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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

REPUBLIC OF MOLDOVA

**DRAFT LAW ON THE ANTI-CORRUPTION JUDICIAL SYSTEM AND
ON AMENDING SOME NORMATIVE ACTS
AND EXPLANATORY NOTE**

PARLIAMENT OF THE REPUBLIC OF MOLDOVA**L A W**
on the anti-corruption judicial system
and on amending some normative acts

Parliament adopts this organic law.

Chapter I
GENERAL PROVISIONS**Art. I. - Article 1.** Subject matter of regulation

(1) This law regulates the role, organization and functioning of the anticorruption judicial system.

(2) The organization and functioning of the anticorruption judicial system is regulated by the Constitution of the Republic of Moldova, the Law on Judicial Organization, the Code of Criminal Procedure, the Code of Civil Procedure, the Administrative Code, this Law and other normative acts, insofar as they do not conflict with this Law.

Article 2. - The role of the anticorruption judicial system

The role of the anticorruption judiciary is to administer justice on cases established by law, aimed at committing corruption crimes and those related to corruption acts, judicial control of the acts of the National Integrity Authority that ascertain the substantial difference between the income obtained, the expenses incurred and the wealth acquired, as well as on the cases of confiscation of unjustified wealth initiated by National Integrity Authority.

Chapter II
ANTI-CORRUPTION JUDICIAL SYSTEM
AND ITS COMPETENCE**Article 3.** Anticorruption judicial system

The anti-corruption judicial system includes:

- a) Anticorruption Court;

- b) Anticorruption Chamber of the Chisinau Court of Appeal;
- c) Supreme Court of Justice.

Article 4. Statute of the Anticorruption Court

(1) The Anticorruption Court is a specialized court, part of the judicial system of the Republic of Moldova.

(2) The Anticorruption Court is a legal person, has a seal with the image of the State Coat of Arms of the Republic of Moldova and its own symbol.

(3) The seat of the Anticorruption Court shall be located in Chisinau.

Article 5. Jurisdiction of the Anticorruption Court

(1) The Anticorruption Court shall judge in the first instance procedure all criminal cases assigned to it by the Code of Criminal Procedure.

(2) The judicial control over the procedural actions performed by prosecutors in cases falling within the competence of the Anticorruption Court shall fall within the competence of the investigating judge of the Anticorruption Court.

(3) The Anticorruption Court shall examine the legality of the declaratory acts issued by the National Integrity Authority establishing substantial differences between the revenues obtained and the expenses incurred, on the one hand, and the acquired wealth, on the other hand, as well as the requests of the National Integrity Authority regarding the confiscation of unjustified assets.

Article 6. Competence of the Anticorruption Chamber of the Chisinau Court of Appeal

Within the Chisinau Court of Appeal, the Anticorruption Chamber is established, which hears appeals and cassation appeals against decisions issued in the first instance by the Anticorruption Court, as well as other cases given according to the law within its competence.

Article 7. Jurisdiction of the Supreme Court of Justice

The Supreme Court of Justice hears appeals against judgments handed down by the Anticorruption Chamber of the Chisinau Court of Appeal, as well as other cases given according to the law within its jurisdiction.

Chapter III
ORGANISATION AND FUNCTIONING OF THE
ANTICORRUPTION JUDICIAL SYSTEM

Article 8. Composition and organisation of the Anticorruption Court

(1) The Anticorruption Court has 15 judges.

(2) The Anticorruption Court shall be headed by a President, who shall be assisted by a Vice-President.

(3) Investigating judges shall work within the Anticorruption Court.

Article 9. Composition and organization of the Anticorruption Chamber of the Chisinau Court of Appeal

(1) The Anticorruption Chamber of the Chisinau Court of Appeal shall consist of 6 judges.

(2) The Anticorruption Chamber of the Court of Appeal shall be headed by the Vice-President of the Chisinau Court of Appeal.

Article 10. Criteria for selection of judges of the Anticorruption Court and of the Anticorruption Chamber of the Chisinau Court of Appeal

(1) A person who cumulatively fulfils the following conditions may run for the position of judge of the Anticorruption Court:

a) has at least 5 years actually worked as a judge in the Republic of Moldova or abroad, including in international courts, or has a professional experience of at least 10 years in the field of law, obtained in the Republic of Moldova or abroad, including within international organizations, of which at least 5 years in the position of prosecutor, lawyer or criminal investigation officer, with the exceptions provided for by this Law;

b) has an irreproachable reputation, since there are no reasonable suspicions about him/her committing acts of corruption, acts related to acts of corruption or corruptible acts within the meaning of the Law on integrity, as well as meets the criteria of financial and ethical integrity;

c) has the professional qualities and skills necessary to exercise the function of a judge of the Anticorruption Court.

(2) The professional qualities and skills required to hold the position of a judge of the Anticorruption Court shall concern:

a) the ability to understand and analyse legal situations falling within the competence of the courts of the anticorruption judicial system;

b) clarity of written and verbal expression;

c) experience relevant to the position.

(3) A person who has at least 6 years of actual work as a judge in the Republic of Moldova or abroad, including in international courts, or has a professional experience of at least 12 years in the field of law, obtained in the

Republic of Moldova or abroad, may apply for the position of judge of the Anticorruption Chamber of the Chisinau Court of Appeal, including in international organizations, of which at least 6 years in the position of prosecutor, lawyer or criminal investigation officer, with the exceptions provided by this law. The provisions of para. (1) letter (b) and (c) and of paragraph (2) shall apply accordingly to the judges of the Anticorruption Chamber of the Chisinau Court of Appeal.

(4) Persons who have worked in the position of prosecutor in the Anticorruption Prosecutor's Office of the Republic of Moldova in the last 7 years cannot run for the positions of judge of the Anticorruption Court or judge of the Anticorruption Chamber of the Chisinau Court of Appeal.

