal of controlled deliveries is to investigate a crime or identify persons involved in its commission if there is reasonable suspicion about the illicit holding or obtaining of such objects.

(2) Controlled delivery can be ordered only to detect or arrest persons involved in trafficking in human beings, illegal transportation of drugs, firearms, stolen materials, explosives, nuclear materials, other radioactive substances, money and other objects resulting from illegal activities or if such objects are used for the purpose of committing crimes.

(3) Controlled delivery presupposes that all states through which the illegal or suspicious consignments are being transported shall, in an express manner:

1) agree to the entrance of the illegal or suspicious consignment on their territory and to its exit from the territory of the given state/s;

2) guarantee that the illegal or suspicious consignment be constantly held under the surveillance of competent authorities;

3) guarantee that the prosecutor, criminal investigation bodies or other competent state authorities be informed about the results of the criminal investigation opened against the persons accused of the crimes which represented the object of the special investigation measure foreseen in paragraph (1).

(4) Provisions included in paragraph (3) shall not be applied if a ratified international convention or an international agreement stipulates otherwise.

(5) In addition to the requirements stipulated in article 255, ordinances issued by the prosecutor should include: name of the suspect or defendant, if such is known; pieces of evidence proving the illicit character of the goods which are going to enter, transit or exit the territory of the country; modalities of conducting the deliveries. Prosecutor shall give his/her opinion on each of the delivery ordered for surveillance.

(6) Upon completion of the controlled delivery on the territory of the Republic of Moldova, responsible bodies should prepare minutes on the operation conducted and submit it to the prosecutor.

Article 138³. Controlled procurement

Controlled procurement shall include purchase of services or goods placed for free, limited or prohibited circulation for the purpose of making some technical and scientific findings or judicial expertise or for investigation of a crime or identification of perpetrators.

Article 93.Evidence

(...)

(2) In a criminal proceeding, the following actual data established through the following means shall be admitted as evidence:

(...)

8) procedural documents that record the results of the special investigative measures and their annexes, including transcripts, photos, records and other.

Law no. 59 of 29.03.2012

On Special Investigations Activity

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The Parliament adopts this organic law.

Chapter I

GENERAL PROVISIONS

Article 1. Concept and Scope of Regulation of the Special Investigative Activity

(1) Special investigation activity represents a secret and/or public procedure, carried out by the competent authorities, with or without the use of special technical equipment, for the purpose of collecting information necessary to prevent and combat crime, ensure state security, public order, protection of rights and legitimate interests of persons, detecting and investigating crimes.

(2) This Act regulates the special investigative measures, the method of disposition and making them, and control of their legality.

Article 2. Tasks of the special investigations activity

Tasks of special investigative activity are as follows:

a) revealing the criminal attacks, preventing, stopping the crimes and identifying persons who organize them and/or commit them;

b) discovery and investigation of crimes;

c) looking for missing persons without a trace or those that are hiding from the prosecution or the Court or evade execution of penalty;

- c¹) tracing proceeds of crime and collecting evidence on these goods;
- d) gathering information about possible events and/or actions that could endanger state security.

Article 3. Principles of Special Investigations Activity

Special investigations activity is based on the principles of:

- a) legality;
- b) observance of the rights and freedoms of the person;
- c) opportunity and safety;
- d) combining methods and intelligence;
- e) cooperation with other state authorities;
- f) de-ideologization and impartiality.

Article 4. Special Investigations Activity and Human Rights

(1) Every person subject to special investigations measure has the right to be informed, after being carried out, by the prosecutor or by the investigation judge who authorized the measure, if it not draw the layout of other special investigative measures.

(2) Any person subject to special investigations measure has the right to compensation for material and moral injury caused by the violation of this Act.

(3) Undertaking the special measure of investigations for other purposes and tasks than those provided for in this law shall not be admitted.

(4) Special investigations activity exercised in violation of this law shall entail the liability provided for by law.

(5) Any information, any evidence that has been gathered in violation of human rights and freedoms is void and shall be deemed non-existent.

Article 5. Protection of Personal Data in the Exercise of the Special Investigations Activity

(1) Persons who have access to the personal data of the person subject to the measure of special investigations are required to maintain the confidentiality of the data.

(2) Access to the file or file materials to persons other than those who are investigating the particular case is forbidden, with the exception of specialized subdivision head of the relevant body, within the limits of its competence, and the prosecutor who has authorized a special measure of investigation or its authorization requested by the investigation judge, the judge who authorized the special measure of investigation.

Chapter II

SUBJECTS CARRYING OUT SPECIAL INVESTIGATIONS ACTIVITY

Article 6. Subjects Carrying Out Special Investigations

(1) Special investigations activity shall be carried out by the investigations officers of special subdivisions within or under the Ministry of Internal Affairs, Ministry of Defense, the National Anti-Corruption Centre, the Information and Security Service, State Protection and Guard Service, the Customs Service and the Department of penitentiary

institutions of the Ministry of Justice.

(2) It is prohibited to carry out special measures of investigation by other authorities than those referred to in paragraph (1).

(3) Investigations officer conducting special investigations activity carries out the tasks independently, except when special investigative action is ordered and coordinated or led in the criminal process by the prosecutor or by the criminal investigation officer, or in collaboration with confidential cooperation members.

