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Corruption and access to justice

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1. Corruption in Moldova and its Impact on the Society

1.1 The Organization of the Sociological Survey

The goal and objectives of the survey

Like all the phenomena within a society, corruption can be studied from many perspectives and within many disciplines. Economists attempt to estimate the economic consequences of corruption in a country and create economic utility models for some illegal behaviors. Lawyers try to study the state's legal and institutional frameworks and find the legislative gaps that impede the foundation of the rule of law. This absence of effective laws could include the lack or imperfection of some regulations or the lack of a clear mechanism for enforcement, implementation or control. Political scientists can foresee in such a study the possibility of understanding the political environment; they study the circumstances and interests contributing to the creation of a certain situation related to the spread of corruption. Historians could observe the crucial moments in a state's history when the corruption phenomenon intensifies or declines. Their analyses of government authority and its credibility in the eyes of decreasing public confidence, coupled with the appearance of abnormal evolution phenomena, are certainly important perspectives. Psychologists evaluate and investigate the more personal motivations and characteristics of those people responsible for contributing to the appearance and development of individual and collective behavior. Sociologists' interests lead to observations about the population's attitude and view towards this problem, how the corruption phenomenon is perceived, how close this perception is to reality and how that perception evolves over time.

The main goal of this survey is to study the population's perception of the corruption phenomenon in Moldova. In addition, the extent of the public's understanding of corruption and the acuteness of corruption's effect, on both individuals and society as a whole, are key questions that this survey seeks to answer.

In order to achieve the goals of the investigation we have established the following *objectives:*

- Emphasize the main problems currently faced by the society
- Study the causes of corruption and its evolution
- Evaluate the level of public tolerance towards corruption
- Collect information about the population's contacts with public institutions and concrete cases of corruption
- Determine the level of corruption in the public sector
- Quantify the total amount of bribes collected within various public institutions
- Examine the ability of the society to cope with corruption
- Investigate public opinion regarding the most effective ways to reduce corruption

In order to maintain continuity in studying corruption phenomena and the possibility of analyzing its dynamic trends, the questionnaire repeats a series of questions previously used in L. Carasciuc's "Corruption and Quality of Government: the Case of Moldova." Moreover, in order to perform a comparative, cross-border analysis, questions from similar sociological studies conducted in Albania, Bulgaria and Macedonia are included. Questions from the research of

Daniel Kaufmann, a World Bank expert[1], are also adopted and help to illuminate the relationships of the respondents to state institutions.

The research of the corruption phenomenon conducted in the Republic of Moldova uses a standardized sociological questionnaire as a tool for aggregating this data. The surveys are divided to target specific respondents, with one intended for businessmen and another for households and non-government organizations.

The Structure of the Questionnaire

Two types of questionnaires, including essentially the same questions, are applied to three categories of respondents- businessmen, households and non-government organizations. Thus, it is possible to study and produce a comparative analysis of opinions and attitudes among different social and economic categories regarding a single phenomenon – corruption. With the exception of the first section, the questionnaire's goal is to establish those factors (economic, psychological, social etc.) which, directly or indirectly, contribute to the dissemination of corruption within various activities. It also seeks to understand the effect of measures designed to eradicate corruption. Accordingly, the questionnaire is based on certain sets of interrogatories oriented towards revealing several aspects of this phenomenon, including the causes and consequences of corruption in the Republic of Moldova.

The section *"Data about the respondent"* includes standard demographic features- age, gender, education, residence and welfare. The last feature represents the family's income related to its need and is estimated using four indicators: (1) the family's income is not sufficient to meet primary needs (2) the family's income is sufficient only for primary needs (3) the family's income is sufficient for a decent living, and the occasional purchase of luxury goods (4) family's income could cover any expenses without any restrictions. From a quantitative aspect, these indicators help to describe the population's standard of living.

The section *"Main problems"* identifies the significant impediments faced by the business community during its regular activity, as well as the key hurdles in Moldovan society: bureaucracy, corruption, crime, inflation, poverty, unemployment and similar variables. In this section the respondents evaluated these problems by their gravity- very acute, acute or not very acute. Aside from information about the general problems faced by people conducting business in Moldova, the respondents also provided an evaluation of some barriers related to the special feature of their activity. These barriers specifically focus on the following: lack of market infrastructure, lack of a qualified labor force, monopolistic practices, price controls and unforeseen changes in legislative, regulatory and other guidelines.

The section *"Evolution and causes of corruption"* reflects the population's opinion about the intensity of corruption within state institutions. It studies the last twelve months compared to the previous years, the main sources of information about this phenomenon and the causes of corruption in the Republic of Moldova. The respondents evaluated the effect of the intensity- very important, important or minor. Favoritism, low salaries, non-standardized behavior exhibited by public officials, opaque state institutions and other causes generating both the appearance and dissemination of corruption within the society are also included here.

The section *"Admissibility of corruption"* denotes the degree of tolerance towards the behavior of public officials in various situations. These situations specifically address instances such as accepting money from a legal entity in order to pay for a relative's treatment and another questioning the ethics behind constructing a medical clinic in their locality to treat relatives. A third scenario describes a public official applying influence to secure employment for a relative or friend whom does not otherwise possess adequate qualifications.

[1] D.Kaufmann, *New Empirical Diagnostic Tools for Anti-Corruption and Institutional Reform: A Step-by-Step Guide to their Implemenation*, 14 July, 1999

The section *"Dissemination of corruption"* emphasizes respondents' opinion regarding the frequency of corruption cases in state institutions, especially in instances when there is an attempt to solve a particular problem. Over 20 (primarily public sector) institutions were included in the list: Education and Health Services, Fiscal Inspections, Municipal Administrations, Police Departments, Prosecutors' Offices and other similar sectors are all considered here. This section's goal is to establish the level of *perceived* corruption in the governmental sector, although the *real* situation could possibly differ. Consequently, the following division of the questionnaire includes questions about concrete corruption cases facing the interviewed persons or their family members thereby, attempting to illuminate the discrepancies between the perception and the reality.

The section *"Personal experience and contacts with the public service"* attempts to highlight personal interaction and encounters with the public service sector. This section establishes the percentage of persons who have contacted a state institution, their number of contacts, whether they paid officially or unofficially for the services provided, their possible reasons for paying unofficially, their number of unofficial payments and the total amount paid. For businessmen, this section also includes separate questions addressing separate issues, i.e. the frequency of inspections during the last 12 months, the fiscal inspector's behavior in cases of detected violation(s) and the share of the fine paid unofficially to the inspector to "solve" the problem. Finally, the conclusion reviews efforts to catalogue concrete cases of corruption.

The section *"Public procurement"* is also stipulated for the business community. It denotes the level of participation in public appropriation procedures undertaken during the last 2 years and the reasons why some companies have not participated in such activities.

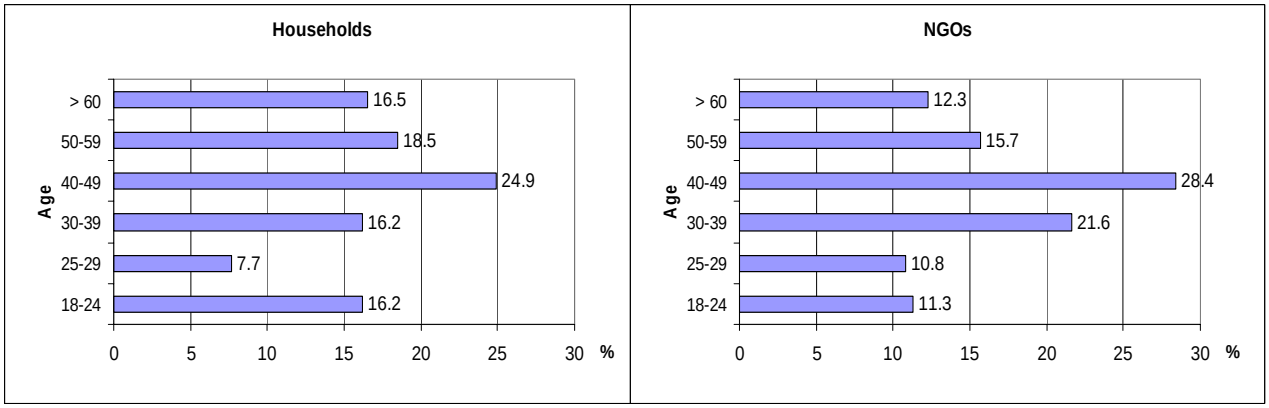
The section *"Engagement to fight corruption"* is concentrated mainly on identifying efficient measures for fighting corruption. It focuses on efforts that actively involve state institutions in combination with the society as a whole.

The Methodology of the Survey

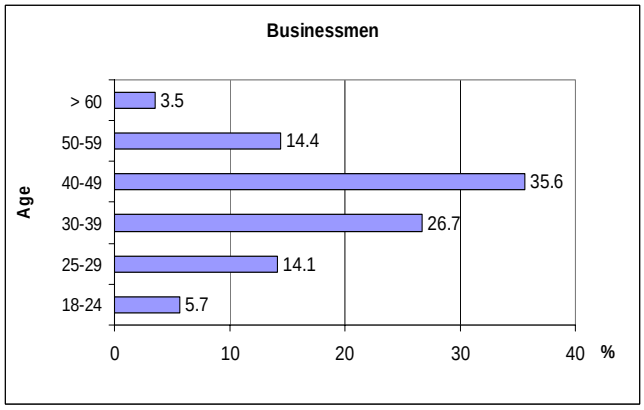
- Sample size: 1,009 respondents: 404 business people, 401 households and 204 national and local non-governmental organizations;
- Random, stratified, multi-stage sample;
- Stratification criteria: 3 geographic areas – North, Center, and South– residential area (urban-rural), size of the urban (2 types) and rural (3 types) locations;
- The sample for business people was built using the catalogue of goods and services producers – VARO MOLDOVA, 2002. The statistical step method determined the individuals selected for investigation. Out of the 7,000 interviewed legal entities, 73% are located in Chisinau – 7% are located in the North – 13% are in Central areas – and 7% in the South;
- The sample for the non-governmental organizations was designed according to the list offered by the National Center for NGO Assistance and Information in Moldova CONTACT. The organization provided relevant representatives from both national and local levels. Representatives were selected according to a statistical step procedure;
- The households' sample was designed based on the list of localities in each geographic area. In each locality the households were chosen using the random number selection methods while the interviewed persons were chosen using the random selection of birth-dates;
- The interviews with members of the business community and NGOs were conducted in their offices while the household surveys were conducted in their domiciles;
- The duration of the field survey was October 15 – November 7, 2002;
- The quality of data collection and the accuracy of their recording was verified by the representatives of Transparency International – Moldova.

1.2 Description of Respondents

Age of respondents



Age distribution of the respondents is as follows: Those aged 18-29 constitute 21.9% of the total number of respondents; 30-49 years old – 51.4 %; 50 years old and older – 26.7 %.



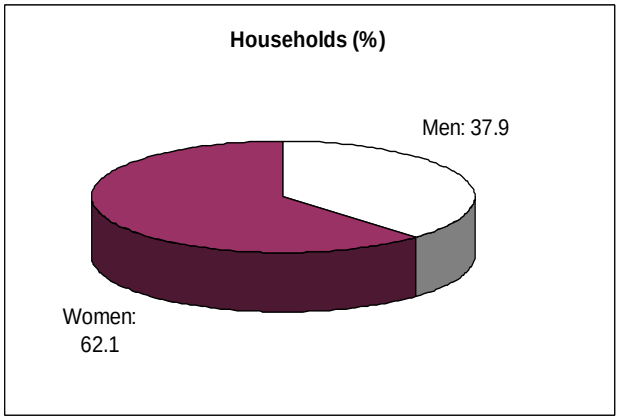
The share of respondents aged 18-29 are 23.9% of the total number from the household representatives category; persons aged 30-49 - 41.1%; those 50 years old and older - 35%.

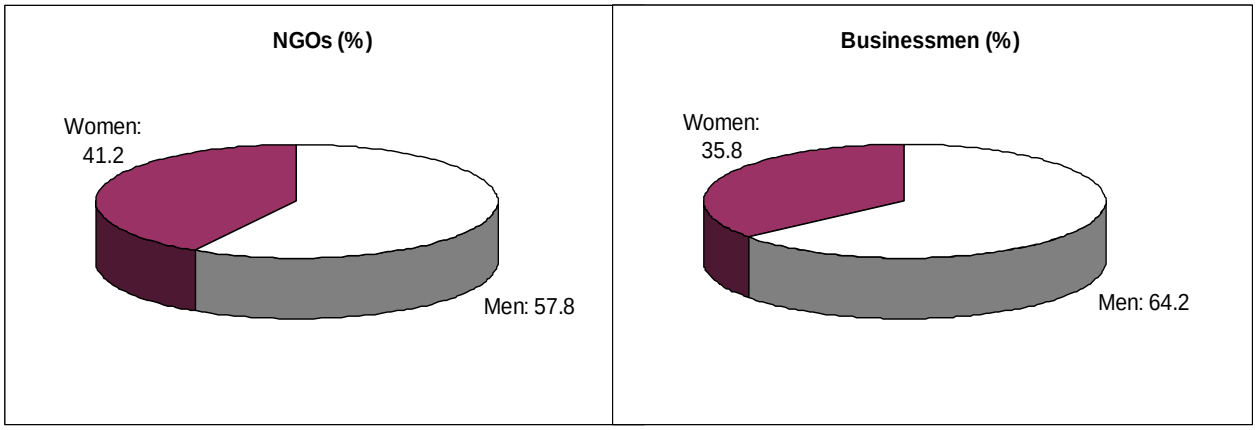
NGO representatives are divided by age category as follows: 18-21 years old – 22.5%; 30-49 years old – 51%; 50 years old and older – 26.5%.

The share of businessmen aged 18-29 is 19.8%; 30-49 years old - 62.35%; 50 years old and older - 26.5%.

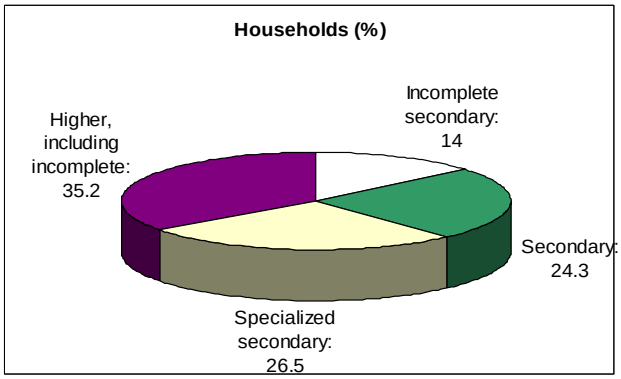
Gender

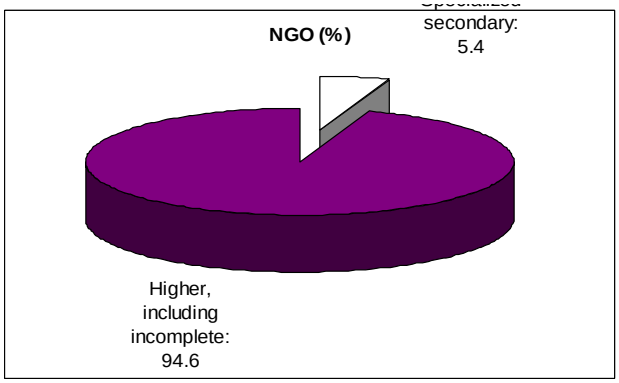
The general sample includes 530 men, or 52.5%, and 479 women, or 47.5%. Among households, men constitute 37.7% and women 62.3% of the range. Among representatives of NGOs, men constitute 57.6% and women 42.4%. The men's share of the business community represents 64.2%, and the women represent 35.8%.



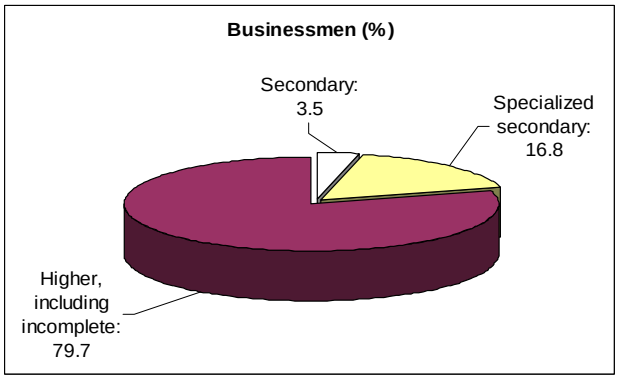


Level of education



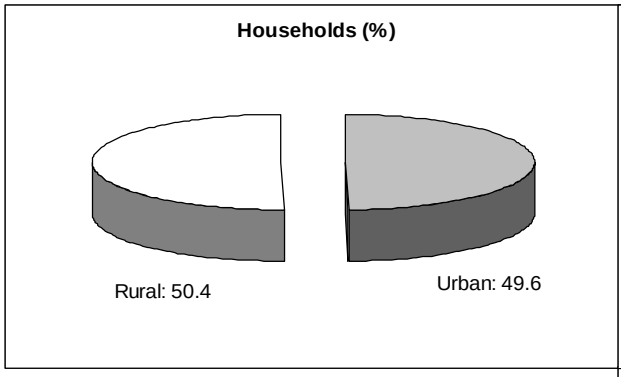


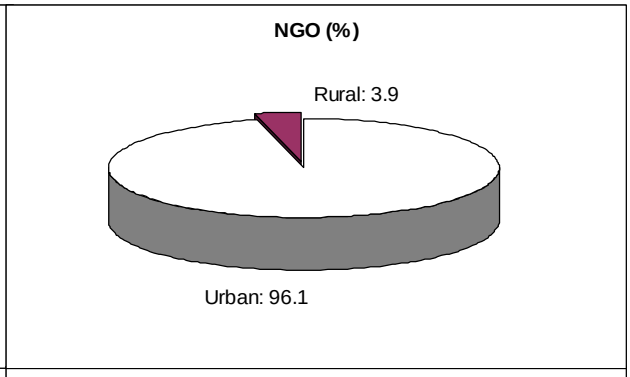
The level of education clearly differs among the 3 categories of respondents. The general distribution within the sample is described as follows: incomplete secondary education – 5.6%; secondary education – 11%; special secondary education – 18.3%; higher education, including incomplete higher education – 65.1%. The preponderance of respondents with higher education is caused by the fact that the majority of the 204 representatives from NGOs are better educated than those from the other categories.



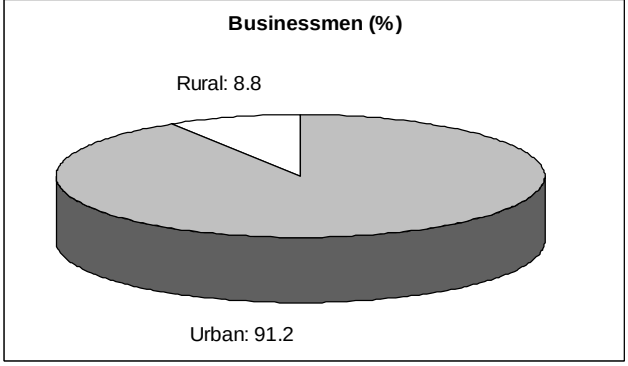
An examination of the households yields different results. Within this category, the share of persons with incomplete secondary education is 14.4%; those who completed secondary education – 23.6%; those with special secondary education – 26.6%; those with higher education, including incomplete higher education – 35.4%.

The business respondents are generally better educated than those from the household survey. Here, the research reveals the percentages of those who achieved some form of higher education, including incomplete higher education – 79.9%; respondents with special secondary education – 16.8%; and those with secondary education – 3.5%.





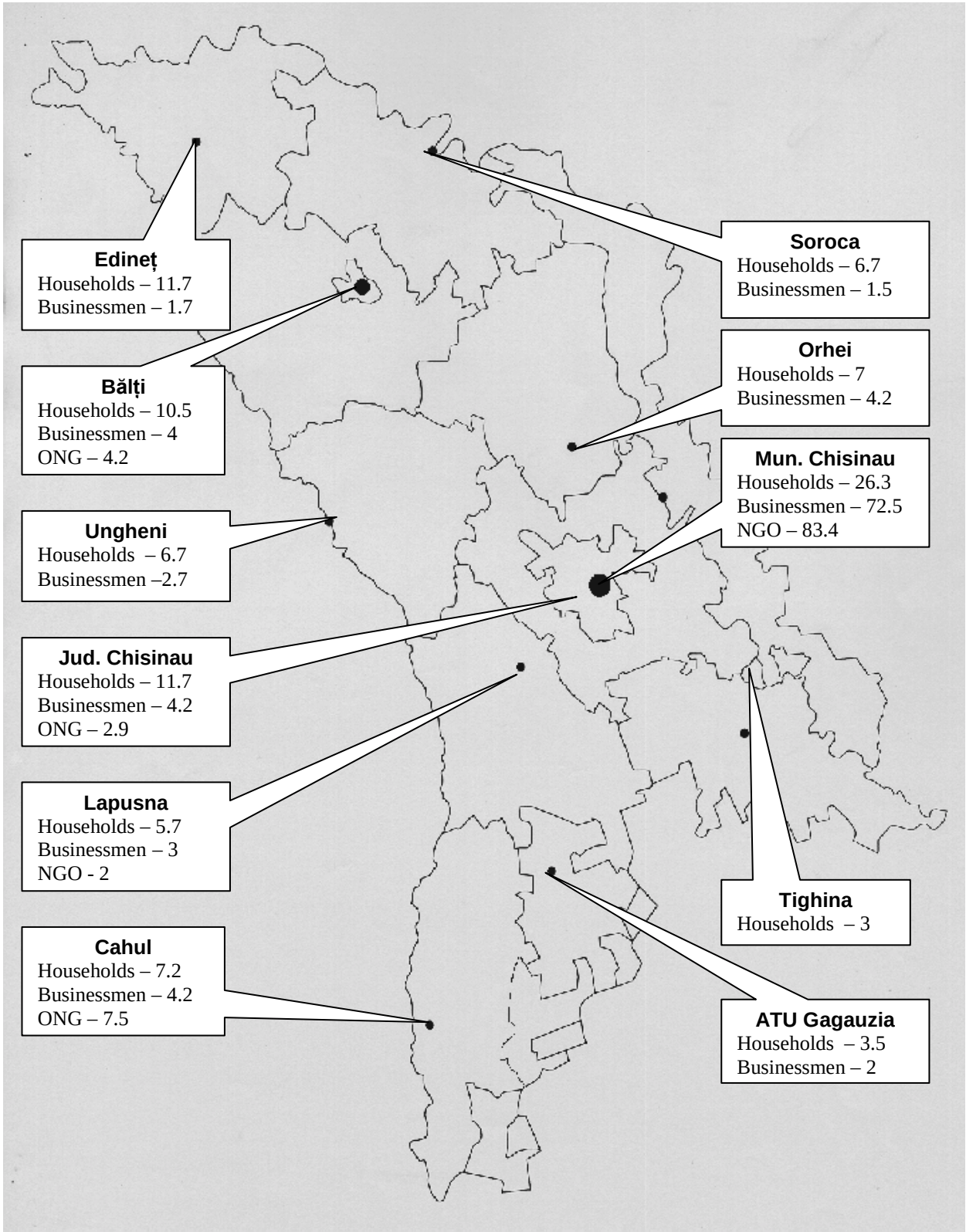
The representatives of NGOs have the highest level of education from all the categories of respondents. The evidence supports this observation because 94.5% of respondents from NGOs received some form of higher education while only 5.5% of them have special secondary education.



Residential environment

The distribution of respondents from residential areas differs widely among the survey groups. Thus, urban households represent 49.6% and rural ones 50.4%. Urban NGOs represent 96.1% of the total, and rural ones only 3.9%. The business category is similarly distributed, with urban areas comprising 91.2% and rural ones only 8.8%.

Geographic distribution of the respondents (%)



Income level

According to each family's level of income, the respondents are distributed in the following way: about 16.8% of respondents declare that their sources of income do not cover their primary needs; 31.5% consider that incomes cover only basic necessities; 35.5% of respondents state that they have a decent living, but are unable to afford luxury commodities; 15.4% affirm that sometimes they can afford to purchase luxury goods. Only 0.8% of respondents, all from business environment, can afford any type of expense and do not restrict their spending in any way.

More than 1/3 of household representatives affirm that family income is hardly enough to purchase the essential goods. Another 1/3 of respondents (31.4%) state that their income does not cover even basic goods. About ¼ of respondents (26.1%) indicated that they maintain a decent living but cannot afford to purchase luxury goods. Only 8.3% of household representatives occasionally have the opportunity to purchase various luxury commodities.

NGOs representatives, most of whom live in urban environments and have higher levels of education express their situation similarly. In this way, 11.3% believe that their family income places them below an adequate standard of living; 37.3% think their income hardly covers basic necessities; 36.3% indicated that their income level provides them with a decent living without the ability to purchase luxury goods; 15.2% of NGOs representatives can afford occasionally to purchase luxury commodities.

Businessmen consider their living standards to be better than the other groups in the survey. Thus, 44.3% think their income is enough for a decent living but do not have the ability to afford luxury items; 24.5% can sometimes afford to buy luxury goods; 2% of businessmen can afford any expenses. At the same time, while 1/3 (31.6%) of businessmen are not satisfied, 26.6% consider their living standards just enough to acquire basic goods and services; 5% are not satisfied or find their income insufficient even for essentials.

1.3 Main Problems

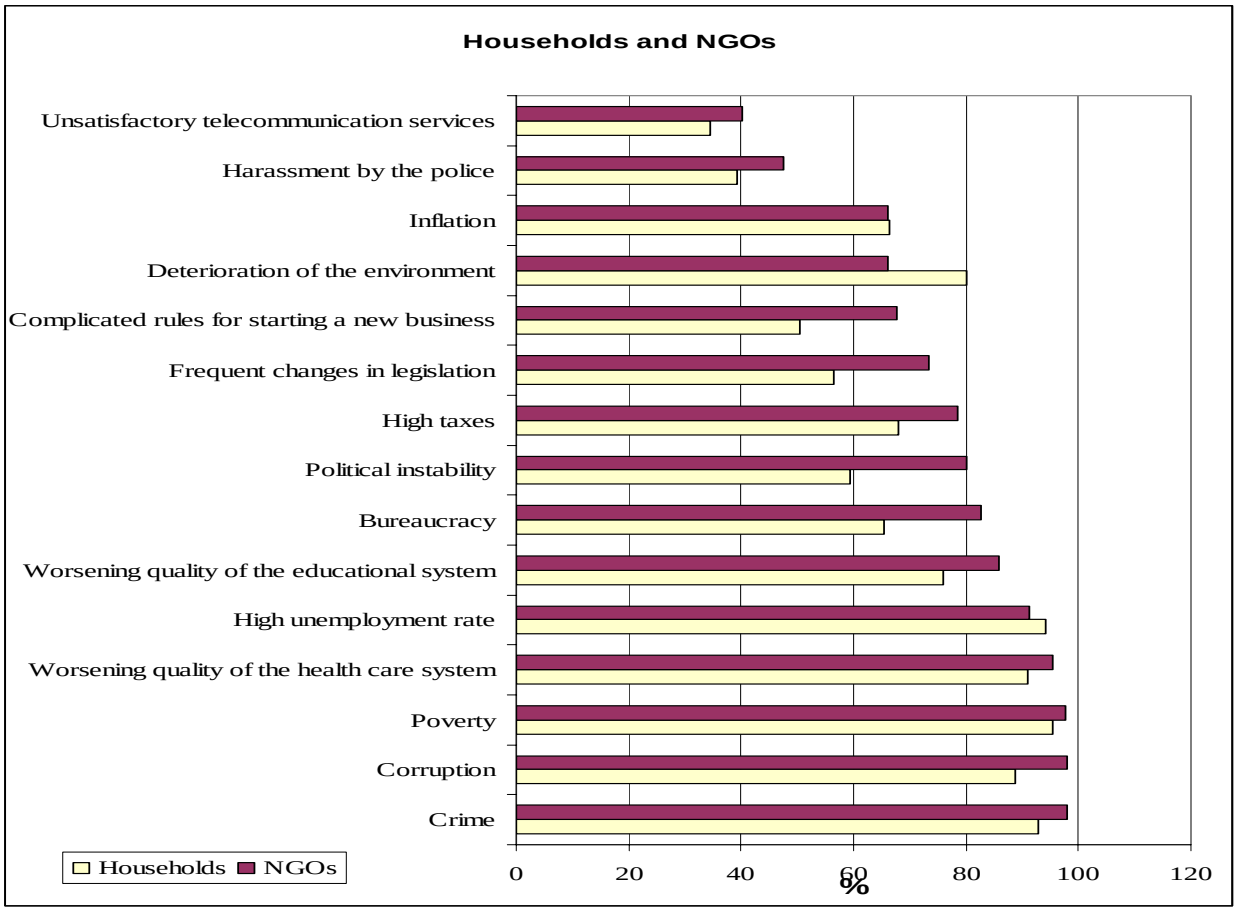
In order to establish priorities and direct the formulation of public policy it is necessary to study civil society's opinions regarding state institutions. To determine the primary problems currently facing Moldovan society, the respondents were addressed the following question:

How acute do you consider the following problems in the Republic of Moldova?

The results show that the most acute problems facing households and NGOs are associated with bureaucracy, corruption, the low quality of services offered by the health care system and poverty. It is important to note that the respondents believe the above-mentioned problems remain as acute as they were 2 years ago. In this way, as in 2000, poverty remains the primary problem and corruption is still in second-place.

Households

Problem	Average 2000	Average 2002
Inflation	3.05	2.85
Worsening quality of educational system	3.12	3.12
Worsening quality of healthcare system	3.55	3.44
Criminality	3.47	3.5
Corruption	3.56	3.5
High taxes	3.15	3.06
Political instability	2.81	2.81
Intimidation by police	1.91	2.34
Poverty	3.63	3.68
Unsatisfying communication services	2.13	2.22
Bureaucracy	2.99	3.01
Frequent changes in legislation	2.65	2.71
Complicated rules for starting a new business	2.13	2.77

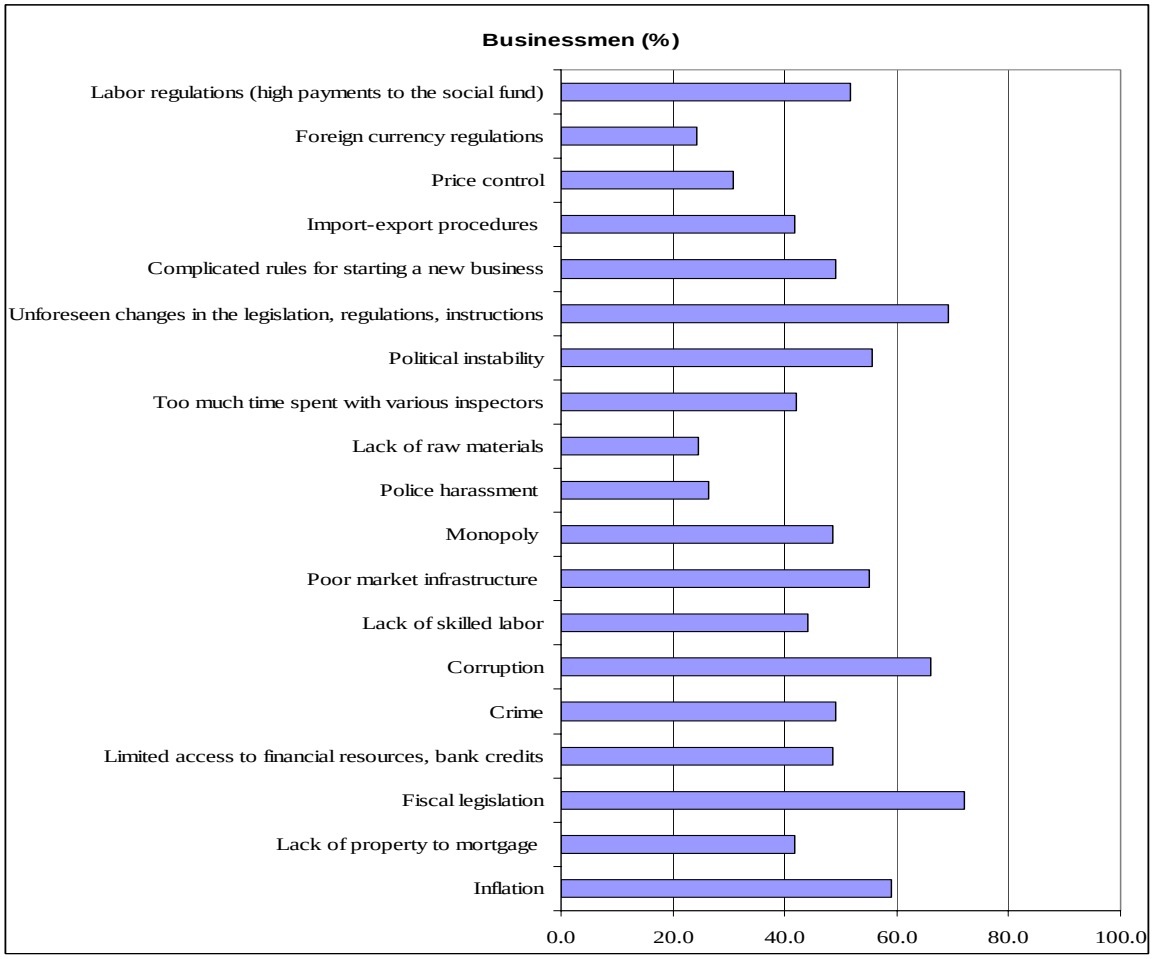


Meanwhile, the household representatives are worried about crime. In the year 2002, the list of problems in the questionnaire designed for households has been supplemented to include 2 additional problems – the high rate of unemployment and the deterioration of the environment. According to the respondents, these additional concerns are also considered priorities.

Businessmen

Problem	Average 1999	Average 2002
Inflation	2.80	2.68
Tax legislation	3.22	2.99
Criminality	2.79	2.47
Corruption	3.21	2.85
Deficit of qualified man power	1.86	2.3
Intimidation by police	2.05	1.92
Lack of raw materials	1.91	1.89
Political instability	2.61	2.59
Frequent changes of legislation, regulations, instructions	2.93	2.95
Complicated rules for starting a new business	2.43	2.45
Problems with export-import regulations	2.35	2.34
Price control	1.90	1.96
Regulations on foreign currency	1.82	1.83
Labor legislation (high dues to social fund)	2.42	2.63

The survey was developed with the idea that the range of problems facing the private business sector differs from that facing households. Therefore, the list of options offered to this category of respondents differs from the one proposed to the representatives from civil society. By comparison, the responses offered by the representatives from the business community in 2000 indicated that the primary problems were connected with fiscal concerns and followed, in order of importance, by corruption. In 2002, the responses indicate that permanent and unforeseen changes in legislation became more important than corruption. In the same year, according to the opinion of the businessmen, the most acute problem is tax legislation, followed by unforeseen changes in legislation and then corruption. As a matter of fact, respondents intuitively sensed the correlation between large-scale regulation in the economy and the diffusion of corruption. Corruption, by



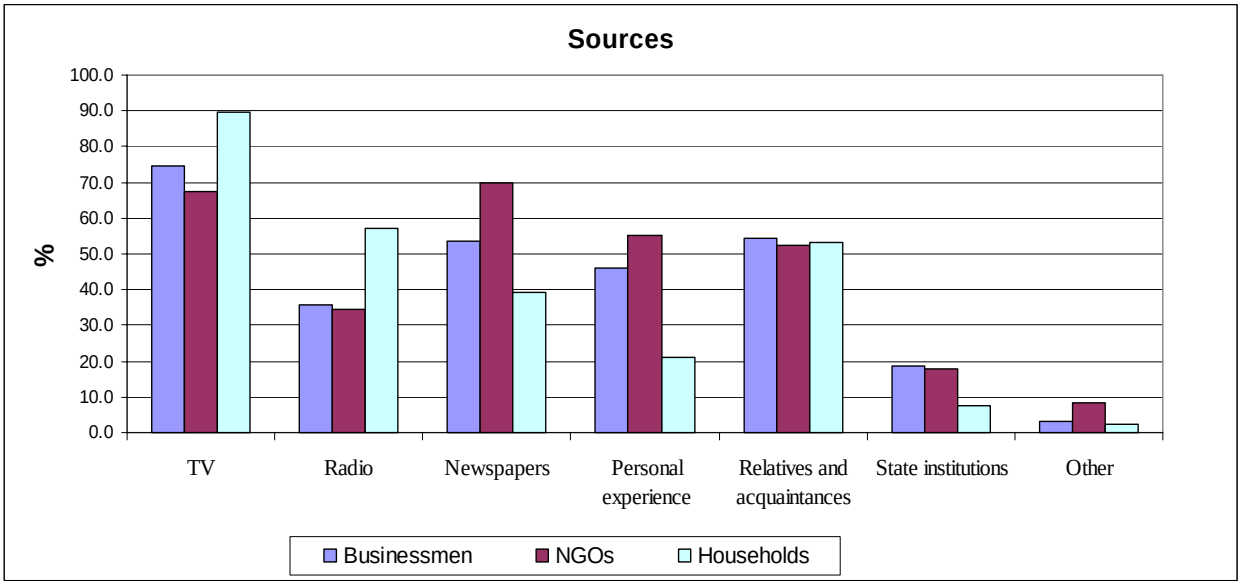
comparison, is fifth on the list of main problems facing businessmen in Bulgaria[2]. In Albania, Croatia and Macedonia this problem is apparently less significant and is ranked in positions 5-7.

[2] Corruption in Small and Medium- Size Enterprises, Vitosha research Center, Freedom House and Integra, July, 2002

1.4 The Evolution and Causes of Corruption

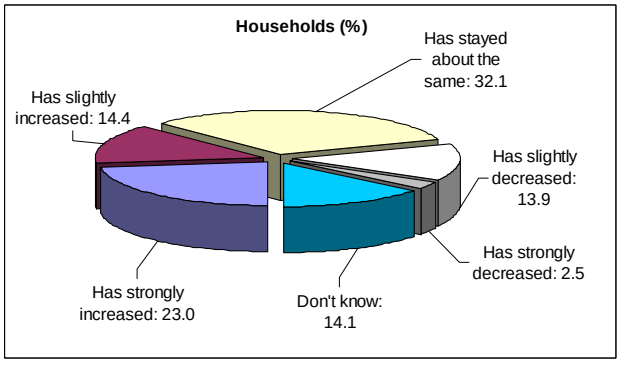
What sources provide the most information about corruption? (Please indicate the three most important sources)

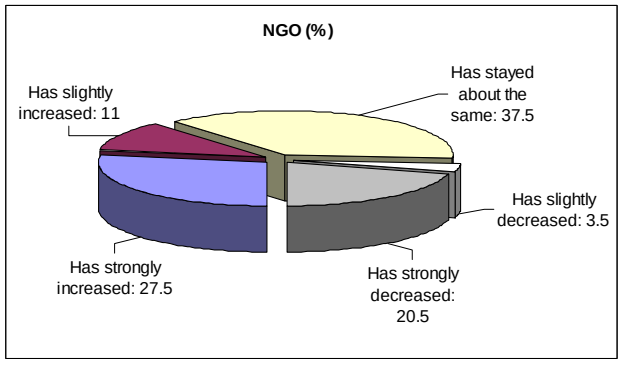
The results of the survey demonstrate that for the households, the main sources of information about corruption in Moldova are television (90%), radio (57.1%) and relatives and acquaintances (53.1%).