Article 11. Selection process for the position of judge at the Anticorruption Court and judge of the Anticorruption Chamber of the Chisinau Court of Appeal

(1) The judges of the Anticorruption Court and of the Anticorruption Chamber of the Chisinau Court of Appeal shall be selected through a public selection, which shall include the following stages:

a) pre-selection of candidates by a pre-selection commission established ad hoc by the Superior Council of Magistracy;

b) selection of candidates by the Superior Council of Magistracy from among eligible candidates.

(2) Information on the initiation of the competition and pre-selection shall be published on the official website of the Superior Council of Magistracy at least 20 days before the deadline for submission of applications.

(3) The file for participation in the selection shall be submitted to the Superior Council of Magistracy on paper or in electronic format and shall be registered in the established manner. Incomplete dossiers or those submitted after the deadline shall not be examined.

(4) The pre-selection of candidates shall be carried out by the pre-selection commission established by the Superior Council of Magistracy, composed of 6 members, of whom 3 are international experts delegated by the development partners and 3 are representatives of civil society appointed by the Superior Council of Magistracy. Membership of the pre-selection board may be held by persons who are qualified in the field of law, have at least 10 years' professional experience in the field of professional activity and enjoy an irreproachable reputation.

(5) The pre-selection board shall organise and conduct the pre-selection of candidates, comprising two stages. In the first stage, the committee shall verify that candidates meet the criteria set out in Art. 10 para. (1) (a) and (b) or, as the

case may be, in Article 10 para. (3). Candidates who do not fulfil those criteria shall not be admitted to the second stage of the pre-selection by decision of the pre-selection board adopted by a majority vote of the members present. At the second stage, the commission interviews and evaluates the admitted candidates regarding the required professional qualities and skills. Each member of the pre-selection committee shall fill in an evaluation sheet for each candidate admitted to the second stage of the preselection, scoring for each of the criteria set out in art. 10 para. (2). The final marks obtained by eligible candidates, which shall be the average of the marks given by each committee member, shall be recorded in a totalling sheet. The list of eligible candidates who passed the pre-selection contest after both stages, together with their evaluation sheets and the totalization sheet, is submitted to the Superior Council of Magistracy and, at the same time, is published on the official website of the Superior Council of Magistracy.

(6) Other aspects regarding the organization and conduct of each stage of the contest, including the organization of the activity of the pre-selection commission, as well as the way of testing the necessary professional qualities and skills, shall be established by regulation approved by the Superior Council of Magistracy.

(7) The Superior Council of Magistracy shall decide on the winners of the selection and propose to the President of the Republic of Moldova the appointment or, as the case may be, the transfer of the nominated candidates in accordance with the results of the selection.

Article 12. Appointment of judges of the Anticorruption Court and of the Anticorruption Chamber of the Chisinau Court of Appeal

(1) The President of the Republic of Moldova shall issue a decree appointing or, as the case may be, transferring to office the judge of the Anticorruption Court or the judge of the Anticorruption Chamber of the Chisinau Court of Appeal within 30 days from the date of receipt of the proposal. If further examination of the candidate's file or information held by a public authority about the candidate is necessary, this deadline may be extended by 15 days.

(2) If there are circumstances confirming the candidate's incompatibility with the position of judge of the Anticorruption Court or judge of the Anticorruption Chamber of the Chisinau Court of Appeal or violation of the procedure for selecting the candidate, the President of the Republic of Moldova shall refuse the appointment/transfer stating the reasons and shall inform the Superior Council of Magistracy. At the repeated proposal of the Superior Council of Magistracy, voted by at least 2/3 of its members, the President of the Republic of Moldova issues the decree on the appointment/transfer to office of the judge of the Anticorruption Court or of the judge of the Anticorruption Chamber of the Chisinau Court of Appeal.

(3) The judges of the Anticorruption Court and the judges of the Anticorruption Chamber of the Chisinau Court of Appeal shall be appointed or transferred to office for a term of 6 years. Upon expiry of the 6-year term, they return to the previous position of judge they held until the transfer or, with their consent, are granted another position of judge in a court of the same level.

(4) The judges of the Anticorruption Court and the judges of the Anticorruption Chamber of the Chisinau Court of Appeal shall start their activity from the date indicated in the decree on appointment/transfer to office.

(5) If, at the time of transfer to the position of judge of the Anticorruption Court or to the position of judge of the Anticorruption Chamber of the Chisinau Court of Appeal, the judge holds an administrative position, this administrative mandate shall cease de jure.

Article 13. Investigating judges of the Anticorruption Court

(1) Investigating judges shall be appointed from among the judges of the Anticorruption Court, in accordance with the Law on Judicial Organization, for a term of 3 years and may not be appointed repeatedly to this position for 3 consecutive years.

(2) Investigating judges shall work in accordance with the provisions of the Code of Criminal Procedure.

Article 14. President and Vice-President of the Anticorruption Court

The President and Vice-President of the Anticorruption Court are selected from among the appointed or transferred judges in the established manner and with the duties provided for in the Law on judicial organization.

Article 15. Secretariat of the Anticorruption Court

The organizational and administrative activity of the Anticorruption Court is ensured by the secretariat of the Anticorruption Court, consisting of the registry, the administrative service, as well as, where appropriate, other subdivisions. The structure, organisation and powers of the secretariat shall be determined in accordance with the Act on Judicial Organisation.

Article 16. Budget of the Anticorruption Court

(1) The Anticorruption Court shall have a treasury account.

(2) The budget of the Anticorruption Court shall be an integral part of the budget of the courts, which shall be elaborated and administered in accordance with the principles, rules and procedures provided by the Law on Public Finance and Budgetary-Fiscal Accountability. The draft budget shall be submitted to the Superior Council of Magistracy.

(3) The budget of the Anticorruption Court shall be reflected separately in the budget of the courts and shall be administered by the President of the Anticorruption Court.