Article 7. Competencies of Authorities Whose Special Subdivisions Carry Out Special Investigations

(1) For the purpose of organization and accomplishment of special investigations activity, the authorities whose specialized subdivisions performed special investigations activity shall be competent:

- a) to create information systems to ensure that the duties of special investigations activity are carried out;
- b) to conclude agreements concerning the use of the service rooms, the estates of housing, transport, enterprises' property, institutions, organizations, military units, and other assets of individuals and legal entities;
- c) to make and use acts, within the framework of the special investigative measures, which encode the identity of persons with functions of liability, subdivisions, organizations, rooms and means of transport, as well as the identity of confidential co-worker;
- d) to acquire special technical means, such as: video and audio recorders, cameras, and other modern technical means for obtaining secret information;
- e) to set up, in the manner established by law, enterprises, organizations and subdivisions in solving the tasks provided for by the present law.

(2) The powers specified in paragraph (1), letter c) and d) apply only to specialized subdivisions of the Ministry of Internal Affairs, the National Anti-Corruption Center and the Information and Security Service of the Republic of Moldova.

(3) Specialized subdivisions of the authorities carrying out special work of investigation within the limits of their competence, are entitled to collect the necessary information concerning the persons subject to verification regarding:

- a) access to the information that constitutes state secret;
- b) admission to employment objectives posing a great danger for life and health;
- c) admission to the organization and conduct of special investigative measures or access to materials received during the execution of these measures;
- d) the establishment or maintenance of collaboration in organizing and conducting special investigative measures;
- e) consideration by the Licensing Board license application for private detective and / or security;
- f) ensuring internal security.

Article 8. Heads of Specialized Subdivisions of the Authorities Carrying Out Special Investigations

(1) The leader of specialized subdivision of authority which carries out special investigations activity, hereinafter referred to as specialized subdivision, distributes documents ordering the special investigative measures, and

coordinates the activity of investigations officers under his command and exercises departmental control over them.

(2) The head of the specialized subdivision approves measures referred to in Article 18, paragraph (1), point 3) and exercises control over their execution.

(3) The head of the specialized subdivision is responsible for organizing the activity and observing the time limit for carrying it out.

(4) In case of special investigative activity by the head of specialized subdivision on its rights and obligations are residing with the investigation officer.

(5) In the exercise of administrative functions, specialized subdivision leader instructs officers that are required for investigations.

Article 9. Investigations Officer

(1) Investigations officer is the empowered person who, on behalf of the state, carries out special measures of investigation in accordance with the legislation in force.

(2) When carrying out the special measures of investigation within the criminal case, the investigations officer is subject to the written indications of the prosecutor or criminal investigation officer.

(3) The identity of the investigations officers of the specialized subdivisions, which conduct special investigations and work as an undercover investigator, is a state secret and may be disclosed only with the written consent of these officers and in accordance with the law on state secret.

(4) The investigations officer is responsible for carrying out directly the special investigative measure that the one performs.

Article 10. Group of Investigation Officers

(1) In the case of some complex measures, investigation officers group may be formed by:

a) the prosecutor under the Ordinance, if the measure was approved by the latter, or authorization has been requested by the investigation judge;

b) the head of the subdivision, with the inclusion of investigation officers from the same specialized subdivisions, or by the head of the authority whose subdivision performs the activity of special investigations, including the investigations officers of the various specialized subdivisions, where the measure was approved by the head of the specialized subdivision.

(2) At the time of group formation that carries out the special investigations activity, persons referred to in paragraph (1) appoint one of the investigations officers as the leader of the group, which coordinates the activity of investigation officers within it.

Article 11. Obligations of Investigations Officer

Investigations officer shall observe the following obligations:

a) respect the rights and the legitimate interests of the person;

b) undertake, within the limits of powers, all measures for the defense of human rights and freedoms, protection of all forms of property protected by law in order to ensure state security and public order;

c) perform the Ordinances of criminal prosecution officer, written guidelines or prosecutor's ordinances and

decisions of the court;

d) inform the other authorities which carry out special investigation activity about the infringements become known, regarding the competence of these bodies, and grant them the necessary help;

e) abide by the rules of conspiracy to the pursuit of special investigations;

f) observe confidentiality of personal data which become known during the special measure of investigations;

g) comply with the proportionality of the right infringed and the need of measure being carried out.

Article 12. Rights of Investigations Officer

(1) Investigations officer shall have the following rights:

a) undertake special measures of investigation according to the competence and within the limits of the law;

b) establish relationships with people who have given their consent to collaborate, in confidence, with specialized subdivisions;

c) use the information systems that ensure the achievement of the tasks of the special investigations;

d) use, in carrying out special measures of investigation, under contract or by written agreement, service spaces, housing, transport, assets of enterprises, institutions, organizations, military units and other assets of individuals and legal entities;

e) be trained initially and continuously.

(2) The investigations officer is independent to establish the techniques applied, rules and tactics for carrying out specific measure of investigation.