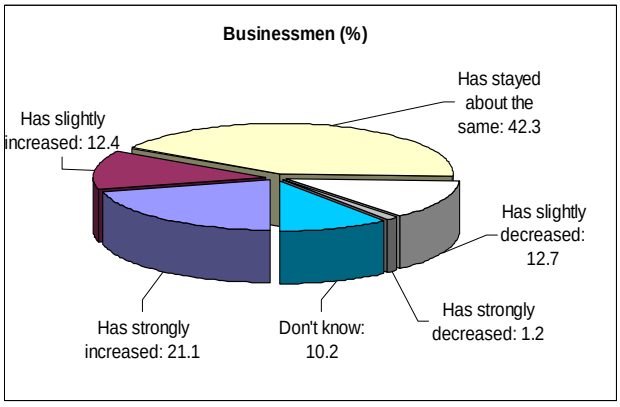
The NGOs, by contrast, are informed about corruption from newspapers (70%), television (67.5%) and personal experiences (55%).

For the businessmen, the principal sources of information about corruption are television (74.8%), newspapers (54.2%) and relatives and acquaintances (53.5%). It is important to mention the fact that a part of the businessmen have *not* expressed "personal experience" as a main source of information about corruption; any mention of this source could lead to the conclusion that they have paid bribes.





In your opinion, during the last 12 months has corruption within Moldovan State institutions increased, remained stable or decreased?



At first glance it is clear from the respondents' answers that during these 2 years corruption has surely not decreased. Thus, only 16.4% of household members, 24% of NGO representatives and 13.9% of businessmen believe that corruption has diminished. Nearly 1/3 of the respondents considers that the

corruption phenomenon has remained the same and approximately 1/3 thinks that the phenomenon has become more intense.

Please rank the following causes influencing the spread of corruption in the Republic of Moldova: very important, important, not very important or not a cause?

	Averages		
	Household	NGO	Business
Low salaries	1.69	1.61	1.64
Lack of punishment for corrupted persons	1.51	1.42	1.45
The Government does not treat the issue seriously	1.77	1.67	1.63
Greed	1.93	2.3	2.13
Lack of transparency in the activities of the state institutions	2.09	1.63	1.92
Favoritism	1.99	1.6	1.77
Pressures from employers	2.56	2.69	2.96
Tradition	2.51	2.73	2.52
Lack of a code for officers	2.4	2.19	2.33

In 2002, the answers to this question are fundamentally different than those from 2000. In 2000, the respondents described the main reasons for corruption - complicated and contradictory legislation, low salaries and poor controls over the public officers. However, in 2002 all categories of respondents noted that "Tradition" and "Pressures from employers" are the primary influences facilitating corruption. This opinion is best evidenced by the repeated interviewee sentiment that, to paraphrase, "In order to keep the job the public official must share the benefits with the employer."

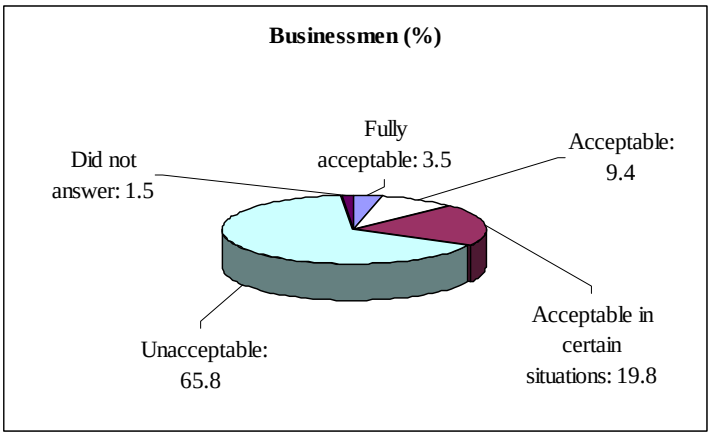
Such a shift in opinions is significant because an acceptance of corruption implies more widespread participation in this phenomenon. This shift also suggests a discouraged and resigned attitude towards the possibility of reducing corruption's impact on living and working in Moldova.

1.5 Admissibility of Corruption

What is the population's attitude towards certain acts of corruption? How admissible are various types of behavior? What understanding does the population derive from "corruption"? By combining different hypothetical examples of professional abuse with a corresponding series of potential outcomes for private interests, it is possible to obtain indirect answers to these questions. Accordingly, the respondents were asked to express their attitude towards certain behaviors, and these attitudes help to indicate the admissibility of corruption.

The business respondents were asked the following question:

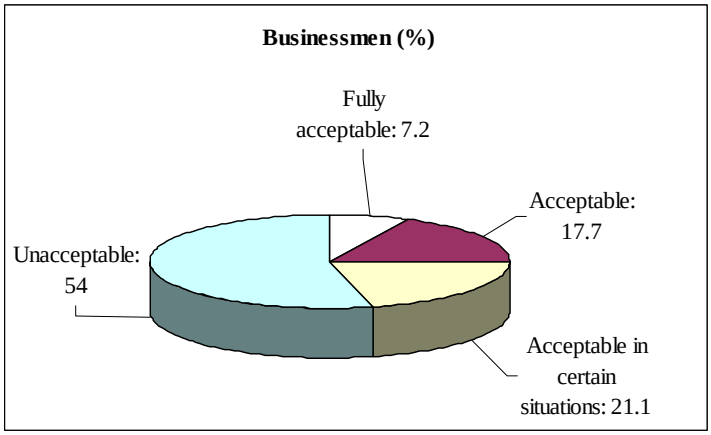
Let us suppose that a public official accepts money from a company in exchange for a favor. How acceptable do you think this kind of behavior is if the official uses this money for payment of a relative's medical treatment?



Nearly 2/3 of the respondents (65.8%) considered this hypothetical instance to be an unacceptable use of funds, and about 1/3 considered it acceptable in some situations.

The second case described a situation when the money received ***unofficially is intended to build a medical clinic in his/her village or city.***

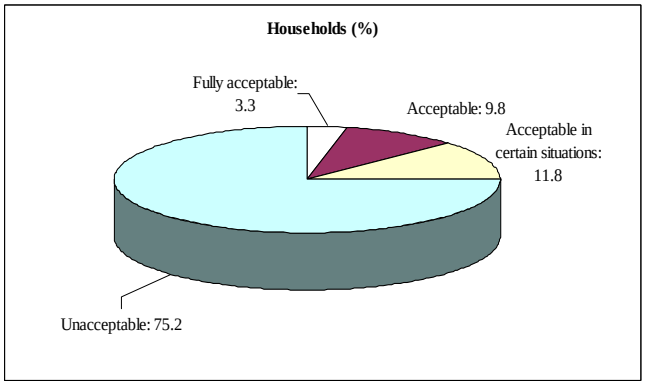
In this case more than 1/2 (54%) of the business representatives considered such behavior to be unacceptable.

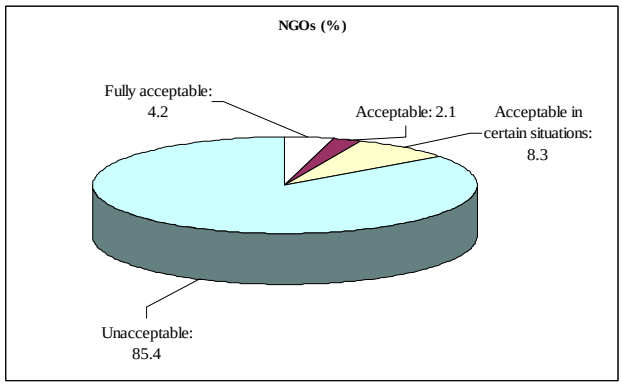


It is interesting that the households have demonstrated a more positive attitude towards this phenomenon. Here, about 64.3% of the sample indicated that they basically accept this scenario and consider this way of spending the unofficial money more useful than other forms.

The representatives of the NGOs were given a different hypothetical case:

If a public officer uses his position in order to employ a friend or a relative, how acceptable is this kind of behavior if the friend or relative is not otherwise qualified to do the work?

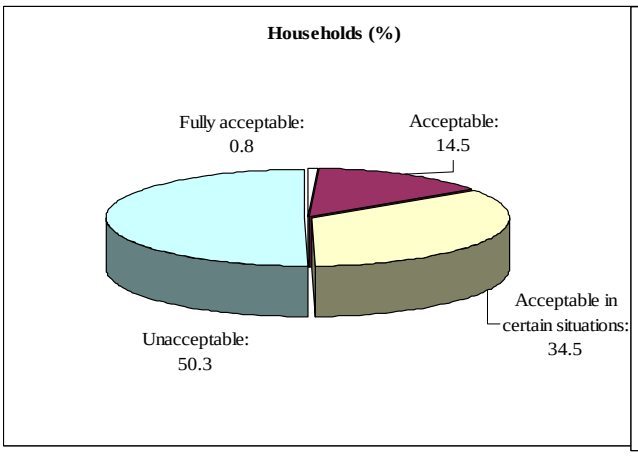


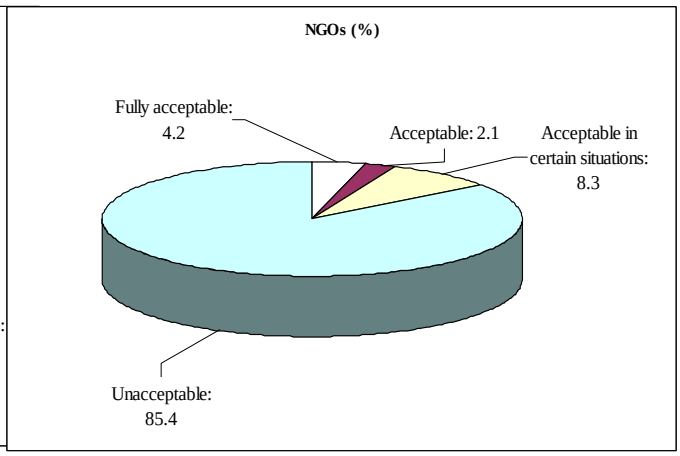


Both categories of respondents mainly expressed negative opinions about such behavior (households- 75.2%; NGOs- 84.4%).

In another hypothetical case, the representatives of the civil society were offered the following question:

If a public official uses his position for employing a relative or friend, then how acceptable is such behavior if the person is qualified to do the job, but is not the best candidate for the current position?





During the administration of the survey several amusing instances were observed. During the interview of one NGO Director, the respondent was asked if he ever hired a relative. The immediate answer was “Of cause! There he is!” as he simultaneously pointed to his deputy.

Regarding this series of questions on favoritism, the households proved less principled than the NGOs. Only 50.3% of the former clearly stated that they do not accept such conduct. Conversely, 85.4% of NGO representatives consider such behavior from a public official to be unacceptable under the proposed circumstances. We believe this discrepancy stems from the fact that the NGO representatives generally possess a higher level of instruction and therefore are likely to have a better understanding of the consequences of this action.

In conclusion, for all the categories of respondents we could note that the majority of the society clearly understands what is meant by the word “corruption”. The fact that this phenomenon is widespread is certainly not because of a lack of understanding.

1.6 Dissemination of Corruption

How frequently are the problems with the public officials solved with money, presents or personal contacts?

The goal of this question is to determine the most corrupt domains within the governmental sector. However, this evaluation reveals only a partial glance into the corruption phenomenon. First, only the frequency of bribes and informal contracts is recorded. Second, only the population’s perception is noted, while their own personal experiences remain neglected. Third, the corruption phenomenon covers a broader range of activities than the ones shown above. Nevertheless, such a question is a first step in evaluating the extent of corruption within the public sector.

The results of this survey show that the fields of activity where the bribes and informal, unauthorized relationships are present include customs, education, health care and police. The responses from the different groups are slightly varied depending on the institution they most frequently encounter. In the opinion of household respondents, the most corrupt institutions are medical facilities (82%), followed by customs controls (74%), education centers (70.8%) and police (65.8%).

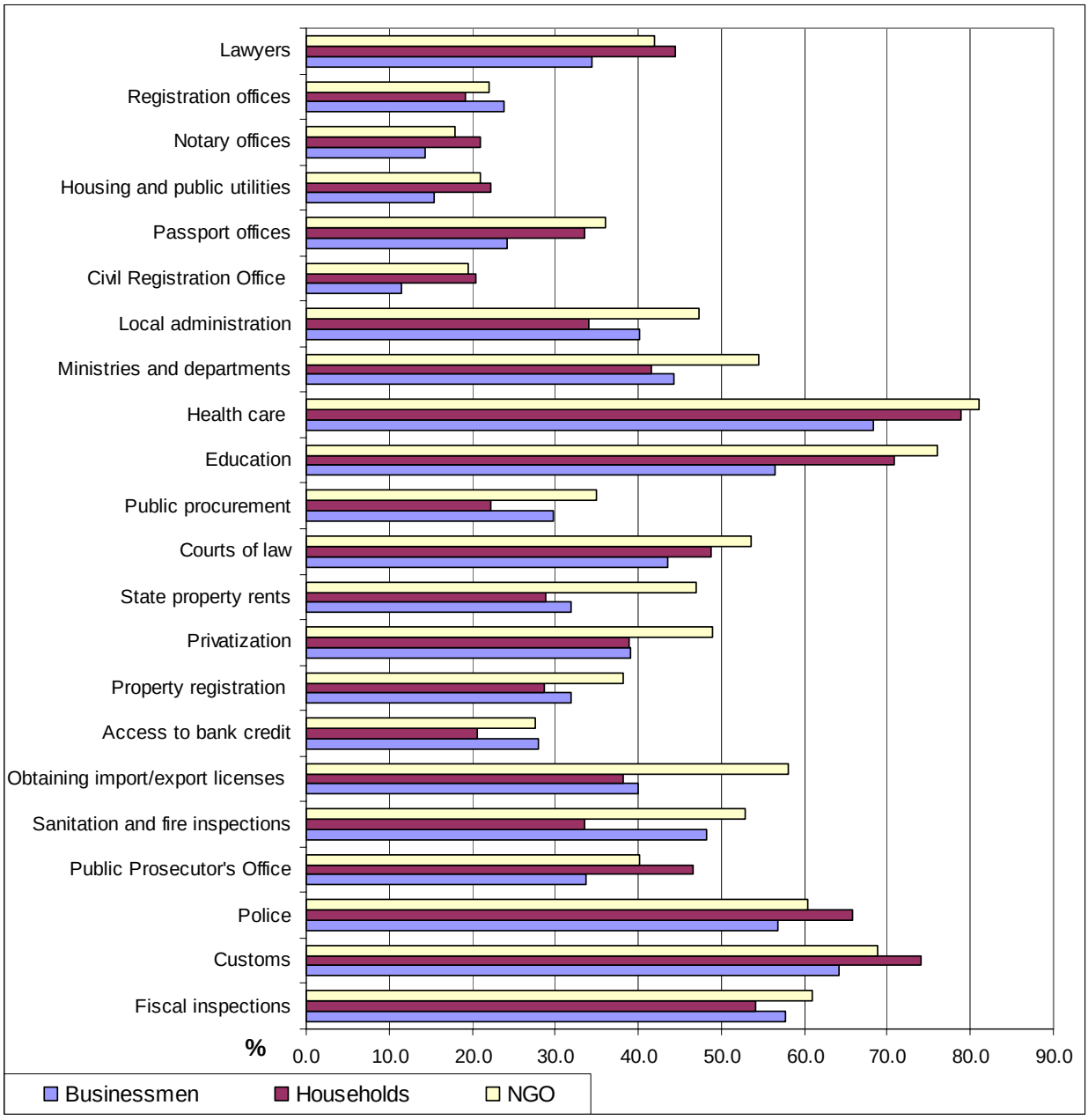
81% of NGOs believe that corruption is frequently or permanently present in health care; 76% in education; 68% in customs controls; and 61% in the fiscal authorities.

The businessmen listed different concerns than those offered by the NGOs, but only by a few percent. Subsequently, 68.3% consider health care as corrupted, 64.1% note the customs controls**,** 57.7% marked fiscal authorities and 56.9% believe police is the leading sector. By contrast, the banking, civil registration, commodity services and notaries are considered less corrupt than the above-mentioned fields.

For comparison purposes, Bulgarian businessmen consider that the most frequent instance of corruption is when public purchase contracts are signed (67.4%)[3]. The institutions associated with issuing licenses are second with a rating of 62.7%.

[3] In the Republic of Moldova the corruption problem in the public purchases institutions (agency) is not so acute due to the fact that more than a third of the total volume of acquisitions in general does not involve the acquisition itself; in other words the law is simply ignored

It is important to remember that this case only focuses on the *frequency* of corruption and not estimates about the amount of money circulating illegally in various sectors. Additionally, it is about the *perception* of the phenomenon versus measures designed to see the *real* situation. Therefore, the next question proceeds to evaluate respondents' personal experiences associated



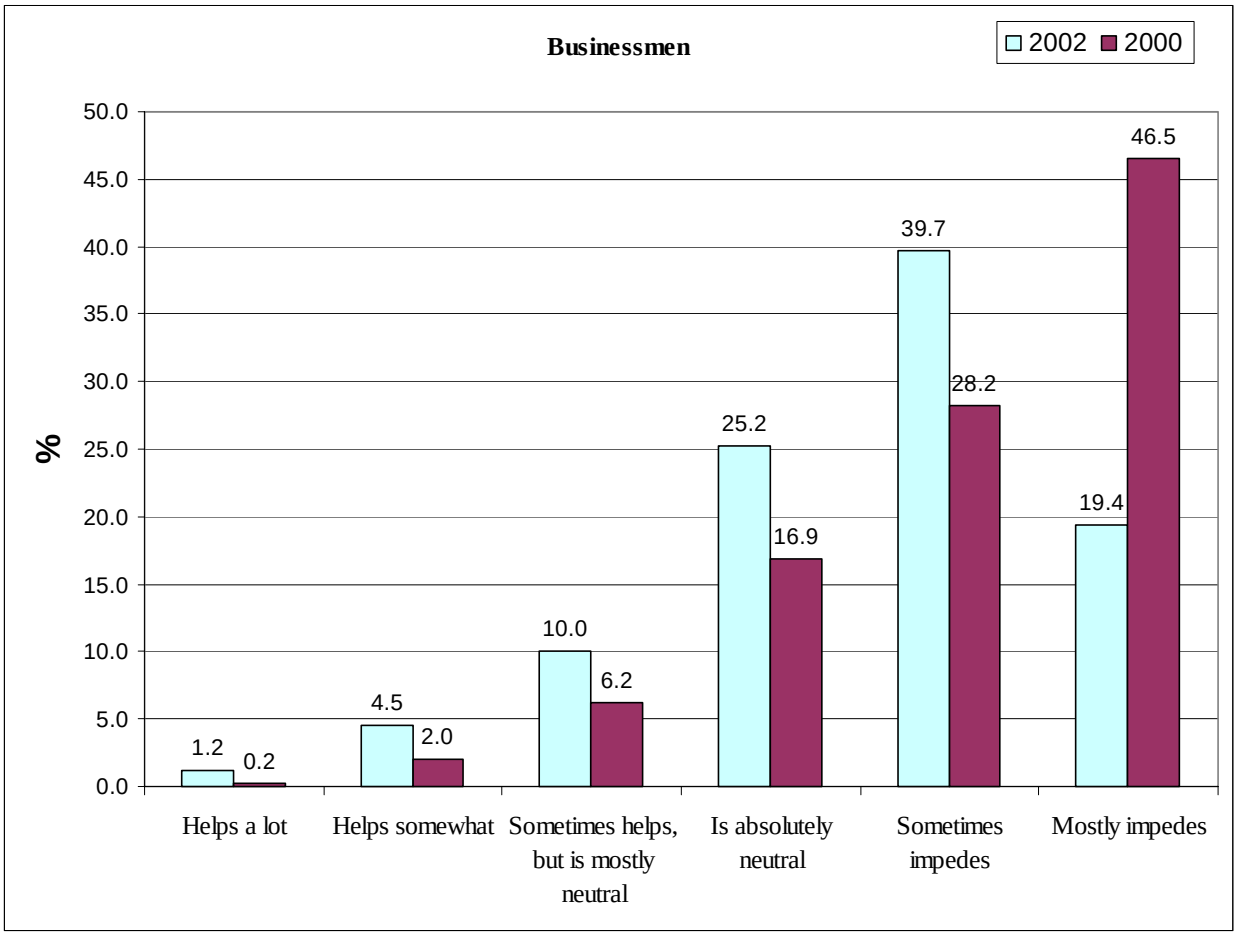
with their contact with State institutions. Again, it is clear in this instance that a larger share of respondents will avoid providing exact answers because doing so might imply complicity with corrupt officials and institutions.

1.7 The Personal Experience in Contacting the Public Sector

Do you believe that the State helps, is neutral or impedes the development of your business?

About 16% of businessmen consider that the State somehow assists the small business. While 25% of businessmen believe that the State is simply neutral, 59.1% think that State institutions impede business activities. Although this evaluation is quite negative, at the same it shows a little progress in comparison with opinions from 2000. One of the possible causes for this progress is

the promise of State institutions to reduce taxes and adopt a State Small Business Assistance Program. Nevertheless, it is necessary to mention the fact that in comparison with the previous survey, in 2002 businessmen are more cautious. Respondents repeatedly mentioned their suspicion of this investigation during their interviews, as well as the possibility of reprisals on behalf of State institutions for providing too sincere of an interview.



How much of your time do you lose (in %) solving your problems with public officials?

Responses to this question varied with the different respondents, but the average obtained is rather high at 24.4%. Businessmen were asked a quite similar question in a 1999 EBRD survey[4]. Moldova's collective response indicated a figure of 14.5%. In EBRD's research most of respondents were foreign investors. It seems that local business people need more time to solve their problems with public officials than their foreign counterparts.

How many control authorities have visited your company how many times during last 12 months?

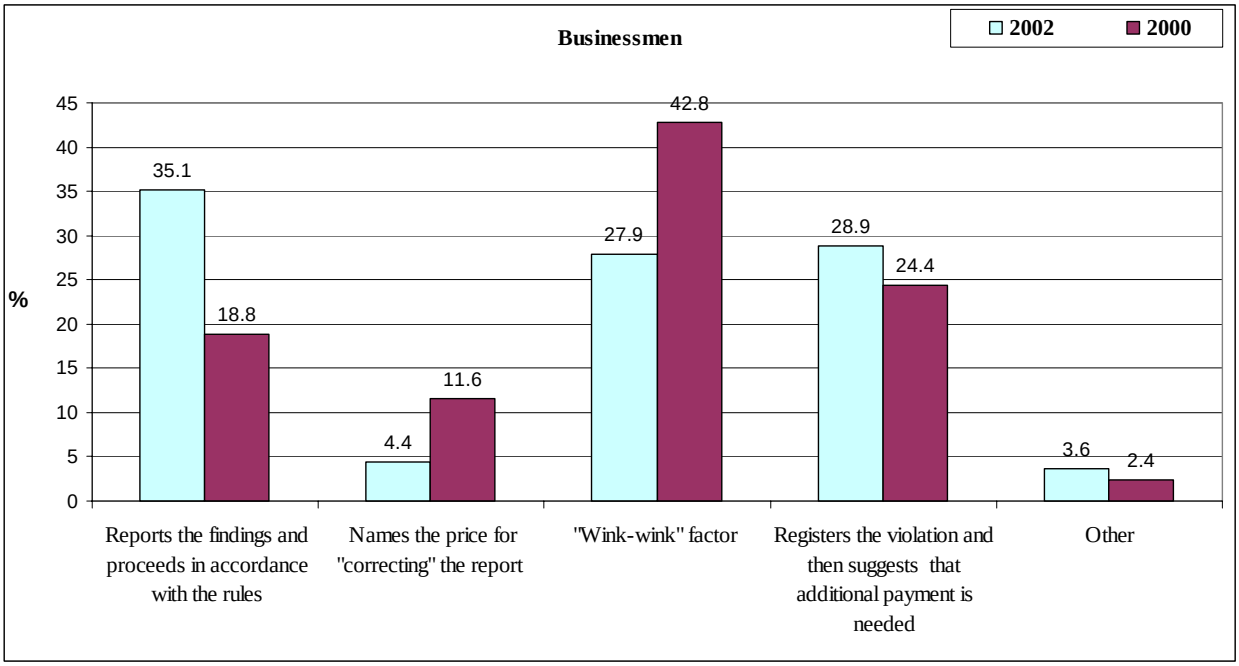
Progress in this field is clearly visible compared with the earlier survey. While in 2000 the average number of

Control authority	Visits per year 2000	2002
Tax inspector	6.3	3.6
Economic Police	6.4	3.9
Fire inspectors	3.0	2.4
Electric networks inspector	5.5	6.1
Sanitation inspector	6.0	4.2
Financial Guard	6.0	3.9
Others	5.1	7.3
TOTAL	38.55	31.44

[4] Transition Report, 1999, EBRD

visits to a firm (including unofficial, unregistered visits) was over 38, in 2002 it was 31. Government Decree N. 181 of 2000, which provides for the introduction of a register of controls, was a certain step toward minimizing the number of inspections. Although the businessmen did not enthusiastically welcome the implementation of the Decree, some positive changes are noticeable.

How does the inspector usually act when he discovers an infringement of the Tax Code?



According to businessmen, tax inspectors' behavior is now slightly more ethical. Most recently, 35.1% of businessmen have affirmed that in 2002 the inspector acted according to his statutory obligations. This figure is nearly double the percentage affirmed by businessmen in 2000 when they responded to the same question at a rate of 18.8%. Despite this substantial increase, 61.2% of businessmen confessed that the inspector still accepts bribes in some form.

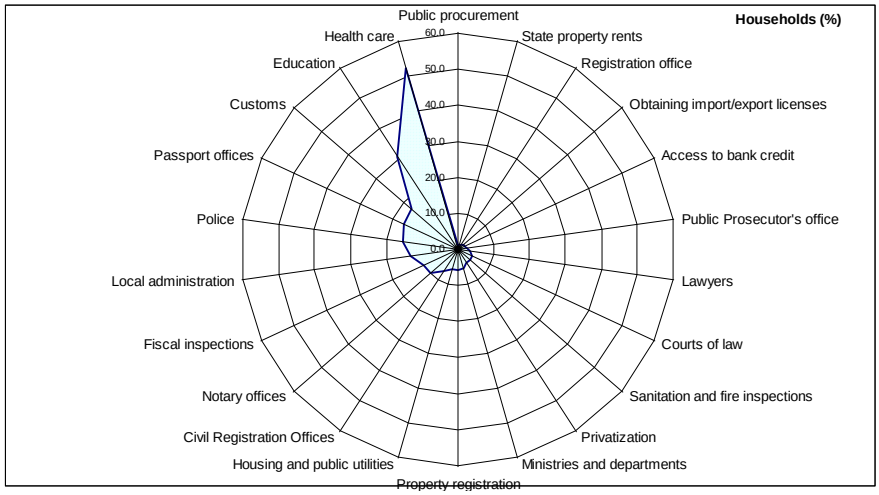
If the inspector discovers a law infringement for which you are fined, what part of that sum do you have to pay directly to the inspector in order to "find a solution" for the infringement (% of fine)?

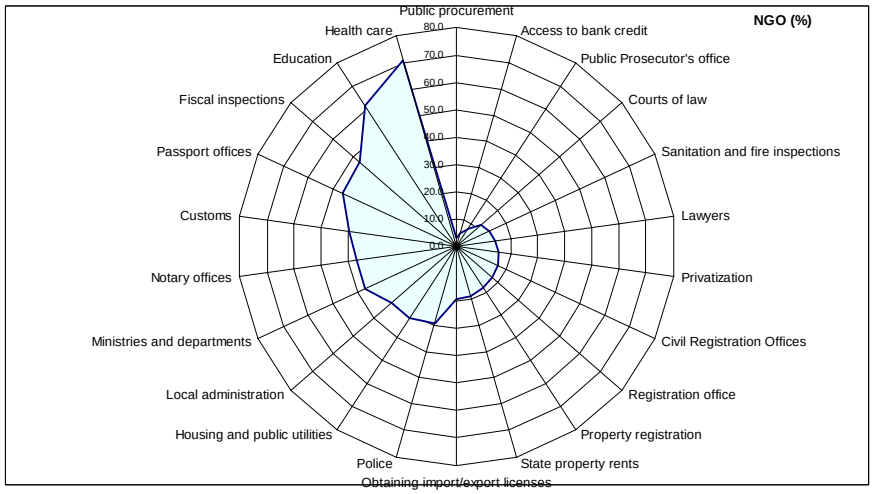
Businessmen state that as the fine increases, the portion of the fine paid unofficially decreases. This situation means that the higher the sanction is, the easier it is to arrive at the "solution". In a certain sense it indicates that for small- and medium-scale firms it is more difficult to "survive" in unfair competition.

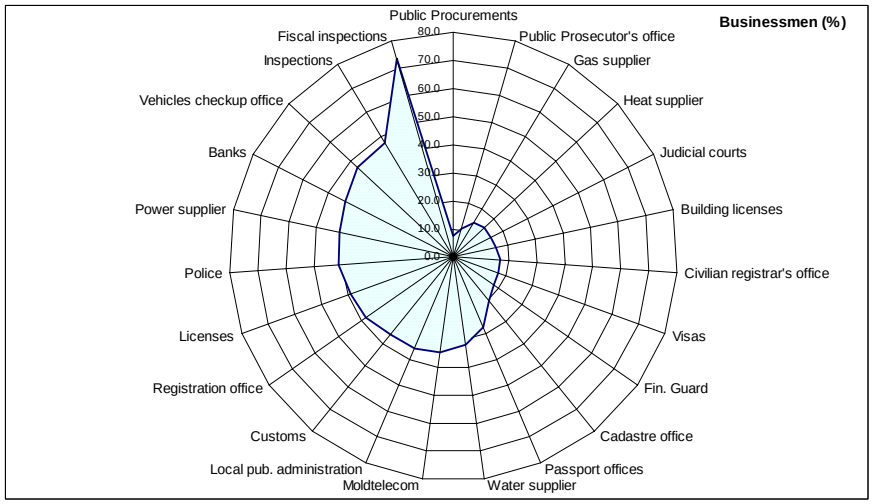
The value of 37.8% is the average obtained out of the whole businessmen sample. For a comparison, in 2000 this average constituted 34.22%. Apparently, the bribe taking is becoming more efficient. The bribe is used more rarely, but the difference is still collected by accepting larger bribes. This data is quite alarming, as it shows that both sides, those representing control authorities and those representing the businessmen, are more and more interested to bypass official ways of solving problems. This development has a strong impact over budget earnings. According to Transparency International – Moldova, tax evasion causes, at the minimum, a 40% reduction in the budget income. That estimation is based on the assumption that tax inspectors' reports are objective. But keeping in mind the experience of businessmen who suggest that only 1/3 of tax inspectors act legally, the estimation of tax evasion's effect is, no doubt, minimal.

The most frequently contacted institutions

In the previous section we have referred to civil society's opinion about the level of corruption's diffusion within the public sector. However, it is important to know how personal experiences relate to each respondent's contacts with public services. Understanding personal experiences helps us to better understand the basic aspects which determine both the scale and scope of corruption. According to the results of the investigation, during the previous 12 months the majority of interviewed individuals have experienced direct or indirect (i.e. via family members) contacts with various State institutions.



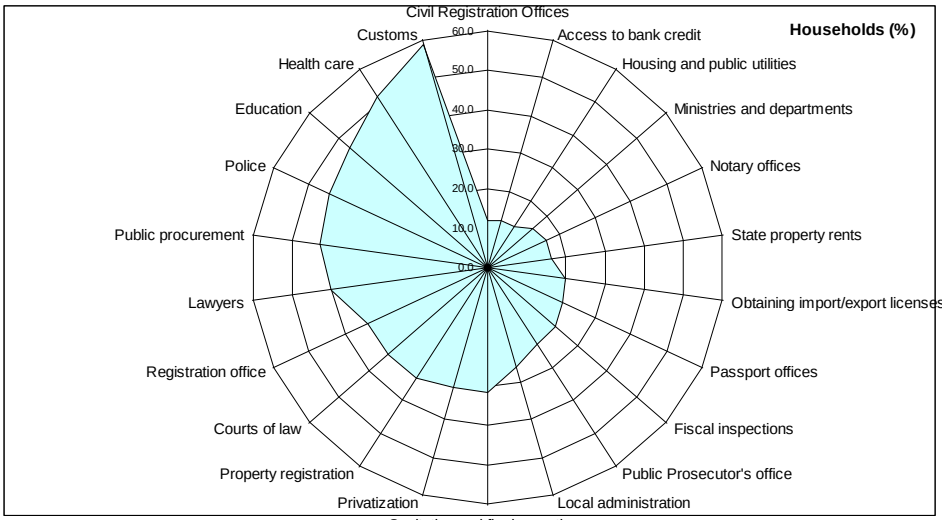


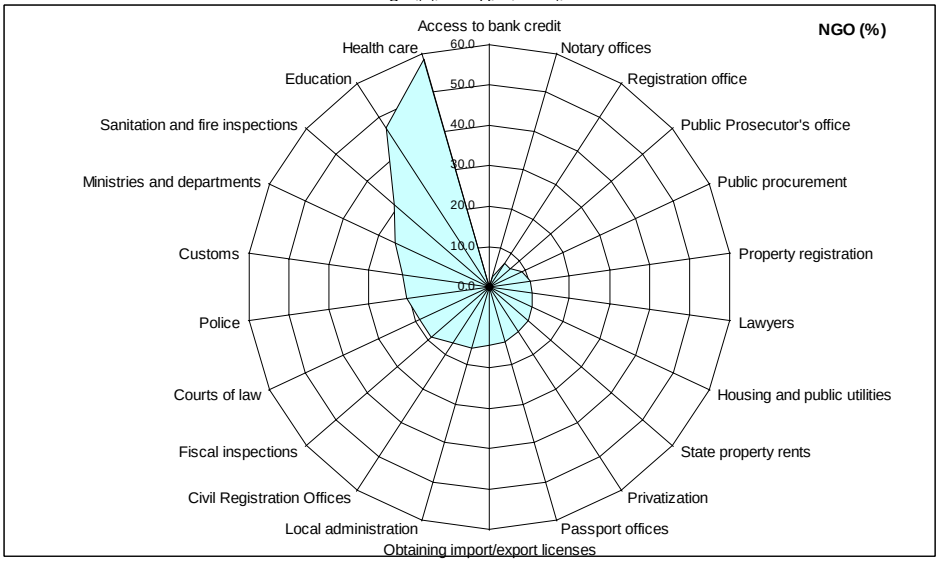


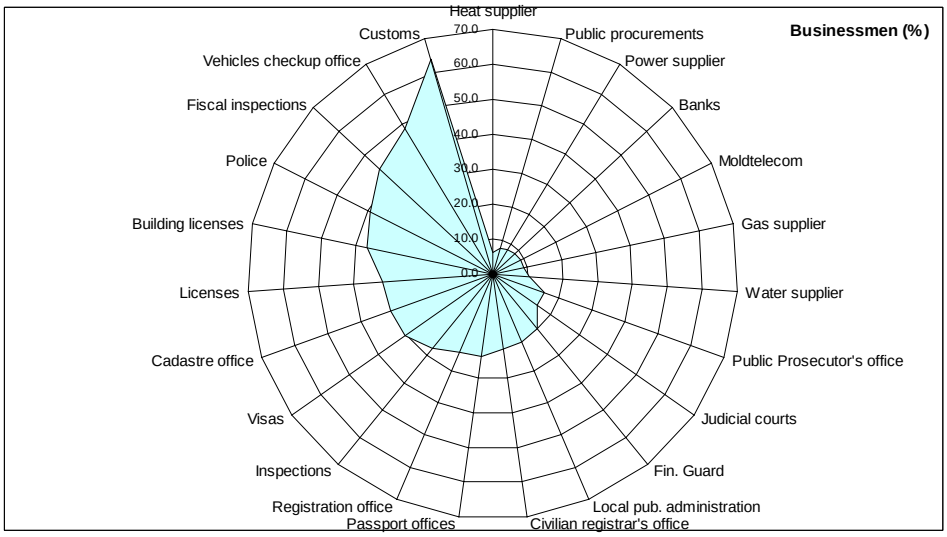
Thus, the household members have more frequently contacted the health care (52.3%) and education (30.4%) institutions. NGO representatives have also had most of their contacts with the health care (70.9%) and education sector (61.3%) but also with the fiscal inspectorate (46.9%), passport section (45.9%) and customs offices (39.4%).

The business representatives, due to the specific feature of their activity, are more likely to regularly contact fiscal inspectorates (73.2%), sanitation, fire, environmental agencies, vehicle registration and technical inspection offices (46.9%), banking institutions and the electricity supplier (41.5%).

Where is the bribe more often paid?







Certainly, the public institutions are absolutely necessary because each of us needs certain services i.e. health care, business or property registration among others. However, why is it necessary to have unofficial fees for these services? Of course these fees are not necessary because official fees are already in place. The results of this survey demonstrate that individuals nevertheless continue to pay both kinds.

It is not surprising then to find that nearly 2/3 (63.7%) of the businessmen who contacted the customs service paid unofficial fees; 48.9% have made unofficial payments to register their vehicle or for technical inspections; 44.1% paid fiscal inspectors; 39.1% made payments to police and 36.7% have unofficially paid a member of a public service in order to obtain a construction authorization or similar license.

Out of the total number of households that have contacted the public service most of them (58.8%) have paid unofficially at the customs controls; 51.4% paid in health care institutions while 46.3% paid to educational institutions and 44.3% to the police.

Most of the NGOs have made their unofficial payments to the environmental (58.4%) and education (47%) institutions; sanitation and fire inspections (31%); ministries and departments

(25.7%); and customs (21.8%). A brief analysis demonstrates that customs, education, health care and police are the most frequently mentioned.

What services or benefits have these persons paid for?

In some instances people pay for a specific favor, while in others they hope to avoid more general problems. However, in most of the cases the bribe is primarily paid to ensure the completion of the official's regular responsibilities.

Most of the household representatives indicated that they have paid bribes in exchange for a favor when registering property (83.3%), for health care (80%), at the passport office (76.9%), and to receive notary service (71.4%).

The NGO representatives have made unofficial payments in a court of law (85.7%), to the local public administration and civil registration office (83.3%), to ministries and departments (82.6%), as well as within health care (80.8%) and educational (62.7%) institutions.