Chapter IV **SPECIFIC PROVISIONS**

Article 17. Development of professional skills

(1) The judges of the Anticorruption Court and of the Anticorruption Chamber of the Chisinau Court of Appeal, in addition to the trainings provided by the Law on the Status of Judge, shall benefit from trainings dedicated to increasing the level of professional skills and studying good practices in the field of combating corruption, and of the new international anticorruption standards.

(2) The judges of the Anticorruption Court and of the Anticorruption Chamber of the Chisinau Court of Appeal shall systematically undergo, but not less than once a year, mandatory additional training on judicial activity in the field of combating corruption.

(3) The National Institute of Justice organises regular training courses for judges of the Anticorruption Court and of the Anticorruption Chamber of the Chisinau Court of Appeal to strengthen and update their knowledge and skills, organises workshops for the study of innovative international practices of judicial activity in the field of combating corruption, including with the involvement of representatives of international organisations and foreign institutions.

Article 18. Use of information technologies

(1) The Anticorruption Court shall use the judicial information system owned by the Agency for Court Administration; an administrative authority subordinated to the Ministry of Justice.

(2) The Anticorruption Court shall have the capacity of registrar, with rights of access and use, according to the legislation.

(3) The Anticorruption Court shall use information technologies for the purposes of efficient access to justice, ensuring the speed of the process, optimizing the work of judges and the secretariat, as well as for other useful purposes.

Article 19. Monitoring the integrity of judges of the Anticorruption Court and the Anticorruption Chamber of the Chisinau Court of Appeal

In order to monitor the integrity, compliance of the standard of living of judges of the Anticorruption Court and of the Anticorruption Chamber of the

Chisinau Court of Appeal, assets owned by them and their family members with the level of legal income of judges, verification of the possibility of a conflict of interest of judges, the following measures shall be taken:

a) full annual verification of all declarations of assets and personal interests of judges of the Anticorruption Court and of the Anticorruption Chamber of the Chisinau Court of Appeal submitted in accordance with the law, publication of results on the official website of the National Integrity Authority and information of the Superior Council of Magistracy;

b) monitoring the lifestyle of judges of the Anticorruption Court and of the Anticorruption Chamber of the Chisinau Court of Appeal, including their family members, in accordance with the legal procedure, by the Superior Council of Magistracy *ex officio*, based on information received from individuals and legal entities, media and other open sources of information, indicating the lack of correspondence between the lifestyle of judges with the income declared by them. For monitoring purposes, the Superior Council of Magistracy may request from natural and legal persons of public or private law, including financial institutions, documents and information necessary to carry out the assessment;

c) other measures to control and monitor the integrity of judges.

Article 20. Additional security guarantees for judges of the Anticorruption Court and the Anticorruption Chamber of the Chisinau Court of Appeal

(1) The judges of the Anticorruption Court and of the Anticorruption Chamber of the Chisinau Court of Appeal, in addition to the guarantees provided by the Constitution of the Republic of Moldova and the Law on the Status of Judge, shall benefit from additional guarantees to ensure their security and personal safety of their families and to preserve their assets.

(2) The judges of the Anticorruption Court and of the Anticorruption Chamber of the Chisinau Court of Appeal, if necessary, and their family members, may be granted, under the law, state security protection.

(3) The headquarters of the anticorruption courts shall be equipped with modern security facilities, which guarantee the personal security of the judges of the Anticorruption Court and of the Anticorruption Chamber of the Chisinau Court of Appeal, keeping documents and preventing illegal access to the premises of the courts.

Article 21. Additional guarantees

Judges of the Anticorruption Court and of the Anticorruption Chamber of the Chisinau Court of Appeal who do not have accommodation space in Chisinau municipality are granted accommodation space during their activity in the Anticorruption Court and the Anticorruption Chamber of the Chisinau Court of

Appeal. In case of non-provision of employment accommodation, judges are granted a monthly non-taxable rent allowance.

Chapter V

FINAL AND TRANSITIONAL PROVISIONS

Article 22. Entry into force

(1) This law shall enter into force on the date of its publication in the Official Gazette of the Republic of Moldova, except for the provisions referring to the competences of the Anticorruption Court and the Anticorruption Chamber of the Chisinau Court of Appeal, which shall enter into force once the Anticorruption Court and the Anticorruption Chamber of the Chisinau Court of Appeal effectively start their activity.

(2) The Anticorruption Court shall effectively commence its activity, in accordance with the provisions of this law, on the date when the President of the Republic of Moldova appoints, at the proposal of the Superior Council of Magistracy, at least 5 judges. The Anticorruption Chamber of the Chisinau Court of Appeal will effectively start its activity, in accordance with the provisions of this law, on the date when the President of the Republic of Moldova appoints, at the proposal of the Superior Council of Magistracy, at least 4 judges.

(3) From the date of effective commencement of the activity of the Anticorruption Court, cases attributed to the competence of the Anticorruption Court that were within the competence of ordinary courts shall be sent to the Anticorruption Court.

(4) Within one month from the date of effective commencement of the activity of the Anticorruption Court, cases attributed to the jurisdiction of the Anticorruption Court sent to courts of general jurisdiction for examination until the entry into force of this law shall be transmitted to the Anticorruption Court, if the other court has not yet started examining the merits of the case in criminal cases or has not completed the examination of the case on the merits in the files related to the acts and applications of the National Authority for Integrity.

(5) Cases attributed to the jurisdiction of the Anticorruption Court in which the general court has commenced the examination on merits and has not completed the examination of the case on the merits shall continue to be examined and resolved by the general court within 3 months from the date of entry into force of this law. If, within 3 months, no act of judicial disposition has been issued, the cases are sent, within 10 days, for examination to the Anticorruption Court.

(6) The provisions of paragraphs (3) to (5) shall also apply accordingly to appeals to be examined by the Anticorruption Chamber of the Chisinau Court of Appeal.