(3) The investigations officer has the right to refuse the execution of written orders of the Prosecutor, the criminal prosecution officer, if they are illegal or if there are actual circumstances which endanger the life and health of the officer. Refusal to execute the instructions is performed by contacting the higher-ranking prosecutor.

Article 13. Investigations Officer's Liability

Investigations officer is disciplinary, administrative or criminally liable for illegal acts committed during a special measure of investigation.

Article 14. Powers of Prosecutor in the Special Investigations Activities

Within the framework of the special investigations, the Prosecutor shall have the following powers:

a) authorize special measures of investigation which, according to this law, are approved by the public prosecutor;

b) coordinate and lead the special investigative measures carried out in the context of a criminal trial which it has authorized or requested approval of the investigating judge;

c) control the legality of special investigation measures, as well as the results of special investigation measures that one authorized or upon which requested the approval of the judge;

d) examine any question concerning the legality of the special measures of investigation conducted by the investigations officer;

- e) require specialized subdivision head the designation of investigations officers of the investigation officers group;
- f) during criminal prosecution, require specialized subdivision head carrying out certain special investigations.

Article 15. Confidential employees

(1) Confidential employees are people who, through written or oral agreement, undertake to provide investigative information officer, to participate in the preparation and implementation of special investigative measures and to contribute in another way not forbidden by law, the special investigative activities.

(2) Involvement of confidential employees in performing special investigations measures can be made for consideration or not.

(3) Investigations officers, as appropriate, may enter into confidentiality agreements with employees on behalf of the authority whose subdivision perform special investigations activity.

(4) Confidential employees are required to maintain confidentiality of secret information that they have become known during the performance of special investigative measures and to provide accurate information.

(5) To ensure the confidentiality of confidential employees, their family members and relatives, it is allowed the performance of special investigation measures to protect them according to the law. Information about the confidential employee may be disclosed only with his written agreement.

(6) Investigations officers are forbidden to engage as confidential employees in specific investigation activities deputies, judges, prosecutors, criminal investigators and lawyers.

(7) Confidentiality employees work under the control of the authorities whose subdivisions perform special investigations activity and heads of respective specialized subdivisions.

Article 16. Assistance Provided to the Subjects of Special Investigations Activity

(1) Natural and legal persons, irrespective of their form of ownership, are obliged to assist in specialized subdivisions, to immediately make available the information required, as well as, to the extent possible, movable and immovable property, other objects and documents necessary for the implementation of special measures of investigation.

(2) Legal persons providing postal services and electronic communication are obliged to provide equipment and technical conditions necessary for the realization by the specialized subdivisions of special investigative measures, and to take actions to preserve the confidentiality of the contents, methods and tactics of these measures.

Article 17. Guarantees and Social Protection of Investigation Officers

(1) Upon the investigation officers shall be extended the legal protection and social guarantees for employees of authorities in whom they are employed.

(2) No one has the right to interfere with the legitimate actions of investigation officers, except those directly authorized by law.

**Chapter III
SPECIAL MEASURES OF INVESTIGATION**

Section 1

Procedure for disposal of special investigation measures

Article 18. Special Measures of Investigations

(1) For carrying out the tasks provided for in this law the following special measures of investigations shall be performed:

1) with the approval of the investigation judge at the request of the Prosecutor:

- a) research home and / or installation of appliances for monitoring and recording audio and video, camera and film;
- b) supervising the home by using technical means providing registration;
- c) the interception and recording of communications and images;
- d) retention, research, transmitting, searching or lifting mail;
- e) monitoring telegraph connections and electronic communications;
- f) monitor and control financial transactions and access to financial information;
- g) documentation with technical methods and means and locating or tracking by global positioning system (GPS) or by other technical means;
- h) collection of information from electronic communication service providers;

2) with the authorization of the Prosecutor:

- a) identify the subscriber, the owner or user of an electronic communication system or a point of access to a computer system;
- b) visual tracking;
- c) control the transmission of money or other tangible assets extorted;
- d) undercover investigation;
- e) cross-border supervision;
- f) controlled delivery;
- g) collecting samples for comparative research;
- h) examine objects and documents;
- i) acquisition of control;

3) the authorization of the head of the specialized subdivision:

- a) questioning;
- b) collecting information about people and events;
- c) identify the person.

(2) The list of measures specified in paragraph (1) is exhaustive and may be amended or supplemented only by law.

(3) The measures provided for in paragraph (1), section 1), as well as those referred to in paragraphs (1), section

2) letters c), e), and f) are carried out only in the context of a criminal trial, according to the Code of Criminal Procedure of the Republic of Moldova. The measures referred to in paragraph (1), section 2) shall be carried out in the framework of a criminal trial, and beyond. The measures provided for in paragraph (1), section 3) shall be performed beyond the criminal process.

(4) Special investigations measure referred to in paragraph (1), section 2), letter c) shall be carried out only by specialized subdivisions of the Ministry of Internal Affairs and of National Anti-Corruption Centre.

(5) In the process of carrying out special measures of investigations information systems, video and audio recording devices, cameras and camcorders, other technical means shall be used, if they have been approved by law.