Most of the business representatives have also paid for a favor at the customs (63.7%), in the vehicle registration and technical inspection office (48.9%), to fiscal departments (44.1%), police (39.1%), as well as for obtaining construction authorizations (36.7%). Thus, we can observe again that some institutions are the most frequently mentioned by all the categories of respondents. This fact shows how often favoritism is displayed.

The second reason people pay bribes is to avoid problems. For the household respondents, the sanitation and fire inspection (83.3%), police (71%), fiscal department (66.7%), customs controls (63.2%), and the courts of law (50%) are the institutions presenting such problems. Logically then, these are the most frequently cited services where people seeking to avoid problems are offering unofficial payments.

The NGO representatives have referred more to fiscal departments and customs controls (81%), property registration institutions (80%), notaries (66.7%) and police (62.5%).

The businessmen have mostly paid to avoid problems with the police (79.7%), fiscal departments (79.1%), Financial Guard (75%), District Attorney's Office (66.7%), as well as the customs controls (64.4%). We could observe that in the case of the businessmen, their list of institutions was more extended.

What is the average amount of a bribe paid to State institutions?

According to the results of the surveys, the amounts paid out vary widely. In health care institutions, which ranked first in the number of contacts, the average bribe paid by the household members varies from 10 to 4,200 lei with an average of more than 150 lei; in the education institutions the figure ranges from 20 to 5,500 lei. Meanwhile, the study demonstrates that there is a direct correlation between the frequency and the number of contacts with the institution and the average value of the bribe. In some less frequently contacted institutions the average bribe is usually much higher than in the more frequently contacted ones. In order to obtain a license the businessmen, for example, usually pay an average of 4,774 lei, and to the Financial Guard they typically pay even more (6,133 lei). The lawyers and judges are also paid well via unofficial channels. The household members mentioned that for the services offered by lawyers they have paid between 150 and 55,000 lei, with an average of 14,000 lei. The average bribe from businessmen to the Financial Guard officers is over 6,000 lei, or almost the average annual salary in Moldova.

Households: Estimating the average bribe (lei)

No.	Institution / field of activity	Number of payments	Minimum	Maximum	Average
1	Fiscal inspectorates (departments)	2	100	250	175
2	Customs	30	25	1168	199
3	Police	22	10	1000	129
4	Sanitation and Fire Inspections (Departments)	4	50	2000	575
5	Obtaining licenses	2	100	13500	6800
6	Property Registration	6	50	250	142
7	Privatization	6	100	200	133
8	Courts of law	4	30	300	152
9	Education	42	20	5500	496
10	Health Care	90	10	4200	151
11	Ministries and Departments	3	30	200	127
12	Local Public Administration	12	30	200	94
13	Civil Registration Offices	3	30	2000	693
14	Passport Departments	10	50	2000	352
15	Housing Exploitation Departments	3	20	60	43
16	Notary	5	25	250	105
17	Chamber of Registration	2	150	150	150
18	Lawyers	4	150	55000	14100

NGOs: Estimating the average bribe (lei)

No.	Institution / field of activity	Number of payments	Minimum	Maximum	Average
1	Fiscal inspectorates (departments)	12	50	1350	229
2	Customs	11	30	700	272
3	Police	13	10	700	150
4	District Attorney's Office	2	120	120	120
5	Sanitation and Fire Inspections (Departments)	8	30	2000	320
6	Obtaining licenses	4	60	500	278
7	Property Registration	2	50	150	100
8	Privatization	2	150	5000	2575
9	Rental of State Property	4	400	2700	1125
10	Courts of law	3	500	1500	833
11	Education	22	20	2750	335
12	Health Care	49	20	3500	343
13	Ministries and departments	14	20	400	130
14	Local Public Administration	4	100	670	300
15	Civil Registration Offices	4	50	2000	562
16	Passport Departments	5	40	200	110
17	Housing Exploitation Departments	4	35	100	79
18	Notary	2	20	50	35
19	Chamber of Registration	2	60	300	180
20	Lawyers	3	1500	2000	1667

Businessmen: Estimating the average bribe (lei)

No.	Institution / field of activity	Number of payments	Minimum	Maximum	Average
1	Fiscal inspectorates (departments)	14	20	667	158
2	Customs	38	10	10000	681
3	Police	43	20	22667	1032
4	Obtaining Visas	8	50	4500	1150
5	Issuing Licenses	16	50	40500	4744
6	Police	36	10	1350	196
7	Civil Registration Offices	11	35	360	132
8	Passport Departments	17	25	3400	323
9	Vehicle Registration and Technical inspection offices	35	50	900	189
10	Land records office	8	100	200	156
11	Issuing construction authorization	11	200	10800	1882
12	Local Public Administration	18	10	1000	283
13	Water supply agent	6	25	100	67
14	Electricity supplier, electricity network	6	30	27000	4630
15	Moldtelecom	6	55	1350	552
16	Heating supplier	2	100	200	150
17	Gas supplier	3	100	700	500
18	Financial Guard	7	270	32000	6153
19	Sanitation, Fire and Labor Protection Inspections (Departments)	28	10	400	147
20	Courts of Law	6	200	7650	2650

Real corruption situations – testimonies of respondents

When asked indirectly about the extent of corruption, the respondents were generally active, but when the question was asked directly, when they had to declare their own direct involvement in specific corruption incidents, it is not surprising that they became more reticent. Nevertheless, some of them provided concrete cases:

Interview #47, 24/10/02, 19:10, Chisinau: “I had 47 verifications during the year... you may imagine how much it cost me...”

Interview #84, 28/10/02, 12:00, Chisinau: “I was supposed to pay a fine of 1,500 lei to the Tax Service. I paid 500 lei directly to the officer and I got my problem solved…”

Interview #90, 18/10/02, 16:00, Chisinau: “Police pulled me over and asked for a 1,500 lei fine. I didn’t agree. Finally they accepted 1,000 lei, but didn’t give me any receipt.”

Interview #84, 28/10/02, 12:00, jud. Chisinau: “Until the interdiction of eggs exports to Romania, along the entire road to Romania each traffic police officer was taking a box of eggs and then through radio transmission was informing the next police officer. The other also received a box and this way they were doing that until the border. The customs officers were taking 3 boxes each and then signing the papers without looking at the merchandise; a stamp was enough and you could carry even arms and drugs, nobody would have known anything. The car was going this way about 3 times a week. Why did they need so many eggs?”

Interview #96, 17/10/02, 12:00, jud. Chisinau: “At the vehicle registration offices there is always a person who does not work there, but knows the personnel very well. For $50 the individual

takes your papers to the office where your documentation is signed. There is a $100 fee for changing the production year of the automobile, and nobody even looks at it".

Interview #97, 17/10/02, 14:00, jud. Chisinau: "The firm SGS takes our skin off".

Interview #112, 18/10/02, 10:20, Chisinau: "I was supposed to pay a 20,000 lei fine. I gave them only $200, [2,700 lei]".

Interview #127, 19/10/02, 18:30, jud. Orhei: " . . . instead of paying 10,000 lei VAT, I gave 5,000 lei to the inspector."

Interview #145, 18/10/02, 12:30, Chisinau: "It depends, but sometimes I even pay 50% of the official fee to the inspector, just to get rid of the problem."

Interview #147, 18/10/02, 12:50, jud. Balti: "My son imports cars from abroad and every time he pays bribes at customs."

Interview #159, 21/10/02, 10:15, Chisinau: "Sanitation service held an inspection and found in the bar 1.5 kg of chlorine. They said I was supposed to have 10 kg and then he said to me: 'If we to file a report, it is going to cost you 500 lei, if we don't – 250 lei.'"

Interview #185, 28/10/02, 8:50, jud. Chisinau: "Each inspector that comes tells us from the beginning that he cannot leave with an empty form, it means he must obligatorily fine us, and this can be solved unofficially."

Interview #186, 8/10/02, 13:30, jud. Chisinau: "I gave those people from the Tax Guard 1,000 lei. At the moment of inspection I didn't have the forms at the office… my accountant was preparing the statement."

Interview #190, 28/10/02, 14:45, Chisinau: Interviewee wrote with his own hand on the survey form, in capital letters: "I don't believe in anonymity!!! In the near future the company will change its office to Romania, Russia or even Transnistria!!!"

Interview #197, 29/10/02, 13:30, Chisinau: "A man from the police checked our shop and discovered a violation. He said it would cost us 350-400 lei. Then he took 200 lei from a saleswoman by the cash register and told her to inform the owner about it."

Interview #202, 29/10/02, 15:45, Chisinau: "For a problem with the Social Fund I paid the whole fine of 180 lei, but unofficially."

Interview #204, 10/10/02, 14:45, Chisinau: "I gave $50 to the teacher for a 5 mark."

Interview #218, 19/10/02, 13:35, Chisinau: "Instead of paying the State 100,000 lei, I paid the inspector 25,000 lei."

Interview #230, 17/10/02, 14:00, Chisinau: "Not a long time ago the police seized and stored my merchandise valued at 4,000 lei. After an arrangement with the policeman I paid a fine of 180 lei and also "repaid his kindness" with 140 lei and a meal, where I handed him the money."

Interview #231, 18/10/02, 11:30, Chisinau: "It wasn't a business trip, but I had a few bottles of brandy with me. The customs officer suggested that I should leave him a bottle and I did. I don't need problems."

Interview #233, 17/10/02, 10:40, Chisinau: "I pass the customs controls about 10 times per month, and every time I have to give 100 lei bribe, despite the fact that the documents for the goods are ok."

Interview #237, 19/10/02, 14:30, Edineț: "The expiration date of some commodities I was selling passed. I had to pay a fine unofficially to keep my license."

Interview #238, 01/10/02, 14:00, Chisinau: "I sell meat and other products daily and gain about 10,000 lei. You cannot always give the exact amount of change to the customer. Sometimes I

leave them 5 bani, sometimes they leave me 5 bani. At the end of the day it becomes a deficit or an excess of about 10 lei. The maximum fine is 3,600 lei. If the fine is small, I prefer to pay it officially, but if it is the maximum, I prefer to pay 700 lei to the inspector so he leaves me alone."

Interview #239, 30/10/02, 9:00, Chisinau: "A tax officer held an inspection of the company's activity, including 4 years worth of old reports. At that time we had just passed from quarterly reports to monthly reports, but there was a lack of forms. The officer told us we must pay a fine of 160,000 lei for this. The problem was "solved" by paying 20% of this sum directly to the inspector."

Interview #240, 01/10/02, 9:15, Chisinau: "The district policeman wants a bribe. He looks for faults, but he can't find them. He brutally knocks at the door even after we are closed."

Interview #242, 28/10/02, 19:00, Chisinau: "I frequently import goods. Although my documents are all in order, each time I pay the "tax" of $250 to the customs officer to avoid problems. Also I pay $350 to the policeman so that he escorts me and I don't get bothered on the road."

Interview #245, 2/10/02, 14:15, Chisinau outskirts: "As a result of an inspection in the internet café an inspector from the Tax Police discovered a little surplus of cash in the cash register. I was told the fine is 1,800 lei, but the solution to the problem without writing any reports was going to cost me 400 lei."

Interview #261, 30/10/02, 12:00, Chisinau: "Isn't this corruption? I had to undertake the obligation to do charity by paying money to the District City Hall and to give gasoline to a person in charge in exchange for an ordinary signature."

The real number of testimonies is larger, but all of them lead to the same conclusions:

- Fines are so high that business people prefer to pay the inspector directly in order to solve problems with State Institutions.
- Although State inspectors have low salaries, those who accept bribes daily "receive" unofficial sums comparable with their monthly salary. All these unofficial payments have an impact on prices and minimize State's budgetary collection.
- It seems that regardless of the size of the deficit or the surplus of money in the cash register, the fine is almost the same. That excess or surplus is not compared with daily turnover.
- Representatives of State authorities do not hide their intention to find infringements; their initial approach assumes that the business people are lawbreakers. In this situation businessmen prefer to pay immediately to avoid conflicts.
- According to the Center for Standardization, Metrology, and Certification, near 70-80% of the imported goods verified do not correspond with the necessary standards. However, in cases where such violations are discovered, (e.g. the validity of food products or the production date of imported vehicles) in many cases these products do not disappear from the market, but rather they simply remain available in exchange for a fee. In this case, both public health and the environment are endangered.
- Bribery has reached such an extent that businessmen consider it a normal act of survival. Unlike in market economies, where the principal competition is between companies and leads to a reduction of prices, in the Republic of Moldova the main "enemy" or "competition" for businessmen is the representative of State authorities. Here, the representative fills its own pocket instead of collecting money for the budget in accordance with its mandate.

1.8 Estimating the total volume of bribes

The estimations made based on the results of the investigation denote that during the last 12 months most of the household representatives have paid a bribe to health care institutions (approximately 654,000 people), to educational institutions (342,000 people), to customs officers (240,000 persons), police (162,000 people) and various local administrations (78,000 people). Given that both the number of contacts and the average value of the bribe differ from one institution to another, the total amounts of bribes paid to the state institutions are very different.

Nevertheless, the rankings according to the total volume of bribes accumulated from households, yields the following results: lawyers are first[5] with a total of over 348 million lei followed by fiscal departments (222 million lei), then health care institutions (217 million lei), then educational institutions (205 million lei) and in fifth place, customs controls (187 million lei). Thus, the total amount of the bribe paid by the household members is more than 30% of the total value of the State budget for 2002 (in its income section); this money should return to the population to pay or increase salaries, pensions and social allowances or other entitlements.

Businessmen: Estimating the total bribe (mil. lei)

No.	Institution/ field of activity	Total bribe
1	Chamber of Registration	6.7
2	Fiscal Departments	97.1
3	Customs	172.8
4	Police	37.1
5	Passport Departments	7.1
6	Vehicle Registration and Technical Inspection Offices	19.2
7	Issuing construction authorization	61.9
8	Local Public Administration	9.4
9	Financial Guard	60.6
10	Sanitation, Fire, Environmental and Labor Force Inspections	18.1
11	Courts of law	33.7
12	Others	408.3
	Total	**932**

The businessmen have most frequently contacted the fiscal departments (79,000 persons), customs controls (60,000 persons), Vehicle Registration and Inspection Office (58,000 persons), police (over 40,000) and license issuing organizations (31,000). According to the obtained estimates, the total amount of the bribes paid to the customs was 173 million lei, to fiscal departments – 97 million lei, construction authorization institutions – 62 million lei, Financial Guard – 61 million lei and police – 37 million lei.

It is worth mentioning that these are only minimal estimations because the survey did not intend to identify those categories of the population that had more frequent contacts and made larger unofficial payments within legal institutions, to lawyers or to other parties. In any case, the figures are imposing enough and convincingly denote the range and extent of corruption both in the State institutions and in the private sector.

[5] Possibly in this case the bribe is distributed by means of the lawyer to the inspector, district attorney and judge.

Households: The results of the study about the contacts made with the public service

No.	Institution / domain	The share of persons who have contacted the institution (% of total)	Average number of contacts per person	The share of persons who have paid a bribe (% of those who have contacted the institution)	The share of persons who have paid a bribe (%)		Average number of unofficial payments per person	Average total amount of unofficial payments per person (lei)
					For a favor	To avoid the problems		
1	**Fiscal inspections**	10.5	10.6	22.7	33.3	66.7	1.6	3700
2	**Customs**	17.0	3.1	58.8	36.8	63.2	3.2	779
3	**Police**	15.3	3.4	44.3	29.0	71.0	2.4	193
4	**Public Prosecutor's office**	2.5	2.1	23.1	66.7	33.3	1.0	250
5	**Sanitation and fire inspections**	4.5	1.9	31.6	16.7	83.3	1.2	900
6	**Obtaining import/export licenses**	2.0	1.3	20.0	100.0	-	1.3	6800
7	**Access to bank credit**	2.0	2.1	12.5	100.0	-	1.0	-
8	**Property registration**	5.8	1.9	33.3	83.3	16.7	1.4	193
9	**Privatization**	4.5	1.9	31.6	57.1	42.9	1.2	157
10	**State property rents**	1.3	1.8	16.3	100.0	-	1.0	1350
11	**Courts of law**	4.3	2.9	33.3	50.0	50.0	17.8	237
12	**Public procurement**	1.0	2.2	42.9	66.7	33.3	1.0	200
13	**Education**	30.4	5.1	46.3	61.8	38.2	5.0	1015
14	**Health care**	52.3	4.8	51.4	80.0	20.0	3.7	332
15	**Ministries and departments**	5.5	2.9	15.0	66.7	33.3	2.3	127
16	**Local administration**	13.0	4.2	26.0	68.8	31.3	2.5	133
17	**Civil Registration Offices**	7.0	1.8	12.0	100.0	-	1.0	525
18	**Passport offices**	16.5	1.8	20.9	76.9	23.1	1.2	350
19	**Housing and public utilities**	5.8	4.0	12.5	100.0	-	1.7	83
20	**Notary offices**	10.0	1.9	16.2	71.4	28.6	2.2	220
21	**Registration office**	1.5	1.9	33.3	100.0	-	1.0	150
22	**Lawyers**	3.5	2.3	40.0	66.7	33.3	1.2	9675

NGOs: The results of the study about the contacts made with the public service

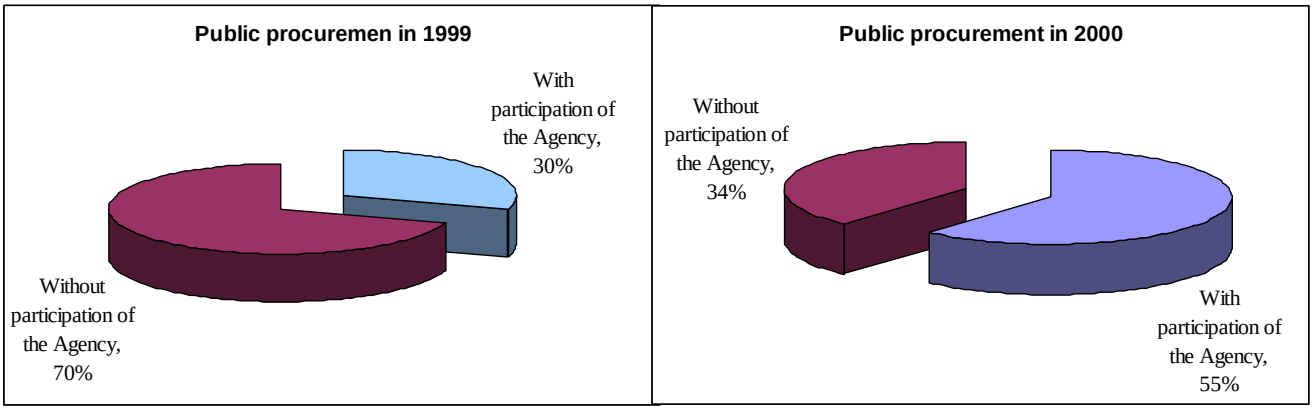
No.	Institution / domain	The share of persons who have contacted the institution (% of total)	Average number of contacts per person	The share of persons who have paid a bribe (% of those who have contacted the institution)	The share of persons who have paid a bribe (%)		Average number of unofficial payments per person	Average total amount of unofficial payments per person (lei)
					For a favor	To avoid the problems		
1	**Fiscal inspections**	46.9	4.7	18.8	19.0	81.0	2.6	1230
2	**Customs**	39.4	4.3	21.8	19.0	81.0	2.4	728
3	**Police**	29.1	2.5	20.6	37.5	62.5	1.9	226
4	**Public Prosecutor's office**	7.9	1.5	6.9	-	100.0	1.0	120
5	**Sanitation and fire inspections**	13.3	2.1	31.0	50.0	50.0	1.2	370
6	**Obtaining import/export licenses**	19.1	1.9	14.3	50.0	50.0	1.0	422
7	**Access to bank credit**	5.2	2.2	-	-	-	-	-
8	**Property registration**	18.0	1.9	10.0	20.0	80.0	2.0	233
9	**Privatization**	15.6	2.2	13.0	75.0	25.0	1.4	1733
10	**State property rents**	18.8	2.2	12.5	75.0	25.0	3.2	1120
11	**Courts of law**	11.9	3.7	18.9	85.7	14.3	1.0	833
12	**Public procurement**	3.2	2.0	8.7	-	100.0	1.0	400
13	**Education**	61.3	5.9	47.0	62.7	37.3	3.7	594
14	**Health care**	70.9	4.7	58.4	80.8	19.2	4.0	886
15	**Ministries and departments**	36.6	8.0	25.7	82.6	17.4	2.3	235
16	**Local administration**	31.4	5.3	15.7	83.3	16.7	2.9	1040
17	**Civil Registration Offices**	16.4	2.2	16.3	83.3	16.7	1.0	460
18	**Passport offices**	45.9	2.0	14.0	66.7	33.3	1.4	122
19	**Housing and public utilities**	31.1	5.0	11.6	55.6	44.4	2.8	157
20	**Notary offices**	36.8	2.7	2.5	33.3	66.7	1.3	60
21	**Registration office**	17.2	1.4	6.8	-	100.0	1.3	180
22	**Lawyers**	14.1	2.7	10.5	100.0	-	1.0	1667

Businessmen: The results of the study about the contacts made with the public service

Nr.	Institution / domain	The share of persons who have contacted the institution (% of total)	Average number of contacts per person	The share of persons who have paid a bribe (% of those who have contacted the institution)	The share of persons who have paid a bribe (%)		Average number of unofficial payments per person	Average total amount of unofficial payments per person (lei)
					For a favor	To avoid the problems		
1	**Chamber of registration**	37.8	2.3	24.3	72.5	27.5	1.9	285
2	**Fiscal inspectorates (departments)**	73.2	6.1	44.1	20.8	79.1	7.7	1224
3	**Customs**	35.8	8.7	63.7	35.6	64.4	30.3	2904
4	**Obtaining visas**	17.1	4.9	30.5	72.4	27.6	3.0	3878
5	**Issuing licenses**	38.8	2.6	31.5	69.4	30.6	2.1	9215
6	**Police**	40.9	4.5	39.1	20.3	79.7	5.3	919
7	**District Attorney**	10.5	3.9	15.7	33.3	66.7	4.3	175
8	**Civil Registration Office**	16.8	3.8	21.8	85.0	15.0	1.7	513
9	**Passport Departments**	27.5	2.0	23.7	76.2	23.8	1.7	398
10	**Vehicle Registration and Technical Inspection offices**	46.9	2.2	48.9	72.6	27.4	3.8	330
11	**Cadastral offices**	20.4	3.9	30.8	82.6	17.4	1.5	314
12	**Construction authorization**	15.5	3.2	36.7	56.0	44.0	1.6	33349
13	**Local Public Administration**	35.4	8.4	21.1	75.9	24.1	2.9	492
14	**Water supply agent**	31.9	4.9	10.4	56.3	43.8	2.1	317
15	**Electricity supplier, electricity network**	41.5	5.8	8.1	57.9	42.1	2.0	4642
16	**Moldtelecom**	34.4	5.5	8.8	61.5	38.5	2.2	790
17	**Heating supplier**	15.0	3.9	6.1	61.5	38.5	1.0	1075
18	**Gas supplier**	14.2	3.4	9.1	50.0	50.0	1.2	533
19	**Financial Guard**	17.5	2.2	20.0	25.0	75.0	1.7	5917
20	**Public Purchases**	7.3	2.7	7.7	50.0	50.0	2.3	350
21	**Sanitation, Fire, Environment and Labor Protection Inspections (Departments)**	47.3	4.2	27.3	46.8	53.2	3.5	600
22	**Banks**	43.1	10.2	8.5	54.2	45.8	5.4	404
23	**Court of laws**	15.2	8.8	15.7	45.0	55.0	1.7	4782

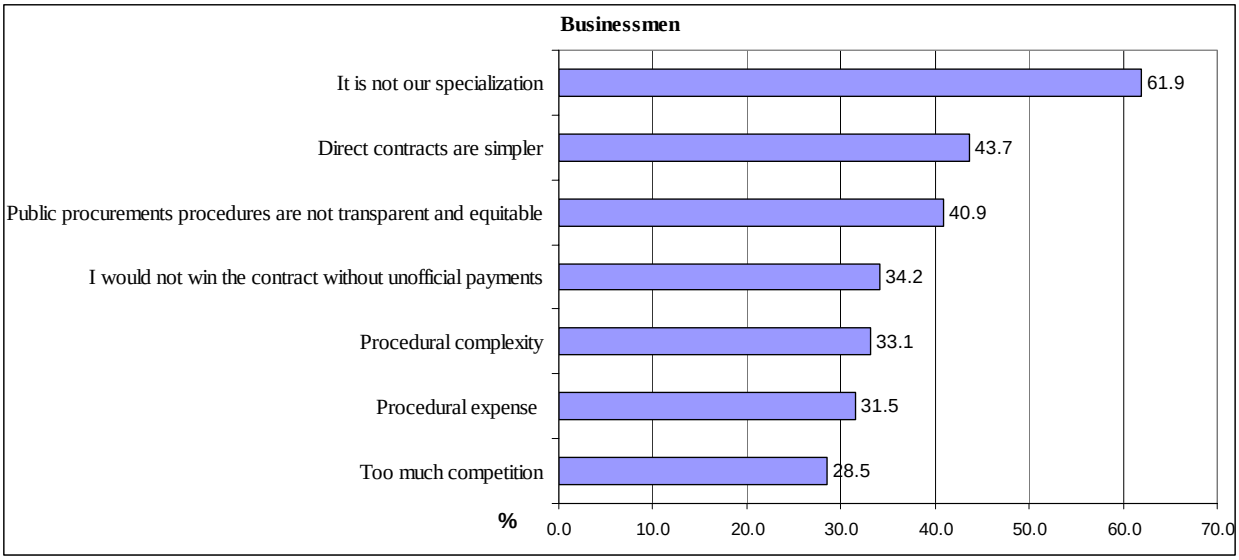
1.9 Public Procurement

One of the necessary conditions for preventing corruption in the public sector is the existence of transparent and accessible public acquisitions procedures. In the Republic of Moldova the situation is further complicated by the fact that a part of the total number of purchases is done through the National Agency for Public Acquisitions. According to a study conducted by Transparency International – Moldova (E. Obreja's "Public Acquisitions and Public Ethics: Views on Reducing Corruption"), in 1999 only 30%, and in 2000 – 55% of the total number of



acquisitions were conducted using the services of the National Agency for Public Acquisitions.

Moreover, out of the total number of purchases made through the Agency 58% (1999) and 43% (2000) were conducted only using one source. Therefore, it is not possible to talk about an absolutely transparent and accessible system of public acquisitions. In order to determine the causes and explanations of this situation, the business people were asked the following question:



During the last 2 years have you bid on any public acquisition?

According to the responses only 14.6% of the total number of companies included in the survey have participated in such offers, which is a relatively low percentage. What are the reasons of non-participation in such public acquisitions offers?

According to the businessmen, there are several explanations for this current situation. First of all, 62% of the total number of respondents indicated that the profile of companies does not correspond to the offers proposed. This fact might express the general situation, but it might also be an incomplete assessment. For some reason, it was clear that the businessmen did not understand the meaning of "public acquisition." Possibly there is a need to conduct a small

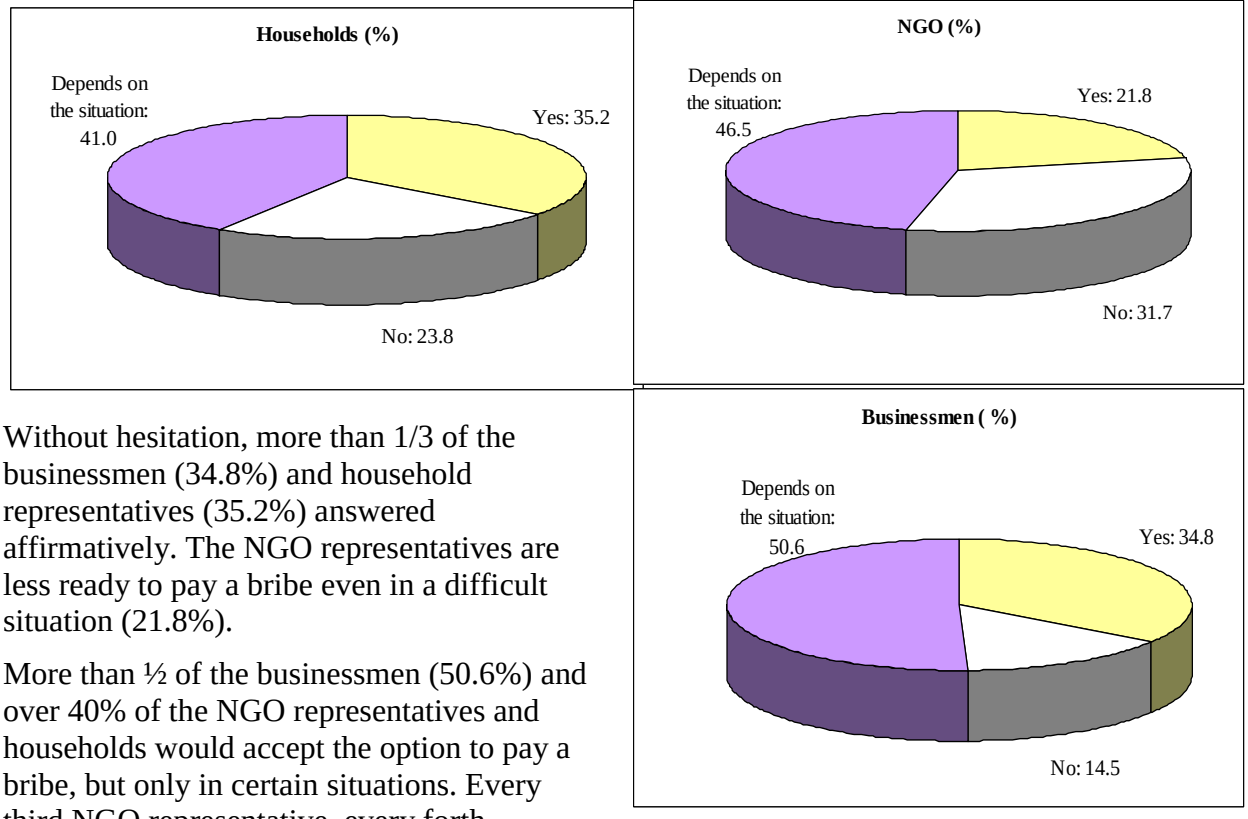
training for business people and demonstrate the potential advantages of participating in public acquisitions.

The second reason for a low participation in offers for public acquisitions is the consideration that the simple contracts could be easier (43.7%). More than 40% of the respondents consider that the acquisitions procedure is neither transparent nor equitable, and 34.2% think that it is not possible to win the contest without paying an unofficial fee. It is difficult to draw a conclusion from these responses due to a low rate (14%) of their personal experience; those without direct experience have only described their expectations. Nearly 1/3 of all the respondents pointed out the complexity and high cost of the process of participation in public acquisition offers.

1.10 Engaging Against Corruption

Today, reducing corruption is a priority for the government and the whole society. But how prepared is the Moldovan society to cope with this phenomenon and to what extent is the social conscience able to tolerate corruption? How are individuals contributing to the rejection of corruption cases? During this investigation we have tried to find some answers to these questions from our respondents.

If you were in a difficult situation, would you agree to pay a bribe?

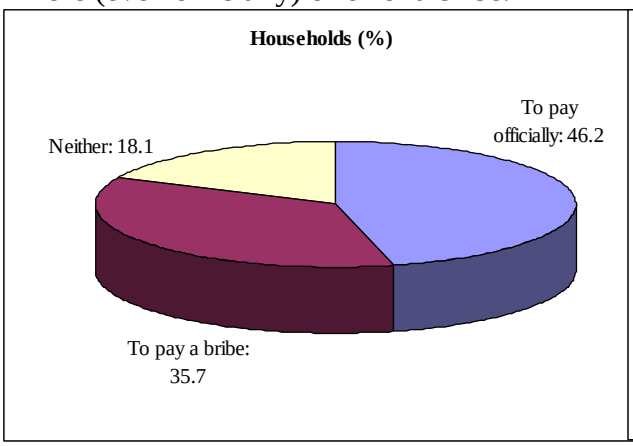


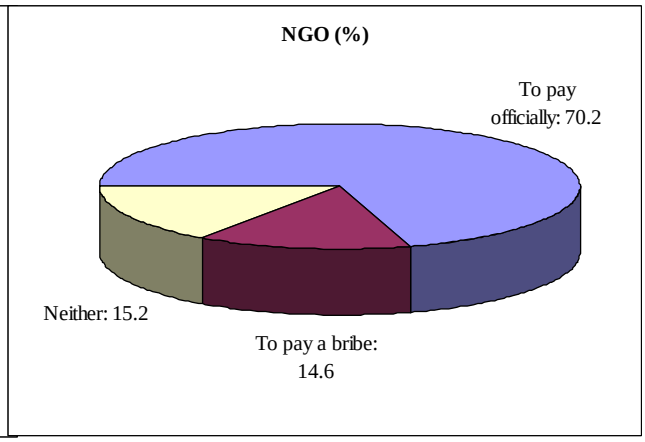
Without hesitation, more than 1/3 of the businessmen (34.8%) and household representatives (35.2%) answered affirmatively. The NGO representatives are less ready to pay a bribe even in a difficult situation (21.8%).

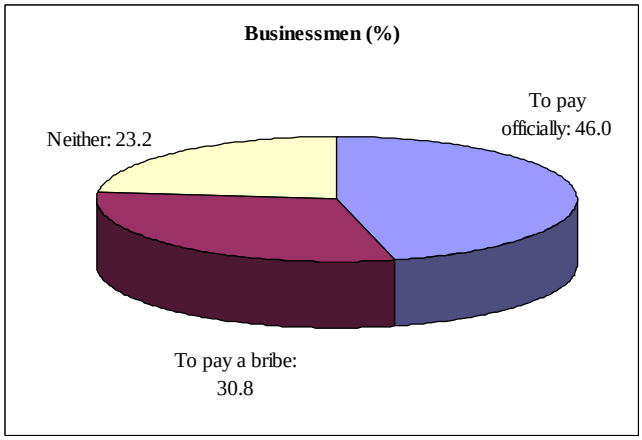
More than ½ of the businessmen (50.6%) and over 40% of the NGO representatives and households would accept the option to pay a bribe, but only in certain situations. Every third NGO representative, every forth household member, and 15% of the businessmen would not pay a bribe even in a difficult situation.

Which would you personally prefer, to pay more money officially or to give a bribe?

70.2% of the NGO representatives, 46% of the businessmen and the same percentage of households chose the official fee. 35.7% of the household members and about 15% of the businessmen and NGO representatives would prefer to give a bribe. 23.2% of the businessmen, 18.2% of the household members, and 15.2% of the NGO representatives disagree either to pay more (even officially) or offer a bribe.







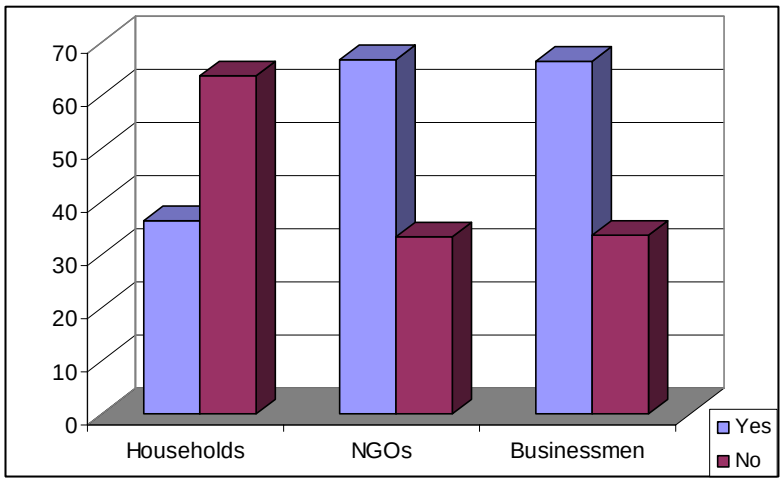
Regarding the persons who prefer to pay more have mentioned that they would accept the following scale:

- Those who would pay 50% more than the official fee: 11% of households and NGOs, as well as 7% of businessmen;
- Those who would accept to pay 25% more than the official fee: 17.2% of businessmen, 14.8% of NGO representatives, and 11% of household members;
- Those who would accept to pay 10% more than the official fee: 22.3% of the businessmen, 22% of the households, and 20% of the NGO representatives;
- Those who would accept to pay 5% more than the official fee: 31.1% of household members, 14.1% of NGO representatives, and 12.1% of businessmen;
- The other respondents answered differently or did not express their opinion.

The answers to the question below also demonstrate the diffusion of the corruption phenomenon within Moldovan society.

Have you or any of your family members faced corruption cases during the previous 2 years?

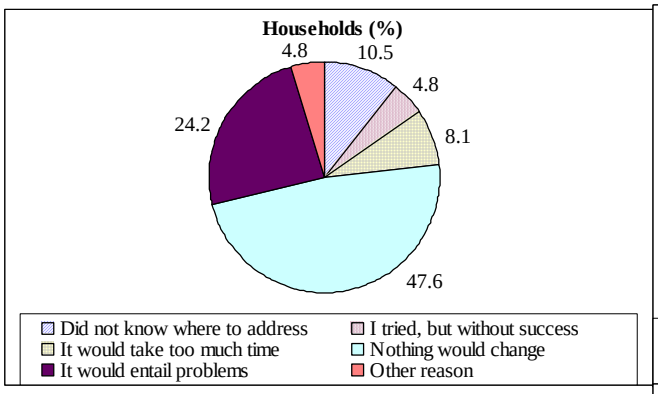
66.8% of the NGO representatives and 66.5% of the businessmen have responded positively to this question. The household members have directly encountered

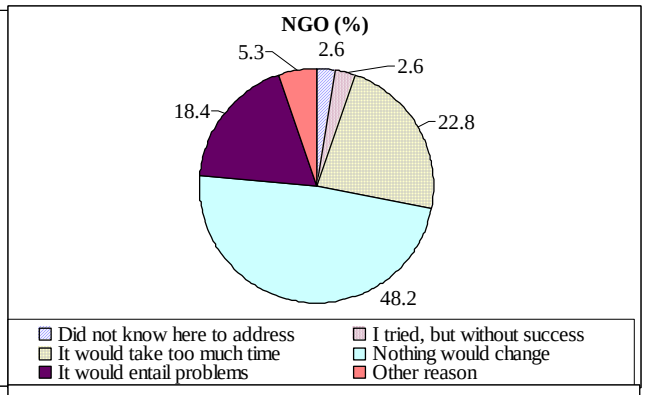


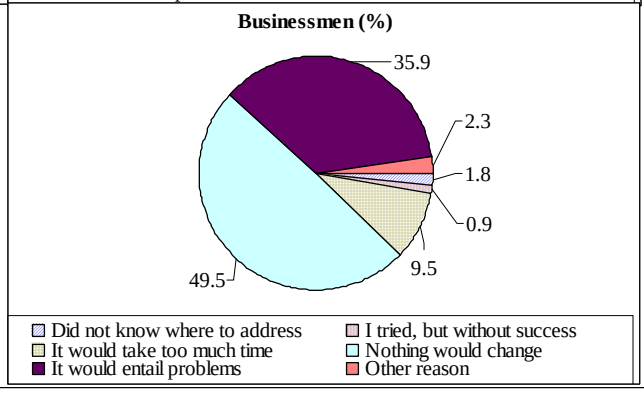
corruption cases less frequently (36.3%). However, according to the survey the majority of those who coped with corruption cases have never addressed the official institutions, nor have they filed a complaint or taken other actions regarding the past events. 87.9% of the household members, 86.1% of the businessmen, and 83.5% of the NGO representatives have confirmed that they remained complacent following their encounters with corruption.