Article 23. Organisation of the execution of this law

(1) Within one month from the date of entry into force of this law, the Superior Council of Magistracy shall ensure:

a) approval of the regulation on the organisation of the competition and on the rules for testing candidates for the position of judge of the Anticorruption Court and the position of judge of the Anticorruption Chamber of the Chisinau Court of Appeal;

b) starting tenders for selecting candidates for the position of judge of the Anticorruption Court and for the position of judge of the Anticorruption Chamber of the Chisinau Court of Appeal;

c) adoption and amendment of normative acts necessary for the implementation of this law.

(2) The Government, jointly with the Superior Council of Magistracy, shall, within one month from the date of entry into force of this law, provide the Anticorruption Court with space and equipment for its headquarters, including the interoperability of information systems.

(3) Until the appointment of the President and Vice-President of the Anticorruption Court, the Superior Council of Magistracy shall designate a judge of the Anticorruption Court who shall ensure the interim office of President of the Anticorruption Court.

(4) Within 3 months from the date of entry into force of this Law, the Government shall:

a) submit proposals to Parliament to bring any other legislation into conformity with this Law;

b) bring its normative acts into conformity with this Law.

Art. II. – Law no. 514/1995 on judicial organization (republished in the Official Monitor of the Republic of Moldova, 2013, no. 15–17, art. 62), with subsequent amendments, is amended as follows:

In Article 25, the single paragraph shall read as follows:

1. “The courts shall operate in sectors established by law. The courts and the territories within their area of activity are established according to Annex no. 2, with the exception of specialised courts.”

2. The following Article 25¹ shall be added:

“Article 25¹. Anticorruption Court

The organisation and functioning of the Anticorruption Court shall be regulated by law.”

Art. III. – Law no. 544/1995 on the status of judges (republished in the Official Monitor of the Republic of Moldova, 2013, no. 15–17, art. 63), with subsequent amendments, is amended as follows:

1. The following paragraph (6) shall be added to Article 6:

“(6) The appointment of judges to the specialised court shall be regulated by the Law on the Anticorruption Judicial System and on the Amending of Normative Acts.”

2. In Article 20:

paragraph 1, after “court of the same level”, shall be supplemented by “specialised court”;

paragraph (4), after the last statement, shall be supplemented by the following statement: "The manner of transfer of the judge to the specialized court is established in the Law on the Anticorruption Judicial System and the Amendment of Some Normative Acts.”

Art. IV. - The Code of Criminal Procedure of the Republic of Moldova no. 122/2003 (republished in the Official Monitor of the Republic of Moldova, 2013, no. 248–251, art. 699), with subsequent amendments, is amended as follows:

1. The following paragraph 21 shall be added to Article 29:

“(21) In criminal cases that have been sent to court by the Anticorruption Prosecutor's Office, justice shall be carried out by the Anticorruption Court.”

2. Article 36 shall read as follows:

“The general court hears at first instance criminal cases concerning offences covered by the Special Part of the Criminal Code, except for those provided for in Art. 36¹ and Art. 39 para. (1), requests and complaints against decisions and actions of the prosecutor, the criminal investigation body and the body exercising special investigative activity, as well as examine issues related to the execution of sentences and other matters given by law within its competence.”

3. The following Article 36¹ shall be added:

“Article 36¹. Jurisdiction of the Anticorruption Court

(1) The Anticorruption Court judges in the first instance cases concerning the offences referred to in art. 181¹–181³, 239–240, 243, 324–335, 352¹ para. (2) of the Criminal Code, those related to them, as well as in the case of crimes committed using the work position provided for in art. 190 and Art. 91 of the Criminal Code, if the listed offences were committed by the persons indicated in art. 269 and Art. 270¹ of this Code.

(2) The Anticorruption Court hears in the first instance criminal cases sent to court by the Anticorruption Prosecutor's Office, requests and complaints against decisions and actions of the prosecutor in the Anticorruption Prosecutor's Office, ensures judicial control during criminal investigation and other matters

given by law within its competence.

(3) Whenever reference is made to the general court, the reference shall be deemed to be made also to the Anticorruption Court, when the criminal investigation is carried out by the Anticorruption Prosecutor's Office or the National Anticorruption Center.

4. In Article 38:

the single paragraph shall become paragraph (1);

The following paragraph (2) shall be added to the Article:

“(2) Appeals and cassation appeals against judgments handed down at first instance by the Anticorruption Court shall be heard by the Anticorruption Chamber of the Chisinau Court of Appeal.”

5. In Article 41:

the single paragraph shall become paragraph (1);

The following paragraph (2) shall be added to the Article:

“(2) The investigating judge of the Anticorruption Court shall ensure judicial control during criminal proceedings on criminal cases falling within the competence of the Anticorruption Prosecutor's Office.”

6. The following paragraph (5¹) shall be added to Article 42:

“(5¹) If there is a conflict of jurisdictions between the Anticorruption Court and a general court, the case shall be heard by the Anticorruption Court.”

Art. V. - Article 278¹ paragraph (1) of the Code of Civil Procedure of the Republic of Moldova no. 225/2003 (republished in the Official Monitor of the Republic of Moldova, 2018, no. 285–294, art. 436), with subsequent amendments, will have the following content:

“(1) The application for confiscation of unjustified assets shall be submitted to the Anticorruption Court.”

Art. VI. - Article 201 of the Administrative Code of the Republic of Moldova no. 116/2018 (Official Monitor of the Republic of Moldova, 2018, no. 309–320, art. 466), as subsequently amended, is supplemented by paragraph (11) with the following content:

“(11) Applications for confiscation of unjustified assets for the benefit of the state and claims contesting the acts of the National Integrity Authority establishing the substantial difference between the income obtained, the expenses incurred and the acquired wealth of the person subject to control shall be inseparable and shall be examined in a single procedure, which shall be an administrative court procedure.”