(6) Organization, methods of carrying out special measures of investigations, internal procedures for approval, rules for drawing up the minutes on the management, preservation and destruction of materials obtained, measures to ensure their integrity and confidentiality, and privacy of special investigations activity, carrying out undercover operations on leadership and management work done covertly recording mode special files and financial resources assigned to special investigative measures, are established by common rules of authorities performing special investigations in agreement with the Prosecutor General's Office.

Article 19. Grounds for Carrying Out Special Measures of Investigations

(1) Grounds for carrying out special measures of investigations are as follows:

- 1) unclear circumstances in connection with the prosecution;
- 2) information, which has become known on:
 - a) injurious deed under preparation, to be committed or already committed, as well as persons who prepare, commit or have committed it;
 - b) people who are hiding from the prosecution or the Court or avoid executing the criminal punishment;
 - c) missing persons without a trace, and the need to establish the identity of unidentified bodies;
 - d) circumstances that endanger public order, military, economic, environmental or other security of the state;
 - e) circumstances endangering the safety of the undercover investigator or members of his family;
- 3) the procedural acts of the prosecution officer, the prosecutor or the investigating judge in criminal cases within their proceedings;
- 4) interpellations of international organizations and law enforcement authorities of other countries under international treaties to which Moldova is a party;
- 5) report of the investigation officer on the circumstances that endanger own safety, family and those close to him.

(2) Special investigation measures shall be authorized and carried out, if the following conditions are cumulatively met:

- a) the attainment of the criminal process is not possible otherwise or there is a danger to the security of the state; and
- b) special investigations measure is proportionate to the restriction of fundamental rights and freedoms of human being.

Article 20. Authorization Procedure of the Special Measures of Investigations

(1) Special measures of investigations provided for in Article 18 paragraph (1), section 1) shall be authorized under the Code of Criminal Procedure of the Republic of Moldova.

(2) Special measures of investigations provided for in Article 18, paragraph (1), section 2) shall be authorized by the public prosecutor ex officio or at the request of the criminal prosecution officer, the investigations officer or of specialized subdivision within a particular recorded file. The Ordinance of the Prosecutor shall include:

- a) the concrete authorized measure;
- b) the period for which it was approved so far;
- c) the identity of the undercover investigator assigned to, as well as the activities one will undertake;
- d) name, identification number of the person subjected to special investigations or particulars of it, if they are known;
- e) reason of undertaking special investigations measures;
- f) information on the technical equipment necessary to perform special investigations measure.

(3) Measures provided for in Article 18, paragraph (1) section 3) shall be available through resolution by the head of specialized subdivision ex officio, and upon the requested of investigations officer, officer of the criminal prosecution or the prosecutor.

(4) Special investigation measures approved shall start from the date indicated in the notice of disposal or at the latest at the date of expiry of the term for which it has been authorized.

(5) The investigation officer carrying out special measures of investigations within one month of the date of the disposition measures or within the period specified in the Act, shall inform the Prosecutor through a report or, where appropriate, the head of the specialized subdivision of authorized special measure of investigations about the results achieved from the implementation of special measures of investigation.

(6) If, during the examination of the report, the public prosecutor or head of the specialized subdivision found that the conditions of the special measure of investigations are not observed or that by the measure disposed, rights and legitimate interests of persons are conspicuously or disproportionately violated, he/she orders its cessation.

(7) Special measures of investigation is ordered for a period of 30 days and be extended up to six months based. Each extending special investigative measure may not exceed 30 days. If the term of authorization to carry out special investigative measure was extended to 6 months, the measure prohibits the authorization of special investigative repeated on the same basis and on the same subject, unless the use of undercover investigators or development circumstances of new cases and research the facts related to investigating organized crime and terrorist financing.

(8) Prosecutor or, as appropriate, specialized subdivision head shall order the cessation of special investigations measure before the deadline for which it was authorized, as soon as the grounds and reasons that justify its approval disappeared.

(9) If the grounds for conducting special investigative measures no longer exist, the investigations officer requests the prosecutor or, as appropriate, the head of specialized subdivision immediate cessation of these measures.

Article 21. Special File

(1) In conducting special investigative measures, the investigation officer is required to form a special file that

includes all the materials gathered. Creation of file is subject to mandatory registration.

(2) Special file cannot be a basis for limiting rights and freedoms provided for by law.

(3) Categories of special cases, their management, termination and destruction method shall be established by departmental regulations of the authorities whose specialized subdivisions of investigations carry out special investigations activity.

(4) Notwithstanding provisions of paragraph (3), special files containing state secret shall be destroyed after their declassification in accordance with the Law on State Secrets.

(5) Each special file shall include a detailed schedule of persons who are aware of the case materials, which included:

- a) name and surname of the person;
- b) position of the person;
- c) day, month, year and time of notification to file materials and day, month, year and time of its completion;
- d) signature.

Article 22. Recording Special Investigations

(1) Investigations officer who carries out special investigations measure shall draw up a report for each measure authorized by the investigative judge or prosecutor, recording the following:

- a) the date and place of the measure, as well as the time of commencement and completion;
- b) function, name and surname of the subject who shall draw up the minutes;
- c) name and surname and the status of the persons who participated in carrying out the measures and, if applicable, their addresses, their objections and explanations, except data relating to confidentiality coworkers;
- d) detailed description of the facts and of the actions undertaken within the framework of the measure;
- e) concerning the photographing, videotaping, audio recording, using the technical means, conditions and procedures for their application, the objects against which these means were applied and the results obtained.