What are the reasons that those who faced corruption cases never addressed a complaint or a request to the relevant institutions?

According to the survey results, the main reason lies in the uncertainty of the population about any potential for change. This belief was the reason why about ½ of the businessmen, NGO representatives and household members have not decided to address official complaints. At the same time, the survey emphasizes the fact that 35.9% of the businessmen, 24.2% of the household members and 18.4% of the NGO representatives have not addressed concerns due to the problems previously encountered.. A part of the respondents also indicated that a complaint would have taken a lot of time or that they did not know how and/or whom to address. Another reason stated was that previous complaints have not been successful.



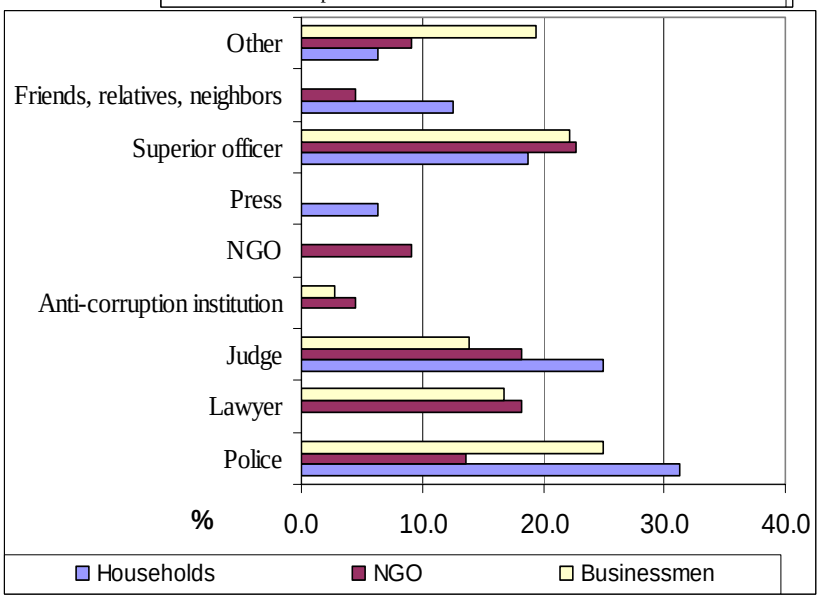




So, who should the people encountering corruption address? Who are the persons they trust most? According to the study most of the persons would seek assistance from anti-corruption institutions, a lawyer or the press and would talk to relatives, friends and neighbors.

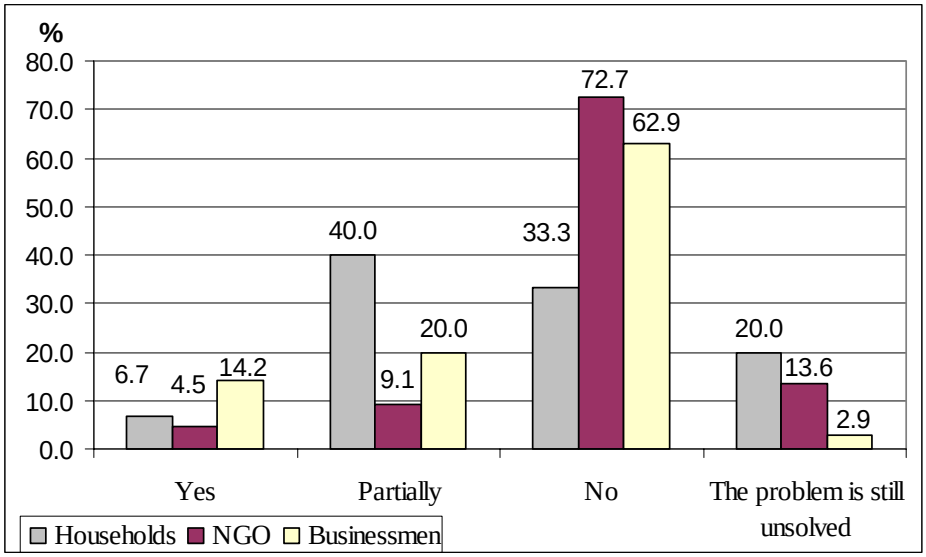
Where and to who have those filing corruption complaints address their cases?

Most of the households have addressed their complaints to the police (31.3%), judges (25%) and public officials (18.8%). The business representatives have addressed concerns to the police (25%), superior officers (22.2%) and other institutions and persons (19.4%). The NGO representatives have mainly addressed the superior officers (22.7%), lawyers (18.2%) or judges (18.2%). Thus, in most of the cases the complaints have been addressed to the legal institutions or superior officers within respective



administrations. What were the results?

Have the problems been solved?



Only 14.2% of the businesses, 6.7% of the households, and 4.5% of the NGO representatives have mentioned that their problem has been completely solved. In all the other cases the problems have either been partially solved, are still under processing, or have not been solved at all. 72.7% of the NGO representatives, 62.9% of the businessmen and 33.3% of the household representatives have pointed out this latter case. Certainly, this type of "efficiency," or lack thereof, within the legal institutions and other responsible persons generates concerns. Consequently, today there is a need to develop and apply some particularly efficient measures for reducing corruption.

In your opinion what would be the most efficient measures for reducing corruption in Moldova?[††]

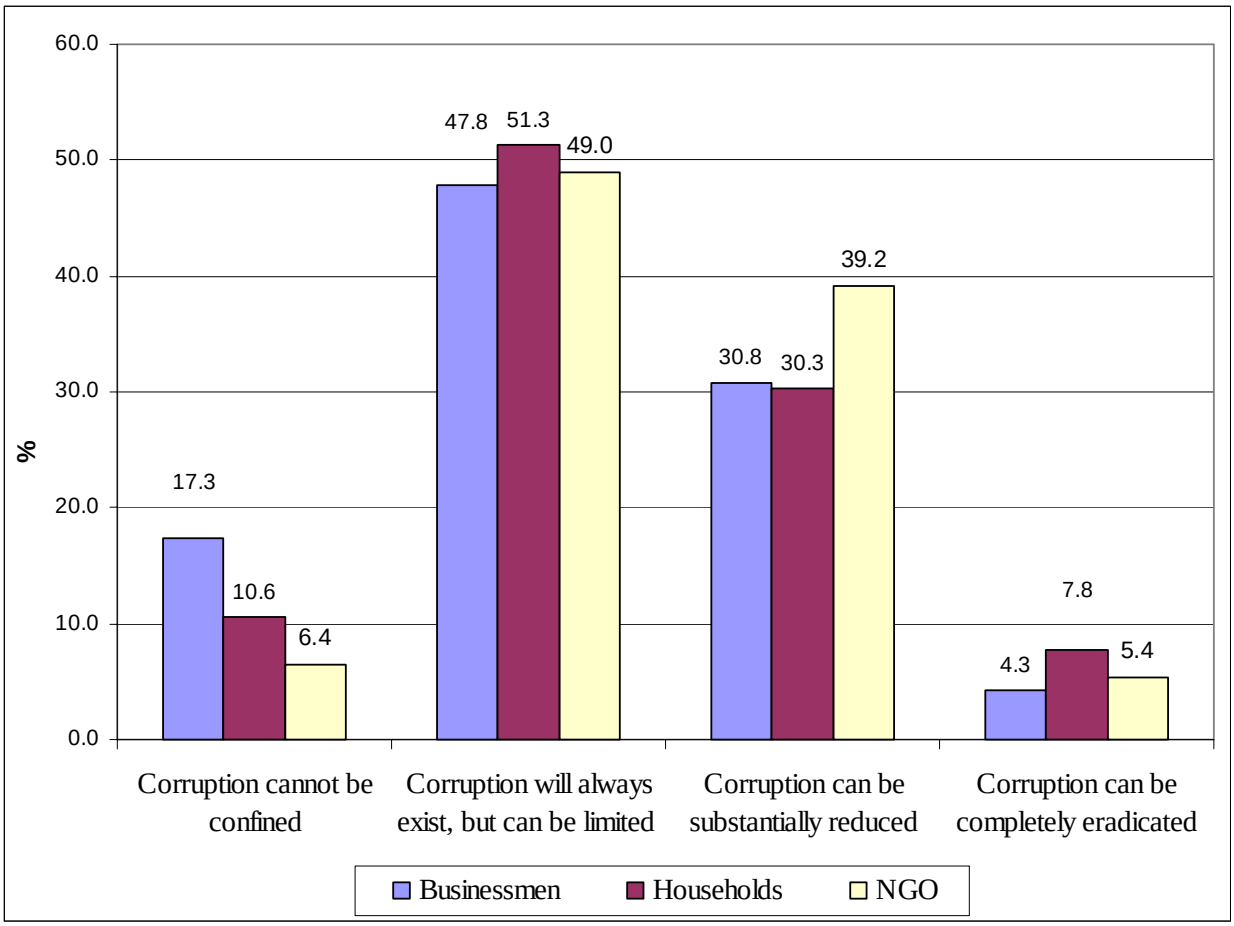
Measure	Businessmen	Households	NGO
Introduction of a new severe sanction for corrupt conduct	3.28	3.10	3.10
Teaching ethics courses in the educational institutions	2.46	2.23	2.49
Implementation of a system of income declaration	2.65	2.52	2.82
Reducing State intervention in the economy	2.46	2.58	2.64
Popular informational campaigns about the dangers of corruption	2.75	2.40	2.73
Introduction of ethical codes for public officials	2.44	2.20	2.58
Providing independence to the judges	2.49	2.55	3.01
Public discussion of budgets	2.64	2.53	2.83
Introduction of performance standards for the public officials	2.62	2.59	2.93
Intensification of sanctions for those who accept bribes	3.55	3.30	3.35
Intensification of sanctions for those who give bribes	3.10	2.78	2.91
Increasing salaries	3.43	3.33	3.37

According to the opinion of the 3 categories of respondents the most efficient measures of reducing corruption in Moldova would be: intensifying the sanctions for *those who accept bribes*, raising the salaries for the employees and the introduction of severe penalties for corrupt behavior. It is worth mentioning that the household members consider that the most efficient measure of reducing the corruption is making the penalties more drastic for those *who accept bribes* (91%).

Do you consider that corruption in the Republic of Moldova could be reduced?

Although very few of the respondents consider that corruption in Moldova could be completely eliminated (4-8%), the majority has affirmed that it is possible to limit its dissemination and that corruption could be substantially reduced.

[††] Average: the efficiency of measures has been calculated on a four-point scale; "1" stands for an inefficient measure and "4" for a very efficient one.



1.11 Corruption Perceptions of the Population by Different Levels of Education

A higher level of education usually offers the possibility to have a more technical occupation and higher income. On one hand, it could mean that those with higher education are more protected against corruption, and evaluate the problem as a less acute. On the other hand, these individuals have a better understanding of the situation in the Republic of Moldova and so their evaluation of corruption's pervasiveness could be higher. Respondents' evaluations concerning corruption have been grouped according to their level of education to produce an understanding of the real situation. Results show that in both the private sector and in civil society the higher the respondents' level of education is, the more the see corruption as a major obstacle for the development of the society in the Republic of Moldova. Accordingly, in the households, those with incomplete secondary education evaluate the corruption with an average number of 2.88, and those with higher education (including incomplete) use an average value of 3.13. It is important to remember that a value equal to 4 means a total stoppage of development. Among businessmen, this average rises to 1.63 for those with incomplete secondary education, and to 2.94 for those with even partial or incomplete higher education. In the case of NGOs, most of their employees are persons with higher education; NGOs generally evaluate the phenomenon of corruption in all domains of public sector more promptly and less tolerantly.

	Households	Businessmen
Incomplete secondary education	2.88	1.63
Secondary education	3.05	2.79
Special secondary education	3.08	2.62
Higher education, including incomplete	3.13	2.94

Hence, a solution for the prevention of the corruption phenomenon is educating the population about the consequences of this phenomenon on the society. Promotion campaigns designed to diminish the tolerance to corruption and trainings on citizens' rights, as well as on ways and authorities to address, when somebody faces unethical behavior among public servants are essential.

1.12 Summary

Below, the main conclusions are presented after conducting a survey on businessmen, households and NGO's:

1. Television, newspapers and individual experience are the main sources from which the society learns about the extent of corruption in the Republic of Moldova.
2. According to public opinion, corruption did not decrease in the past 12 months. Only 12.7% of the businessmen, 13.9% of the households 3.5% of the NGOs and consider that corruption diminished. As for the rest, at approximately equal rates, respondents consider that corruption remained at the same level or even increased.
3. Civil society clearly understands the notion of corruption as an abuse of power for the purpose of personal benefit, including bribery, favoritism and protectionism. When asked to express their attitude toward certain behavior from public officials, most of the respondents clearly understood where it was a matter of abuse of power. Therefore, the lack of knowledge is not a cause of corruption's spread in Republic of Moldova.
4. A change of public opinion regarding the main causes of corruption took place during the last 2 years. If in 2000 poverty was considered the primary motivation for corruption, then in 2002 the respondents mentioned other causes like the pressure on behalf of superiors and traditions. The shift could indicate an acceptance of corruption as a regular or entrenched phenomenon.
5. Corruption is placed second in the rating of basic problems facing the society in Republic of Moldova, preceded only by poverty. In comparison with the year 2000, the high level of criminality generates more and more anxiety.

   The biggest problem of the businessmen is taxation. In 2002, a problem even more important than corruption is the unforeseen changes in legislation.
6. Very few businessmen feel that State Institutions support them, and about 59% of businessmen consider that the State impedes their activity.
7. The businessmen consider that they spend about one-quarter (24.4%) of their total working time solving problems with public institutions and they regard this time as lost.
8. Although the average number of visits (official and unofficial) by State representatives to a company decreased in comparison from 2000, it still remains quite high – 31.4.
9. Businessmen believe that inspectors act as provided by law in only 35% of cases. As for the remainder of cases, bribery is employed.

10. Bribes constitute on average only 37.5% of the sum initially proposed by the State. This ratio makes the process of bribery attractive for both parties, the one accepting the bribe and the one offering it. As a result, substantial sums are removed from the State budget.
11. Although the wages of public officials are very small, daily accepted bribes in some institutions exceed the contracted monthly salary.
12. Relatively small rates of public purchases are carried out through the National Agency of State Purchases (30% in 1999 and 55% in 2000). Of all those accomplished via Agency purchases, 58% in 1999 and 43% in 2000 were from only 1 source. It does not insure a competitive environment for participants. Only about 7% of companies participated on some form or another in the offers of the Agency. Those who did not participate justify their exclusion by citing complicated procedures and high participation fees.
13. Only 14.5% of the total number of businessmen, 23.8% of households and 31.7% of NGOs believe they would not pay a bribe if put in a difficult situation. The rest of respondents would prefer to solve their problems in a more informal way.
14. About 46% of businessmen and households, and 70% of NGOs would choose an increase in tariffs instead of the embarrassing procedure of bribery. At the same time, some respondents are convinced that even increased tariffs will not save them from paying an additional bribe.
15. 67% of businessmen and NGOs, as well as 36% of households directly encountered corruption during the last 2 years.
16. According to the investigation results, the most frequently contacted public services are the health care institutions, educational institutions, tax departments, passport departments and customs controls. Businessmen, due to the specific feature of their activity, often have to deal with banking institutions, sanitation, fire and environmental departments and electricity suppliers.
17. At the Civil Records Department, cadastral offices, passport department, vehicle registration and technical inspection offices, private property registers, tax department, customs controls and medical institutions, bribes are paid mostly to secure favors.

    At the customs, police, district attorney, financial guard, tax department, notary and private property registration, a bribe is generally paid to avoid problems. So, we observe that in some institutions bribes are paid both to receive favors and to avoid possible problems.
18. The study reveals that there is an inverse correlation between the frequency, or number of contacts with the institution, and the average volume of the bribe. In some more rarely contacted institutions, the average bribe is usually much higher than in the institutions that are contacted more frequently. It was established that the average bribe paid to an officer of the Financial Guard is comparable to the Moldovan average annual wage.
19. Minimal estimations show that the amount of bribes paid during the previous 12 months by business people constitutes over 30% of the State budget; this money should return to the population as entitlements. The business representatives paid bribes to the customs controls amounting to a sum of about 173,000 lei; to tax inspectors about 97,000 lei; to construction authorization authorities about 62,000 lei; to the financial guard, about 61,000 lei; and to police about 37,000 lei.
20. About 85% of persons encountering corruption never addressed the official authorities about protecting their rights. The main cause of this civic passiveness is the certainty that nothing would change. About ½ of the respondents share the same opinion and about 18.4%-35.9% of different groups of respondents believe that addressing this issue to legal institutions would generate problems, especially in the case of the businessmen. Out of

those who nevertheless tried to protect their rights, the problem is still present in 86% of NGOs, 65.8% of businessmen and 53.3% of households.

21. The segment of the population possessing a high level of education clearly has negative attitude towards corruption. The NGOs are the most intolerant in evaluating this phenomenon. Hence, informing the population about the consequences of corruption and consolidating the population against this vice would be a way of preventing this phenomenon.

22. Public opinion asserts that the most efficient way of fighting corruption is the severe punishment of corrupted persons. The population believes that both parties should be punished- the one who accepts a bribe and the one who offers it, even if support for punishing the latter is minor.

23. About 1/2 of respondents believe that corruption will exist forever in the Republic of Moldova although it might be possible to limit its influence. 1/3 of respondents is more optimistic and consider that corruption can be substantially reduced.

The analysis of the survey results shows that corruption has reached a relatively high level of development in the State institutions and that it has severe consequences on the society. Under these conditions it is necessary to elaborate a system of social indices, based on which the corruption phenomenon will be observed. The creation of a social mechanism for corruption reduction could also be efficient and it should involve both public bodies and civil society. We believe that these activities would constitute a positive supplement for the draft of the National Anti-Corruption and Anti-Crime Program for 2003-2005.

2. The Judicial System of the Republic of Moldova: Access, Transparency, Independence

In 1948 the General Assembly of the United Nations Organization proclaimed the Universal Declaration of Human Rights[1], which states that everyone has the right to life, freedom, security, to effective remedy before the national authority for violation of fundamental rights, recognized by constitution or by law. Region-wise, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)[2] followed in 1950; the Convention reaffirms the belief in fundamental freedoms, which are the foundation of justice and peace.

By adhering the Universal Declaration of Human rights, the Republic of Moldova has reaffirmed that securing freedoms and protection of human rights, enforcement of effectively equal rights of all people are the major aims and tasks of the states. The Republic of Moldova has reaffirmed that it will assume the obligation to respect the generally valid fundamental principles of the modern international law referring to human rights, and to irreversibly promote the process of democratization of the country.[3]

The Republic of Moldova signed the European Convention on July 13, 1995 and ratified it on September 12, 1997. For the ratification of the Convention, an inter-ministerial commission was set up to consider the compatibility of the legislation of the Republic of Moldova with the European standards[4], which was followed by a task force to consider the compatibility of the laws of the Republic of Moldova with the provisions set out under the European Convention for the Protection of Human Rights and Fundamental Freedoms[5]. With the scope of realizing the government's obligations to ensure fundamental human rights and freedoms, the president has appointed the Ministry of Justice as an authorized representative of the Republic of Moldova with the European Commission for Human Rights and with the European Court of Human Rights[6], while the Parliament has approved a program of harmonizing the national legislation with the international standards[7].

Not withstanding adherence to the Universal Declaration of Human Rights and the European Convention, in the first years of independence legitimate interests of the citizens of the Republic of Moldova were still protected pursuant to legislation, which was partly obsolete and dated back to the Soviet era, which largely defend the interests of the state and the nomenclature, rather than legitimate rights and interests of the individuals. Under the new economic conditions, the obsolete judiciary system was no longer capable of supporting the development of society, being – from the start – in contradiction with democratic principles.

In a state governed by law, it is the government that is a creator of law, of the norms of law, it is the government that establishes the constituent parts of the juridical system and organizes the implementation of juridical norms by every individual, official, governmental body, or other body of a private agent. The essence of a state governed by law is the existence of and the inseparable link between state, law and individual, the balance between the three, which ensures the supremacy of law, observance of human rights and fundamental freedoms. If governmental institutions dominate, the balance cannot be maintained, the balance of powers disappears, as does the balance between state, law and individual. The result is a totalitarian, despotic, politicized, militarized police state, etc. in which a common individual, who is the natural source of the existence of law, is placed in danger. The law in a totalitarian state is subordinated to the dominating ideas of a party or officials, whereas the human rights and freedoms are limited. Lawfulness is only an appearance, which in ensemble serves to distort the activity displayed by public institutions.

A state, governed by the law is possible only, when it is constitutional, when the Constitution is a fundamental law, based on the principle of separation of power into legislative, executive and judicial branches, when the main aim of state and law is securing and protection of the fundamental human rights and freedoms, based on the supremacy of law, under the conditions of

a democratic regime and free development of every individual. In a true state, governed by law, the three branches of power cooperate under condition of law, while judicial and constitutional supervision over the normative acts, governmental bodies and authority of decision-makers in the society is a mandatory condition to maintain the transparency of government actions and ensure the publicity of actions of the three branches, which can only operate observing the norms of law in the interest of human rights and freedoms.

The previous Constitution stated political, economic and social rights; however, these rights were not secured *de facto* and had a status of formal rights. Possibilities of justice to defend the rights of citizens were neglected. The consequence was loss of confidence in the ability of state to protect interests of a common citizen, which is grave consequence for a state that claims to be a state governed by law. Therefore, the notion of law becomes a mere declaration.

The Constitution of the Republic of Moldova of July 29, 1994[8] states that "the state governed by law, civil concord, democracy, human dignity, rights and freedom, free development of human personality, lawfulness and political pluralism" are considered to be the supreme values of the society and are guaranteed. Given these ideas are accepted, the government and law are to realize the objectives, set out in the supreme law of the society and the state.

State governed by law appeared as a concept, and realization of this concept becomes vital necessity for the existence of any state, for the establishment of a democratic regime, and securing fundamental human rights and freedoms.

It is clear that without lawfulness and establishing independent and impartial judiciary system the Republic of Moldova cannot have its future of a prosperous European state. Security of citizens, security of property, protection of lawful rights of citizens and businesses, combating corruption, prospective for foreign investment, close co-operation with European institutions, etc cannot be guaranteed without it. For Moldova, same as for any other country in transition, strengthening lawfulness on the basis of an independent judiciary system and bodies of law and order established by law has always been and still remains a priority task in reaffirming the state governed by the law. At that very instance it became necessary to work out and adopt a new concept to contribute to the development of the judiciary branch as well as to separation of the judiciary branch from the other two branches of power. While the executive and legislative branches shall, in their turn, contribute to the creation of environment conducive to strengthening the judiciary system, improving its efficiency, free access to justice, securing fundamental human rights and freedoms by means of juridical mechanisms.

The Republic of Moldova adopted the Concept of judiciary and legal reform, which was oriented towards the implementation of the principles of a new judiciary system. After the reform was launched, various obstacles appeared, which prevented the judiciary system from accomplishing the goal of securing the fundamental human rights and freedoms. Thus, the authority of the judiciary has evidently lost the trust of citizens in fair justice.

The authors of this report made a survey of the current judiciary system in the Republic of Moldova and the implementation of the fundamental principles underlying the judiciary system. The goal of the study was to highlight the actual situation as well as the problems experienced in the course of reform implementation. With that in mind, and arising from the international practices and local experience, we hereby come with proposals supporting creation of the state governed by law, improving efficiency of the judiciary system and ensuring its independence as a real guarantor in the protection of fundamental human rights and freedoms.

2.1. The Principles of Judiciary System in a State of Law

Jeremy Pope says that the impartial and informed judiciary branch is central to the realization of right, honest, open and responsible governance[9].

Article 6 (the right to a fair trial) of the European Convention for the Protection of Human Rights contains general norms - principles of judiciary system are among them - for securing this right. Pursuant to this article, everyone is *entitled to a fair and public hearing* of his case *within a reasonable time by an independent and impartial tribunal established by law*, which shall judge both charges of violation of rights and obligations of civil nature by him, and any criminal charges brought against him. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. *Everyone charged with criminal offence shall be presumed innocent until proved guilty pursuant to the law*.[2]

Matthew Hodes[10] (with reference to the presentation of the USA Supreme Court judges at a World Bank conference of 2000) considers that states, which are based on the principle of rule of law, have the following characteristic features:

- States offer all the citizens **"***even playing field", where all citizens are treated equality before the law*;
- These states have *a judiciary system* composed of *impartial judges freed from political interference, while the decisions are based on facts and law*;
- These states have a judiciary system, which provides *an effective check against abuses of executive authority*, whose *decisions are respected and executed*.

Herewith presented are the core principles of the judiciary reform:

- *Political independence*, which implies that if genuine independence is a key to an efficient judiciary, the true independence is impossible without freedom from political pressure. *The judiciary systems must be, and must be seen to be, separate and independent from, the influences of the executive and legislative branches of governance.*

- *Merit-based selection*, which implies selection of judges and prosecutors based on merit, and not their political or family association. To this end validation procedures can be applied, which consist of interviews and selection of candidates from members of judicial assembly based on professional recommendations.

- *Accountability*, which implies that judges and prosecutors must be accountable in their work to the public. Bodies of executive and legislative power to their discretion may not inappropriately use submission of reports. *Discipline should be rendered in accordance to fair and understandable codes of ethics, by tribunals, which have the authority to deal with cases of conduct of the colleagues*.

- *Remuneration*, which implies that the salaries and pensions should reflect the special place in society occupied by members of the judiciary. The same is true with respect to *guarantees of tenure*. In return the Codes of ethics mentioned previously should be *firm in their establishment of conflicts of interests* and should be based not only on preventing improprieties, but even the appearance of such. This can serve to reduce the temptation to succumb to bribes and other attempts to purchase influence.

- *Physical protection*, this implies ensuring physical protection of *judges and prosecutors, who are involved in investigation and examination of cases having social importance*, in order to protect them from problems, which may compromise impartiality of judgment.

- *Training*, which implies realization of professional training programs for judges and prosecutors, taking into account new realities, new legal and cultural standards, new investigation technologies, methods of work, etc. This also implies professional training of counsels to ensure that decisions rendered by courts are effectively enforced.

- *Court Administration*, this implies a range of measures that should be taken by judges to *eliminate procrastination of the examination of cases* to linger indefinitely. This should be achieved by improving the infrastructure, improving the proficiency of staff and the logistics of courts.

Jeremy Pope also[9] quotes a number of fundamental criteria, which an efficient judiciary system should meet:

- *An impartial court*, with reference of a universally recognized right to a fair trial before an impartial tribunal;

- *Persons selected to judiciary office should have integrity, ability, possess adequate qualifications in law.*

- *Selection process should be nondiscriminatory*, at the same time care should be taken against discrimination when a candidate of a certain nationality (citizenship) is required for a judiciary office;

- Means of appointment in office and further promotion of judges are of vital importance for their independence; *judges should not be appointed out of political considerations but solely on the consideration of their competence and political neutrality*; they should be selected on the basis of merit, personal integrity and ability, and not as a reward for party services, or as a means of protection of the executive branch in order to secure itself in cases when the principles of a state governed by law are violated;

- *Promotion of judges should be based on objective factors*, in particular, *ability, integrity and experience*. Promotion should be considered as a reward for professionalism and extraordinary competence, but in no way as a reward for a doubtful decision in favor of the executive power. *Judges themselves should participate in the process of selection for promotion*; whatever say the executive branch has to have in it should be minimal.

- *Senior judges should ensure the functioning of justice at a lower level of the hierarchy as well.*

- *Judges* of both higher and lower instances *cannot be "above law", there should be sanctions for those who have temptation to abuse their office or show outright professional incompetence*;

- The concept of judiciary independence implies that the judiciary is provided with *an adequate remuneration* and the right of a judge to remuneration should not be changed to his disadvantage. If judges are not confident, that either their mandate or remuneration is secure, their independence is evidently in menace.

- *The principle of "irremovability"* of the judiciary, which implies removal from office only on grounded motives and following a fair trial, and life-long term of office (which is the most common) till retirement age are important safeguards of a state governed by law.

- *Removal of a judge form office* should be made *in accordance with adequate and well-defined procedures, where the judiciary play a decisive role; cases* of confirming inadequate conduct in office should be judged; judges should be *removed from office in exceptional cases*, while the motives of removal should by all means be presented before a judiciary body, judges should be removed or suspended from office for cases of professional inability, or inadequate behavior, which make the performance of duty impossible.

- *Provision of the judiciary system with its own budget.*

- *Independence of prosecutors*, prosecutor should not receive any instruction from any political party or an interest group; given the fact that *the discretionary power of initiating criminal prosecution*, which is the foundation of a juridical system, is one of the most difficult areas of law, clear-cut principles should be formulated in order to determine what violations of law should be taken into account and what should be excluded from the process of taking decision to initiate criminal prosecution.

Similar provisions are included in the Recommendations of the Committee of the Ministers of the Council of Europe, they hold good for the Republic of Moldova, which is a member of this European institution.

2.2. The Judicial and Legal Reform in the Republic of Moldova

In early 90s – in the absence of a democratic constitution and a clearly defined concept - the implementation of a judiciary system based on new principles was hardly possible. That is why at that time in the Republic of Moldova a two-fold effort was under way: development and adoption of a new Constitution; and designing and approval of the concept of judiciary and legal reform. To this end two task groups were set up, a conference was held, and the recommendations of the conference were put at the basis for the concept of judiciary and legal reform[11].

The practical implementation of the new judiciary concept is a pressing necessity and can not be postponed. Failure to implement it will result in a delay in the progress of reform. Whereas the experience of advanced countries makes it possible for us to expedite the progress of reform by means of implementing new concepts.

Unfortunately, in the period of transition the development and adoption of both the Constitution and the concept of legal and judiciary reform lagged behind the implementation of market reforms. This fact had a negative effect on the effort of implementation and securing of the state governed by law.

In 1994, however, *Parliament adopted the concept of judiciary and legal reform of the Republic of Moldova*, and set up a coordination council for the implementation of the reform[12]. The Concept recognizes that due to factors of legal, organizational, social and material nature the judiciary power cannot be autonomous, the priority of individual rights and freedoms cannot be secured, protection of rights and supremacy of law cannot be guaranteed in all social spheres. The Concept recognizes that the judiciary and legal reform is one of the most important steps in the transition from governance by directives to a democratic law-based state. As is emphasized in the Concept, the formation and strengthening of an independent state of the Republic of Moldova requires, as an imperative, the implementation of the principle of separation of powers - a primary condition of a law-based state. It is emphasized that the state has three fundamental functions, each bearing upon corresponding authority (i.e., power): legislative power, executive power and judiciary power. Each power is vested with relatively autonomous bodies, which ensure the smooth movement of state activity. In a law-based state the judiciary power is autonomous within its jurisdiction and is equal in status to the legislative and executive power.

It was clear that only a new Constitution could provide the basis of the implementation of the principle of separation of powers.

The Concept determines, that in order to achieve the goal of establishing a law-based state, the following principles should be observed: strict separation of authority of the bodies which represent the three powers, the priority of human rights and freedoms, the assuming and harmonization of principles and norms of international law, and in the process of the implementation of reform the priority of international law should be observed. The Concept also

determines, that justice should be realized on the basis of the general principles, which are aimed at securing the independence of the judiciary authority: defining the status of judges and establishing the Superior Council of Magistrate judges, a special body, which has the goals of securing the independence of the judiciary system, of providing guarantees and forms of self-administration of courts, of constituting the judiciary system and of exercising supervision over the activity of judges.

The Concept envisaged establishment of the Constitutional Court, a single authority of the constitutional jurisdiction in the state, meant to guarantee the supremacy of the Constitution, to secure the implementation of the principle of separation of powers, to guarantee the responsibility of the state to a citizen and the responsibility of a citizen to the state. The Constitutional Court is to secure the supervision over constitutionality of laws, presidential decrees and government decisions, to maintain the balance of powers in the state and to contribute to good functioning thereof.

The Constitution of the Republic of Moldova[8] was adopted in the same year of 1994, after the approval of the Concept of judiciary and legal reform. The Constitution proclaimed that "the Republic of Moldova is a democratic law-based state, where human rights and freedoms, free development of individual, rule of law and political pluralism are supreme values and are guaranteed" (article 1). It further proclaimed that "constitutional provisions concerning human rights and freedoms are interpreted and applied in accordance with the Universal Declaration of Human Rights, international conventions and treaties to which the Republic of Moldova is a signatory" (article 4). "In the Republic of Moldova the legislative, the executive and judiciary branches are separated and co-operate in exercising their powers according to the provisions of the Constitution" (article 6).

The Constitution proclaims human rights and fundamental freedoms, which it guarantees. Should these rights and freedoms be violated, the citizen should have free access to justice guaranteed by the Constitution (article 20).

On December 13, 1994 with the scope of securing the observance of the constitutional provisions the Parliament has passed the Law of the Constitutional Court[13]. Pursuant to the Constitution and law, *the Constitutional Court is a single authority of constitutional jurisdiction in the state, which guarantees the supremacy of the Constitution, secures the implementation of the principle of separation of powers into legislative branch, executive branch and judiciary branch, guarantees the responsibility of the state before a citizen and the responsibility of a citizen before the state*. To implement the constitutional provisions, the Constitutional Court exercises – upon notification - supervision over constitutionality of laws, parliamentary regulations and decrees, Presidential decrees, Government decisions, international treaties to which the Republic of Moldova is a party. The Constitutional Court interprets the Constitution, pronounces judgment on moves to review the Constitution, settles exceptional cases of non-constitutionality of legal acts, brought to its attention by the Supreme Court of Justice, and exercises other functions. The acts of the Constitutional Court are indisputable, final and effective as from the date of approval. Laws and other acts, or provisions thereof declared unconstitutional, become nil and void on and inapplicable as from the date of decision by the Constitutional Court.

Pursuant to the Constitution, *the Constitutional Court is not part of the judiciary system, it does not consider administrative, civil or criminal cases, does not establish guilt or innocence of individuals, nor is it an instance for appeal or claim.*

In order to realize the principle of separation of powers, the law requires that the three branches of power should be represented in the Constitutional Court. Pursuant to article 136 of the Constitution, the Constitutional Court is made up of six judges, each having a 6 years' mandate: 2 judges from Parliament, 2 judges from the Government (as per article 6 of the constitutional court law: from the President of the Republic of Moldova), 2 judges from the Superior Council of the magistrate courts.

With view to implementing the constitutional provisions and the concept of judiciary and legal reform, an action plan was approved in a Parliamentary decree[14]. For coordination purposes, task groups were set up to prepare a draft penal code and a code of penal procedure, a draft civil code and a Code of civil procedure[15].

In correspondence with the requirements of the new Constitution, which is based on the principles of the Concept of judiciary and legal reform, a number of normative acts were approved, they provided a framework for the implementation of a new judiciary system, the restructuring was planned to be completed on August 27, 1996.

2.3. The Judiciary System of the Republic of Moldova: General Overview

Pursuant to effective legislation, the judiciary authority in the Republic of Moldova is represented: by the courts, the Superior Council of Magistrates and by the prosecutor's office. This new system is stipulated in chapter IX "The Judiciary Authority" of the Constitution and in other organic laws.

In accordance with the law, the judiciary authority is independent, separate from the executive and legislative branches, and has its own powers. Justice is administered in the name of law. Under the Constitution, powers to administer justice are vested with the judge. The judge exercises them in performance of duty. Court judges are independent, irremovable from office and abide by the law exclusively. To administer justice the judges have plenipotentiary powers, established under the law. Requirements and orders of judges, related to judiciary activity, are mandatory for all natural and legal persons. Non-implementation is punishable by law.

Courts administer justice to protect and realize the rights and fundamental freedoms of citizens, associations of citizens, enterprises, institutions and organizations. Courts prosecute all cases of legal relations of civil, administrative and penal nature, and other cases, for which law does not establish other jurisdiction. In the administration of justice courts protect the state and constitutional order in the Republic of Moldova.

Everyone has the right to effective satisfaction by competent court of any acts of violation of his legitimate rights, freedoms and interests. Associations of citizens, enterprises and institutions have the right of action to protect the legitimate rights and interests, which were violated. Everyone charged with criminal offence shall be presumed innocent until proved guilty according to law, in a public hearing, in which the necessary defense is guaranteed and secured, and the judgment is final.

The Courts

The Supreme Court of Justice, Court of Appeals, tribunals and courts administers Justice. Specialized courts (economic, military) deal with special cases. Setting up of extraordinary court is forbidden.

Courts act in districts and municipalities.

Tribunals comprise several courts and exercise their powers in a district.

Specialized courts are part of judiciary system. They are similar to tribunals in organizational and operational aspects, with exception of certain legal provisions specifically referred to the specialized courts.

Military courts[16] are specialized courts, which administer justice within the armed forces. Military courts administer justice to protect state security, efficiency of armed forces, rights and freedoms of the military.

The jurisdiction of the economic courts[17]**:** disputes, which arise in the course of economic relations of natural and legal persons. The courts ensures protection of legal rights and interests of natural and legal persons in business relations and other economic relations, correct and fair application of legislation, helps regulate the economy.

The system of economic courts includes district economic courts, economic court of the Republic of Moldova, the Supreme Court of Justice (for litigation's of economic nature).

Tribunals and specialized courts are under jurisdiction of the *Court of Appeal*.

Location of courts, jurisdiction, the number of judges in courts, tribunals and in the Court of Appeal is approved by Parliament on proposal of the Superior Council of Magistrates.

The superior court and supreme body of judiciary power is *the Supreme Court of Justice*. It ensures correct and uniform application of law by all courts, settlement of disputes, which arise in the process of application of law, guarantees the responsibility of the state to a citizen and the responsibility of a citizen to the state (as well as the Constitutional Court), ensures that the principle of the presumption of innocence be observed, contributes to the creation of a state governed by law[18].

Each court has an office, archives, documentation service and administrative service. To ensure the security of courts each of them have a police force assigned to them.