Art. VII. - Law no. 132/2016 on the National Integrity Authority (Official Monitor of the Republic of Moldova, 2016, no. 245–246, art. 511), with subsequent amendments, is amended as follows:

1. Article 34(5) shall read as follows:

“(5) In the situation referred to in paragraph (a) of this Article: (3), the Authority shall apply any necessary insurance measures and shall apply to the Anticorruption Court for confiscation of unjustified assets. The respective action shall be submitted to the Anticorruption Court within 30 days from the moment the finding document was brought to its attention.”

2. In Article 36:

paragraph (1) shall read as follows:

“1. The ascertaining documents referred to in Article 34 para. (1) and para. (2), except for the documents establishing the substantial difference between the income obtained, the expenses incurred and the wealth acquired, may be challenged before the Chisinau Court of Appeal, within 30 days from issuance, by the person subject to inspection, by the author of the complaint or by the persons referred to in art. 33 para. (4) and para. (5), directly affected by those acts.

The following paragraph (11) shall be added to the Article:

“(11) The documents establishing the substantial difference between the income obtained, the expenses incurred and the wealth acquired shall be challenged in the Anticorruption Court.”

Art. VIII. - Law no. 270/2018 on the unitary salary system in the budgetary sector (Official Monitor of the Republic of Moldova, 2018, no. 441-447, art. 715), with subsequent amendments, is amended as follows:

1. Article 10 paragraph (31), after the phrase "Intelligence and Security Service", shall be completed with the text " , the Anticorruption Court and the Anticorruption Chamber of the Chisinau Court of Appeal".

2. The following point (g) shall be added to Article 17 (2):

"g) for the staff and judges of the Anticorruption Court, as well as for the staff and judges of the Anticorruption Chamber of the Chisinau Court of Appeal – 60% of the annual amount of basic salaries for the staff entitled to benefit from a specific bonus."

3. Annex No. 3:

to Table no. 2:

the name of the compartment "Courts of appeal" will have the following content: "Courts of appeal, Anticorruption Court";

The notes shall be supplemented by point 16 with the following content:

"16. The salary classes for the public positions "judicial assistant" and

"clerk" of the Anticorruption Court and of the Chisinau Court of Appeal assisting the Anticorruption Chamber shall be increased by 8 successive classes compared to those set out in the table for the respective positions."

4. Annex No. 4, in Table 1, the name of the department "Courts of appeal" will read as follows:

"Courts of Appeal, Anticorruption Court".

Art. IX. - In Article 10, paragraph (2) letter f) of Law nr. 359/2022 to the state budget for 2023 (Official Monitor of the Republic of Moldova, 2022, no. 435-437 art. 807), with subsequent amendments, after the phrase "Supreme Court of Justice", is completed with the text "of the Anticorruption Court, of the Anticorruption Chamber of the Chisinau Court of Appeal".

THE PRESIDENT OF PARLIAMENT

Explanatory Note

to the draft Law regarding the anti-corruption judicial system and on amending some normative acts

1. The name of the author and, as the case may be, of the participants in the development of the project

The draft *Law on the anti-corruption judicial system and on amending some normative acts* is developed by the President of the Republic of Moldova, under the conditions of art. 73 of the Constitution of the Republic of Moldova and of art. 47 of the Parliament Regulation, approved by Law no. 797/1996.

2. The conditions that imposed the drafting of the normative act and the aims pursued

This draft law was developed in order to strengthen efforts in the fight against corruption and to ensure the quality and speed of the trial of criminal cases concerning acts of corruption and connected actions.

Through the draft law in question, it is proposed to establish a judicial system specialized in corruption and related cases.

The reasoning behind the establishment of the court specialized in corruption cases

1. The perception of the high level of corruption in the country

The phenomenon of corruption is considered by the society of the Republic of Moldova to be one of the main factors that prevent economic development and further aggravate inequality, poverty, and social division. This perception is supported by a number of studies of the state of judiciary and prosecutorial systems. Corruption attacks the foundation of democratic institutions by distorting electoral processes and distorting the rule of law.

Transparency International's Corruption Perceptions Index scored between 30 and 39 units between 2016 and 2022. The lowest level was recorded in 2016, and 2022 saw a consecutive increase from 2019 by 7 points. Although this increase is objectively due to the efforts made by the Government to improve the anti-corruption climate, the Republic of Moldova is still among the states where the level of perception of corruption is significantly high. Among the "ranking neighbours" of the Republic of Moldova are the Republic of Colombia (39), the Republic of Argentina (38), the Republic of Tunisia (40). It should be noted that certain states, such as: Ukraine (33), the Slovak Republic (53), the Republic of Armenia (46) and the Republic of Croatia (50), which have established specialized courts, have made progress on the corruption perception indicator.

The country level of corruption is also reflected in the World Justice Project's Rule of Law index, according to which the Republic of Moldova ranks 105th out of 140 countries in terms of lack of corruption, and 85th in terms of criminal justice.

The fact that corruption continues to represent a serious problem for Moldova is also confirmed by the opinion survey carried out by the Legal Resources Center of Moldova "The perception of judges, prosecutors and lawyers about justice and the phenomenon of corruption"¹. According to the survey, 1/3 of judges, four out of 10 prosecutors and 2/3 of lawyers believe, in 2023, that there is a lot of corruption in Moldova. By contrast, only 12% of judges, 7% of prosecutors and 3% of lawyers believe that there is no corruption in the Republic of Moldova. The representatives of the three interviewed professions indicated that the main

¹ See at: https://crjm.org/wp-content/uploads/2023/07/pre-tipar_ENG-Sumar.pdf

causes of corruption are low salaries and failure to hold the corrupt accountable.

2. Ensuring independence in decisions

The creation of a system of specialized courts offers an increased degree of independence to judges:

- i) in-depth training and knowledge, i.e. specialization, on corruption cases, provides judges with confidence in the quality of their own decisions;
- ii) the separation through a special court implies a degree of independence from the rest of the judicial system, which creates premises for the judges in the specialized courts to have the courage to act in derogation from the unwritten rules applied to the judicial profession.