(2) The information carrier material that contains the results of the special investigative measures shall be attached to the minutes, in a sealed envelope.

(3) The minutes and information carrier material shall be attached to the special case file drawn up under the present law.

(4) Upon the cessation of the special measure of investigations or at the request of the prosecutor, the investigations officer who carried out the measure passes him/her the minutes, to which all materials gathered during the approved special investigations measure shall be annexed. The Prosecutor examines and pronounces, by Ordinance, on the legality of the measure performed.

(5) If the prosecutor finds that special measure of investigations was carried out in obvious violation of the human rights and freedoms or investigations officer acted in excess of the provisions of the Ordinance for authorization, the Prosecutor shall declare null the undertaken measure and rules, by statute, the immediate destruction of information carrier material and of the materials gathered during that special measure of investigation. Ordinance of the

Prosecutor may be appealed to the higher-ranking Prosecutor.

(6) In case it is found, by Ordinance, the legality of the special measure of investigation, the Prosecutor shall notify the persons who have been subject to special investigations measure.

(7) Since the information referred to in paragraph (6), the person subject to the special investigations measure has the right to inspect the minutes on special measure for the conduct of investigations and the Ordinance of the Prosecutor with respect to the legality of the measure carried out.

(8) Special measures of investigations authorized by the head of the specialized subdivision shall be recorded in a report and submitted to him/her.

Article 23. Access to Information Systems

Investigations officers, within the limits of the special case file, have free access to information systems data, with the exceptions provided for by the laws in question.

Article 24. Use of Special Investigations Measures

(1) Results of special investigations measures can serve as a basis for making other special investigative measures in order to prevent crime and to ensure state security, public order, as well as evidence, if they were carried out in the framework of a criminal case.

(2) Information about the forces (with the exception of persons who assist the authorities carrying out special measures of investigation), the means, sources, methods, plans and results of special investigations, as well as about the organization and tactics of special investigative measures, constituting state secret, can be declassified only in accordance with the legislation.

(3) If the investigations officer finds a reasonable doubt as to the commission or the preparation to commit an offence, he/she shall immediately, by comparison, pass all the materials to the criminal prosecution body.

(4) The use of the special investigations results provided for in Article 18 paragraph (1), section 2) within a special case file into another special case file shall be performed only with special authorization of the Prosecutor that authorized the initial measure.

Article 25. Confidentiality of Special Investigations Measures

(1) All data collected during the special investigative measure constitute official information with limited accessibility or state secret.

(2) Any disclosure of the data referred to in paragraph (1) attracts the liability provided for by law.

Article 26. Procedure for Contesting the Special Measures of Investigation Conducted Outside Criminal Proceedings

(1) The ordinance of the Prosecutor by which was authorized the special investigations measure or by which was found the legality of its performance shall be challenged to the higher-ranking prosecutor by:

a) the investigations officer that requested the authorization of a special investigations measure and/or who carried out the special investigative measure;

b) the person to which, by carrying out special investigative measure, fundamental rights and freedoms have been violated.

(2) The persons referred to in paragraph (1) have the right to challenge the Ordinance on:

- a) the refusal of the Prosecutor to authorize a special measure of investigations;
- b) the legality of the special investigations measure;
- c) declaring void the results of the special investigative measures.

(3) The request for appeal is addressed to the higher-ranking Prosecutor within 15 days from the date of notification of the Ordinance and shall be filed directly to him/her or the Prosecutor who issued the Act in question. If the request for appeal was filed to the Prosecutor who issued the Act in question, the one shall, within 48 hours of receiving them, submit it to the higher-ranking Prosecutor, accompanied by explanations, by the minutes concerning the special investigative measures and materials collected in connection with its performance, as the case may be.

(4) In order to ensure the examination of the request of appeal, the investigations officer or head of specialized subdivision shall provide the higher-ranking Prosecutor the materials needed in connection with the request of appeal, with the exception of data about people who have contributed substantially to carrying out the special measure of investigations.

(5) The higher-ranking Prosecutor shall examine the request of appeal within 5 days and rules:

- a) annulment of the order of the Prosecutor, with an indication of actions to be undertaken; or
- b) maintaining the ordinance in force.

(6) The order of the higher-ranking Prosecutor is irrevocable.

(7) Special measures of investigations authorized by the head of the specialized subdivision shall be challenged to the head of the authority whose subdivision carries out the special investigations activity.

Section 2

Definition of special investigative measures

Article 27. Special Measures of Investigations That are Carried Out Only Within the Framework of Criminal Prosecution

Special investigations measures approved only within the framework of criminal proceedings shall be carried out in accordance with the provisions of the Code of Criminal Procedure of the Republic of Moldova.

Article 28. Identification of the Subscriber, Owner or User of an Electronic Communication System or a Point of Access to a Computer System

(1) The identification of the subscriber, the owner or user of an electronic communication system or a point of access to a computer system is to request a service provider to identify the subscriber, the owner or the user of a telecommunication system, of a means of telecommunication or a point of access to a computer system or to provide information about the fact that a particular means of communication or a certain point of access to a computer system is being used, is active or has been used or has been active on a particular date.