The Superior Council of Magistrates

Pursuant to the Constitution and the Law of Superior council of Magistrates, the *Superior Council of Magistrates is an independent administrative judiciary body. The Council is established with view to constituting and functioning of the judiciary system and is a guarantor of the independence of the judiciary power*[8,19]**.**

In its relations with the Supreme Court of Justice, the Ministry of Justice and government authorities, the Superior Council of Magistrates is independent and is governed only by the Constitution and laws.

Revalidation and disciplinary boards are bodies within the Superior Council of Magistrates. The objective of the *revalidation board* is to build a corps of judges, which are capable of exercising justice in a qualified, conscientious and objective manner based of professionalism, and to confirm the level of professional proficiency of candidates to the office of judges and that of judges.[20] The *disciplinary board* examines cases of disciplinary responsibility of judges.[21]

The Superior Council of Magistrates has a staff. The staff of the Superior Council of Magistrates carries out the work of the Council, and of the two boards.

The Prosecutor's Office

Pursuant to the Constitution, the Prosecutor's office is a part of judiciary authority. The *Prosecutor's Office* represents general interests of the community and protects law and order, rights and freedoms of citizens, *institutes prosecution, represents the prosecution in court under condition of law*.

Pursuant to the law on the Prosecutor's Office[22], the *prosecutor's office is also a supervisory body, which monitors precise and uniform execution of the law*.

The office of the Prosecutor General, local (i.e. district, municipal) prosecutor's offices, and specialized (military and transport) prosecutor's offices are part of the system. Prosecutor's units at courts are also part of the system. The number of prosecutor's offices, their location, jurisdiction, structure and staff are approved by Parliament on the proposal of the Prosecutor General.

Herewith it is worthy to mention that the title "judiciary authority" of chapter IX of the Constitution is interpreted as judiciary power, rather than judiciary system. This is due to the Russian name (Судебная власть) of the chapter. In this case the name of the chapter is not compatible with contents, because *the prosecutor's office, which is an element of judiciary system, is not judiciary authority*, since it is courts in person of judge – the only representative that exercise judiciary authority[8,23,24]. Possibly, because of the confusion of the notions of judiciary system and judiciary power, the following language was incorporated in the prosecutor's office law, "the prosecutor's office exercises its powers as an independent body in the system of judiciary instances" (article 1 (4)). This is a particularly important element of the state organization because it underlies the provision on the place and role of the bodies of judiciary system, especially of the prosecutor's office. We find the name "Judiciary authority" to be unsuitable because it does not reflect the contents of the chapter. The name was taken in 1994 during the formulation of the concept of judiciary and legal reform; thus it was incorporated into the Constitution of the Republic of Moldova. Therefore, the part "Prosecutor's office" should be removed from chapter IX of the Constitution. Provisions of article 1(4) of the prosecutor's office law should be abrogated: pursuant to this provision the prosecutor's office exercises its powers as an autonomous body in the system of judiciary organs, thus the prosecutor's office has an autonomous status in general government.

2.4. Ensuring Access to Justice Through the Implementation of Judiciary Principles

Availability of an authority established by law

Pursuant to effective legislation[17,23,25], the judiciary system of the Republic of Moldova comprises as follows:

- the Supreme Court of Justice with a staff of 15 judges (as per manning table);

- Court of Appeal – 35 judges;

- Economic Court of the Republic of Moldova - 10 judges;

- Economic Court of Chisinau district 12 judges;

- Military Court – 5 judges;

- Five tribunals with a total corps of 68 judges (the number of judges vary from 5 to 25);

- 48 district and municipal courts with a total corps of 309 judges (the number of judges varies from 2 to 17).

Establishment of courts and their functioning on the basis of law is hampered in the left-bank, the self-proclaimed Transnistrian Republic. Pursuant to law, 2 municipal courts, 5 district courts and 1 tribunal are established in this area[23]. Pursuant to the law on the restructuring of the judiciary system, the courts which operate on behalf of district courts of the left bank, are situated in reality on the right bank. They deal both with cases in the jurisdiction of the court, on whose behalf they operate, and in the jurisdiction, where they operate. *In fact, the laws of the Republic of Moldova are not effective in Transnistiria*, and the courts, which operate there, are established under the law of Transnistria, they protect the rights of its leader, rather than fundamental human rights and freedoms. Thus, Alexandr Radchenco, the chairman of the popular power party, and Oleg Horjan, the first secretary of the leninist-communist union of youths, declared that the president of Transnistria (Igor Smirnov) "has executive, judiciary and legislative powers", that "the court in Transnistria is represented by Smirnov himself, who according to law, has the powers to propose, appoint and remove judges from the office" and "that it is difficult to imagine how a judge can overlook this fact and take an independent decisions"[26], these elements are typical of a totalitarian regime.

Due to the fact that the laws of the Republic of Moldova are not effective in Transnistria, the Parliament of the Republic of Moldova has ratified the European Convention of Human Rights and Fundamental Freedoms with the following statement and reservations, "The Republic of Moldova declares that it shall not be able to secure the observance of the provisions of the Convention with view to omissions and actions of the authorities of the self-proclaimed Transnistrian Republic in the territories under their effective control before the final settlement of this regional conflict"[27].

Therefore, we state that the principle of the existence of tribunal established by law has not been implemented. The problem of establishing courts in Transnistria and their functioning under the laws of the Republic of Moldova shall be settled simultaneously with the settlement of the Transnistrian conflict.

Free access to justice

In a modern judiciary system free access to justice implies at least three elements: organizational, functional and secure legal assistance.

Article 20 of the Constitution declares that everyone has the right to effective satisfaction by competent tribunal against acts of violation of his legal rights, freedoms and interests, free access to justice cannot be limited by any law. This principle was placed at the basis of the new judiciary system and the new judiciary principles in penal, civil and contraventional procedure.

This country has been in transition for a number of years, however, a host of old laws are applied in everyday life, new laws provided for judiciary mechanisms to secure free access to justice. According to civil procedure, everyone, whose legal right is violated, can initiate a case for protection or re-institution of his rights under a general, special or administrative procedure. Similarly, anyone, whose rights were violated by an act of offence, can apply to police, prosecutor's office or other authorized agency with request to undertake an investigation with view to establishing the circumstances of the offence, prosecuting the culprit and compensating for damage. When elements of criminal offence are revealed the prosecutor sends the case to court for consideration.

If the plaintiff considers that his rights were violated by prosecutor or investigation agency, he can complain against these violations in the court of respective jurisdiction (in whose jurisdiction the prosecutor's office is situated).

In the event of detention or arrest, the person detained or arrested, or his authorized representative can initiate a move to establish the lawfulness of arrest / detention and pursue release in case of illegal detention.

Any party to a case, which is subject to appeal, has the right to complain against court judgment, which he considers to be unlawful. State duty is not payable for appeal against court judgment in criminal procedure, whereas in civil procedure state duty is payable more often than not.

Since there are laws that can obstruct access to justice, pursuant to judicial practice established by the decision of the Plenum of the Supreme Court of Justice[28], court *ex oficio* may not apply the law which limits citizen's right, as an exception, this regards the laws passed before April 29, 1994. If such provisions were included in organic laws or other acts after the Constitution had been adopted, the court *ex oficio*, or on the initiative of a party, notifies the Constitutional Court to decide upon constitutionality of such a law.

> Thus, adequate judicial mechanisms are in place to implement the constitutional provision of article 20 "no law shall obstruct free access to justice", and free access to justice shall be secured.

In spite of this, *the current legislation has provisions that in fact obstruct free access to justice.* For example, amendments were made to the Law of the contentious matters[29,30], *which excluded litigations arising from removal from office of the military, persons of the military status* (police

officers and staff), other acts of administrative nature (articles 4, 5 on acts excepted from judiciary control and subjects with the right of summons with the administrative court).

Article 25 (3) and (4) of the status of judges law also provides that the procedure of dismissal from the office and claim against such decision are established by law, and if decision of removal is cancelled the judge shall be reinstituted in all of his rights. *The national legislation, however, does provide for* such *a procedure of claim against a decision of dismissal of a judge from office, therefore the above provision remains a purely declarative one*. The problem seemed to be resolved as soon as the Law of the contentious matters became effective. However, article 4 of the law was changed and a new provision was made. Under this provision no claim can be made against either exclusively political acts of Parliament, President of the Republic of Moldova, Government, or individual administrative acts of Parliament, President and Government - issued in the exercise of duties pursuant to constitutional or legislative norms - on election, appointment and dismissal of state officials, exponents of a particular political or public interest. Thus, *judges' access to justice was obstructed*. Hence, care shall be taken to abrogate legal provisions, which obstruct free access to justice.

As it has been already mentioned free access to justice can be secured by use of other instruments, some of which are of economic nature, though law does not always take them into account.

Organizationally, the judiciary system is accessible to the citizens of the Republic of Moldova. In administrative territorial units, one district court is available per 50 to 70 thousand population replicated in which is the previous administrative structure (there are 45 district courts and 3 municipal courts). District and municipal courts are courts of general jurisdiction and deal with civil litigation, examining administrative and penal cases.

Specialized courts, which deal with *economic lawsuits, are at a far distance from place of residence of citizens*. Both the District Economic Court and the Supreme Economic court are situated in the municipality of Chisinau. These courts – different in their jurisdiction and instance - occupy the same building. This creates an impression that they are the courts of the same instance and deal with similar cases with no difference in jurisdiction. Moreover, one instance within the Economic Court of the Republic of Moldova deals with both the examination of recourse and appeals, this reminds the former soviet court of arbitration, which had been established by the government for examination of economic dispute on the basis of directives of government officials.

Free access to justice is impaired due to the fact, that economic courts are situated far from locations in which businesses are displaying their economic activity. Oftentimes, economic agents have to run exorbitant expenses for simple cases, such as non-compliance with contractual discipline, therefore they do not bother to go to court and resort to other means of settling disputes, quite often to illegal ones and seek assistance of the organized crime structures. The provision of article 41 of the economic court law, which authorizes the government to propose solutions and initiatives with view of creating new district economic courts in the towns of Balti, Bender, Cahul and Comrat, remains in the status of recommendations till now. If such system had been put in place, given the national specifics, it would have made things even more complicated.

In the Republic of Moldova we now have a situation when the *examination of economic dispute in the judiciary system is rather complicated*, while the procedures of appeal by far exceed European standards of double jurisdiction. Under procedural laws, economic agents - parties to the litigation – are allowed three appeals against the judgment on an economic dispute; this fact created the image of the judiciary as justice without limits, and impaired stability of economic relations. Such state of affairs with respect to economic litigation affects the whole of the judiciary system, and the citizen's view it as a system, where examination of cases is procrastinated forever.

Military courts, where there are 2 levels for complaint, recourse and appeal, shall try lawsuits of economic nature, which involve the military. Thus, we can state that economic lawsuits are treated differently – an ambiguous fact in the national legislation.

Judiciary practitioners propose that examination of economic lawsuits be substantially simplified and allow resort to urgent procedure. From the point of view of the judiciary system, all lawsuits of economic nature could be examined in courts by judges specialized in the subject.

As far as access of the military to justice is concerned, the situation is similar. As for military courts, the existence and possibility to establish more military courts (articles 5 – 9 of the law on the system of military courts would result in a huge system, which could hardly be maintained at the expense of the taxpayers of the Republic of Moldova. Military courts do not exist at all in a number of European states. It is civil courts that examine lawsuits of military individuals and military units of civil nature, as well as offences, committed by the military. This is a demonstration of the principles of a genuinely democratic society.

Given the principle of organization, which requires that the judges should necessarily be military, the courts receive extraordinary funding from the Ministry of Finance's budget. Thus, the military courts from the beginning do not satisfy the principle of independence and impartiality. Moreover, it is more appropriate for Moldova, which declared itself a neutral state, to examine civil and penal lawsuits of the military in civil courts without additional budget expenditure.

Given all said above, to secure free access to justice, economic and military courts should be disbanded, and legislation should be amended accordingly to vest additional powers with courts to examine economic lawsuits, military lawsuits and offences committed by the military.

Another problem with free access to justice *is insufficient legal information* to form an adequate legal conscience. In provinces access to legal information is oftentimes not a reality. Under the existing circumstances, the counselors at law themselves do not receive adequate information on the host of laws, to say nothing of the frequent amendments to the legislation. Courts, prosecutor's offices, receive information on the current legislation with a delay. Publication of penal code, civil code, administrative code, code of civil procedure and code of penal procedure does not keep pace with new amendments. New official editions have not been published for a number of years. The same is true of the availability of information at the Bar: they are far behind the judiciary, while it is counselors at law who are vested with the right by law to provide legal counseling to citizens. Counselors at law cannot perform their duty at high professional level due to insufficient information. Therefore, a fair trial for citizens cannot be secured.

One way to assess how free access to justice is, is to look at the examination of cases in courts. Pursuant to the Supreme Court of Justice[31,32], in 2001 the 44 district and municipal courts, 5 tribunals, the Military Court, the District Economic Court of Chisinau, the Economic Court of the Republic of Moldova, the Court of Appeals and the Supreme Court of Justice – having the total corps of 375 judges – judged approximately 224 thousand cases (see Table No. 1). Ninety-three per cent of all the brought actions were accepted for examination.

Table No. 1. *Number of lawsuits and case materials resolved by the judiciary instances in 2001.*

Lawsuits and case materials	**In first instance**	**In appeal, in recourse and by extraordinary ways of contest**
Penal lawsuits	14574	4484
Civil lawsuits	52806	7711
Actions in relation to contentious matters	1825	932
Economic lawsuits	7143	1211
Contravention lawsuits	110434	2526
Writs of arrest	8760	1062
Other petitions and case materials	10555	

With these data the Supreme Court demonstrates that courts have become a real mechanism of guaranteeing free access to justice, which makes restitution of violated rights of every natural and legal persons a reality.

If the broader sense of the *free access to justice* is considered, we have to state that this principle *has not been fully implemented.* The fact that the principle of free access to justice is not fully implemented is supported by the evidence on both examination of cases by courts and admission of cases to court hearing, on handling of cases by agencies of penal prosecution and preliminary investigation, on the number of petitions to other bodies (i.e., President, Parliament, Government, Superior Council of Magistrates, Center for Human Rights etc.), on the number of complaining persons received, on procrastination of cases, on non-execution of court judgments and on implementation of other principles of judiciary system.

Thus, 8353 cases were taken to the Economic Court in 2001, 1184 of them were turned down and only 7169 were accepted for examination. In the same year 2409 cases of administrative offense were initiated, while only 1942 were accepted for trial.

In 2001, 862 petitions of individuals, government and non-government organizations were filed with the Superior Council of Magistrates, whereas the leadership of the Council received only 116 petitioners, among others there were petitions about inadequate organization of administration of justice[31]. According to the available evidence on free access to justice for 2001, 358 persons filed 328 petitions with the Center for Human Rights, and 564 persons were received[33]. In the year of 2001 Parliament received over 5000 petitions and verbal complaints of citizens, among others, on such issues as problems with observance of human rights and implementation of legislation[34].

Estimates show that 10000 to 16000 offenses were not registered for various reasons in 2000[35].

Alongside with the establishment of new judiciary bodies (the Court of Appeal and tribunals) and the vesting of the right of final decisions with them, the law provided for the derogation of the principle of oneness of the judiciary system in the Republic of Moldova.

When the judiciary system of the Romanian model in combination with the Dutch and French models was established in 1996, courts of complaint and appeal on the national level were vested with non-specific functions, as a result *the judiciary system became cumbersome and bureaucratic*. Thus, the Court of Appeal, as the instance considering complaints, examines approximately 90 per cent of judged cases in recourse, and the judgments become final after the Court of Appeal pronounces them. Being the only court of its type, the Court of Appeal tries to promote legal practice, which differs from that of the Supreme Court of Justice, while the latter is the only instance made competent by law to secure correct and uniform application of the legislation. The number of civil and penal cases, which the Court of Appeal examines in recourse, is incompatible with its name and status: this court was established to consider judiciary cases of the order of appeal. It was this state of the judiciary system functionality that the legislators misunderstood when making and adopting organic laws and legal procedures, thus providing food for debate and doubtful opinion of the current judiciary system.

There is statistical evidence[31,36,37] that the functions of recourse and appeal – non-proportional to the volume of work - were also vested with district tribunals (of Chisinau, Balti, Bender, Comprat and Cahul) (see Table No. 2).

Table No. 2. *Number of cases examined in the order of recourse and action dismissed by the Supreme Court of Justice, in the appeal and recourse by the Court of Appeal, tribunals Chisinau, Balti, Bender, Comrat, Cahul and the Economic Court of the Republic of Moldova in 1999-2001.*

Name of the court	Judgment in:	Year		
		1999	2000	2001
Supreme Court of Justice	**Penal cases**			
	Recourse	117	155	169
	Action dismissed	270	210	205
	Civil cases (economic)			
	Recourse	268	341	353
	Action dismissed	372	508	555
Court of Appeal	**Penal cases**			
	Appeal	197	174	239
	Recourse	897	966	1174
	Total	**1094**	**1140**	**1413**
	Civil cases			
	Appeal	72	96	60
	Recourse	1653	1791	1608
	Total	**1725**	**1887**	**1668**
Tribunals Chisinau, Balti, Bender, Comrat, Cahul	**Penal cases**			
	Appeal	2119	2537	2381
	Recourse	141	122	305
	Total	**2260**	**2659**	**2686**
	Civil cases			
	Appeal	3686	3652	3753
	Recourse	883	1076	1134
	Total	**4569**	**4728**	**4887**
The Economic Court of the Republic of Moldova	**Economic cases**			
	Appeal	435	378	400
	Recourse	559	644	811
	Total	**994**	**1022**	**1211**

The available statistical data prove that the actual economic courts perform rather inefficiently. More than 1/3 of the judgments adopted are disposed of in the order of appeal and recourse. (see Table No. 3).

Table No. 3. *Data on cases examined in appeal and recourse by the economical courts, disposing of and modifying judgments on these cases in 1999-2001.*

Cases examined in:	Year					
	1999		2000		2001	
	Examined	Disposed of and modified	Examined	Disposed of and modified	Examined	Disposed of and modified
Appeal	435	197	378	169	400	168
Recourse	559	328	644	309	811	205

Economic relations should be secured by a system of sustainable legal mechanisms. This sustainable regime in the economic justice system has not been optimized. A suggested conclusion may be either the judges are incompetent, or the judgment is made under pressure, which economic court cannot withstand.

In civil courts the share of disposed of and amended judgments is twice as low (i.e., 20 to 22%).

Analysis of the statistical data shows that the Court of Appeal, which is the instance of appeal, examines 80 to 92% of civil and penal cases in recourse, after that the judgments become final and citizens cannot have free access to the court of supreme jurisdiction in the state. This, along with other circumstances, was not taken into consideration when approaching the laws on the judiciary system organization were approved. One Court of Appeal, which corresponded neither

to the legal ideas nor to the approved standards, was established, thus normal functionality of the whole judiciary system was impaired.

There is also evidence that *tribunals and the Court of Appeal, which are the different tiers in the judiciary system*, to a great extent *replicate each other*. This is not rational in terms of both free access to justice and cost effectiveness of the judiciary system.

Thus, one may conclude that the judiciary organization and distribution of powers of examining civil, penal and administrative cases in the judiciary system was not implemented successfully and the cooperation of courts in this system should be modified significantly, due to double jurisdiction for the protection of fundamental rights provided by the Constitution and the European Convention. *Simplified procedures should be provided, which make the judiciary system functional and prompt so that each case be examined in reasonable and fair terms*. In this context the experience of others, e.g. the USA, Sweden etc. is appropriate, which demonstrates that a three-tier court system: 1) primary courts (local, district, municipal); 2) instances for appeal (each of which comprise several primary courts); and 3) a court of supreme instance[38] is much more reasonable.

Following this, *modification of the judiciary organization of the Republic of Moldova is proposed with the transition to a 3-tier court system:* I – primary courts (district or municipal); II - 6 Courts of Appeal (instances of appeal); and III – supreme step: the Supreme Court of Justice, which is the only supreme instance. As a result of the reorganization, tribunals, military and economic courts shall be disbanded. To examine cases of economic and military nature judges shall specialize, and boards to deal with special cases shall be established at the instances of appeal and the Supreme Court of Justice. The staff positions, which are made redundant upon disbanding tribunals and specialized courts, shall complete the new instances of appeal and specialized colleges. Due to this, the system of courts will be simplified substantially, access to justice – to the supreme court as well - will increase considerably, a lot of resources required for the normal operation of the judiciary system will be saved.

In terms of free access to justice, the competence of the Supreme Court should be changed as well. Under the current system, the majority of complainants or plaintiffs resort to ordinary ways of appeal to tribunal and the Court of Appeal, they are thus deprived of the access to the Supreme Court, which is the court of supreme instance. Plaintiffs and complainants can apply to the Supreme Court only through the prosecutor general; thus their access to the court is conditional on the latter. Therefore, legal provisions, which obstruct free access to Supreme Court, should be abrogated.

Though the Supreme Court of Justice reports that “the judiciary instances have become a real mechanism of guaranteeing free access to justice” a lot of effort should be made to fully implement this principle.

A judiciary system with its own budget

Pursuant to article 121 of the Constitution and Article 22 (1) of the Law of the judiciary system organization, financial resources required for good functioning of the courts are approved by Parliament upon proposal of the Superior Council of Magistrates and are provided for by the state budget. Pursuant to article 27 of the Supreme Court of Justice law, the Supreme Court has its own budget, which parliament approves on the proposal of the Court Plenum. The Superior Council of magistrates also has its own budget, which is an integral part of the state budget (Article 27).

At the same time the Law of the judiciary system organization (Article 23) provides that it is the Ministry of justice which ensures organizational, logistic and financial maintenance of courts, tribunals and the Court of Appeal. It also says that the government provides courts with premises, vehicles etc. through local governments. All these provisions imply that the principle is not fully implemented. *Courts, tribunals and the Court of Appeal being financed from the state*

budget do not have their own budget. Neither Constitution, nor organic laws provide for having own budget, which contradicts to the principle of the judiciary system.

Therefore, *annual disbursement of funds to the judiciary instances is much below the minimum required for normal functioning* (40 to 60 %). *The courts are not only short of premises, furniture, office equipment, and technical means*; they also *do not have the elementary office supplies* for routine work, while the budget provision is sufficient to cover only 9 to 10 monthly wages per year.

Although the law provides that the budget for courts is formulated by the Superior Council of Magistrates in cooperation with the Ministry of Justice and is approved by the Parliament, it is the Ministry of Finance that has the final say and the government accepts it. The budget appropriation is what the Ministry of Finance establishes, rather than what is necessary for normal operation of the judiciary system.

Courts represent the judiciary power, therefore to secure its independence the courts should have their own budget, on which they will rely for logistics and financial support. Therefore, in order to implement the said principle, the Constitution and the current organic laws should be amended accordingly to provide for an own budget of the judiciary power, which will be executed by the staff of the Superior Council of Magistrates.

Speaking of the prosecutor's office (which is judiciary power, pursuant to the Constitution), according to Law of the prosecutor's office, it has its own budget, although the Constitution does not say so. Pursuant to article 12(5), the budget of the prosecutor's office - within the state budget - is approved by Parliament, which is a necessary provision to stress – at least relatively – its independence of the state powers.

Judiciary system security effective control over abuse of the executive power

Pursuant to article 135 of the Constitution and pursuant to the Law of the Constitutional court, the Constitutional Court exercises supervision over constitutionality of laws, parliamentary and presidential decrees, government decisions and orders. Laws and other normative act, or parts thereof become nil and void immediately upon judgment on of the Constitutional court is passed. Constitutional court judgments are final and cannot be appealed against.

*Courts do not have competence ex oficio to supervise the constitutionality of the actions of either the executive or the legislative authorities***.** Thus, pursuant to article 6 of the Constitution, the authorities are separated, and cooperate in exercising their powers, which are vested to them under the law.

When examining penal, civil and administrative cases, the court is entitled to solicit - upon the request of the parties - data about cases from bodies of executive power.

To prevent abuse of power by local governments, to protect the rights of individual, to streamline the work of local governments, to secure order based on law *courts examine cases dealing with the activity of local governments. In accordance with the effective legislation*[39]*, everyone*, whose legal right was violated by government in an administrative action or non-consideration of an application within legal timelines, *can bring the case to the court, which deals with administrative offense*, to have the said act disposed of, to have the violated right recognized and to have the damage compensated. If the lawsuit is accepted upon application of a citizen, the court decides upon lawfulness of the action of the government, coerces the defendant to issue and administrative act solicited by the plaintiff, to compensate moral and material damage caused by non-consideration of the original application.

2409 cases of unlawfulness of administrative actions were examined in 2001 (1344 cases in 2000). 1942 cases were tried, of which 117 were forgiven under competence. Of all the cases brought, 1825 were tried on merits, in 1463 cases judgment was issued, the proceedings were

suspended in 220 cases, and 142 cases were disposed of. Commitment of actions was admitted in 838 cases, which represent 57.3 percent.

There is statistical evidence that courts treat actions of the government bodies, who do not settle problems related to legitimate rights of citizens, with higher exactingness. Although neither the law on administrative court not judiciary practice is well established, upon recourse decisions on 23.8 per cent of cases were disposed of. This proves that the influence onto the judiciary system is rather considerable. The executive branch has made a move that the said law is not opportune and that the judiciary interferes in the activity of the government bodies. Upon the legislative initiative of the Government, the Law of the contentious matters was amended[29,30], lawsuits related to removal from office of the military, persons with the military status (e.g. police officers), other acts of administrative nature (Articles 4, 5) were excluded. The provision of article 4(25) on the size of moral damage, which was an innovative provision in the national legislation and a baffling problem for the ruling quarters, was excluded. The provision on reimbursement of expenses related to the publication of the judgment (article 28(2)), which was effective support for the execution of the court judgment, was also excluded. According to discussions in the ruling quarters, this law can be further amended, thus made formally exigent.

In the context of problems related to the examination of lawfulness of administrative actions in the court of administrative court, it is necessary to mention the problem of the institute of ombudsman. It has the powers to supervise the observance and implementation of laws, especially those, which protect freedom, security and property of citizens. The Republic of Moldova passed the *Law of the parliamentary counselors at law*[40]**,** which from the beginning *was given a wrong name*. The name parliamentary counselor at law (which is presumed to mean ombudsman) seems to be wrongly understood i.e., a counselor at law of the parliament, who defends the interests of the parliament (or the members of the parliament). This may be one of the reasons of incompatible reaction to annual reports on violation of human rights in the Republic of Moldova, which are prepared by the Center for Protection of Human Rights. The said law is implemented with the assistance of the Center. The word ombudsman is of Scandinavian origin. In many countries this term is not translated and is used in the original form. Therefore, the word parliamentary counselor at law should be replaced with the word ombudsman.

Pursuant to the law, *the work of the parliamentary counselor at law* (i.e. ombudsman) *is to secure the guarantee of observance of human rights and constitutional freedoms* by national and local public authorities, institutions, organizations and enterprises of any title, public associations and government officials at all levels. As is demonstrated by international experience, it is ombudsman who has the powers to supervise the observance and implementation of laws[38], rather than the prosecutor's office, which is the case of the Republic of Moldova[22]. Moreover, how can the prosecutor's office impartially supervise its own work, or supervise the observance of human rights of inmates, whom it prosecuted, in prisons? In Sweden for one, the institute of ombudsman is independent. The primary powers of ombudsman are to supervise the observance and implementation by the administration and courts of the country's laws, in the first place, the laws, which protect freedom, security and property of its citizens. The ombudsman has the right to make investigation and to have access to any necessary information. More than that, the ombudsman supervises the activity of local governments and of any official, with whom administrative authority is vested. Thus, the system of ombudsman in Sweden plays an important role in guaranteeing that neither government nor courts shall pass unlawful judgments.

Therefore, it is necessary to prepare and approve a new chapter to part II of the Constitution to provide regulation for the institute of ombudsman – a supervisory body for the observance and implementation of laws. The language of the law on parliamentary counselors at law should also be changed to replace the words parliamentary counselors at law with the word ombudsman. The law should be amended accordingly to vest the ombudsman with the powers to supervise the

observance and implementation of laws. Whereas the powers of supervision should be excluded from the prosecutor's office law as being non-specific for the said body.

The principle of irremovability

The principle of judges irremovability from office was incorporated into the national legislation simultaneously with the adoption of the Constitution on July 29, 1994 (article 116 (1)). This provision of the fundamental law was also incorporated into the Law of the status of a judge (Article 1(3)).

The principle of irremovability from office implies that once appointed in office with all the exactingness to administer justice independently and impartially, it is necessary that the judge have stability of office. Primarily the principle implies that judges should be appointed in office for life, or till the age of retirement. The principle of irremovability from office also implies a second condition: removal of the judge from office only on grounded motives in exceptional circumstances and as a result of a fair trial, the judge cannot be promoted or transferred without his own consent.

Although this principle was proclaimed by the Constitution, judges were initially appointed for 5 years, then for 10 years, and only after 15 years in office, the judges could be appointed till the age of retirement. The legislation has created a rather ambiguous situation. The principle of irremovability was declared under the law, while in practice a new judge should be appointed every 5, 10 or 15 years. This was in contravention of the declared principle. Therefore, on July 19, 1996 the situation was partially corrected, when it was established that the first term for a judge was 5 years, and then till the age of 65[8,24].

*The principle of irremovability from the office, provided for by the Constitution even now is not in agreement with the scientific doctrine***.** The first 5 years of office of a judge are similar to a race. Anyone can make longer or shorter, even other powers of the state, they can remind the judge that he should meet their requirements because he is going to be re-appointed in office till the age of retirement.

The activity of the judge is not a show with a happy end. The parties to a case are equal before justice. It is possible that of the two parties one, or even both are not happy with the decision of the judge. In reality the dissatisfaction becomes known and remains in the memory of the general public. Alongside with the personal problem of appointment in the office, various barriers of subjective nature interfere through various mechanisms. Even persons, whose performance is professional, can be suspended from reappointment in office. The legislation does not provide for efficient mechanisms to defend against this phenomenon. Thus, due to the absence of such mechanisms in the stability of judges appointment to the office, the image of justice can easily be affected.

Therefore, the appointment in function for a 5-year term with the reappointment till the age of retirement comes in contradiction to both Article 116(1) of the Constitution and the principle of irremovability from the office within the judiciary system. The latter implies that judges are appointed in the office once till the age of retirement, or for the life.

To overcome the situation with the appointment of judges in office – proceeding from the international experience - Article 116(2) of the Constitution, Article 11 of the Law of the status of a judge and other organic laws should be amended accordingly to provide that the judge shall be appointed in office for the life or till the age of retirement at once, rather than for 5 years initially. Thus, the principle of irremovability form office will be secured, which will – in turn – contribute to the implementation of the principle of independence and impartiality of court.

Merit-based appointment and promotion of judges, selection of judges by the judiciary without involvement of the executive branch

In the Republic of Moldova the Constitution and the current organic laws provide the regulatory framework for appointment judges and prosecutors.[22,24]

In addition to the criteria that the candidate should meet to be a judge (i.e., citizenship of the Republic of Moldova, residency in the Republic of Moldova, qualifications to practice law, first degree in law, legally required experience in the prospective position, absence of criminal record, good reputation, command of the state language, fitness for the office), the law also requiems that the candidate be 30 years of age, have at least 5-year experience in practicing law and have successfully passed the professional qualification test. In addition, the law provides that a candidate to the position of a military judge should be an officer in active service. Candidate to the position of the judge in tribunal, Court of Appeal or the Supreme Court of Justice should have respectively, at least 5, 7 or 15 years of experience of the office of judge. The required experience in the office of judge for candidates to the position of judge in district economic court and of the Economic Court of the Republic of Moldova is respectively 5 and 7 years.

Court (and specialized court) judges are appointed by the President upon proposal of the Superior Council of Magistrates. Chairmen and vice-chairmen of courts, tribunals, the Court of Appeal are appointed for a term of 4 years. *The chairman and the judges of the Supreme Court of Justice are appointed by the Parliament upon the proposal of the Superior Council of Magistrates*.[18]

Persons with such versatile conditions, willing to hold the office of a judge, should file the necessary documents with the Superior Council of Magistrates. The latter makes a decision to send candidates to the Qualification board for an admittance examination or qualification test. Admittance examination is for persons with experience in office of 3 to 5 years. The candidate with the best score is proposed for the position of a judge. If several contestants have equal score the older one and the one with longer professional experience have priority.

The qualification board draws up a statement, which together with all the decumbent is delivered to the Superior Council of Magistrates for validation. *On the basis of the set of documents, the result of the examination and the statement of the Qualification board the Superior Council of Magistrates validates the qualities of candidates and in a session decides to propose the candidate for the vacant position of a judge*. All the relevant documents and the decision of the Superior Council of magistrates are submitted to the President of the Republic of Moldova, who appoints the candidate to the position of a judge. The President appoints a judge by his Decree on the basis of the documents submitted. For the appointment of a judge or chairman of the Supreme Court of Justice, the relevant documents are first submitted to the Parliament.

In accordance with the Law of the status of a judge, the judges are promoted or transferred by the President or Parliament upon proposal of the Superior Council of Magistrates, but only with the consent of the candidate. *Promotion takes place on a competitive basis.*

In accordance with the Constitution (Article 125) and the Law of the prosecutor's office, *the prosecutor general is appointed by the Parliament* for a term of 5 years *upon the recommendation of the chairman of the Parliament. The prosecutor general appoints other prosecutors, subordinated to the prosecutor general*, also for a term of 5 years.

It looks as if the procedure of the appointment of a judge is transparent and democratic. It should be stated, however, that although the laws that put the judiciary system in place were quite progressive, the mechanism did not contribute to selection and creation of an entirely professional and competent judiciary corps. *The persons, who were appointed in office of the chief of court, did not always meet the high standards of competence, professional experience in the judiciary system and good reputation*. The Superior Council of Magistrates, as soon as this new judiciary organization was established, intended to be the leader of the judiciary system

reform. In reality, however, the Council was occupied with its own organization and activity. Election of the chairman of the Superior Council of Magistrates and the testing of the instruments of influence in the new judiciary organization took almost a whole year. This resulted in the Council appointing chairmen of the newly established courts, and in practice each chairman dealt with the staffing issues of court himself, while this responsibility should not be left to the discretion of a single person. All the proposals, which the chairmen of the new courts had submitted, to the Superior Council of Magistrates, were approved without observance of the criteria of competence, professional level and good reputation. As never before, the cadre of justice were appointed on the basis of departmental interests, reliability and personal loyalty, rather than on the basis of merit, independence and impartiality. It was the "multitude", parties, "influential people", counselors at law etc – factors alien to justice -, which contributed to the staffing of the judiciary corps. This led to the discredit of the existing judiciary authority.

The Superior Council of Magistrates was not able to withstand such pressure and did not in any way interfere to conduct the formation of the new judiciary instances, provided for in the law on the status of judges. The formation of the new judiciary corps underwent terrible ordeal. At least after 5 or 6 years we shall be able to speak about the results of this process.

With the incorporation of the new procedures, excluded from the organic laws, the appointment of judges becomes rather ambiguous. Party influence, personal positions come in to further diminish the authority of the judiciary.

As becomes evident from the practice of the appointment of the judge, the prosecutor, the chairman of court and the head of prosecutor's office, *the representatives of ruling parties*, recently more often, *motivate "the sympathies" of the judiciary or prosecutor candidates*, particularly the candidates to the office of the chairman of court or the head of district prosecutor's office. Thus, the appointees to the positions of chairman of the Court of Appeal, the tribunals of Balti, Cahul, Chisinau, the court of Orhei, Cimislia, Briceni, Botanica district court of Chisinau, etc were coordinated with party agencies without due consideration of professional competence. In the case of appointment to office of the prosecutor general, professional competence was also neglected, and a person form the governing party was appointed. When the prosecutor's office board was established in 2000, every parliamentary faction wanted to have its representative in it.

In the practice of the appointment in office by parliament, candidates to office of the Supreme Court of Justice judges, chairman or deputy chairman and prosecutor general are discussed in parliamentary factions, parliamentary commissions, party factions (a decisive factor for the appointment in office), and after that proposals are put under discussion of the plenary session of the Parliament.

In the practice of the appointment of judges the legal provisions concerning the Qualification and Revalidation Boards are oftentimes ignored, while these provisions say that the Qualification Board "produces inference concerning possibility to propose a candidate for office of the judge, or propose a judge for office in a higher instance court" (Article 7). Further provisions are that "a candidate, with the highest score at the examination shall be proposed for office of the judge" (Article 21). It is further stated that "the Qualification Board shall issue inference on the correspondence of the professional knowledge of the judge to office he holds and to the rank conferred" (Article 25). Likewise ignored are the provisions of Article 19 of the Law of the Superior Council of Magistrates, while these imply that the Superior Council of Magistrates shall make proposals on the appointment of judges, chairman or deputy chairman of a court, and that candidates with the highest score and qualifications stipulated by law shall be considered and selected.

Proceeding from the provisions of law, issue of a presidential decree or a parliamentary decision of the appointment of judge or chairman of court is only a legal act, which confirms the appointment of the candidate selected by the Superior Council of Magistrates by means of the

Qualification and Revalidation Board. Judges themselves without involvement of the executive or legislative branch, while neither President –the executive authority -shall make selection of judges, nor Parliament – the legislative authority - can impose selection of another person.

In practice, the office of President often returns the documents of candidates to the Superior Council of Magistrates without any motive. This fact suggests *lack of transparency in* such *appointments*. According to the official data[31], in 2001 the Superior Council of Magistrates sent documents of 21 candidates to the President for the appointment in office of judge and the documents of 132 judges for the reappointment in office till the age of retirement. President did not accept candidates for the appointment and returned the documents of 5 persons, neither did he accept 16 candidate judges for the reappointment in office till the age of retirement.

It can be concluded that the office of the President and the Parliament have another parallel mechanism, which is not provided for by law, to select candidates to office of judge or to promote judge in office. This mechanism "overrides" the legal one and provides grounds for not permitting the appointment in office of a candidate with the best score, who was selected by the Superior Council of Magistrates. This is the only explanation of the fact that the President of the country refuses to appoint a candidate, selected by the Superior Council of Magistrates. This departure from the principle of merit-based selection, appointment and promotion of judges was made possible by the amendments of Articles 11, 19 of the Law of the status of a judge and of Article 19 of the Law of the Superior Court of Magistrates. These amendments allow the President of the Republic of Moldova or Parliament to turn down a candidate for office of judge, selected by the Superior Council of the Magistrates. Moreover, (repeated) rejection of a candidate, proposed for office of the judge, may provide ground for demanding that the Superior Council of Magistrates remove the said candidate from office, which is in contravention of the established mechanism of merit-based selection and appointment of judges. It is also in contravention of the principle of the judiciary system, which implies that the judiciary themselves shall select judges for promotion.