Despite the reform in the justice sector, including the external evaluation (vetting), the judicial system still does not have the courage to act contrary to the perception established in the system, i.e. to protect the interests of judges despite the public interest. Thus the high profile cases continue to be procrastinated, the corruption files against judges are mostly finalized in favour of the judges, the files regarding the appeals against the decisions on the external evaluation of the judges remain unresolved for long periods, despite the limited deadlines provided by the law.

The systemic reform of the judicial system, which includes the vetting of judges and prosecutors, is a process that will yield results especially in the medium and long term. At the same time, taking into account the urgency of the problem, the effects of corruption and the country's European aspirations, in addition to this reform, other actions are needed that would aim to change the current situation.

3. Ensuring the speed of the criminal process

The perception of impunity due to corruption is also fuelled by the lack of promptness in sanctioning this criminal phenomenon. According to the analytical document carried out by the Legal Resources Center of Moldova "Judgment and sanctioning of corruption analysis of judicial practice", the average rate of examination of a corruption case is approximately 3.5 years. The procedures for adjudicating a corruption case from the time it is referred to the court to the adoption of an irrevocable decision last from 138 days to 10 years, in one case the term of 12.6 years was also recorded. According to data from 2020, Moldovan courts resolved all categories of cases, in the first instance, appeal and Supreme Court appeal in only 324 days (less than a year), which is 39% faster than the Council of Europe median (529). These figures confirm that the speed of examination of corruption cases by the courts analysed in the study was four times slower than the national average and 2.4 times slower than the Council of Europe median.

Further, according to the statistical activity report of the trial courts regarding the trial of criminal cases, during 2022, a total of 738 files on corruption offenses in the public and private spheres were examined, of which 474 outstanding files from previous years and 264 registered in 2022. During 2022, judgments were issued by the court of first instance in 229 cases, which represents approximately 30% of the total number of cases examined during the reference period. Comparatively, the rate of completion of criminal cases pending at the trial court for the year 2022 is 50% (total – 24,933 cases, completed – 12,583).

In other words, only 30% of the corruption cases pending in court are finalized with the pronouncement of the sentence within a year.

A similar situation is attested in the appeal courts when examining cases in order of appeal. During 2022, 306 cases were examined in the appeal procedure (of which 182 were outstanding from the previous year). In total, 105 criminal cases were completed, which represents 35% of the total number of criminal cases under review at the appeal courts.

The yield of completion of pending criminal cases for the year 2022 – 46% (total – 7413 cases, completed – 3408).

The case of Ilan Shor for fraud was sent to court in 2016, and the final sentence of conviction was pronounced by the court of appeal more than 7 years after the prosecutors first sent the case to court. Such deadlines for examination of corruption cases represent a risk for the expiry of the statute of limitations and the circumvention of the judicial act.

4. *EU candidate country status and assessment of progress in the fight against corruption*

The status of a candidate country implies advancing on the path of a comprehensive justice reform, fighting corruption, intensifying asset recovery, reforming public institutions, eliminating the influence of oligarchs, as well as intensifying the fight against organized crime. The evaluation of the progress of the Republic of Moldova, in particular the commitment to fight corruption, is not limited only to strengthening the capacities of the institutions responsible for investigating the cases of corruption and modifying the normative framework. The efficiency of the fight against corruption will be assessed through the prism of the number of convictions and sanctioning of corruption cases.

5. *The experience of other states*

The architecture of the anti-corruption judicial system, the way of organization and activity of the Anti-Corruption Court, the way of appointing judges was elaborated following the analysis of the functioning of the specialized courts in other states (Ukraine, the Republic of Armenia, the Slovak Republic), as well as the recommendations of the Venice Commission in the opinions regarding specialized courts in these and other states.

Currently, there are 27 states in which specialized courts on corruption cases operate, such as: Ukraine, the Republic of Armenia, the Republic of Albania, the Republic of Croatia, Montenegro, the Republic of Serbia, the Slovak Republic, the Republic of North Macedonia, etc. All of the countries mentioned faced a high level of corruption, which manifested itself in every aspect of society and economy. Corruption has been recognized as one of the biggest challenges for states with European integration aspirations, such as: the Republic of Albania, Ukraine, the Republic of Moldova. The creation of specialized forums was a response to the lack of justice for corruption offenses in the existing courts.

6. *The ineffectiveness of previously applied measures*

Previously, procedural management measures were taken to ensure the speed of criminal trials, especially on complex cases, which did not reach the expected result. The establishment of specialized panels on corruption cases did not contribute either to increasing the degree of trust in the judicial system and less to the efficiency and acceleration of the justice act, a fact also confirmed by the surveys presented.

In addition, the Superior Council of the Magistracy did not ensure suitable and sufficient measures to contribute to the swiftness of the criminal process on corruption cases, to the prevention and sanctioning of delays that constitute disciplinary violations.

Based on the above, a substantial reform of the judicial system is proposed through the institutionalization of specialized courts.

It is worth noting that both the standards promoted by the Venice Commission and the jurisprudence of the European Court of Human Rights accept the establishment of specialized criminal courts, to the extent that they have a legal basis. In *Fruni v. Slovakia* (Application no. 8014/07) and *X and Y v. Ireland* (Application no. 8014/07), the Court recognized that "combating corruption and organized crime may require specialized measures, procedures and institutions".

The specialized court will have jurisdiction over corruption and related cases and will be a continuation of the work of the authorities investigating corruption cases.

Additionally, the Anti-corruption Court will examine the civil actions for the confiscation of unjustified assets, as established by the National Integrity Authority (hereinafter NIA), as well as the requests to verify the legality of the documents of the National Integrity Authority which establish a substantial difference between the incomes earned, expenses incurred and wealth acquired.

According to the statistical data provided by the General Prosecutor's Office and the Anticorruption Prosecutor's Office, in 2022, the Anticorruption Prosecutor's Office referred 221 criminal cases to justice, in 2021 – 248 criminal cases, 2020 – 204 criminal cases. Analysing the data presented, annually prosecutors submit an estimated 220 criminal cases to courts, to which shall be added cases that are currently in court. At the beginning of 2023, 479 criminal cases against 949 persons were pending in the proceedings of the substantive courts.