(2) The Ordinance ruling special investigations measure, in addition to the elements provided for in Article 20, paragraph (2), shall also contain:

- a) identification data of the service provider who has the control or keeps the information referred to in paragraph (1);

b) identification data of the subscriber, owner or user, in case they are known, motivating the accomplishment of conditions for the disposal of special investigative measures;

c) the provision concerning the obligation of the person or service provider to communicate immediately in terms of confidentiality, the requested information.

Article 29. Visual Tracking

Visual tracking is revealing and establishing the person's actions, of some buildings, vehicles and other objects.

Article 30. Undercover Investigation

(1) Undercover investigation shall be authorized for the period of the discovery of the existing offence.

(2) Undercover investigation shall be ruled by Ordinance, which indicates:

a) the authorized special investigations measure;

b) the period for which it was authorized the special investigations measure;

c) identity assigned to the undercover investigator, as well as the activities one is to undertake;

d) person or persons subject to special investigations measure or the identification data thereof, if they are known.

(3) In case the prosecutor values the need to use the undercover investigator, technical devices for obtaining photographs or audio or video recordings, the one shall notify the investigative judge for the issuance of a decision to carry out special investigations measure.

(4) Undercover investigators are employees, specifically designated for this purpose, from the Ministry of Internal Affairs, Information and Security Service, the National Anti-corruption Centre, Department of penitentiary institutions of the Ministry of Justice or are people trained to carry out a particular special investigation. Undercover investigators carry out a special measure of investigations during the period established in the Ordinance of the Prosecutor.

(5) The undercover Investigator to gather data and information that make it, in full, at the disposal of the Prosecutor who has authorized a special measure of investigation.

(6) Undercover investigator is prohibited to cause committing of crimes.

(7) Public authorities may use or otherwise provide the undercover investigator any records or objects needed to perform authorized special investigations measure. A person who uses or provides records or objects is not responsible for them.

(8) Undercover investigators may be heard as witnesses in the criminal proceedings. For good reason, the undercover investigator can be heard in accordance with the Law on protection of witnesses and other participants in criminal proceedings.

Article 31. Collection of Samples for Comparative Research

Collection of samples for comparative research is to detect, raising physical and material support conservation of information (objects, substances) to compare these samples with materials that already have specialized subdivisions or for subsequent detection of identical objects especially objects of interest.

Article 32. Research Articles and Documents

(1) Research consists of objects and documents in its assessment, scientifically, for depicting signs of criminal activity, in studying the content, in oppose to other objects and documents necessary to determine the objective reality.

(2) Research objects and documents shall be carried out by investigations officers involving, as appropriate, the specialist who has knowledge for their examination.

Article 33. Acquisition of Control

Acquisition of control is to purchase services or goods in free circulation, restricted or prohibited, for the purpose of making technical, scientific or legal expertise or to investigate a crime or identification of perpetrators who committed this offense.

Article 34. Questioning

Questioning is the direct communication of the investigations officer and other persons authorized by him/her with people who have or know information about facts, events, circumstances or are persons of interest.

Article 35. Gathering Information about People and Facts

Gathering information about people and facts means acquiring information about individuals and legal facts, events, circumstances of interest by studying direct documents, materials, databases, by the preparation of applications for individuals and legal entities that have or know the nominated information.

Article 36. Identification of Persons

Identification of persons means establishing the person's identity upon static signals (fingerprints, blood and saliva composition, odor traces and traces left at crime scene) and dynamic signals(walking, gesticulation, mimics, etc.), as well as through photo-robots and other methods giving way to determine the identity with increased probability.

**Chapter IV
FINANCIAL ASSURANCE OF SPECIAL INVESTIGATIONS**

Article 37. Funding of Special Investigations Activity

(1) Specialized subdivisions of authorities that are competent for carrying out special investigations activity are often given budget funds from the state for the purposes of this Act.

(2) The control over the use of funds allocated for special investigations activity is exercised by the authorities concerned, as well as by a representative of the Ministry of Finance specifically authorized under the special rules approved by the Government.

**Chapter V
CONTROL AND COORDINATION OF SPECIAL INVESTIGATIONS**

Article 38. (1) Parliamentary Scrutiny

Parliamentary scrutiny over the special investigations activity is exercised by the Committee on National Security, Defense and Public Order.

(2) Authorities carrying out the special investigative activity shall submit to the Attorney General, until 15 January

of the following year, a report on the activities of the special investigations, which will include:

- a) the number of special investigations authorized;
- b) the number of cancelled special investigations measures;
- c) the results of special investigations measures.

(3) The Attorney General, on the basis of the reports presented and on the basis of the information available to the Prosecutor's Office, shall submit a final report of the special investigations task to the Committee on National Security, Defense and Public Order until 15 February of each year.

(4) Committee on National Security, Defense and Public Order may, within the limits of its competence, request any further information with respect to the special investigative activity, except in special cases, if it considers that the report is incomplete.

Article 39. Control Exercised by the Prosecutor

(1) Control over the execution of this law shall be effected by the hierarchically superior prosecutors.