In accordance with the legislation, the Superior Council of Magistrates proposes the appointment, promotion, transfer or removal of judges, chairmen of courts. With the said amendments to the legislation the executive or legislative authority makes the Superior Council of Magistrates to identify another candidate, even if such candidate has inferior qualifications than the first one, who won the selection contest at the Qualification Board. Thus, it is demonstrated that the amendment was made out of political interest in order that the executive and legislative authority have direct influence – political – on the appointment, promotion and removal from office, so that "obedient judges" be appointed. This, in turn, clearly leads to loss of the citizens' confidence into the independent justice.

The Law of judiciary system organization (Article 16 (3)) provides that chairmen and deputy chairmen of courts, tribunals and of the Court of Appeal shall be appointed in office for 4 years by President of the Republic of Moldova upon the proposal of the Superior Council of Magistrates (amended by law No. 486 of September 28, 2001). The amendment to law was made urgently without soliciting inference of the concerned agencies. There is an impression that this amendment also has a political mark. It was necessary to provide by law for a term of office for a chairman of court. But why 4 years, and not 5 or 6, as was provided for earlier? Or like other states had proceeded and established a term of office for a chairman of court longer than the term of office of parliamentarians or members of the Government in order to eliminate their direct influence on the judiciary. The Superior Council of Magistrates did not respond to this legislative intervention. The amendment in the legislation was necessary to replace the cadre, who is not loyal to the ruling party. The change for 4 years in the term of appointment of chairmen of courts, tribunals and of the Court of Appeal was evidently made in haste, because this mechanism did not apply to chairmen and deputy chairmen of all courts. A similar amendment was not incorporated either into this law or into other organic laws on specialized courts, or the Supreme Court of Justice. It seems that chairmen and deputy chairmen are

appointed in office for life. At least such conclusion can be drawn from the contents of the organic laws.

In view of observance of the law of appointment of judges there was a pressing need to adopt another law (No. 583 of October 25, 2001), which has stipulated most urgent appointment of the managerial staff with the judiciary instances and in this case the Superior Council of Magistrates went even further in giving up its professional competency functions, advancing for the approval by the President of the Republic of Moldova by 3 applicants for each position of the chairman and deputy chairmen. Such an approach running into discrepancies with the actual situation, as many of the courts of law do not have more than 3 judges. Delivery of materials on alternative basis has been confirmed by data available with the Supreme Court of Justice[31]. The like suggestion has given rise to a rather distorted interest with many of the judges to "serve" the political interests rather than justice. This being a rather problematic issue of justice tacitly accepted the Superior Council of Magistrates.

An impression was created that the Superior Council of Magistrates has deliberately allowed transfer of its competencies to the President of the country, since being the authority of judiciary self-administration, composed of professionals, it is the only body having the capacity to decide on the competency, professionalism and personal qualities of the candidates to take the positions of the chairman and deputy chairman. Neither the President of the country nor his office have the capacity or qualification in doing staff selection for the position of the chief of court, whereas proper staff selection process implies specific practice and professional knowledge. As a result, *appointed as the chairmen with some of the courts were persons failing to meet the requirements of competence, impeccable reputation and a good image of the judiciary authority.* When judges and managers of the judiciary instance appointment took place in 2001-2002 none of the managerial staff of the tribunals, Court of Appeals, Supreme Court of Justice (except for Comrat tribunal) were promoted in their position. As a result dismissed from the positions of judges and heads of courts was an impressive number of persons with the length of service in excess of 10 years - sufficient term for displaying professional justice.

However, bearing in mind that the prior legislation of judiciary arrangement, in relation to managerial functions in courts had its contents different from the current one, the judges that were holding positions of the chairman or deputy chairmen, in compliance with the amended law, could not have been discharged from their position earlier than in at least 4 years. This problem is similar to that encountered by the actual mayors and chairmen of county councils, holding respective functions for the duration of the elected term despite the fact that the law was adopted envisaging reform of self-administration with local public administration bodies. Despite evident similarity this issue was not brought up for discussion with the Constitutional Court by either Superior Council of Magistrates or the deputies, and generally speaking it was a mistake that can not be repaired any more.

To that end, Jeremy Pope mentioned that „probably, the most flagrant abuse admitted by executive power lies with the practice of appointing with the judiciary instances as many supporters or followers as possible"[9].

In view of ample implementation of the merit-based principle in appointing and promoting judges invalidated shall be the respective provisions stipulated by the legislation. Constantin Lazari, the parliamentary counsel at law, has made an inquiry with the Constitutional Court to examine the constitutionality of this and other provisions stipulated under the Law of the status of a judge, considering these provisions non-compliant with the Constitution[41]. However, the Constitutional Court has ruled that the perceived subject is beyond the competencies of the parliamentary counsel at law and ceased proceedings aimed at verifying the constitutionality of said provisions.

By establishing such practice of appointment and promotion, *on multiple occasions, the candidates to the position of a judge, prosecutor or head of the judiciary instance was looking*

for supporters amidst parliament deputies and Presidency functionaries, which shall be inadmissible in appointing to such positions. Such an approach may give rise to appearance of obligations, preferences or antipathies affecting the performances displayed by the legislature. As a result of such procedure the principle of merit-based appointment of a judge or prosecutor is being neglected.

In what refers to judges promotion it shall be understood that it applies depending on the qualification grade. According to the Law of judges qualification and revalidation Board (Article 27) established were 6 qualification grades, which correspond to the length of service and professional competence. The higher grade of qualification shall be conferred by the President of the Republic of Moldova while all the others by the qualification Board; and in some cases by the Superior Council of Magistrates.

In the first 5 years the judge passes promotion procedure 2 to 3 times and once again has to pass revalidation to be reappointed to the position of a judge prior to reaching the age of retirement. During this period of time the judge is set on trial by his colleagues, prosecutor, police, Supreme Court of Magistrate, society, public self-administration bodies, and parties. The judge makes respective moves trying to maintain „good reputation", to look „good" or to demonstrate confidence extended to him. Resulting from the mentality shared by nowadays society, during these 5 years the judge is preparing the ways of manipulating his position so as to be reappointed in the office again, thinking of capacities that can be of use for being reappointed as the judge prior to reaching the age of retirement.

Next, the judge is facing further promotion to another hierarchically superior instance, depending on which are such factors as professional interest, size of salary and prestige of position taken. There are practically no mechanisms envisaged under the law that would specify well-defined values. Promotion in itself depends not only on the judge's desire, but rather on proposal advanced by one of the heads of the judiciary instance. Hence, a conclusion can be drawn that primarily pursued is the subjective factors and not the objective ones such as background and professional competence or good reputation.

Thus, in the judiciary system the objective mechanisms of promotion are combined with a number of subjective elements, which, on many occasions, are dominating over the objective ones and as a result promoted to the position of judge in a hierarchically superior instance can be persons with low professional qualities.

It is worthy to make further study of involvement exercised by other powers in advancing suggestions for judges appointment through the Superior Council of Magistrates. In compliance with the Law of the Superior Council of Magistrates[19], the Board shall be composed of 11 magistrates, in which the judges do not make the major (core) part and at least 5 representatives of executive and legislative power (45%) shall be directly involved in selecting, appointing and promoting to the position of a judge. From the start, their presence in the Superior Council of Magistrates makes the judge dependent on them.

Arising from the composition of the Board one may conclude that in appointing and promoting the judges there is a failure to observe the core principles of the judiciary system, which applies not only to merit-bases appointment and promotion of judges (integrity, skillfulness, adequate background and qualification, experience, political impartiality), but also to selection of judges for promotion by the judges themselves without involvement of executive or legislative powers. Hence, to ensure more ample implementation of the principle of merit-based appointment adopted shall be modifications to Article 116 of the Constitution, Article 11 and 20 of the Law of the statute of the judge and Article 19 of the Law of the Superior Council of Magistrates, which stipulate that selection and promotion to the position of a judge, head of the judiciary instance shall be done by the Superior Council of Magistrates.

Discipline with the judges is being maintained on the basis of impeccable and recognized principles of the Code of Ethics; rigorous stipulation of the conflict of interests

To a great extent, the judiciary activity bears upon rigorous discipline in exercising service duties. Besides personal qualities the discipline is determined by rigorous legislative stipulations referred to the rights and obligations of the judges, availability of the Codes of Ethics, judges' responsibility, prestige of the profession and position taken, conditions of activity as well as by the existence of clear-cut and coherent legislation subject to execution and legal provisions of state-guaranteed statute.

The effective organic Laws comprise provisions governing conduct of the judges in execution of the office. The Law of the statute of a judge and the Law of the disciplinary board and disciplinary responsibility of judges *stipulates the rights and obligations of the magistrates, their disciplinary responsibility, disciplinary abatements, implying judges' responsibility, disciplinary sanctions, the authorities and the procedures applied by the disciplinary Board***,** which is competent in investigating cases of disciplinary responsibility of judges.

Conduct of the judges has been also governed by the Code of Ethics (Rules of conduct) adopted at judges' conference of February 4, 2000.

Neither effective legislation nor Code of Ethics for judges contains rigorous stipulations of the conflict of interests, which would prevent and exclude acts of corruption in exercising the justice. To that end it is advisable to adopt amendments to the Law of the status of a judge so as to rigorously regulate implementation of the Code of Ethics. Likewise, it is desirable to amend the law in question and the Code of Ethics, so as to rigorously stipulate the conflict of interests in exercising the justice.

Naturally, the judge's discipline can not be maintained through the application of adopted procedures alone, but rather through consistent discipline and irreproachable competence displayed by the judges. Measures shall be targeted towards securing highly professional devotees, expanding traditions meant to enhance efficiency of the activities displayed and at the same time creating certain negative attitude towards those showing low professionalism, offending the law and thus discrediting profession. The like approach, devoting key attention to a human, securing his fundamental rights and freedoms, shall contribute to educating young employees in respecting prestige of the function as well as traditions accumulated in exercising the justice. Implementation of these mechanisms will serve to ensure better transparency of the activities displayed by the judiciary instances and to enhance citizens' credibility into justice and equity, and by so doing to exclude or prevent acts of corruption.

Despite provisions set out under the legislation, *some of the judges while fulfilling their judiciary duties allow for certain abatements incompatible with the position taken.* During 2001 mailed to the address of the Superior Council of Magistrates were 862 petitions and appeals lodged by natural persons, state-owned and public organizations, out of which 56 were from the Presidency, 41 from the Parliament, 8 from the Government, 6 from the Center for Human Rights and 19 from other organizations. The management of the Superior Council of Magistrates gave hearing to 116 persons. The majority of petitions result from insufficient set up of justice implementation, procrastination in investigating penal and civil cases, negligible attitude proven by some of the judges in exercising their service duties, failure to timely deliver cases to the instances of appeal and resort, failure to execute within reasonable term court rulings, brutal treat of the participants of trial. Thus, for example, 147 petitions were lodged with the judiciary instances claiming procrastination in examining cases and 134 referred to delay in court ruling execution. Part of the petitions turned out to be true and some of the judges were made answerable on disciplinary line or subject to discussion at the sitting of the Superior Council of Magistrates. Based on the petitions launched were 6 disciplinary proceedings, while 6 judges were given hearing during the sitting of the Superior Council of Magistrates.[31]

Herewith attention shall be given to the quality of lawsuit examination (see paragraph 2.17.), which offers immense reserves as well.

Under the context of disclosed facts a more explicit activity is desired on behalf of the Superior Council of Magistrates and the respective Boards affiliated by the latter.

Dismissal of judges due to substantiated motives under exceptional circumstances, based on well-defined and adequate proceedings, as a result of certain equitable process with support of tribunals competent in examining cases of judges answerability.

The judge has the right for dismissal irrespective of the age, in case of applying for such, upon expiry of the power of office and/or incapacity for work. In such and other cases (transfer to another position or to another state body) dismissal from the job means respected discontinuation of judge's activity. However, respected dismissal can not take place in case of the judges, who in exercise of duties and outside service relations have admitted acts discrediting justice or compromising the honor and dignity of a judge. It is inadmissible to allow the position of a judge to be taken by a person that has admitted an offence or has gravely violated the legislation, etc. In such cases decision shall be taken on dismissal of such a judge at the initiative of the judiciary self-administration, since the case is discrediting both the judge and the judiciary instance.

Pursuant to Article 116 par. 5 of the Constitution sanctioning the judges shall be done in compliance with the law. Dismissal is one of the disciplinary sanctions envisaged under the Law of the statute of a judge. According to the law the judge can be dismissed due to reasons as follows: recurrent or grave disciplinary abatements, passing definitive verdict of guilty, refusal to make official oath or violating such, failure to observe service restrictions, non-compliance with requirements of being a magistrate, insufficient qualification, recurrent or grave violations of the Code of Ethics as well as other such cases. These grounds for disciplinary sanction, including dismissal of a judge from his position may serve as sufficient motives for launching disciplinary proceedings.

The competency of launching disciplinary proceedings belongs to the following: chairman of the Supreme Court of Justice, chairman of the Superior Council of Magistrates, any member of the Superior Council of Magistrates, ex officio or at the suggestions made by the chairmen of the judiciary instances. The disciplinary proceedings with regards to the counsels at law and assistant counsels at law of the Supreme Court of Justice, members of the Supreme Court of Magistrate and members of the disciplinary Board shall be launched and resolved by the Superior Council of Magistrates.

The disciplinary Board shall examine cases referred to disciplinary responsibility of judges. The Board is created by the Superior Council of Magistrates and has its chairman, deputy chairman and 10 members: by 3 judges representing Supreme Court of Justice, Court of Appeals, tribunals and courts of law. The ruling (approval) of the disciplinary board is submitted for validation to the Superior Council of Magistrates. The decision taken by the disciplinary board can be appealed against by the judge in question or by the person that has launched disciplinary proceedings with the Superior Council of Magistrates. The Superior Council of Magistrates decides on validation of the rulings (approvals) of the disciplinary board as well as on modifying or repealing decisions made or on closing the case. Likewise, the Council examines contests against the rulings (approvals) made by the disciplinary board.

In compliance with the Law of the Superior Council of Magistrates, the rulings of the Supreme Court of Magistrate with exception of such referred to suspension from the position of a judge and on ceasing his resignation are definitive ones. The Superior Council of Magistrates advances proposals to the President of the Republic of Moldova or to the Parliament on dismissal of judges or heads of the judiciary instances.

Despite the fact that there are certain explicitly stipulated provisions, *the discipline within the judiciary corps is below public expectations.* According to the officially available data[31], during

the enlarged session of the Superior Council of Magistrates and the Ministry of Justice that took place on July 27, 2001, attention was drawn to the procrastination in examining cases lodged with the judiciary instance, brutal conduct of some of the judges with the participants of the process. Launched during 2001 were a number of disciplinary proceedings: *ex officio* with regards to 18 judges; with another 4 launched at the suggestion of the heads of the judiciary instances. Applied with regards to 13 judges were 15 disciplinary sanctions: 5 for grave violation of the legislation in administering the justice; 5 for grave violation by the judges of the reasonable terms of resolving lawsuits and delaying submission of such to the hierarchically superior instances in cases when the ruling of the respective instance was appealed; 2 for breaching labor discipline; 1 for breaching other provisions of incompatibility and interdictions referred to the magistrates. In view of unsatisfactory fulfillment of service duties by 4 judges, the Superior Council of Magistrates has submitted to the qualification Board proposals to proceed to premature revalidation of such.

It is worthy to herewith mention that *occurring in practice are concealed non-motivated dismissals.* This can be explained by the lack of rigorously stipulated exceptional circumstances serving as sufficient grounds for the dismissal of a judge. *This approach,* for instance, *takes place during the period of appointment to the position of a judge before reaching the age of retirement but prior to expiry of 5 years of judiciary activity.* It has been already mentioned that during 2001 the Superior Council of Magistrates has submitted to the President of the country materials with regards to 132 judges to be nominated before reaching the age of retirement. The president has failed to accept and hence nominate 16 judges. In principle, return of the materials without nomination, implies dismissal, since the Superior Council of Magistrates has submitted proposal for appointment and the problem of disciplinary responsibility was not examined by the disciplinary Board. Same tendency was observed in 2002 as well. The officially available data show that within 4 months of 2002 (from March 12, 2002 to July 12, 2002) the president of the Republic of Moldova has passed 41 Decrees of judges dismissal and nomination. Dismissed were 25 judges and 11 heads of judiciary instances, while 25 judges and 25 heads of judiciary instances were nominated.[42] It is worthy to notice that out of 25 judges dismissed one resigned, one was dismissed upon his own initiative, 23 were dismissed officially according to provisions set out under Article 25, par. 1, j) of the Law of the statute of a judge – expiry of term of office, but in reality some of the dismissals come in contradiction with the principles of the judiciary system organization.

It looks rather probable that some of the judges had to be dismissed from the office, although this dismissal was due to be based on substantiated motives, under exceptional circumstances and as a result of fair process. However, in reality, this procedure was turned into a campaign of pursuing the judges, when many of the judges were dismissed without explaining the motives, which is contrary to the declared independence and irremovability of a judge.

This became possible due to making well-known changes and amendments to Article 11 and 19 of the Law of the statute of a judge and Article 19 of the Law of the Superior Council of Magistrates.

The like state of affairs when the judges are dismissed without transparent and substantiated motives is a real threat to the judiciary. Lack of transparency in this activity displayed by the Presidency and the Superior Council of Magistrates serves to provoke fear, implicit obedience and submissive execution of orders, all being a rather dangerous phenomena in justice administration process.

To avoid using this possibility as a way of illegitimate dismissal, envisaged under the legislation shall be procedure of judges dismissal by the Superior Council of Magistrates under exceptional circumstances exclusively (specifying these circumstances) based on the respective definitive decision made by the competent authority. This would be in line with the principle of the judiciary system, which stipulates that dismissal of a judge due to negative motives shall be done

as a result of fair process based on well-defined and adequate procedures in which the judiciary power is playing a decisive role.

In every such case analysis of the respective legislation shall be the answer to the question on whether the decision on dismissal of a judge shall be satisfied or not. Article 25 par.3 and 4 of the Law of the statute of a judge stipulates that the procedure of dismissing a judge and contesting decision on dismissal shall be established by the legislation and that in case of canceling decision on dismissal of a judge, the latter has to be reinstated in all of his rights. *Such a way of contesting the decision on judge dismissal does not exist in the national legislation***,** and hence, this is a merely declarative stipulation. Hence, it is necessary to adopt amendments to the respective legislation governing the mode of contesting decision of judge dismissal (especially such arising from negative motives). Despite of the fact that the Law of the disciplinary Board and of the disciplinary responsibility of judges (Article 23) envisages the possibility of contesting decision taken by the disciplinary Board with the Superior Council of Magistrates, the latter decides on the suggestion of dismissal due to disciplinary abatements or due to moral actions. At the same time, in the majority of cases it is the Superior Council of Magistrates that makes proposals on judges dismissal due to disciplinary motives, while Article 25 of the Law of Superior Council of Magistrates stipulates that its decisions are definitive except for such referred to suspending or ceasing dismissal, which can be appealed with the Supreme Court of Justice.

In line with the effectiveness of the Law of contentious matters it may look as if the problem in question is resolved. However, Article 4 of this law was modified[29] to read: that cannot be appealed exclusively political acts passed by the Parliament, the president of the Republic of Moldova and the Government, as well as administrative acts bearing individual nature and passed by the Parliament, the president of the Republic of Moldova and the Government while exercising attributions explicitly envisaged under constitutional or legislative provisions referred to electing, nominating and dismissal of the official public functionaries of the state, exponents of certain special political or public interest. Through its Decision No. 39 of July 9, 2001, the Constitutional Court has adjusted its prior Decision (No.16 of May 18, 1998) . on the issue; however, the latter was taken over by the legislature and incorporated was herewith mentioned modification reading that *in case of dismissal restricted shall be free access of the judges to a judiciary instance* for claiming effective satisfaction against such acts that violate their rights, freedoms and legitimate interests.

As a result, dismissed were tenth of judges who, doing professional carrier were deprived of a chance to challenge decisions taken against them. To that end, mass-media have made public the list of those 57 judges and heads of judiciary instances dismissed from their positions during the period from November 2001 through August 2002.[43]

According to herewith stated facts it is necessary to adopt amendments to the effective legislation regulating the procedure of contesting decisions on judges dismissal (especially such due to negative motives). Invalidated under this context shall be modifications adopted to Article 4 of the Law of the contentious matters, provisions restricting access to the instances of administrative contentious matters.

Equality before the law

Stipulated under the national legislation is the principle of equality of all the citizens of the Republic of Moldova before the law (Article 16 of the Constitution, Article 8 of Criminal Proceedings Code, Article 6 of Civil Proceedings Code, Article 8 of the Law of judiciary system arrangement). It is assumed that these provisions should have been observed through a rather large spectrum of existing mechanisms although on many occasions stipulated under the law there are certain provisions coming in contradiction with the principle of citizens equality before the law and judiciary authority. For instance, concomitant with intercession of a prosecutor, the parties under the proceedings become unequal and here the judiciary instance can not fully

reshuffle this inequality. The party on whose side the prosecutor has interceded becomes more active and dominating in the process. Although on many occasions the procurator revokes the action, recourse or appeal, in the party in a civil lawsuit can appropriate this quality. In order to equalize this situation, all the instance has to do is just suggest to the adversary to hire a representative (counsel at law), which implies extra expenditures while the observance of the principle of equality is not always ensured.

Same situation persists in criminal proceedings. Although the parties are declared equal before the judiciary instance, possibilities of the prosecutor, supporting state indictment, are net superior to the possibilities of defense. In criminal proceedings there are no mechanisms, i.e. legal possibilities to ensure equality of the parties. What is actually needed under such circumstances is the objectiveness of the judge, which sometimes leaves much to be desired. This becomes especially evident in prosecuting lawsuits at the courts and tribunals, when the prosecutor bringing accusation and the judge are fiends, godfathers or even relatives. To these very issues was our attention drawn by the citizens residing in different localities of the country.

Appearing inevitably under this context, *was the issue of the immunity of deputies, judges and procurators*. Pursuant to the Constitution (Article70), the Law of the statute of the Parliament deputy (Articles 9, 10)[44], the Law of the statute of a judge (Article19) and the Law of the Public Procurator's Office (Article 44[1]), the deputies, the judges and the investigators with the procurator's office were granted immunity. For bringing to the trial under administrative or criminal charges to, say, deputies, it is necessary to have the parliament's consent. *This immunity makes citizens unequal before the law and public authorities*, which comes in contradiction with the Article 16 of the Constitution and creates barriers in documenting illegal activities displayed by the corrupt persons. Immunity attributed under the law to different categories of functionaries is contradictory to one of the 20 core principles of combating corruption adopted by the Council of Europe[45], namely the principle of limiting total immunity in case of inquiry, prosecution and sanctions bound to acts of corruption, which is a must in a democratic society.

Hence, to ensure more ample implementation of the principle of equality of all before the law and arising from the desire to enhance activities aimed at combating corruption, it is necessary to adopt amendments to the Constitution, the Law of the statute of the Parliament deputy, the Law of the statute of a judge and the Law of Public Prosecutor's Office, allowing to revoke the immunity of deputies, judges, procurators and procurator's office investigators in case of applying inquiry, prosecution and sanctions bound to acts of corruption.

To that end, it is worthy to notice continuous judiciary practice of rush investigation of lawsuits at the request of concrete influential persons making part to public authorities (central or local). As a rule, instructions are given to take expedient measures in lawsuit examination. Such lawsuits are examined by the judiciary instances much earlier than the due term at the expense of other pending lawsuits.

Added to herewith specified circumstances affecting the principle of equality before the law shall be as well *the unsatisfactory judicial culture of the population*, which of course, contributes to deformed promotion of equality (in this case a concept applies that the one who is more active, stronger and insistent, brings in motion other mechanisms of influence is the one that is more frequently respected – a point of view actually reflecting inequality of citizens).

Arising from the above stated one comes to the necessity of developing the principle of counter-dictatorship in trying the lawsuits as well as in processing lawsuits based on fact and law, ensuring parties equality in throughout the judiciary procedures.

Clear principles governing the discretional power of the prosecutor when launching penal lawsuit

The prosecutor's system in the Republic of Moldova acts on the basis of the Law of public prosecutor's office[22], which was adopted immediately after Moldova has proclaimed its

independence. Of course, this law has incorporated the majority of prosecutors' attributions and competencies stipulated under the law of the former USSR. Thus, the prosecutor's office in a young state became nothing but a shadow of the former soviet-style prosecutor's office authority. At the extent of 10 years that followed, the respective law was endlessly modified so as to bring it in conformity with the European standards. The effective law cannot be further adjusted to the accepted standards, since from the start it was bearing upon totalitarian principles without clearly specified responsibilities and scopes, without clear definition of the role of public prosecutor's office in the society. In the law the public prosecutor's office is being represented in general as a supervisory body for rigorous and unitary observance of the laws. This type of activity (supervision on behalf of a prosecutor) is an independent form in the state. Despite of the fact that in 1995 (through the law No. 551-XIII of July 27, 1995) this provision was modified, while the essence of the law remained unchanged – overall supervision, which highlights that this body is kind of a super-structure looming over all the other state bodies and has no limit to its activity. As a result, no account is kept of the principles of state organizations – separation of powers, free competition, market economy, privacy, etc.

In the majority of the European countries, the basic activity of the prosecutor's office lies with combating criminality by prosecuting penal lawsuits as well as by supporting penal lawsuits prosecution at the judiciary instance. Shall the prosecutor's office attempt to encompass the supervisory activity it will never have space to do its specific activity, which is combating criminality.

Stipulated under the Constitution is that the prosecutor's office is investigating and enforcing penal lawsuits, i.e. it shall bear responsibility for the activity of combating criminality. In view of supervisory function assumed by the prosecutor's office, responsible for combating criminality *de facto* remains the Ministry of Home Affairs.

Until presently the prosecutor's office was not properly placed amongst the state bodies. Pursuant to Article 4 of the Law, the prosecutor's office is exercising its attributions as an independent body within the judiciary system. And then what is the prosecutor's office? Is it the judiciary or executive power? Is it actually equal in its competence with the judiciary instances and what are its organizational methods?

From the organizational point of view, the prosecutor's body is bearing upon the hierarchical principle of subordination to the public prosecutor. The prosecutor's office exercises penal lawsuits along with the Ministry of Interior bodies and other departments with the sole difference that these bodies are not entitled to exercise their attributions independently within the judiciary. The law envisages that the prosecutor's bodies constitute single and centralized body managed by the prosecutor general. The prosecutor general is nominated by the Parliament, who then nominates *ex officio* all the other prosecutors, who are disciplinary, administratively and procedurally subordinated to the latter – a matter of affairs inadmissible in the judiciary system. These and other such arguments serve to remind that the prosecutor's office has the attributions of executive power and hence, cannot be equalized with the judiciary instances and as a result, cannot perform within the frameworks of a judiciary instances system.

In connection with studying the *issue of the place to be taken by the prosecutor's office*, one shall not mix up the 2 notions: „the judiciary system" and „the judiciary power". *The prosecutor's office being an element of the judiciary system is actually not the judiciary power.* Hence, a conclusion can be drawn that the provision envisaged under Article 1, par. 4 is the erroneous one since it stipulates that „the prosecutor's office is exercising its attributions as an independent body of the judiciary instances system", a provision that has to be invalidated. Arising from these very considerations it has been suggested to place prosecutor's office bodies in subordination of the Ministry of Justice, which is in line with the experience of the developed countries.[35] Moreover, if envisaged under the Constitution is that the prosecutor's office is

prosecuting and enforcing penal lawsuit, then as the law enforcement body the prosecutor's office shall fully assume the responsibility in view of activity implying combat of criminality.

Within the same framework we would like to recommend investigation of the *penal lawsuit (inquiry).* According to the Code of criminal proceedings, the preliminary investigation is carried out by the criminal investigators of the Ministry of Home Affairs, by the Prosecutor General's office, by the Information and Security Service and by the customs services. Discrepancies always existed in this domain when trying to find the answer to the question which body shall carry out penal investigation and on what types of offense specifically. Moreover, the investigators from different bodies, apparently holding the same position, in reality feature different statute. Arising from these very motives there are certain intentions to adopt the unique statute of an investigator. Due to the fact that the prosecutor's office conducts and enforces penal lawsuits we believe it would be rational, as part of justice and law reform, to merge the penal investigation with the preliminary inquiry one into single penal lawsuit and to subordinate penal lawsuit prosecution to General Prosecutor's office as well as to its subordinated prosecutors. Such an approach will allow to implement constitutional provision stipulating that the prosecutor's office shall „prosecute and enforce penal lawsuit".

The effective legislation (The law of the prosecutor's office, the penal proceedings Code) contains a number of provisions governing initiation of penal lawsuit and the discretional power of a prosecutor in launching penal lawsuit.

If the penal proceeding initiated by the penal investigation bodies is found under the supervision of the prosecutor's office bodies, then the activity of prosecutor's office to that end remains, in principle, beyond any control. It is also worthy to notice that in the organic law one can not find any mechanisms of control over the activity and decisions taken by the prosecutor's office.

The activity displayed by the prosecutor's office bodies should be subject to departmental control on behalf of the general prosecutor' office and its subordinated prosecutors, or to judiciary control envisaged under the penal proceedings Code.

Through the first way of control disclosed can be illegitimate decisions, which can be invalidated by the hierarchically superior prosecutor or by the prosecutor general. As a rule, the departmental control carried out by the prosecutor general is lacking transparency. It would be more appropriate to say that such control is meant to conceal offenses admitted by the subordinated prosecutors, since in case of becoming public, these can turn into a negative indicator proving managerial incapacity with the blame placed onto him, by the legislative power bodies that have actually nominated prosecutor in question.

The second way of control (judiciary control) became possible due to modifications made to the Criminal Code as a result of meeting obligations agreed upon with the Council of Europe. Introduced for the first time into the penal proceedings Code[46] were modifications referred to applying judiciary control over the pre-judiciary procedure (Chapter XX^1 introduced through the law of November 3, 1994), envisaging (Article 195^1) possibility for the suspected, accused, counsels at law, prejudiced party, civil party, party responsible under civil process, as well as other persons whose rights or interests were offended to appeal against court rulings of the penal lawsuit body as well as such of the prosecutor, if such appeal was not satisfied by the prosecutor. The herewith listed persons are entitled to appeal with the court refusal of the penal lawsuit prosecuting body and such of prosecutor to endorse claim on offense, on satisfying challenges and petitions of bringing the penal suit, as well as ruling on suspending or dismissing the penal lawsuit and other actions and rulings in cases envisaged under the penal proceedings Code. However, this way of control takes place *ad hoc* in application to a penal cause or in cases of refusal to develop a trial case.

The activity displayed by the prosecutor's office can as well be controlled by the Parliament, since the prosecutor general is being nominated by the latter and since the prosecutors office

bodies area accountable to the Parliament on the status of legality (Article 3 of the Law of prosecutor's office). But again, it takes place *ad hoc* in connection with prosecuting certain cases referred to combating criminality, which does not imply immediate control over the activity and judgments of the prosecutor's office.

Otherwise, the activity of the prosecutor is practically uncontrolled. Neither departmental nor judicial means of control dispose of efficient mechanisms and remedies allowing to repair the flaws in prosecutor's activity. Actually, the availability of such mechanisms would mean a step forward in trying to resolve problems the were building up throughout decades so as to confer to prosecutor's office attributions and competencies matching its basic duty of combating criminality jointly with penal lawsuit prosecuting bodies and exercising the role of public prosecutor with the courts.

Herewith stipulated issues tend to produce a rather negative effect onto the chances of succeeding in ample implementation of the principle governing the discretional power of a prosecutor in developing penal lawsuit investigation. This can explain the flaws highlighted in the informative notices supplied by the Ministry of Home Affairs on the chapter describing development and disposal of penal cases[35]. Same being supported by the data available with the Supreme Court of Justice on penal lawsuits investigation. Thus, in 2001 the number of persons with regards to whom penal cases were dismissed has increased from 758 up to 897 or by 18,3%. According to estimations, in 2000 some 10000 to 16000 offenses were not recorded and hence, no penal cases were developed. In some other cases, even if penal cases were brought to trial, some 1/4 to 1/3 of cases were dismissed. As a rule, it takes place when cases are difficult to disclose and there is a desire not to show low rate of offences exposure undermining the image of performances, lack of professionalism, acts of corruption, etc. Lately the like phenomena occur in combating traffic of human beings, acts of corruption, economic and financial offenses, other type of offence.

Herewith it is worthy to notice, that arising from the statistical reports maintained by the judiciary instances one can derive that registered in 2001 was the number of sentences of acquittal, while the circumstances determining such state of affairs can be explained by the lack of action attempted by the prosecutor defending the case with the court. To that end it has been mentioned that under conditions of a contradictory trial, the judge takes into consideration proofs presented by the participants in the process, being obliged to judge the cause within the limits of leveled accusations. Unfortunately, cases occur when there is a clear need of re-appointing the offender's actions into the component of a much graver offense, but the representative of the prosecution does not insist on developing a case to repair the state of affairs.[31]

Insufficient implementation of regulations related to judiciary control over the pre-judiciary procedure is by large due to low awareness of the citizens about the justice procedures, who frequently do not know or, in the respective cases, do not appeal to the possibilities granted under the law. As a result, an impressive number of offenses remain unrecorded, or once launched, the penal cases are later on groundlessly dismissed and thus obstruct implementation of the principle of free access to justice. Arising from these considerations it has been suggested to implement training programs so as to enhance juridical awareness with the population, which shall allow the citizens a chance to defend consistently and with due competence their fundamental rights and freedoms and, if necessary, appeal to the courts.

Public judgment within reasonable term

Pursuant to Article 117 of the Constitution, the Civil and Penal Proceedings Codes, Code of administrative contravention, the judgments of the court made by all of the judiciary instances shall be public. Judgment of cases in the course of closed sittings shall be admissible in cases stipulated under the law only and with due observance of the rules of proceedings. In all such cases the rulings of the judiciary instances shall be pronounced in open sitting.

The reasonable term has appeared as a notion in the judiciary procedure concomitant with our country's joining the Council of Europe and signing and ratifying the European Convention.

Neither the Constitution nor the Law of the judiciary system organization has stipulated the reasonable term of case investigation by the judiciary instance.

Pursuant to Article 264 of the Code of administrative contravention, cases referred to administrative contravention shall be prosecuted during a term of 15 days. In some cases this established term is 30 days while in other cases 5. Envisaged under the legislation can also be other terms of administrative contravention cases investigation.

In what refers to penal cases, Article 12^1 (Duration of judiciary procedure) was introduced as late as June 23, 2000.[47] Pursuant to this Article, the judgment on penal lawsuits shall be done within a reasonable term. Criteria of defining a reasonable term for solving penal lawsuits depend on the following: complexity of a case; conduct of the parties involved in the process; conduct of the penal prosecution body or such displayed by the judiciary instance.

The terms of procedure are specified under Articles 109-114 of the Civil Proceedings Code. Besides, existing in the procedural legislation are the specific terms referred to certain procedural activities, the terms that shall be observed by both the judiciary and the participants of the process.

Herewith mentioned regulations were not sufficient for ensuring cases processing within reasonable terms. *The practice shows that* for the impressive number of cases *lawsuit processing by the judiciary is done with essential procrastination.*

Influencing the term of case processing are such factors as the number and complexity of lawsuits as well as the organizational backup of the activities displayed by the judiciary. Resulting from its competencies the Ministry of Justice is responsible for the organizational activity displayed by the judiciary instances in what refers to allocating finances required for normal display of work while prosecuting penal, civil and administrative lawsuits (serving the writs, international juridical assistance, timely formulation of minutes, lodging lawsuits in the order of appeals and recourse, etc.).

According to estimates made by the judges, the recorded number of cases prosecuted by the judiciary instances represents a rather high burden for them. One can assume that the low level of judgments taken is a result of unsatisfactory professional qualities of a judge or lack of clear link between the workload and the reasonable term of lawsuit prosecution.

The problem of lawsuits prosecution within reasonable term was also mentioned in the statistical report presented by the Supreme Court of Justice, according to which the majority of petitions posted with the Superior Council of Magistrates in 2001 referred to delays in lawsuits prosecution by the judiciary instances. In view of that the Government has advanced a legislative initiative on instituting certain specific terms for the judgment of lawsuits. However, this project was not supported by the Supreme Court of Justice by reasoning that the procedural-criminal legislation envisages criteria for solving lawsuit within reasonable terms and stipulates the obligation of hierarchically superior instance to verify observance of said terms. Upon the initiative of the Supreme Court of Justice through the Law No. 373-XV of July 19, 2001, the Parliament has instituted a juridical mechanisms meant for ensuring observance of the reasonable term in judgment of lawsuits. Grave violation of these terms was serving as sufficient grounds for disciplinary sanctioning of a judge. Likewise enhanced was the role of the chairmen of the judiciary instances by entrusting them the competence of organizing judgment of lawsuits within a reasonable term.[31]

Concomitant, highlighted in the statistical reports of the Supreme Court of Justice was the problem of impressive increase of the bulk of work to be done by the judges, while the number of judges remained unchanged during 5 years in a row. If in 1995 (when the judiciary reform

was first launched) the number of prosecuted lawsuits was about 120000, while in 2001 this number was practically doubled. This is bound to the fact that the legislation has granted a chance to persons whose rights (in their opinion) were violated to bring to the court acts and actions of criminal prosecution body as well as a chance to prosecute lawsuits of administrative contentious matters. Within the same time period entrusted to the competencies of the judiciary instances were problems referred to issuance of the arrest writs and extending duration of arrest as well as other such categories of complaints.

In view of herewith stated and for best implementation of the principle of lawsuits judgment within reasonable term it is necessary to adopt amendments to the Constitution and the Law of judiciary system organization, which shall clearly stipulate the reasonable term of judging the lawsuits by the judiciary instances. Likewise, it will be necessary to work out a mechanism allowing to determine the workload per one judge or the number of judges needed depending on the volume and number of prosecuted lawsuits so as to ensure qualitative judgment done within reasonable term as well as justice based on equitable process guaranteed under Article 6 of the ECHR.

Ensuring the right for efficient defense

By adopting Article 26 of the Constitution the state has assumed an obligation to guarantee the right for defense in the court. Every individual has the right to respond independently, through legitimate means, to the violation of his rights and freedoms. At the entire extent of the judiciary proceedings the parties have the right for the assistance of a defense counsel, who shall be selected independently or appointed *ex officio*.

Despite the fact that the right for defense has been envisaged under legislation, in reality attempts to apply this principle in the Republic of Moldova encounters considerable obstacles. First of all, the actual implementation of this principle is considerably limited due to lack of financial resources. As it has been already mentioned in the statistical reports submitted by the judiciary instances, *ensuring the constitutional right for defense through qualified counsel assistance becomes a problem in case of socially vulnerable categories of population*, especially in penal lawsuits in which assistance of a counsel *ex officio* has not been ensured. Cases are frequent when the defendant can not afford paying to a defense counsel for his services and therefore renounces on juridical assistance. In some instances the defense counsel refuse to take part in the process through appointment *ex officio*, since remuneration at the expense of the state due to insufficient financing allocated for the Ministry of Justice is not ensured.[31] The actual Government's debt for defense counsel services exceeds 150 thousand lei. These arrears refer to judges' salaries alone, while the total debt incurred with actual necessities is tenth times as much.