At the beginning of 2023, there were 184 pending criminal cases at the appeal courts, the majority at the Chisinau Court of Appeal (136 cases), followed by the Balti Court of Appeal.

According to the NIA activity report, during 2022, the courts had under review 311 cases of appeals against the acts setting forth the findings by the integrity inspector, ascertaining unjustified wealth and its value. The courts issued decisions 65 cases (55 rejection of appeals and 10 cancellations of the act of the integrity inspector), which represents 20% of the total number of files examined. During the reference period, NIA officers submitted to court 20 confiscation requests [*Note: confiscation requests may be issued only after the court confirms the findings act*]. There are no court decisions on confiscation cases.

A Comparative analysis of the data presented by NIA in its activity reports reveals a continuous decrease in the number of cases where courts issued decisions. If in 2020 the court ruled in 54.45% of pending cases, then in 2021 it drops to 48.5%, and in 2022 a decision was pronounced in only 20% of the pending cases.

It should also be mentioned that a specialised court (in this case the Anticorruption Court) is in line with the provisions of art. 115 para. (2) of the Constitution, according to which "For certain categories of cases, specialized courts can operate, according to the law".

3. Description of the degree of compatibility of projects aimed at harmonizing national legislation with European Union legislation

This bill does not aim to harmonize national legislation with European Union legislation.

4. The main provisions of the project and the highlighting of new elements

This draft law creates the anti-corruption judicial system, which contains provisions regulating the organization and activity of a specialised court and a specialised chamber of the Chisinau Court of Appeal.

Additionally, the draft law contains rules for amending the normative framework, which will ensure the functionality of the specialized court, such as: Criminal Procedure Code, Administrative Code, Civil Procedure Code, etc.

It is proposed that the anti-corruption judicial system include the following components:

- a) Anticorruption Court;
- b) The anti-corruption chamber of the Chisinau Court of Appeal;
- c) The Supreme Court of Justice (in general order, i.e. without the creation of a specialized chamber).

The Anticorruption Court will examine as a court of first instance all the criminal cases

attributed into its competence by the Code of Criminal Procedure; and the legality of the documents issued by the NIA ascertaining finding of substantial differences between the income obtained, the expenses incurred and the assets acquired, as well as requests for the confiscation of unjustified assets for the benefit of the state. Within the Anticorruption Court, the so-called investigating judges will be designated for a term of 3 years, from among the judges appointed to the Court.

The attribution of criminal cases to the jurisdiction of the Anti-corruption Court is carried out through amendments to the related framework, especially the Code of Criminal Procedure. The attribution principle is to include the criminal cases that were sent to court by the Anticorruption Prosecutor's Office, as well as the cases regarding the crimes established by the changes in the related framework.

With regard to the requests for confiscation of unjustified assets and contestations of the acts of the National Integrity Authority establishing the substantial difference between the income obtained, the expenses incurred and the acquired wealth of the person subject to declarations requirements, the draft law includes amendments for both the request and the contestation to be tried in a single court administrative procedure.

The Anti-corruption Chamber shall be set up within the Chisinau Court of Appeal and will hear appeals and secondary appeals (cassation) against first instance decisions by the Anti-corruption Court.

The project provides that the Anticorruption Court has 15 judges, and the Anticorruption Chamber of the Chisinau Court of Appeal – 6 judges.

The draft law provides for the selection procedure and criteria for the judges who will work in the Anticorruption Court, but also in the Anticorruption Chamber of the Chisinau Court of Appeal.

Thus, the person who cumulatively fulfils the following criteria will be able to apply for the position of a judge of the Anticorruption Court:

- a) has at least 5 years of actual work as a judge in the Republic of Moldova or abroad, including in international courts, or has at least 10 years of professional experience in the field of law, obtained in the Republic of Moldova or abroad, including in international organizations, of which at least 5 years as a prosecutor, lawyer or criminal investigation officer;
- b) has an irreproachable reputation, there are no reasonable suspicions regarding the commission of acts of corruption, those related to acts of corruption or corruptible acts within the meaning of the Integrity Law, as well as meets the criteria of financial and ethical integrity;
- c) has the necessary professional qualities and skills to exercise the position of the judge of the Anticorruption Court.

Among the professional qualities and skills required for the position of a judge of the Anticorruption Court are:

- a) the ability to understand and analyse the legal situations that are within the competence of the courts of the anti-corruption judicial system;
- b) clarity of written and verbal expression;
- c) experience relevant to the position.

For the position of a judge in the Anticorruption Chamber of the Chisinau Court of Appeals may apply a person who has at least 6 years of effective work as a judge in the Republic of Moldova or abroad, including in international courts, or has professional experience of at least 12 years in the field of law, obtained in the Republic of Moldova or abroad, including within some international organizations, of which at least 6 years as a prosecutor, lawyer or criminal investigation officer. As in the case of the judges of the Anticorruption Court, in the case of the Anticorruption Chamber, the judges must have an irreproachable reputation, and also possess the necessary professional qualities and skills.

People who have worked as a prosecutor in the Anticorruption Prosecutor's Office in the last 7 years cannot apply for the position of a judge of the Anti-Corruption Court or for the position of judge of the Anti-Corruption Chamber of the Chisinau Court of Appeal. This provision anticipates any potential recusals for example in the cases in which the prosecutors participated in the connected investigation by virtue of their position.

The judges of the Anticorruption Court and the Anticorruption Chamber of the Chisinau Court of Appeal will be selected based on public competition, which includes the following stages: (i) preselection of candidates by a preselection commission established ad hoc by the Superior Council of Magistracy; (ii) the selection of candidates by the Superior Council of Magistracy from among the eligible candidates.