(2) The control is carried out on the basis of complaints lodged by people whose legitimate rights and interests are assumed to have been infringed or ex officio, in cases when special investigative activity was authorized by the prosecutor or authorization has been requested by the investigation judge.

(3) Hierarchically superior prosecutors who carry out the control have the right to access the information that constitutes state secret in the manner established by law.

(4) Activity of confidentiality co-workers is under the control of the Attorney General or a specially authorized prosecutor, by order of the Attorney General.

Article 40. Departmental Control

(1) Departmental control over the activity of investigations officers is carried out by the head of the body carrying out special investigations activity.

(2) The head of authority carrying out the special investigations activity exercises control by requiring the control of special case files.

Article 41. Coordination of Special Investigations

(1) Special investigative activity is coordinated by the Coordinating Council, set up by the Attorney General.

(2) The Coordinating Council includes the Attorney General, which is, at the same time, and Chairman of the Council, and heads of specialized subdivisions. Coordinating Council carries out its activity under the regulation approved by the Attorney General.

Chapter VI

FINAL AND TRANSITIONAL PROVISIONS

Article 42

(1) This law shall enter into force six months after the date of publication.

(2) Government shall, within 3 months from the date of publication of the present law, submit to the Parliament

proposals on bringing the legislation in force in accordance with this law.

(3) Special measures of investigations in process of implementation shall be carried out, before the expiry thereof, in accordance with the provisions of the Code of Criminal Procedure of the Republic of Moldova and the Law Nr. 45-XIII of 12 April 1994 concerning the operative investigations activity.

(4) On the date of entry into force of this law, those persons who, in accordance with the Law Nr.45-XIII of 12 April 1994 concerning the operative investigations activity, worked in the specialized subdivisions shall continue to operate as investigations officers.

(5) On the date of entry into force of the present law, Law Nr.45-XIII of 12 April 1994 concerning the operative investigations activity (republished in the Official Gazette of the Republic of Moldova, 2003, Nr.11 – 13, Article 38), with subsequent amendments and additions shall be repealed.

Study on corruption cases archived in the courts for the period from 1 January 2010 o 30 June 2012 (Developed by the National Anti-Corruption Centre with the support of the Supreme Court of Justice and together with the experts of MIAPAC Project and EUHLPAM Mission, based on an extensive research on corruption cases sent to court and examined by national courts with a view to the implementation of p.7 and p.8 of the 2012-2013 Action Plan for the Implementation of the Anticorruption Strategy for 2011-2015)

During the reference period of the study the old version of Article 135 of the CPC on “Wiretapping” was in force under which “wiretapping (tapping telephone, radio or other conversations using technical means) was performed by the criminal investigation body with the authorization of the investigating judge, based on a reasoned order of the prosecutor in cases related to serious, especially serious and exceptionally serious crimes.” Therefore, to have the means needed for investigation of corruption cases available, the criminal investigation body had to apply the qualification that would allow him/her to do this.

As of October 2012 the new provisions of the CPC were enacted, according to which the “special investigative measures are made available and are carried out [...] only in case of a reasonable suspicion about the preparation or commission of a serious, an especially serious or an exceptionally serious crime” (Article 132/1), being introduced a new article in the CPC, art.132/8, which provides exhaustively the specific crimes provided by the CC, at the investigation of which interception of communication may be applied. Furthermore, there were cases when the prosecutor qualified the actions of the accused in the indictment into milder provisions, overlooking certain aggravating qualifying signs such as receipt of large amounts, exercising the promised influence and achieving the result sought for which the influence peddling was committed, etc. In those cases, although evidence proving the commission of a serious crime was attached to the indictment, the prosecutor qualified the actions of the accused as a less serious crime, which then allowed the court to apply the provisions of Article 55 of the CC, to terminate the criminal proceedings against the defendant and subject the defendant to administrative liability - even if it found him/her guilty of the crime which was incriminated against him/her.

Through those changes, there was introduced the possibility, which was previously inexistent, to use wiretapping when investigating the cases referred to in:

- Article 325 paragraph (1) – active corruption;
- Article 333 paragraph (1) – taking bribes;
- Article 334 paragraph (1) – giving bribes;
- Article 334 paragraphs (2) b) and c) - giving bribes with the participation of two or more persons and on a large scale.

At the same time, the situation regarding the possibility of using wiretapping in case of other criminal components, in relation to which such possibility existed before, has worsened. Thus, the corruption components for the criminal investigation of which the use of wiretapping was excluded as of October 2012, include:

- Article 190 paragraph (2) letter d) – fraud committed by use of an official position;
- Article 191 paragraph (2) letter d) – appropriation of another person’s property by use of an official position;
- Article 191 paragraphs (3) and (4) – appropriation of another person’s property committed by an organized criminal group or by a criminal organization, or on a large scale;
- Article 326 paragraph (2) letters b) to d) – influence peddling committed by two or more persons; with the receipt of goods or advantages on a large scale; followed by the promised influence or the achievement of the result sought.
- Article 327 paragraph (2) letters b) and c) – abuse of power or abuse of official position committed by a high-ranking official; causing severe consequences.
- Article 327 paragraph (3) – abuse of power or abuse of official position committed in the interest of an organized criminal group or a criminal organization.