Yet another motive is bound to *training and control over the counsel corps.* The counsel corps has been instituted without any control and assistance on behalf of the state. It is specifically through the counsel corps that the image of the judiciary system was greatly undermined. In line with market prices formation, those practicing juridical assistance began invoicing the clients to settle the fees in sizes, which many citizens cannot afford due to pauperization. Moreover, many counsels at law proceed to dodging by reasoning that it required to stimulate the judges stimulation in order to resolve one or the other litigation. Due to lack of juridical culture the citizens fall easy pray to such fraudulent actions by paying fabulous amounts of money to the counsels at law. As a result of these phenomena created with the clients was a rather unfavorable image of the judiciary and the counsels in ensemble. Thus, certain counsel at law B.N. has requested from his client US$ 2400 claiming it was necessary to stimulate a judge with Criuleni Court so as to ensure "satisfactory" solution of a penal lawsuit. Being convicted for swindling the counsel at law B.N. was deprived of the right to practice the Bar.

Although the Bar remains amongst the prestigious activities in the sense of free lance, during the last 5 years the Law of the Bar[48] was substantially modified and a good part of it (through the Decision of the Constitutional Court)[49] was recognize non-constitutional, especially in what

refers to its organization, appurtenance to profession, etc. Currently adopted was a new edition of the law of Bar[50] maintained in which was the majority of provisions set out under the effective law. Due to the fact that the provisions were minimized it was impossible through the Law of the Bar to enhance the role of a counsel at law. At the first approach it may look as if the procedure of selecting persons for practicing the Bar is not totally bad. Anyone holding a license in law, professional record of 1 year, and passes examination to prove qualifications can become barrister at law. These are the criteria used by the Ministry of Justice when issuing license allowing to exercise the activities of a counsel at law. However, before 1999 allowed to join barristers at law corps were highly suspect persons with a dubious reputation with prior convictions and low moral principles.

The corps practicing the Bar is represented by approximately 1500 persons, although legally registered in compliance with the effective legislation is only about 500 counsels at law. The others render judicial assistance on the basis of contract or powers of attorney and are totally uncontrolled in such instances as knowledge of legislation, elementary professional, financial or economic discipline. Thus, those rendering judicial assistance allow for imperious actions placing their clients under unpredictable situations with the sole scope of demanding unaccountable fees far beyond the proportion of services furnished.

Due to these reasons, *the citizens prefer to appeal to the justice independently, proving inadequate judicial conduct.*

In ensemble, all these circumstances result in lack of efficient and convincing justice in the Republic of Moldova – a fact confirmed by public opinion.

Therefore it is necessary to adopt and implement into the activity of counsels at law the Codes of Conduct with rigorous stipulation of the conflict of interests as well as such in view of observance of legal requirements by the counsels.

Accountability of the judges and prosecutors; transparency

As it has been stipulated under the Law of the Superior Council of Magistrates (Article 4 item t) the Superior Council of Magistrates shall submit annually to the Parliament and the President of the Republic of Moldova a report on the set up and functioning of the judiciary during the previous year, while according to the Law of the Supreme Court of Justice (Article 30), the latter has its periodical publication entitled „The Bulletin of the Supreme Court of Justice". The herewith mentioned Bulletin publishes and familiarizes its readers with diverse aspects of the activity displayed by the judicial institutions, including annual information on such based on the analysis of statistical data and thus ensuring a general level of transparency of said activities. Besides, the Supreme Council of Justice is obliged to submit to the Parliament a report on the activities displayed by the judiciary instances on annual basis. Through the Bulletin published by the Supreme Council of Justice and other relevant materials the public can follow up the activity displayed by the judiciary power and make general objective assessment of the outcome of such activity.

The like provisions on presentation of reports by the prosecutor's offices are stipulated under Article 3 of the Law of prosecutor's office[22], stating that the prosecutor's office bodies shall inform the Parliament, the President of the Republic of Moldova, the Government as well as central and local public administration bodies on the status of legality. In reality, as a rule, the prosecutor's office presents only some information at the press conferences, taking the floor, publishing articles in mass media through which the public is being informed on certain specific cases or some aspects of the activity displayed by the respective prosecutor's office. Sometimes, the prosecutor's office is given the floor with the Parliament when it is necessary to examine certain specific issues referred to combating criminality. Disclosed in the course of Parliament sitting are certain aspects of the activity displayed by the prosecutor's office. Presenting such information is not equivalent to submitting report on the activity displayed. *The prosecutor's*

office does not present any summarized information on the results of its activity and therefore the public is not sufficiently and objectively aware of all the fact resulting from such activity. This explains lack of required transparency in the activity displayed by the prosecutor's office and control on behalf of the society over the activities displayed by this institution.

In what refers to *local level courts and prosecutor's offices,* a statement can be made that these *are not obliged to submit* the like *reports and the population in these localities is not aware of the results of the activity* which does not help to enhance transparency and does not allow to establish more tight link between the civil society and the respective bodies of justice.

In order to implement any of the principles of the judicial system it is necessary to adopt amendments to the respective organic law, which would stipulate the obligation of the judicial institutions and prosecutor's office to submit reports on their activity. It should also stipulate responsibility of the respective persons within judicial institutions or prosecutor's office for failure to present such reports, which shall help to ensure transparency of the activity displayed by the latter.

Adequate remuneration of judges' job

In compliance with Article 28 of the Law of the judge's statute, remuneration of judges' job is established in relation to the salary of the president of the Republic of Moldova. For the chairman of the Supreme Court of Justice established by the law is 90% of the salary of the president of the Republic of Moldova, while the other functions within the judicial system are established by gradual decrease in pro rate to the salary of the Chairman of the Supreme Court of Justice and further down to district court judge, whose salary amounts to some 40-50% of the salary paid to the chairman of the Supreme Court of Justice. At the same time, their remuneration is specified under Parliament Decision No. 453-XIII of May 16, 1995.[51]

According to the data available with the Supreme Court of Justice, the legal framework that serves to regulate remuneration of judges and other employees of the judicial institutions, including employees of the Supreme Court of Justice, is lagging far behind the one that regulates remuneration of public functionaries[31], while the Parliament Decision on judges remuneration was not upgraded since long. It is necessary to modify the procedure of calculating the remuneration by taking into account the length of service, qualification, amount of work done, but more specifically bearing in mind the fact that the salary of a judge shall ensure to the latter certain decent living standards so as to ensure the principle of independence of a judge. The monthly salary of a judge beginning with district court amounts to 735 lei, with 980 lei paid by the Tribunal, 1230 lei paid by the Court of Appeals, and 1555 lei paid by the Supreme Court of Justice, which can not be considered adequate to the position and responsibilities of a judge as compared to other categories of public functionaries and in the majority of cases being below the size of minimum consumption basket. Herewith it is worthy to notice that the level of salaries paid to the personnel of the judicial institutions is far below the required minimum, not to mention 2 to 3 months wage arrears. Under this context it is necessary to modify the Parliament Decision and Annex No. 1 to the Law of the state budget for 2002 No. 681-XV of November 27, 2001.

Arising from herewith stated considerations, adopted on July 25, 2002 were modifications to the respective Parliament Decision, according to which established was a new size of monthly indemnity for the managers of the Supreme Court of justice and General Public Prosecutor's Office (450 lei), monthly booster for the length of service to judges as well as the new booster to the salary of a judge for the qualification grade (from 150 lei for grade 5 up to 400 lei for the superior grade), effective as of October 1, 2002.[52]

Deputy minister of Justice, Victor Cretu, has quite rightly mentioned that the necessity of increasing salaries has the sole objective of „reducing the level of corruption in this domain", and that „the cheap justice is capable of gravely affecting the state and in lack of adequate salary

paid to the judges the risk of corruption is growing. Such a situation does not only harm gravely the image of the justice, but the image of the state in general".[53]

According to the new modality of salary calculation, beginning with October 1, 2002, the salary of the Chairman of the Supreme Court of Justice will be 4,5 thousand lei, a judge employed with this institutions will be paid 3,5 thousand lei, the chairman of the Court of Appeals - 3,7 thousand lei, and a judge with the Court of Appeals – 3,1 thousand lei, the chairman of the tribunal – 3,2 thousand lei, a judge with the tribunal – 2,5 thousand lei, the chairman of the district court – 3 thousand lei, and the judge with the district court - 2 thousand 190 lei. This new level of remuneration is again inadequate to the position and responsibilities of a judge and therefore daily newspaper „Flux" has qualified this increase of salaries for judges as the „charity for the magistrates".[53]

The Parliament Decision is not supported by either calculation or a concept motivating correspondence of specified amounts to the size of salary required by a judge. All these make us believe that it will not take long for the problem of judges' salaries to appear again. This issue is closely related to the problem of complete realization of the principle of independent budgets allowed for the judicial institutions. Therefore it is necessary to resolve judges salaries under the same context with complete realization of the principle of independent budgets allowed for the judicial institutions.

Implementation of programs for professional training of judges, prosecutors and counsels at law

The function of a judge presumes high level of professional training in the domain of jurisprudence. From this viewpoint the candidates to the function of a judge shall be mandatory subjected to examination by the judges qualification and revalidation Board with the scope of checking up knowledge of law. Prior to examination the candidates shall pass special one-year probation period in practicing law. The Superior Council of Magistrates shall approve the professional training program for a candidate. Once the training program is over the candidates shall pass qualification examination following the procedure established by the law.

After appointment to a post for a term of up to 6 months the judge shall pass revalidation to be conferred qualification grade. Envisaged under Article 27 of the Law of judges' qualification and revalidation Board[20] are six qualification grades: 5, 4, 3, 2, 1 as well as the superior qualification grade.

Throughout the course of their activity the judges are obliged to permanently upgrade their knowledge by using different ways for the purpose: independently, by attending national or international workshops, retraining courses, etc. Permanent changes in the national legislation imply that the judges should have good knowledge of the laws and apply such upon their effectiveness, which by itself means continuous independent training.

Twice a year the Superior Council of Magistrates is holding workshops for the judges in southern, central and northern areas with the scope of informing them on the effective legislation and share national and international practice.

Currently available at the national level is the Republican Center for training and rising qualification skills with the judicial staff offering retraining for the judges, counsels, prosecutors, investigators, judicial institutions chancellery personnel, law enforcement personnel. Traditionally, once every 5 years the judge shall frequent professional refreshment courses. It is worthy to notice that these traditions are not always respected while the professional level with many of the judges leaves much to be desired.

The Center of Retraining has been instituted by the Ministry of Justice, but since the latter does not meet its financial obligations, the Center is financed by the state much below its actual necessities (5% of the center's budget). Currently the Center for training and rising qualification

skills with the judicial staff is financed at the expense of sponsorship and donations of foreign representation offices (USA, Netherlands). Such arrangement is inadmissible for the judicial system, which shall be functioning at the expense of the state budget exclusively. Such state of affairs shows that the state can not cope with maintaining judicial system in a good professional shape supported by training. Moreover, retraining of the judicial staff is not coordinated with the educational system in the domain of law and inefficient not to mention lack of interest in contributing to self-training.

Besides other things, the statistical data on the activity displayed by the judges show unsatisfactory professional quality of adopted judgments. Thus, according to statistical data, during 2001 submitted to the qualification Board were applications for conferring qualification grade to 69 judges. Attested and conferred qualification grades were 60 judges. 9 judges have failed to pass revalidation while the repeated revalidation for them was postponed for 3 months.[31] Likewise mentioned were shortcomings in training and improving qualification skills of a judge. With the time professional skills with some of the judges tend to deteriorate since there are no real possibilities to ensure required conditions to display such training activities. At the same time, it is worthy to notice a rather insufficient level of professional training with many of the applicants competing for the position of a judge.

With the scope of satisfying the needs incurred with maintaining desired professional level of the judges and other personnel in compliance the European standards consideration shall be given to instituting a school of Magistrates. Implemented with such a school shall be programs for permanent professional retraining backed up by due financing at the expense of the state budget, since the state shall not make savings on justice. It is state's prerogative to ensure professional training, legislative framework and adequate conditions for administering justice and it can not left counting on sponsorship. Cheap justice makes the society pay high price for it which fact is well known to any student of law although less known or realized by the leadership.

Physical protection of judges and prosecutors involved in the investigation or prosecution of socially important lawsuits

Stipulated under Article 27 of the Law of the statute of a judge is state protection of a judge and members of his family, where for the first time envisaged under the law was that, if necessary, at a request of the judge, the Chairman of the Supreme Court of Justice or of the minister of justice, the Home Affairs bodies are obliged to take rigorous measures of ensuring security to a judge and his family members as well as to the integrity of their estate.

Despite existence of such provisions and actual facts of judges offense, neither the chairman of the Supreme Court of Justice nor minister of justice made no attempts to ensure security of judges whenever it was needed.

Thus, in 1998, the judge V.C. of Drochia Court was permanently threatened with personal harassment by some non-identified persons. One day when he came home from his job at around 10 p.m. he was kidnapped, taken to municipal garbage dump, maltreated and murdered. It is evident that that the circumstances of this cause were not disclosed while the persons responsible for this sector never attempted any actions envisaged under the law. The family of this judge was left without any support on behalf of the state and dragging miserable existence.

Same like many other judges attacked in 2000 by persons prior criminal record was the judge C.N. of the Supreme Court of Justice and again no attempt of applying provisions of the respective law were taken.

Pursuant to the Constitution (Article 121) and the Law of judiciary system organization (Article 50), the judicial institutions dispose of police assigned to their service. The judiciary police are designed to ensure safeguarding court offices and assets, safety of judges and participants of proceedings, public order inside of judicial institutions and during court sittings, etc.

Although it has been stipulated that the police shall be at the disposal of judicial institutions, until presently *the guard and public order has not been ensured with the courts and tribunals* where the justice is actually administered (with exception of guard ensured with the Supreme Court of justice and the Court of Appeal, but even then the police post is of formal nature and cannot ensure normal administration of justice, which actually remains the burden to be borne by the judges).[31] Moreover, *no physical protection is granted to the judges involved in prosecution of socially important lawsuits.*

In what refers to ensuring security of prosecutors, the Law of prosecutor's office (Article 43) stipulates that the prosecutors and the investigators with the prosecutor's office in exercising their functions are entitled to wear and use arms and means of self defense - a provision implying a way of ensuring their physical protection at their own expense and not at the expense of the state service. In reality, *same as in case of judges, physical protection of prosecutors (prosecutor's office investigators) involved in prosecuting socially important lawsuits, is not being ensured by the state.*

Under current conditions lack of any physical protection granted to these persons can aggravate activity aimed at combating criminality and more so combating organized crime and corruption.

Bearing in mind the enhanced level of criminality and the need of ensuring impartial justice through legal mechanisms it is necessary to develop in the law certain provisions for placing police at the service of judicial institutions. In order to realize the principle of judiciary system of ensuring physical protection it will be necessary to adopt provisions in the legislation, which shall stipulate the mode of ensuring physical protection of the judges and prosecutors involved in investigation or examination of socially important lawsuits.

Naturally, state protection of a judge will incur additional costs, while further failure to ensure measures stipulated under the law in this domain cannot be anymore justified by poverty and lack of budget resources. Otherwise placed on trial will be the mere existence of the state organization and functioning of one of the state powers – the judiciary one. More so that special allocations were envisaged by the budget for that purpose and there are real forces in the state capable of ensuring safety of high rank functionaries within the legislative, executive and judicial powers.

Under this context the problem of judges and prosecutors immunity will appear inevitably. Sometimes the notion of immunity is wrongly interpreted as a modality of ensuring physical protection while these are two different notions that shall not be mixed up.

Equitable judgment: adopting well-reasoned judgments based on facts and law; guaranteeing equal justice functioning at the inferior levels of hierarchy

Legislation on criminal, civil and administrative procedure envisages that the ruling of the judicial instance shall be legal and substantiated and that the judicial instance makes it ruling on the basis of proofs, examined during court sitting and arising from the fact that the instance has to motivate its ruling. Thus, the national legislation is guiding judicial instances towards taking all measures envisaged under the law so as to examine presented proofs under all the aspects in compliance with the civil and criminal proceedings Code and adopt legal and equitable ruling according to facts and law situation established under the prosecuted cause.

If we shall analyze the quality of prosecuting lawsuits by the judicial instances, then the juridical statistics shows a rather alarming situation.[31,32] For instance, according to statistical data *during 2001 submitted with the judicial instances were 15537 criminal cases. Total number of cases prosecuted by the judicial instances amounted to 15152,* out of which 578 cases were posted according to competencies, while 14574 cases referred to 18628 persons after all were prosecuted. As a result condemned (with exception of prosecuting lawsuits in the order of appeal and recourse) were 17138 persons, acquitted were 508 persons, coercive measures (of medical nature) were applied to 85 persons, filed and disposed were cases with regards to 897 persons.

Prosecuted by district and municipal judicial instances were 14478 criminal lawsuits, by Military Court – 231 and 343 by tribunal out of total 15152 prosecuted lawsuits.

Lodged with the Tribunal, Court of Appeal and Supreme Court of Justice in the order of appeal, recourse and by extraordinary ways of contesting were 4625 lawsuits out of which 4484 criminal lawsuits were prosecuted.

Contested with the Tribunal in the order of appeal and recourse were judgments pronounced in 2750 lawsuits or 20,3% of the number of criminal lawsuits examined by the district and municipal courts. The Tribunals have tried in the order of appeal 2381 lawsuits with regards to 3161 persons, leaving unchanged sentences with regards to 2003 persons, while 1134 were overruled.

Overruled were sentences with regards to 10 person with acquittal of condemned, for 11 persons cases were filed and disposed, for 385 persons (or 33,9%) lawsuits were diverted for a new trial, and in case of 728 persons applied were new rulings. Sentences with regards to 24 persons were partially filed and disposed.

The Tribunals have examined in the order of recourse 305 lawsuits with regards to 308 persons, out of which examined in case of 303 persons were complaints and recourses against court rulings, while in case of 5 persons against sentences, out of which sentences with regards to 3 persons were overruled, with diversion of such for a new trial.

The Court of Appeal has tried in the order of recourse 1174 lawsuits with regards to 1669 persons. Trying recourses and contests against rulings of appeal of the tribunals, the Court of Appeals has revoked the appeal in case of 311 persons. The share of revoked rulings of the tribunals as part of examination in the order of recourse amounted to 9,8% or 311 out of 3161 (in 2000 this index amounted to 7,8% or 261 out of 3348). Overruled were sentences with regards to 215 persons, out of which 18 were acquitted, for 3 persons the cause was dismissed, 51 were revoked with diverting these for new trial, in case of 143 persons new sentences were adopted. Besides, revoked were 96 rulings pronounced in the order of appeal by the tribunals out of which for 55 were maintained rulings made by the district courts and for 41 rulings were revoked with diverting lawsuits for a new trial in the order of appeal.

Based on recourses to dismissal the criminal Bar and the Plenum of the Supreme Court of Justice have revoked sentences of judicial instances with regards to 59 persons. Besides, revoked were 35 rulings of appeal and recourse; with regards to 11 persons maintained were judgments pronounced by the court of first instance.

The share of sentences revoked on the basis of lawsuits examined by district and municipal courts in the order of appeal and recourse, arising from the number of persons, amounts to 7,3% (1297) out of 17663 persons with regards to whom the judges have passed sentences.

The criminal Bar and the Plenum of the Supreme Court of Justice, while judging action in cancellation, have further revoked 53 rulings of appeal made by the tribunals. Thus, the total percent of revoking rulings of appeal made by the tribunals amounts to 11,5% or 364 out of 3161 (in 2000 the total percent of revoking rulings of appeal made by the tribunals was 9,8% or 323 out of 3348).

Thus, *in 2001, in the order of appeal, recourse and by extraordinary ways of contesting revoked were sentences of district and municipal courts with regards to 1345 persons*, which constitutes 7,6% (in 2000 it was 9,0%) out of the total number of 17663 persons, with regards to whom the judicial instances have passed sentences.

In 244 cases the sentences of the tribunals and military Court were complained against with the court of Appeals. Examined were complains and recourses in 239 lawsuits with regards to 338 persons out of which sentences with regards to 254 persons were maintained unchanged, while for another 84 persons the sentences were filed and dismissed, 17 condemned persons were

acquitted. In one case the process was disposed, in 14 lawsuits were reversed with diverting cases for repeated judgment and new sentences were pronounced with regards to 52 persons.

The penal Board with the Supreme Court of Justice has verified in the order of recourse the legitimacy and the substantiation of 185 sentences. With regards to 131 persons, the sentences were left unchanged, while 21 sentences were dismissed, out of which one with acquittal of the condemned, 7 with diverting the cause for a new judgment and 13 with issuance of new judgments. In 31 cases judgments pronounced in the order of appeal were reversed, out of which for 10 persons maintained was the sentence of the respective judicial instance.

Based on recourse to dismissal the criminal Bar and the Plenum of the Supreme Court of Justice have dismissed sentences of tribunals from Bender, Chisinau, and the Military Court with regards to one person in each of the judicial instances.

Thus, in the order of appeal, recourse and by extraordinary ways of attack dismissed were sentences of tribunals and Military Court with regards to 98 persons. The share of dismissed sentences with these judicial instances amount to 12% (98 of 814) (in 2000 – 10%, i.e. 67 of 671).

The sentences of the Court of Appeal were not examined in the order of recourse with the penal Board of the Supreme Court of Justice, in 46 lawsuits with regards to 64 persons, out of which sentences for 44 persons were maintained unchanged, while for 19 persons these were reversed. Out of these, dismissed were lawsuits with regards to 5 persons, while such with regards to 7 persons were diverted for a new judgment, with regards to 7 persons new judgments were taken (with regards to 6 persons – more severe judgment was made, while with regards of one person – acquittal sentence was dismissed while the person in question was condemned).

The share of dismissed sentences pronounced by the Court of appeal in 2001 amounted to 12,6% (19 out of 151) (in 2000 – 12,8% or 17 out of 133).

Being examined in the order of recourse the contests and recourses against judgments of appeal pronounced by the Court of Appeal in lawsuits prosecuted by the first instance by the tribunals and Military Court reversed were judgments of appeal with regards to 52 persons, while examining recourses in dismissal, another 4 judgments of appeal were reversed, totally with regards to 56 persons or 16,6% of the number of prosecuted lawsuits (56 out of 338). In 2000, reversed were judgments of appeal pronounced by the Court of Appeal with regards to 17,4% (38 out of 218).

Errors were allowed for by the appeal instances as well. This applies to the penal Board of the Court of Appeal and to the penal Board of the Supreme Court of Justice. Totally, in 2001, reversed were judgments of recourse pronounced by the Court of Appeal with regards to 47 persons or 2,8% of the total number (according to the number of persons; in 2000 - 2,1%).

The Plenum of the Supreme Court of Justice, in 2001, has reversed judgments of recourse pronounced by the penal Board of the Supreme Court of Justice with regards to 3 persons, while for 2 persons – judgment of the penal Board, which prosecuted these lawsuits in compliance with recourse to dismissal. In 2000, reversed were judgments of reversal pronounced by the penal Board and by the Supreme Court of Justice with regards to 5 persons.

Thus, *in 2001, the share of dismissed sentences out of total number of persons with regards to whom judicial instances have pronounced sentences was 7,8% or 1462 out of 18628 (in 2000 – 9,0% or 1681 out of 18643; in 1999 – 9,7% or 1701 out of 17423).*

It is worthy to mention that in *2001, the number of acquitted persons has increased (from 486 up to 508 or by 4,5%), same as the number of persons for whom penal cases were filed and dismissed (from 758 up to 897 persons or by 18,3%).*

Approximately the same situation applies to examination of penal lawsuits during 1998-2000[32,36,37] (see Table No.4).

Table No.4. *Data on the number of persons condemned and acquitted as well as lawsuits filed and disposed of by the judicial instances during 1998-2001.*

	Year			
	1998	**1999**	**2000**	**2001**
Number of condemned persons	15782	15676	17340	17138
Number of persons acquitted	456	412	486	508
Number of lawsuits filed and disposed of	861	1285	758	897

Data on penal lawsuits resolved produce an impression that in the impressive number of cases the judiciary instances of different level are competing between themselves in making wrong judgments. Same tendency persists not only in prosecution of penal lawsuits but also in case of civil, contraventional, economic ones and when issuing arrest writ.

The available statistical data show that *in pronouncing judgment legal requirements are frequently neglected* and thus influencing the quality of lawsuit examination, and that in the respective case *judgments are adopted without proper coordination of the legal situation with the facts and law*. Due to such state of affairs, *the number of persons acquitted in 1998-2001 on penal lawsuits was as high as 1862 while 3801 were disposed of definitely.* It is also worthy to mention that a good number of penal cases were disposed of under amnesty, this being an proof of inadequate application of the law by the judicial instances.

Statistical data on the quantitative and qualitative prosecution of lawsuits serve to further prove that the *principle of guaranteeing justice functioning at the inferior levels has not been fully realized.* Free access to justice shall be primarily guaranteed at the inferior levels of the judicial system hierarchy since this is the level at which the majority of lawsuits are resolved and hence these instances have the competency of guaranteeing protection of the legitimate rights and interests of the citizens.

Statistical reports indicate existence of serious errors and shortcomings in the procedure of lawsuits resolution, which need to be cleared and that there is much space for improvement in this domain.[31]

According to some estimates made by the experienced judges *the reasons underlying the flaws in the activity displayed by the judicial instances are: lack of professional competence with some of the judges and thus failing to match the requirements specific for the judicial instances; corruption and traffic of influence; in some cases lack of clear legislation framework that would be coherent and practically executable; lack of necessary conditions for administering the justice and lack of attractive remuneration for judges; poor quality of case files (materials), submitted by the penal prosecution bodies as well as by the controlling bodies.*

Grave consequences are resulting from the acts of corruption. The number of policemen, prosecutors and judges condemned during the recent years is growing continuously. Condemned for the acts of corruption during the last 5 years were 7 prosecutors and judges. This number of recorded acts of corruption does not imply that this phenomenon is weakly spread amidst judges and prosecutors. Due to different reasons some of the acts of corruption are not recorded, but these can be easily traced by the assets owned by the prosecutors and judges, the value of which has little to do with the size of their salary. The enhanced level of corruption within the judicial system are further confirmed by the data of public opinion survey[54]. Thus, the household survey shows that by the degree of corruption perception the judges are placed before such sectors as health care, customs, education and police.

For instance, the judge C.I., when examining economic cause has requested US$ 6000 bribe for the favorable judgment of litigation. After cause examination and passing judgment in favor of this party the judge requested repayment of the „due debt" and was arrested in *flagrante delicto* and condemned for receiving a bribe worth US$ 1800.

Prosecutor C.V., a party to the penal proceedings bringing charges against D.C. for perpetrating offense envisaged under Article 119 par. 3 of the Criminal Code, has requested from D.C. a bribe of US$ 600 for holding benevolent position with the court. The cause-examining judge was to be later on bribed as well. At the instance of handing over agreed upon cash the judge P.C. was arrested in *flagrante delicto* same as public prosecutor participating in the proceedings.

In yet another case, the judge D.C. having examined penal cause with regards to M.C. accused in compliance with Article164 of the Criminal Code and applying a rather moderate punishment received a bribe at the latter's domicile worth 118 lei and 2 coats for children. At the instance of handing over the bribe the judge was arrested *in flagrante delicto.*

The like cases demonstrate that the respective persons have discredited the staff, their families and the supreme interest of justice, which is the justice and equity.

Of course, the material standing of judges and prosecutors does not ensure for a decent living, although lack of personal qualities with some of the staff result in overstepping the limits of the law, entering into collusion with the instigators and allowing acts of corruption, which has a negative outbreak onto the public opinion and credibility in justice.

The traffic of influence is quite highly pronounced in the society. Unfortunately this traffic takes origin from the central government office. Thus on 26.04.2002 the advisers of the president of the Republic of Moldova in legal issues has addressed the chairman of the thee Court in sector Buiucani with a petition reading as follows: „In compliance with decision of the president of the Republic of Moldova, find herewith attached for examination an appeal lodged by Mr. A.T. In his opinion certain actions were perpetrated, which constitute grave violation of the effective legislation. In case the facts specified under the appeal will find proof it will be necessary to apply disciplinary sanctions and restore legal standing of things. Please inform the president of the Republic of Moldova on the results of examination within a term of 10 days."[55]

It is clear that the president of the Republic of Moldova has no direct relation to that fact, although the obvious level of the author of this petition reveals poor knowledge of the organization of state and cooperation of powers in the state.

As a result of acts of corruption and traffic of influence there takes place wrong judgment of judicial cases or procrastination in examining such. To that end mentioned can be the „Eugenia Duca" case, which remains unresolved for more that 4 years.[56] It is a case of conflict between spouses Andoni and Eugenia DUCA, Director of the Center of International Trade for Investments and Exporters „CHRIS" SRL. Referring to this case deputy Mihai Plamadeala has highlighted the impotence of the justice and law enforcement bodies by mentioning that „whatever is happening in connection with this case is nothing but Mafia-criminal machination supported at the extent of 5 years by the heads and deputies of legislature, prosecutors and policemen and influential shadow players".[57]

The like facts make juridical assistance take just a formal meaning, highly discrediting the judiciary authority, the authority of the law and, as a result, the credibility in fair justice is totally lost. . These and other actions admitted by the judges, prosecutors, counsels, other employees of law enforcement bodies as well as the state dignitaries discredit performances of the state office, undermine trust in the supremacy of the law and in the possibility of resolving through justice civil, penal and administrative litigation. Hence, making use of juridical mechanisms it is necessary to exclude such facts from the activity incurred with justice administration and cooperation between the powers.

Herewith presented reasoning confirm the necessity of withdrawing immunity with the deputies, judges, prosecutors and other decision makers in perpetrating acts of corruption, implementing a real mechanism for declaring their estate as well as adopting the National Anti-corruption Program targeted, among other things, towards prevention and combating corruption within the judiciary system and state office. The proposal on developing and adopting the National Anti-

corruption Program was submitted to the top decision-makers of the country way back in December 2001.[35] Despite the fact that likewise submitted was a set of suggestions for this Program no further action was ever attempted.

The quality of justice depends on the legislative framework as well as on the compatibility of the national legislation with the international treaties and conventions to which the Republic of Moldova is a signatory. The analysis of the national legislation in ensemble has proven its incompleteness and in many cases its imperfection, which has a negative effect onto the judicial lawsuits. These problems were highlighted in the judiciary reports. For instance, the fact that the Law of property has not been brought in conformity with the provisions set out under the Constitution, that certain gaps exist in land legislation revealed in solving bankruptcy litigation, etc. The judiciary power could have contributed a lot to this issue if not for the fact that according to the Constitution it is deprived of the right of legislative initiative. To solve this problem it is necessary to adopt certain amendments to the Constitution and the Law of Superior Council of Magistrates so as to entrust the Superior Council of Magistrates (same as the representatives of legislative and executive powers) with the right of legislative initiative as well as with the right to approve draft laws referred to the judicial system and other such important laws.

A judiciary system in which the judgments are respected and implemented

Observance of the principle of free access to justice inevitably assumes acceptance and execution of judgments pronounced by the judicial instances. Article 120 of the Constitution stipulates that observance of sentences and other definite judgments of the judicial instances shall be mandatory, as well as cooperation requested by these in the course of proceedings.

However, the reality in what refers to execution of judicial judgments presents a rather alarming situation. According to the data available with the Center for Human Rights in Moldova[33], „at the moment awaiting to be executed are about 40 thousand judgments under civil lawsuits". The Ministry of Justice, in its turn, informs that about 40 percent of the judgments remain unexecuted.[59]

The Ministry of Justice confirms that failure to execute the judgments is bound to the fact that local public administration does not want even to hear about cooperation between the state powers while some of the representatives of the local public authorities are dodging from solving the problems referred to protection of citizens rights and interests. Arising from this motive the Ministry of Justice has worked out a draft law of the judicial executor and another draft referred to creation of judicial police with the scope of ensuring and creating efficient mechanism of guaranteeing execution of court judgments.

The fact of failure to execute court judgments has been also influenced by the negative attitude shown by some of the managers of central and local public administration. The like cases, for example, were disclosed with the Ministry of Transport and Communications[60], as well as with the Ministry of Home Affairs, Ministry of Finance[61] and other bodies.

Mentioned in thee statistical information maintained by the judicial instances is that nowadays it is necessary to create efficient mechanism ensuring judgments execution, which for the moment remains one of the extremely difficult problems within the judicial system. It has been also mentioned that it will not suffice to just declare the right granting free access to justice, this right has to be actually ensured.[31]

With the scope of enhancing efficiency of actions in view of setting up control over the actual execution of judgments, decisions, conclusions and sentences issued by the judicial instances with regards to civil, contraventional, non-deprivation of liberty penal lawsuits as well as other such decisions envisaged under the law, the Government has created by the Ministry of Justice a Department for judicial rulings execution complete with its territorial subdivisions found within the circumscription of district courts, through structural reorganization, modifying staff and

reallocating budget resources envisaged for the judicial instances and Department of Penitentiary Institutions.[62] In line with entrusting judgments execution management to the Ministry of Justice, which looks acceptable from the organizational point of view, this idea can soon be discredited due to lack of personnel specifically trained for the purpose. Simple supervision exercised by the Ministry of Justice, prior referred to its competence under the law anyway, does not seem to be sufficient for the purpose of efficient execution of judgments. It is necessary to adopt and introduce procedural modifications and organic laws referred to the number and legal framework of the judicial executors along with implementation of measures required to ensure technical-financial and organizational activities in executing judgments, with, probably, partial inclusion of private sector.

An impartial judiciary power (a court), independent and well-informed, separated from the executive and legislative powers and their influence, free from political pressure

Through Article 6 of the Constitution, recognized for the first time was the principle of separating state powers into the legislative, executive and judiciary one and cooperation of such in exercising respective prerogatives in compliance with the provisions set out under the Constitution. This constitutional provision assumes cooperation under conditions of the law bearing on the equality and creating harmonious management of the society through legal mechanisms constituting the foundations of a legal state.

The judiciary power has advanced significantly by adopting a number of organic laws serving as pylons to the actual judicial instances reform. The national legislation contains sufficient number of provisions referred to impartiality, independence and liberty of a judge in adopting the judgments.

In order to ensure independence and impartiality, according to the Law on the status of a judge (Article8 par.1 item.c), the judges have no right to joint parties or other social-political organizations or to display activities bearing political nature, or collaborate in activities contradicting to the oath of a judge. This provision results from Article 116 par. 6 of the Constitution, which stipulates that the function of a judge is incompatible with any other public or private function except for didactic and scientific activity. Further envisaged for the instance and the judge are certain provision set out under the criminal proceedings Code (Article10), the civil proceedings Code (Article8) and the Law on economic judicial instances (Article5 item b), according to which, when administering the law these shall be guided by the law alone and are independent on any influence beyond the law.

A rather tough provision against interference into the administration of justice that may obstruct complete and objective judgment of a cause or influence onto the issuance of judicial ruling is contained in Article13 par.1 and 2 of the Law of judiciary organization envisaging administrative or penal responsibility for the like activities. In reality, the penal responsibility is envisaged under the criminal Code, although the administrative responsibility is not envisaged under the administrative contraventions Code.

Although we do dispose of certain provisions under the legislation the reality is of different nature. First of all herewith mentioned provisions are contained in special laws only to which common citizens have limited access. There are no such provisions in the organic laws referred to parties and social-political organizations and even if multiple influences on to the judges are admitted, these are considered to be within the framework of normal possibilities which is rightly confirmed by the official statistics data, which were not even recorded during 1994-2000.[63]

When referring to the independence of a judge one shall primarily mention that during the last 3-4 years only that more than 30 modification were made aimed at establishing influence over the judicial instance or a judge. Having inherited experience from the ex-soviet period, the executive and legislature were frequently tempted to influence the judiciary power. Some of these provisions were subsequently modified, others were declared non-constitutional and excluded

from the respective laws. Thus modified was Article116 of the Constitution on the term of naming into the function of a judge (involved in which was the Ministry of Justice).[64] Subsequently excluded were:

- modifications to Article26 par.4, 31, 33 par. 2 item a) of the Law on the status of a judge;[65]

- modifications adopted in the wording of the Law No.552-XIV of 28 July 1999 to Article32 of the Law on the status of a judge, provisions of Article VIII par.1 of the Law No.552-XIV, which envisage exclusion of par. (5) - (8) and (10) from Article 26 of the Law on the status of a judge;[66]

- Government Decision No.191 of 01.04.96[67], Article VI of the Law on the status of a judge, Article 48 of the Law of the state budget for 1997 No.1127-XIII of March 21, 1997;[68]

- Article3 par.2 of Parliament Decision on the Superior Council of Magistrates[69], Article5, Article20 par.1, provisions "were perceived by the Ministry of Justice or, if necessary, by the chairman of the Supreme Court of Justice" from Article20 par. 4, Article26 par. 1, Article 27, Article II and III from Transitory provisions of the Law of the Superior Council of Magistrates;[70] etc.

Despite the fact that a number of provisions which allowed for direct influence onto the judiciary power were excluded, the effective legislation still contains such provisions that place judiciary power in dependence of the executive and legislative ones, as well as the provisions which create conditions for influencing the judiciary power. The like provisions are contained in: Article 23, 45, 55, III, V of the Law of judicial system organization; Article 11, 19, 20 of the Law on the statute of a judge; Article 116, 122 of the Constitution; Article 3, 19 of the Law of the Superior Council of Magistrates; Article 11, 12, 27 of the Law of the military judicial instances system; Article 27 of the Law of judges qualification and revalidation Board, etc.

For instance, the Law of judicial system organization (Article23) stipulates that „the organizational, material and financial part for the courts, tribunals and Court of Appeal shall be ensured by the Ministry of Justice...", that „...the Government through local public administration authorities shall ensure for the judicial instances premises, vehicles and other endowments". Moreover, pursuant to Article55, „the Ministry of Justice shall exercise control over the courts, tribunals and Court of Appeal in solving organizational and financial problems...". The Superior Council of Magistrates shall only be giving hearing to the information presented by the Ministry of Justice on provisions made (including material and financial) for the judicial instances (Article 4 m).[19] These provisions are nothing else but the elements of judiciary instances administration which place the courts, tribunals and Court of Appeal in complete dependence of the Ministry of Justice, Government and local public administrations, and hence realization of such provisions becomes rather uncertain. Article 23 of the Law of judicial system organization stipulating that the organizational, material and financial provisions shall be ensures „with strict observance of the principle of judges independence and their abiding by the law exclusively", as well as provisions of par. 3 Article 55 of the same law stipulating that „it is forbidden to exercise pressure by carrying out control over the judge administering the justice or restricting judges and judicial instances independence through any other means and ways".