The pre-selection of candidates will be carried out by the pre-selection commission established ad hoc by the Superior Council of Magistracy, composed of 6 members, of which 3 are international experts delegated by the development partners and 3 are civil society representatives appointed by the Superior Council of Magistracy. During the first stage, the commission will verify that the candidates meet the eligibility and integrity criteria. At the second stage, the commission will interview and evaluate the admitted candidates in terms of the qualities and professional skills necessary to occupy the position of judge of the Anticorruption Court. The list of eligible candidates who passed the pre-selection after both stages, together with their evaluation sheets and totalization sheet, is forwarded to the Superior Council of Magistracy and published on the official website of the Superior Council of Magistracy.

It will be the role of the Superior Council of Magistracy to take the decision regarding the selected judges and to submit to the President of the Republic of Moldova the proposal for appointment, in the case of new judges; or for transfer, in the case of candidates who, at the time of application, are judges at another court.

The proposed criteria open the possibility of applying to a wide circle of candidates with significant professional experience. At the same time, the way of organizing and conducting each stage of the competition, including the organization of the activity of the pre-selection committee, as well as the way of testing the necessary professional qualities and skills, shall be set forth by a regulation approved by the Superior Council of Magistracy.

It should be noted that a judge is to be appointed to the Anticorruption Court or transferred to this court for a period of 6 years. The term is established to ensure the rotation of judges at the anti-corruption courts and to prevent isolationist or unethical practices from taking root. At the expiration of the 6-year term, the judge will return to the previous position of a judge that he held until his appointment/transfer (if he was previously a judge in the Republic of Moldova) or, with his consent, he is granted another position of judge in a court of the same level/grade (for example, if he was not a judge in the Republic of Moldova or was not a judge at all).

The project contains several specific provisions related to the organization of anti-corruption courts and guarantees for judges. We highlight those related to the development of professional skills, the use of information technologies, monitoring the integrity of judges, additional security guarantees for judges, providing judges with accommodation for the duration of their service or granting a non-taxable monthly allowance for rent. Also, by changing the related framework, we are increasing the remuneration for judges of the Anticorruption Court and the Anticorruption Chamber of the Chisinau Court of Appeal, as well as for their staff.

The Final Provisions chapter describes the related procedures and actions that need to be taken after the implementation of the law, including the fate of pending cases in common law courts. Thus, within one month from the effective start date of the Anticorruption Court's

activity, the cases falling into the competence of the Anticorruption Court currently on the docket of common law courts at the preliminary stage (i.e. where the court has not yet started to examine the merits of the case) shall be transferred to the Anticorruption Court. Similarly, shall be transferred cases related to acts and requests of NIA, if the common law court has not yet completed the examination of the case on the merits. In regards to cases not connected to NIA, where the examination on merits has begun, but has not been completed, we will monitor the dynamics of the case for 3 months, in particular looking for the issuance of judicial acts of disposition.

The entry into force of the law, in the part related to the functionality of the court, is conditional on the appointment of at least 5 judges to ensure the functionality of the court. The rationale for the appointment of at least 5 judges is to be able to designate at least one investigation judge, one judge to handle NIA cases and the need to ensure the formation of at least a panel of judges for complex cases.

5. Economic -financial foundation

In the process of drafting and finalizing the draft law, the economic -financial analysis will be carried out.

6. The manner of incorporation of the act into the normative framework in force

This draft law includes the modification of some other normative acts, as follows:

- 1) Criminal Procedure Code of the Republic of Moldova no. 122/2003, by establishing the jurisdiction of the Anticorruption Court to examine corruption offenses and acts related to acts of corruption;
- 2) Civil Procedure Code of the Republic of Moldova no. 225/2003, by establishing the competence of the Anticorruption Court to examine requests regarding the confiscation of unjustified wealth;
- 3) Administrative Code of the Republic of Moldova no. 116/2018, by adding that the requests for the confiscation of unjustified assets and the claims on the cases of contesting the acts of the National Integrity Authority establishing the substantial difference between the income obtained, the expenses incurred and the acquired assets of the person subject to declarations are inseparable and shall be examined in a single procedure;
- 4) Law no. 132/2016 regarding the National Integrity Authority, by establishing the competence of the Anti-corruption Court to examine the legality of the documents issued by NIA establishing the substantial difference between the income obtained, the expenses incurred and the assets acquired;
- 5) Law no. 544/1995 regarding the status of the judge;
- 6) Law no. 514/1995 regarding judicial organization;
- 7) Law no. 270/2018 regarding the unitary salary system in the budgetary sector, by assigning the specific increase for the staff and judges of the Anticorruption Court and of the Anticorruption chamber of the Chisinau Court of Appeal in the amount of 60% of the annual amount of basic salaries. Also, by increasing by 8 successive classes the salary class for the public positions of "judicial assistant" and "clerk" within the Anticorruption Court and the Anticorruption Chamber within the Chisinau Court of Appeal. At the same time, the salary classes for the judges of the Anticorruption Court are equated with the classes of the judges in the appeal courts.
- 8) Law no. 359/2022 of the state budget for the year 2023, by establishing the reference value in the amount of 3000 lei for the judges of the Anticorruption Court and the judges of the Anticorruption Chamber of the Chisinau Court of Appeal.

7. Approval and public consultation of the project

The project is placed on the official web page of the Parliament of the Republic of Moldova, which will organize public consultations.

Additionally, the draft law will be submitted to the Venice Commission for consultation.

8. Findings of the anti-corruption expertise

The draft law is to be expertized by the National Anticorruption Center , in accordance with the law.

9. The findings of the compatibility expertise

The draft law does not contain rules on the harmonization of national legislation with European Union legislation.

10. The findings of the legal expertise

The draft law is to be submitted to legal expertise under the law.

11. The findings of other expertise

The project does not contain any aspects aimed at the regulation of entrepreneurial activity, respectively, it is not necessary to prepare the Regulatory Impact Analysis (AIR).