The aforementioned suggest that the amendments made to the CPC on the possibility to use wiretapping of communications of subjects involved in acts of corruption have created better investigation possibilities for approximately 4.5% of cases (on corruption in the private sector), and have worsened the conditions in which over 70% of cases (in particular, on corruption in the public sector, such as abuse of official position, influence peddling and misappropriation of state property by use of an official position) could be investigated. Although there is also an undeniable need for higher chances of detecting corruption in the private sector, the arguments in favour of diminishing the success of investigating corruption in the public sector are unclear.

(b) Observations on the implementation of the article

The reviewing experts noted that the use of special investigative techniques is regulated in the CPC (Chapter III on Means of Proof and Evidentiary Procedures). The evidence derived from the use of special investigative techniques is admissible in court proceedings. The reviewing experts noted the interception and recording of communications (section 132/8 CPC) are not applicable with regard to all corruption-related offences and made pertinent recommendations to address this gap.

The reviewing experts concluded that the Republic of Moldova has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

- Ensure sufficient possibilities for investigating acts of corruption-related offences from the initial stage of investigation. In this respect, wiretapping must be possible in all cases of suspicion of corruption, irrespective of the aggravating circumstances, which usually cannot be established at the initial stage of the investigation. To this end, the exhaustive list of crimes referred to in article 132/8 CPC, with regard to which interception and recording of communications can be authorized and used, needs to be revised so as to include the following criminal acts:

- ✓ Article 190 paragraph (2) letter d) – fraud committed by use of an official position;
- ✓ Article 191 paragraph (2) letter d) – appropriation of another person’s property by use of an official position;
- ✓ Article 191 paragraphs (3) and (4) – appropriation of another person’s property committed by an organized criminal group or by a criminal organization, or on a large scale;

- ✓ Article 326 paragraph (2) letters b) to d) – influence peddling committed by two or more persons; with the receipt of goods or advantages on a large scale; followed by the promised influence or the achievement of the result sought;
- ✓ Article 327 paragraph (2) letters b) and c) – abuse of power or abuse of official position committed by a high-ranking official; causing severe consequences; and
- ✓ Article 327 paragraph (3) – abuse of power or abuse of official position committed in the interest of an organized criminal group or a criminal organization.

Paragraph 2 of article 50

2. For the purpose of investigating the offences covered by this Convention, States parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

(a) Summary of information relevant to reviewing the implementation of the article

There are a number of agreements between the Government of the Republic of Moldova and Governments of other states:

1. Agreement between the Government of the Republic of Moldova and the Government of the Italian Republic on cooperation in the fight against organized crime;
2. Agreement between the Government of the Republic of Moldova and the Government of Latvia on cooperation in combating terrorism, trafficking of drugs, psychotropic substances and precursors and organized crime;
3. Agreement between the Government and the Government of the Republic of Poland on cooperation in combating organized crime and other types of crime;
4. Agreement between the Government of the Republic of Moldova and the Federal Governments of Austria on cooperation in combating criminality;
5. Agreement between the Government of the Republic of Moldova and the Government of the Republic of Belarus on cooperation in combating criminality;
6. Agreement between the Government of the Republic of Moldova and the Government of the Republic of Bulgaria on cooperation in combating organized crime, trafficking of drugs, psychotropic substances and precursors, terrorism and other types of serious crime;
7. Agreement between the Government of the Republic of Moldova and the Government of the Czech Republic on cooperation in combating organized crime, trafficking in drugs and psychotropic substances, terrorism and other types of serious crime;
8. Agreement between the Government of the Republic of Moldova and the Government of the Republic of Croatia on cooperation in combating organized crime, trafficking in drugs and psychotropic substances, terrorism and other types of serious crime;
9. Agreement between the Government of the Republic of Moldova and the Government of Estonia on cooperation in combating criminality;
10. Agreement between the Government of the Republic of Moldova and the Government of the Republic of Uzbekistan on cooperation in combating criminality;

There are also multilateral agreements concluded within the Community of Independent States and the Organization of the Black Sea Economic Cooperation

(b) Observations on the implementation of the article

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 3 of article 50

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

(a) Summary of information relevant to reviewing the implementation of the article

See above.

(b) Observations on the implementation of the article

As reported during the country visit, the use of special investigative techniques at the international level can be decided on a case-by-case basis.

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

Paragraph 4 of article 50

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Procedure Code No. 122 of 14.03.2003:

Article 1382. Controlled delivery

(...)

(3) The controlled delivery implies expressly that all the state through which the transit of illegal or suspect transport takes place:

1) shall agree with the entry on their territory of the illegal or suspect transport as well as with its exit from the territory of the state;

2) shall guarantee the fact that the illegal and suspect transport is constantly supervised by the competent authorities;

3) shall guarantee the fact that the prosecutor, criminal investigation bodies or other competent state authorities are informed about the result criminal investigation with regard to the persons accused of crimes that constituted the object of the special investigative measure provided for under para (1).

(...)

(b) Observations on the implementation of the article

The reviewing experts concluded that the Republic of Moldova has adequately implemented the provision under review.

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