Besides, dependence becomes even more pronounced in cases when the Executive body (Ministry of Justice) fails to correctly distribute resources allocated to ensure activities displayed by the judicial instances. This results from the shortcomings regarding the respective problem persisting in the activity displayed by the Ministry of Justice. For instance, the Chamber of Accounts has carried out auditing of the activities displayed by the Ministry of Justice in 2000-2001[71] and revealed a number of grave violations in managing public finances, including such earmarked for ensuring successful activity of the judiciary instances. Thus, it has been revealed that for upkeeping the personnel (beyond the established ceiling) of 12 divisions under General Direction of the Ministry of Justice (involved in servicing ministerial structures), used at the expense of budget resources earmarked for upkeeping judicial instances was total of 192,1

thousand lei. In November-December 2001, based on Government Decision No. 139 of 09.02.98 calculated for paying wages to the minister and his deputies was a supplement to salary worth 2,8 thousand lei (80 percent), and not to the size of 50 percent, as envisaged under the Parliament Decision No. 453-XIII of 16.05.95. In violation of the provisions set out under Article20 of the Law of accounting No.426-XIII of 04.04.95 and the Regulation on the rates for carrying out cash transactions in the national economy of the Republic of Moldova, approved by the Government Decision No.764 of 25.12.92, the ministry has released money for settling salaries, pensions, business trip expenses, etc. at the expense of financial sources envisaged for other types of financing, reflecting in cash ledger negative balance (subsequently these being restituted). In 2000-2001, the Ministry of Justice, contrary to the provisions set out under Article 4 (par.3) of the Law No. 395-XIV of 13.05.99 and item 8 (22) of the Regulation has failed to carry out any control over the use according to destination of the resources transferred to the Union of Barristers for the legal assistance rendered by its members (in 2000 actual expenditures have exceeded the approved ones by 658,6 thousand lei, while registering accounts payable worth 1000,6 thousand lei). On 27.01.2000 the ministry in lack of decision of the former Department of Privatization Managing State Property and in violation of the provisions set out under item 4 (2) of the Regulation on the procedure of transferring enterprises, organizations, state-owned institutions, their subdivisions, buildings, premises, fixed assets and other property, approved by the Government Decision No.688 of 09.10.95, has transferred gratis to a cooperative for housing construction "Pedagogul" (mun.Balti) a building valued at 114,9 thousand lei. In 2000 envisaged for the Department of Penitentiary Institutions was financing to the value of 44390,3 thousand lei, while actual expenditures incurred amounted to 48875,3 thousand lei, thus exceeding the established ceiling by 4485,0 thousand lei. Considerable overspending to the value of 888,4 thousand lei was admitted in labor retribution (Article111) and of 3631,8 thousand lei in paying for goods and services (Article113). Expenditures estimates with the Reformatory Colony No.29/9 for 2000 was approved to the value of 333,0 thousand lei. The actual spending as per report amounted to 2697,9 thousand lei, i.e. overspending was 2364,9 thousand lei, and hence violated were provisions set out under Article 19(2), (e) and 32 (4) of the Law No.847-XIII of May 24, 1996.

The Chamber of Accounts mentions that violations and shortcomings detected in the activity displayed by the Ministry of Justice come as a consequence of failure to observe effective legislative acts and provisions as well as unsatisfactory management of budget resources and tangibles.

As a result of these violations predominantly prejudices was the activity displayed by the judicial instances as well as the image of justice with the citizens.

Moreover, the Ministry of Justice does not dispose of competent personnel highly experienced in the domain of justice administration required for proper management of the judicial instances.

The judiciary self-administration is one of the important principles serving to guarantee independence of the judiciary power. Despite of the fact that the notion “judiciary self-administration” has not been mentioned in the Constitution, the Law of the Superior Council of Magistrates and the Law of judicial system organization explicitly stipulates that *the Superior Council of Magistrates shall exercise judiciary self-administration*.

These doubts on the decrease of the role played by the Superior Council of Magistrates are supported by real facts. For example:

- Resulting from herewith-presented provisions is that by large the executive power exercises its attribution of judicial administration, substituting the Superior Council of Magistrates. Currently, arising from the legislation, a situation was created when two bodies are displaying the activity bound to judicial administration. Neither the Council nor the Ministry of Justice were able to determine their margin of competence in carrying out audits with the judicial instances, which fact readily transform into diminishing of the role and competencies of the instance in resolving

judicial lawsuits, thus marginalizing the role of the Superior Council of Magistrates in its attempt to ensure judges independence. This sector of activity and control over the judicial instances on behalf of the Ministry of Justice contravenes to the principle of independence and impartiality of penal, civil and administrative procedures.

- Although personnel selection and promotion is a prerogative of the Superior Council of Magistrates this attribution has practically turned into the prerogative of the president of the Republic of Moldova or of the Parliament. Articles 11, 20 of the Law on the statute of a judge and, respectively, Article16 of the Law of judicial system organization were modified substantially in the sense of diminishing the role played by the Superior Council of Magistrates in the domain of judiciary self-administration. Attempts were made to implement *de facto* the mechanism of proposal by the Superior Council of Magistrates of a larger number of candidates for the position of judiciary instance manager so that the executive or legislative powers could select the desired candidates, a mechanism envisaged under the law, thus placing on the prime plan credibility towards the parliamentarian majority, gaining sympathy with the power structures, personal devotion, which so far are strange phenomena for the activities displayed by the justice.

- Yet another lever found at the disposal of the Superior Council of Magistrates and serving to maintain independence of the judicial authority is making out and presenting to the Parliament budget estimates for the judicial instances (Article 4, item n), although the draft budget is promoted in contradiction with the effective legislation. The estimates judicial sector budget are formulated by the Ministry of Finance, which being uninformed at the professional level on the judicial activities applies outdated indicators, establishing the budget ceiling at 55-60% of the requested amount and even wages level sufficient for 9-10 months of the activities, excluding from the respective budget expenditures needed to ensure ordinary performances of the judicial instances.

- Likewise referred to the competencies of the Superior Council of Magistrates is giving hearing to the activities of the Ministry of Justice so as to evaluate to what extent it observes its attributions towards the judicial system. However, such an issue was never placed on the agenda of the Council.

- A great share of its time the Superior Council of Magistrates is devoting to examination of petitions. At the extent of 2001 the Council, jointly with its office, has examined 862 petitions and applications. In many cases these contained concrete instructions on behalf of the Presidency, Parliament, Government and other organizations, which are controlled in thee non-procedural order.

- The Superior Council of Magistrates, as a body of judiciary self-administration, was not even included amongst the persons (bodies) entitled with the legislative initiative. Same as other powers the legislative and executive ones shall be equal between the state powers as stipulated under the Constitution. Introduced into the Law of the Superior Council of Magistrates shall be amendments allowing to endow this body with the right of legislative initiative and the right to approve draft laws referred to the judicial system as well as other important laws. Due to lack of such provisions some changes or amendments to the judicial legislation were drafted incompetently and unprofessionally affecting the standards of justice administration made with an intention to diminish the role played by the judiciary power.

Thus, the Superior Council of Magistrates remains a formal body of judiciary self-administration with certain attributions that it can not implement in reality due to lack of legal mechanisms with partial exception in case of magistrates staff.

At the same time, the composition and mechanism of forming the Superior Council of Magistrates as a body of judiciary self-administration is important for ensuring judges independence. According to the legislation, the Superior Council of Magistrates is composed of

11 magistrates: minister of justice, chairman of the Supreme Court of Justice, chairman of the Court of Appeal, chairman of the Economic Court, general prosecutor, 3 magistrates elected by the united boards of the Supreme Court of Justice and 3 magistrates elected by the Parliament from professors on the staff. Although making part to the Superior Council of Magistrates are at least 5 representatives of executive and legislative power, directly participating in the judiciary self-administration, which by itself implies violation of the principle of independence stipulated under the Constitution. In the absolute majority, district and municipal courts have no representatives in the Superior Council of Magistrates. Likewise missing with this body are judges of the tribunals and other judicial bodies. One can observe with priority that the members of the Superior Council of Magistrates are permanently the ones from the office with managerial functions, while the 3 magistrates elected by the Supreme Court of Justice are the managers of the latter. Thus created is the absolute majority sharing common interest convenient for maintaining managerial functions and at times strange to the general interest of the judicial self-administration.

Likewise, in compliance with the existent mechanism of forming the Superior Council of Magistrates, there is a real possibility that one and the same person will manage both the body represented and the Superior Council of Magistrates. For instance, the minister of justice or general prosecutor dispose of real possibility to manage not only the Ministry of Justice or the General Prosecutor's Office but the Council in question as well, which fact comes in contradiction with the principle of independence of the judicial instances.

These and other aspects do not allow for the Superior Council of Magistrates to fully represent and qualitatively self-administrate the judiciary power. If this body has been constituted for judiciary self-administration then at least its basic members shall be from amongst the judges. Such an approach finds confirmation in the composition of the Council for justice administration created in some of the European countries.[72] Hence, the herewith mentioned mechanism of constituting the Superior Council of Magistrates and that of judicial instances administration shall be replaced with another one that can avoid these contradictions affecting judiciary self-administration. In the first place it is necessary to abolish herewith-mentioned provisions stipulated under the legislation allowing involvement of executive power into the judiciary administration. Besides, it will be necessary to replace the existent mechanism of creating the Superior Council of Magistrates with another one. We believe that the most appropriate mechanism will be the one envisaging creation of a Council composed of 15 members, out of which 13 are judges and by one representative of the Parliament and Ministry of Justice (or General Prosecutor's Office, bearing in mind that the General Prosecutor's Office will be a component part of the Ministry of Justice). The judges will be elected to the Council by secret voting during general meeting of the judges: one representative of the Supreme Court of Justice, 2 representatives of the instances of appeal (bearing in mind of the new 3-tier judiciary system organization) and 10 judges of district and municipal courts. We believe that in reality the like composition of the judiciary self-administration body will represent the interests of the judiciary power and will contribute to further strengthening of this power, ensuring independence and impartiality of justice.

The Superior Council of Magistrates shall become a real „pylon" of judiciary self-administration, which through application of legal mechanisms will be able to organize, protect and promote independence of the judicial instances and of the judiciary power exponent – a judge. The Superior Council of Magistrates will only be able to realize this huge and noble mission provided it has an autonomous body for justice administration (similar to practices applicable in Hungary and Russian Federation).

Pursuant to the effective legislation, independence of a judge is ensured by the following: procedure of justice administration; the routine of nominating, suspending, resignation and dismissal; declaration of his inviolability; secret of deliberations and banning request to divulge such; establishing responsibility for lack of respect towards the court and judges and from

interference into the cause prosecution; material and social provisions for the judges; other such measures envisaged under the law.

The aspects examined with regards to implementation of the principles of the judiciary system show that existing currently in the Republic of Moldova are huge obstructions preventing realization of these criteria, and as a result the independence and impartiality of a judge is rather limited. All these are giving rise and explain clearly the „errors" revealed in examination and prosecution of lawsuits by the judicial institutions and why the independent and equitable justice cannot be ensured.

In what refers to prosecutors independence, it is worthy to mention that arising from provisions set out under Article 3 of the Law of prosecutor's office the prosecutor's bodies cannot be members of a party, other social-political organizations and movements and independent in exercising their service duties. The actual practice applied in the domain of public activities exemplifies a somewhat different situation as compared to such envisaged under the law and results from the fact that the management of the General Prosecutor's Office is nominated by the Parliament, the general prosecutor is a person promoted by the majoritary party faction and the latter is managing the General Prosecutor's Office bearing upon the principle of hierarchical reporting to the prosecutor.

Thorough analysis of the legislation allows to deduce that the prosecutor is actually independent only when found at the instance for lawsuits examination purposes, although practically, even this principle is not always maintained. In the judiciary practice there are cases when the district prosecutor disagreeing with the prosecutor who maintained charges, proceeds to lodge an appeal or recourse against judgment, without attending to court sitting and knowing the proofs. Such an approach undermines the fundamental principles of justice administration, which is inadmissible in state-operated activity.

Hence, there is a pressing need to adopt a new mechanism of ensuring prosecutors independence in exercising their attributions in this domain as well. To that end it will be appropriate to adopt a new Law on the status of a prosecutor.

2.5. Conclusions and Recommendations

With the scope of efficiently combating corruption, protecting human rights and fundamental freedoms and harmonizing the legislation it is imperative to further continue and optimize the judiciary and legal reform in Moldova and to implement judiciary system based on the advanced principles.

Following adoption of the concept of the judiciary and legal reform Republic of Moldova proceeded to implementing the principles of the new judiciary system and actually making definite progress in that sense. With all these, until presently the new judiciary system has not been fully realized. Implementation of the new judiciary system encountered permanent hardships and failed to adequately support economical and democratic reforms in the country, due to which reason further development of the society has not made big progress and by large was not successful in protecting through social, economic and legal mechanisms the human rights and fundamental freedoms.

Based on the analysis carried out more problems were revealed which obstruct ample implementation of the new principles of the judiciary system. *There are serious problems in securing free access to justice, independence of judges and prosecutors, organization of the judiciary system, professional training of judges, prosecutors and counsels, merit-based appointment of judges and prosecutors, equitable judgment, rendering legal assistance, corruption spreading within the judiciary system, discretional power of a prosecutor in launching penal case, level of juridical awareness of the population, etc. These problems bear*

legislative, organizational and economical aspects and taken together could place in real danger the viability of the legal state in Moldova.

Arising from herewith mentioned problems we believe it makes sense to advance a number of suggestions targeted towards ample implementation of the advanced principles of judiciary system, strengthening judiciary power, ensuring independence of judges and prosecutors, ensuring unobstructed access to justice, cooperation of powers in the state. We believe that implementation of herewith stipulated suggestions in ensemble will lead to improvement of conditions for justice administration and enhance protection of human rights and fundamental freedoms in the Republic of Moldova.

Recommendations

1. To adopt a new mechanism of forming the Superior Council of Magistrates with the scope of strengthening the judiciary power, ensuring independence and impartiality of the judges and instances, as well as for enhancing efficiency of the activities displayed by the judiciary self-administration body. To adopt changes and amendments to Article 122 of the Constitution and Article 3 of the Law of the Superior Council of Magistrates, which shall stipulate formation of the Superior Council of Magistrates composed of 15 members, out of which 13 are judges and by one representative of the Parliament and Ministry of Justice (or General Prosecutor's Office, bearing in mind subordination of the General Prosecutor's Office to the Ministry of Justice). To envisage that the judges are elected to the Council by secret voting during general meeting of the judges: one representative of the Supreme Court of Justice, 2 representatives of the instances of appeal (bearing in mind of the new 3-tier judiciary system organization) and 10 judges of district and municipal courts.
2. To adopt changes and amendments to Article 115 of the Constitution and the Law of judiciary system organization as well as other laws stipulating new judiciary organization so as to ensure free access to justice and with the scope of simplifying and optimizing judiciary system organization. The new judiciary organization implies creation of 3-tier system of instances: the first tier – district and municipal courts; the second tier - 6 Courts of Appeal (appeal instances) and the third tier – the Supreme Court of Justice as a single superior instance. As a result of this reorganization disbanded shall be tribunals, military and economic courts. For the examination of economical and military lawsuits respective specialization will be offered to the judges along with instituting with the instances of appeal and Supreme Court of Justice of the respective boards for prosecuting special lawsuits. Personnel freed as a result of tribunals and specialized courts disbanding will take the vacancies in the newly created instances of appeal and specialized boards.
3. To take measures for instituting in the localities found in the left bank of Nistru river and *de facto* functioning of the judiciary instances, prosecutor's office and home affairs bodies arising from the effective legislation of the Republic of Moldova.
4. To adopt changes and amendments to the Law of judiciary system organization, the Law on the statute of a judge, other organic laws, which shall exclude responsibility of the Ministry of Justice and Government for ensuring organizational, material and financial provisions for the courts, tribunals and Court of Appeal, as well as other such provisions giving rise to interference of executive power into the administration of justice. To stipulate that provisions for all the judiciary instances will be ensured by the Superior Council of Magistrates – the judiciary self-administration body.
5. To adopt amendments to the Law of the Superior Council of Magistrates, with the scope of ensuring judiciary self-administration activities, which shall stipulate instituting by the Superior Council of Magistrates of an autonomous justice administration body.

6. To adopt changes and amendments to Article116 of the Constitution, the Law on the statute of a judge, the Law of the Superior Council of Magistrates, other organic laws, which shall govern that the selection, assignment, promotion and dismissal of judges and managers of the judiciary instances shall be the prerogative of the Superior Council of Magistrates.
7. To adopt changes and amendments to legislation through which to exclude provisions obstructing free access of citizens to the supreme judiciary instance – the Supreme Court of Justice.
8. To adopt changes and amendments to Article116 par.2 of the Constitution and to Article11 par.1 of the Law on the statute of a judge, other organic laws, which shall stipulate that the judge shall be appointed with the office from the first time and up to reaching the age ceiling or for the life.
9. To adopt changes and amendments to legislation (the Law of the statute of a judge, the Law of the Superior Council of Magistrates, the Law of the disciplinary board and of disciplinary responsibility of judges), in compliance with which it will be stipulated that dismissal of a judge shall be done by the Superior Council of Magistrates at its own initiative only for the case of exceptional circumstances (circumstances to be specified) based on respective definitive ruling of the competent instance.
10. To abrogate changes and amendments to the Law of the contentious matters[29,30], excluded through which were limitations appeared due to dismissal from the office of military servicemen and persons having military status, other acts of administrative nature (Article 4, 5 on the exceptional acts of judiciary control and subjects with the right of summons to the administrative court), to reestablish provision envisaged under par. 4 Article 25 on the size of moral prejudice, as well as provision envisaged repair of expenditures incurred with publishing decision in question (al. 2 Article 28), and provisions obstructing free access to justice envisaged under Article 20 of the Constitution.
11. To adopt changes and amendment to the effective legislation so as to establish procedure of contesting decisions on dismissal from the office of a judge (especially due to disciplinary reasons). Under this context to invalidate modifications adopted to Article 4 of the Law of the contentious matters, provisions obstructing judges access to the instances dealing with administrative offense.
12. To adopt amendments to Article121 of the Constitution so as to envisage that the judiciary instances dispose of their own budgets.
13. To adopt amendments to the Law on thee statute of a judge so as to regulate implementation of the Code of judges ethics and strictly stipulate the conflict of interests in justice administration by the judges.
14. To develop the principle of contradiction in judging the lawsuits ensuring lawsuits judgment on the basis of facts and law, and parties equality under judiciary procedures.
15. To adopt amendments to chapter IX of the Constitution and the Law of the judiciary system organization, which shall stipulate reasonable term for examination of lawsuits by the judiciary instance.
16. To develop a mechanism allowing to determine the load per one judge depending on the number and amount of lawsuits examined so as to be able to offer qualitative judgment within reasonable time frame and ensure the right for fair process guaranteed under Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

17. To adopt amendments to Article73 of the Constitution and to the Law of the Superior Council of Magistrates, so as to govern that the Superior Council of Magistrates (same like executive and legislative power representatives) will be endowed with the right of legislative initiative. Likewise, the Superior Council of Magistrates shall be given the right to approve draft laws referred to the judiciary system and other important laws.
18. To adopt modifications to the Constitution so as to exclude section „Prosecutor's office" from Chapter IX „Judiciary authority".
19. As part of judiciary and legal reform to adopt changes and amendments to Chapter VIII of the Constitution (Public Administration) which shall stipulate place and role of the Prosecutor's Office. To adopt changes and amendments to the legislation through which prosecutor's office bodies will be subordinated to the Ministry of Justice.
20. To abrogate provisions set out under Article1 par. 4 of the Law of prosecutor's office in compliance with which "the prosecutor's office shall exercise its attributions as an autonomous body within the judiciary instances system".
21. With the scope of ensuring independence of a prosecutor to draft and adopt the Law of the statute of a prosecutor.
22. With the scope of implementing provisions stated under the legislation and envisaging that the prosecutor's office conducts and exercises penal prosecution, as part of judiciary and law reform care shall be taken to merge stages of penal investigation and preliminary inquiry into a single penal prosecution and to subordinate penal prosecution to General Prosecutor's Office and to its subordinated prosecutors.
23. To draft and adopt amendments to Title II of the Constitution so as to regulate the institute of ombudsman as a supervisory body for the observance and implementation of laws.
24. To substitute the notion „parliamentary counsel at law" in the Law on the parliamentary counsels at law with the „ombudsman". To adopt amendments to herewith specified Law so as to stipulate that the ombudsman shall exercise supervisory attribution over the observance and implementation of laws.
25. To exclude from the Law of prosecutor's office its attribution of supervising over the observance and implementation of laws as an attribution specific for the institute of ombudsman.
26. To adopt amendments to the Law of judiciary system organization and the Law of prosecutor's office so as to stipulate submission by the judiciary instances and prosecutor's offices accountability on the activities displayed as well as to envisage responsibility of the respective persons for failure to present such reports, thus ensuring due transparency to the activities displayed by these bodies.
27. To examine proposal on instituting the school of magistrates with implementation of programs for ongoing professional training of judges, prosecutors and counsels at law with adequate financing at the expense of the state budget.
28. To adopt amendments to the Law of judiciary system organization and the Law of the prosecutor's office through which to determine the mode of ensuring physical protection to judges and prosecutors involved in examining socially important lawsuits. Concomitant, to adopt changes and amendments to the Constitution (Article70), the Law on the statute of the Parliament deputy, the Law on the statute of a judge and the Law of the prosecutor's office, stipulated through which shall be recalling immunity with deputies, judges, prosecutors and prosecutor office investigators in relation to inquiry, prosecution and sanctions in case of acts of corruption; likewise implemented shall be a real mechanism of declaring and control over the assets owned by the latter.

29. To draft and adopt the National Anti-corruption Program targeted as well onto prevention and combating corruption phenomenon within the judiciary and public sectors.
30. To adopt and implement into the activity displayed by the counsels at law Codes of conduct with strict stipulations of the conflict of interest as well as strict provisions with regards to observance of legal provisions by the counsels at law.
31. To implement training programs with the scope of rising legal awareness with the population as well as programs designed for permanent legal information delivery to public on the contents of the laws, decisions, other regulatory acts, changes and amendments to the legislation.
32. To stipulate under the Code of administrative contraventions responsibility for interference into the process of justice administration.
33. To adopt the Law on judiciary executors and adopt procedural changes and amendments and other organic laws referred to their manning table number and competence so as to ensure implementation of judgments.

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70. Hotărârea Curţii Constituţionale nr. 10 din 04.03.97 cu privire la constituţionalitatea unor prevederi din Legea nr. 947-XIII din 19 iulie 1996 şi a Hotărârii Parlamentului nr. 362-XIII din 3 februarie 1995 (M.O. nr. 18 din 20.03.1997).

71. Hotărârea Curţii de Conturi privind rezultatele controlului asupra activităţii Ministerului Justiţiei în anii 2000 -2001 nr. 27 din 5.04.2002 (M.O. nr. 62 din 09.05.2002)

72. Wim Voermans, Consiliile pentru Administrarea Justiţiei în Europa, Curier Judiciar, nr. 3-4, 2001.

Annex 1

QUESTIONNAIRE FOR HOUSEHOLDS

The interviewer reads the following to the respondent:

Transparency International – Moldova is carrying out this opinion poll to study the causes and the extent of corruption in public institutions. The results of the poll will be used to introduce proposals to combat corruption in the Republic of Moldova.

The coordinator of the study is the Executive Director of Transparency International – Moldova, Dr. Lilia Caraşciuc, tel./fax 21-05-95, e-mail: office@transparency.md

We would like to thank you in advance for your participation and assure you that ALL OF THE INFORMATION WHICH YOU OFFER WILL BE KEPT STRICTLY CONFIDENTIAL. Your name will not be indicated on any documents. Please, try to be as candid as possible in answering these questions.

Individual code of interviewer: _____
*Date of interview:*_____
*Place of interview:*_____
Time at the beginning of the interview: _____

I. The respondent

1. Age :

Age	Percent
18-24	16.2
25-29	7.7
30-39	16.2
40-49	24.9
50-59	18.5
≥60	16.5
Total	100.0

2. Gender:

	Percent
Male	37.9
Female	62.1
Total	100.0

3. Education:

	Percent
Incomplete secondary	14.0
Secondary	24.3
Specialized secondary	26.4
Higher, including incomplete	35.3

4. Residential environment:

	Percent
Urban	49.6
Rural	50.4
Total	100.0

5. How would you asses your family current income?

	Percent
1. Income does not suffice for the most necessary things	31.4
2. It hardly suffices for the most necessary things	34.2
3. It suffices for a normal life, but we cannot afford luxury goods	26.1
4. It suffices for a normal life, sometimes we can afford luxury goods	8.3

II. Main problems*

6. How acute do you consider the following problems in the Republic of Moldova?

	Not a problem	Not acute	Acute	Very acute	Don't know
1. Inflation	8.2	18.0	46.1	20.2	7.5
2. Worsening quality of the educational system	1.7	17.0	44.1	31.7	5.5
3. Worsening quality of the health care system	1.5	4.5	40.5	50.3	3.2
4. Crime	0.5	4.7	38.2	54.6	2.0
5. Corruption	1.5	6.0	31.7	56.9	3.9
6. High taxes	5.5	16.2	35.2	32.7	10.4
7. Political instabiluty	7.5	23.4	38.4	20.9	9.8
8. Harassment by the police	21.5	26.8	27.0	12.3	12.4
9. Poverty	1.3	2.8	21.5	74.0	0.4
10. Unsatisfactory telecommunication services	23.4	34.3	25.2	9.3	7.8
11. Bureaucracy	4.0	18.8	37.7	27.6	11.9
12. Frequent changes in legislation	7.5	24.8	42.4	14.0	11.3
13. Complicated rules for starting a new business	9.5	15.8	33.5	17.0	24.2
14. High unemployment rate	1.8	2.0	26.8	67.3	2.1
15. Deterioration of the environment	2.5	10.1	45.2	34.8	7.4

III. The evolution and causes of corruption

7. What sources provide the most information about corruption? *(Please indicate the three most important sources)*

	Percent
1. TV	89.8
2. Radio	57.1
3. Newspapers	39.2
4. Personal experience	21.2
5. Relatives and acquaintances	53.1
6. State institutions	7.7
7. Other (specify) _____	2.2

* All data, where not explicitly specified, are expressed in percent.

8. In your opinion, during the last 12 months has corruption within Moldovan State institutions...

Strongly increased	Slightly increased	Stayed about the same	Slightly decreased	Strongly decreased	Don't know
23.0	14.4	32.1	13.9	2.5	14.1

9. Please rank the following causes influencing the spread of corruption in the Republic of Moldova:

	Very important cause	Important cause	Not very important cause	Not a cause	Don't know
1. Low salaries	45.9	40.4	7.7	3.7	2.3
2. Not holding corrupt persons to account	53.1	39.2	3.5	1.0	3.2
3. Government does not approach the problem seriously	37.7	41.9	12.2	1.7	6.5
4. Greed	33.4	42.1	16.5	5.0	3.0
5. Lack of transparency in State institutions	18.1	43.5	17.8	3.8	16.8
6. Favoritism	27.3	46.3	14.3	6.0	6.1
7. Pressure from employer	9.0	30.2	30.9	12.1	17.8
8. Tradition	11.0	39.2	27.2	15.5	7.1
9. Lack of standard of conduct for public officials	12.9	37.4	24.2	11.4	14.1

IV. Admissibility of corruption

10.1. Let us suppose that a public official accepts money from a company in exchange for a favor. How acceptable do you think this kind of behavior is if the official:

	Fully acceptable	Acceptable	Acceptable in certain situations	Unacceptable
1. uses this money for payment of a relative's medical treatment	3.3	15.7	30.5	50.5
2. uses this money to build a medical clinic in his/her village or city	13.5	26.3	24.5	35.8

10.2. If a public officer uses his position in order to employ a friend or a relative, how acceptable is this kind of behavior if:

	Fully acceptable	Acceptable	Acceptable in certain situations	Unacceptable
1. the friend or relative is not otherwise qualified to do the work	3.3	9.8	11.7	75.2
2. the person is qualified to do the job, but is not the best candidate for the current position	0.8	14.5	34.4	50.3

V. Dissemination of corruption

11. In your opinion, how frequently are the problems with the public officials solved with money, presents or personal contacts?

Sector	Never	Seldom	Often	Always	Don't know
1. Fiscal inspections	11.0	14.3	38.3	15.8	20.6
2. Customs	4.7	8.0	42.6	31.4	13.3
3. Police	5.0	15.2	41.1	24.7	14.0
4. Public Prosecutor's office	9.5	17.7	31.2	15.5	26.1
5. Sanitation and fire inspections	14.8	18.5	23.8	9.8	33.1
6. Obtaining import/export licenses	13.7	11.0	26.9	11.2	37.2
7. Access to bank credit	18.0	16.5	13.7	7.0	44.8
8. Property registration	15.3	19.5	21.3	7.3	36.6
9. Privatization	16.2	16.5	28.9	10.0	28.4
10. State property rents	14.7	13.0	20.2	8.7	43.4
11. Courts of law	9.5	12.8	32.9	15.8	29.0
12. Public procurement	11.3	12.3	15.8	6.5	54.1
13. Education	5.2	13.5	48.6	22.2	10.5
14. Health care	4.3	11.3	45.0	33.8	5.6
15. Ministries and departments	7.0	14.8	29.8	11.8	36.6
16. Local administration	14.1	21.1	26.6	7.5	30.7
17. Civil Registration Office	28.8	24.1	15.0	5.5	26.6
18. Passport offices	19.0	26.0	25.0	8.5	21.5
19. Housing and public utilities	23.0	18.5	15.8	6.5	36.2
20. Notary offices	23.5	22.3	17.0	4.0	33.2
21. Registration office	18.3	12.5	13.8	5.3	50.1
22. Lawyers	12.5	14.5	29.5	15.0	28.5

VI. Personal experience in contacting the public sector

We assure you once again about the confidentiality of this interview.

12. Sometimes people are asked to make unofficial payments or to offer presents to obtain public services. In some cases people have to pay to avoid problems with the police or other state bodies. Yet in some other cases people have to pay to get a favor (a job, a contract, an authorization etc.). Have you or any of your family members made any unofficial payments or offered presents to persons from the following institutions during the previous 2 years?

Institutions	12.1. Have you contacted the institution?		12.2. If yes, how many times ? (average)	12.3. Have you paid unofficially?		12.4. If yes, what have you paid for?		12.5. How many times have you paid unofficially ? (average)	12.6. Total amount (lei)
	Yes	No		Yes	No	To get a favor	To avoid problems		
1. Fiscal inspections	10.5	89.5	10.6	22.7	77.3	33.3	66.7	1.6	3700
2. Customs	17.0	83.0	3.1	58.8	41.2	36.8	63.2	3.2	779
3. Police	15.3	84.7	3.4	44.3	55.7	29.0	71.0	2.4	193
4. Public Prosecutor's office	2.5	97.5	2.1	23.1	76.9	66.7	33.3	1.0	250
5. Sanitation and fire inspections	4.5	95.5	1.9	31.6	68.4	16.7	83.3	1.2	900
6. Obtaining import/export licenses	2.0	98.0	1.3	20.0	80.0	100.0	-	1.3	6800
7. Access to bank credit	2.0	98.0	2.1	12.5	87.5	100.0	-	1.0	-
8. Property registration	5.8	94.2	1.9	33.3	66.7	83.3	16.7	1.4	193
9. Privatization	4.5	95.5	1.9	31.6	68.4	57.1	42.9	1.2	157
10. State property rents	1.3	98.7	1.8	16.3	83.7	100.0	-	1.0	1350
11. Courts of law	4.3	95.7	2.9	33.3	66.7	50.0	50.0	17.8	237
12. Public procurement	1.0	99.0	2.2	42.9	57.1	66.7	33.3	1.0	200
13. Education	30.4	69.6	5.1	46.3	53.7	61.8	38.2	5.0	1015
14. Health care	52.3	47.7	4.8	51.4	48.6	80.0	20.0	3.7	332
15. Ministries and departments	5.5	94.5	2.9	15.0	85.0	66.7	33.3	2.3	127
16. Local administration	13.0	87.0	4.2	26.0	74.0	68.7	31.3	2.5	133
17. Civil Registration Offices	7.0	93.0	1.8	12.0	88.0	100.0	-	1.0	525
18. Passport offices	16.5	83.5	1.8	20.9	79.1	76.9	23.1	1.2	350
19. Housing and public utilities	5.8	94.2	4.0	12.5	87.5	100.0	-	1.7	83
20. Notary offices	10.0	90.0	1.9	16.2	83.8	71.4	28.6	2.2	220
21. Registration office	1.5	98.5	1.9	33.3	66.7	100.0	-	1.0	150
22. Lawyers	3.5	96.5	2.3	40.0	60.0	66.7	33.3	1.2	9675

VII. Engaging against corruption

13. If you were in a difficult situation, would you agree to pay a bribe?

1	Yes	35.2
2	No	23.8
3	Depends on the situation	41.0

14.1. Which would you personally prefer, to pay more money officially or to give a bribe?

1	To pay officially	46.2
2	To give a bribe	35.6
3	Neither	18.2

14.2. If you would prefer to pay officially, how much more than the officially set price?

1	50 %	11.6
2	25 %	11.0
3	10 %	22.0
4	5 %	31.1
5	Other: _____	4.3
6	Without opinion / don't know	20.0

15. Have you or any of your family members faced corruption cases during the previous 2 years?

1	Yes	36.3
2	No	63.7

15.1. Have you tried to address a complaint (request) about the corruption case you have faced?

1	Yes	12.1
2	No	87.9

15.2. If you have not addressed a complaint, what were the reasons?

1	Did not know where to address	10.5
2	I tried, but without success	4.8
3	It would take too much time	8.1
4	Nothing would change	47.6
5	It would entail problems	24.2
6	Other reason (specify)_____	4.8

15.3. Should you have to address a complaint, whom would you address to?

1	Police	7.7
2	Lawyers	6.8
3	Judge	6.0
4	Official anti-corruption body	23.9
5	NGO	6.8
6	Press	10.3
7	Superior officer	6.0
8	Friends, relatives, neighbors	22.2
9	Other (specify)_____	10.3

15.4. If you have addressed a complaint, whom have you addressed to?

1	Police	31.3
2	Lawyers	-
3	Judge	25.0
4	Official anti-corruption body	-
5	NGO	-
6	Press	6.3
7	Superior officer	18.8
8	Friends, relatives, neighbors	12.5
9	Other (specify)_____	6.3

15.5. Has the problem been solved?

1	Yes	6.7
2	Partially	40.0
3	No	33.3
4	The problem is still unsolved	20.0

16. In your opinion what would be the most efficient measures for reducing corruption in Moldova?

	Absolutely inefficient	Inef-ficient	Efficient	Very efficient	Don't know
Introducing severe sanctions for corrupt behavior	3.5	9.8	39.0	43.4	4.3
Teaching ethics courses in educational institutions	15.6	29.8	36.2	10.6	7.8
Implementing the system of declaration of income and assets by public officials	10.6	26.6	34.1	17.1	11.6
Reducing the number of state interventions in the economy	15.3	25.4	28.9	12.1	18.3
Conducting public awareness campaigns about the threat of corruption	10.1	22.9	39.6	20.1	7.3
Introducing of codes of conduct for public officials	14.4	32.8	29.2	11.8	11.8
Ensuring independence of judges	13.4	24.2	28.2	11.2	23.0
Public discussion of budgets	12.1	23.2	30.7	17.4	16.6
Introducing some performance standards for public officials	8.3	28.7	33.0	13.6	16.4
Introducing tougher sanctions against those who take bribes	1.3	5.5	29.5	61.4	2.3
Introducing tougher sanctions against those who pay bribes	6.8	14.8	34.5	37.6	6.3
Increasing salaries	3.5	8.1	28.0	55.9	4.5

17. With which of the following statements do you agree most? In the Republic of Moldova ...

1	corruption cannot be confined	10.6
2	corruption will always exist, but can be limited	51.3
3	corruption can be substantially reduced	30.3
4	corruption can be completely eradicated	7.8

Time the interview ended _____

Thank you for your cooperation!

Annex 2

QUESTIONNAIRE FOR NGOs

The interviewer reads the following to the respondent:

Transparency International – Moldova is carrying out this opinion poll to study the causes and the extent of corruption in public institutions. The results of the poll will be used to introduce proposals to combat corruption in the Republic of Moldova.

The coordinator of the study is the Executive Director of Transparency International – Moldova, Dr. Lilia Carașciuc, tel./fax 21-05-95, e-mail: office@transparency.md

We would like to thank you in advance for your participation and assure you that ALL OF THE INFORMATION WHICH YOU OFFER WILL BE KEPT STRICTLY CONFIDENTIAL. Your name will not be indicated on any documents. Please, try to be as candid as possible in answering these questions.

Individual code of interviewer: _____
*Date of interview:*_____
*Place of interview:*_____
Time at the beginning of the interview: _____

I. The respondent

1. Age :

Age	Percent
18-24	11.3
25-29	10.8
30-39	21.6
40-49	28.4
50-59	15.7
≥60	12.3
Total	100.0

2. Gender:

	Percent
Male	57.8
Female	41.2
Total	100.0

3. Education:

	Percent
Specialized secondary	5.4
Higher, including incomplete	94.6

4. Residential environment:

	Percent
Urban	96.1
Rural	3.9

5. How would you asses your family current income?

	Percent
1. Income does not suffice for the most necessary things	11.3
2. It hardly suffices for the most necessary things	37.3
3. It suffices for a normal life, but we cannot afford luxury goods	36.3
4. It suffices for a normal life, sometimes we can afford luxury goods	15.2
Total	100.0

II. Main problems

6. How acute do you consider the following problems in the Republic of Moldova?

	Not a problem	Not acute	Acute	Very acute	Don't know
1. Inflation	4.6	25.4	48.7	17.3	4.0
2. Worsening quality of the educational system	1.5	9.6	33.5	52.3	3.1
3. Worsening quality of the health care system	0.5	3.0	29.8	65.7	1.0
4. Crime	0	0.5	25.1	72.9	1.5
5. Corruption	0	1.0	14.1	83.9	1.0
6. High taxes	1.0	12.5	40.0	38.5	8.0
7. Political instability	0.5	15.3	34.7	45.4	4.1
8. Harassment by the police	9.6	26.4	32.0	15.7	16.3
9. Poverty	0	1.5	17.1	80.4	1.0
10. Unsatisfactory telecommunication services	21.3	31.5	28.4	11.7	7.1
11. Bureaucracy	1.0	11.2	37.8	44.9	5.1
12. Frequent changes in legislation	3.6	14.6	38.5	34.9	8.4
13. Complicated rules for starting a new business	3.1	11.7	36.7	31.1	17.4
14. High unemployment rate	2.6	5.1	24.1	67.2	1.0
15. Deterioration of the environment	2.0	13.6	32.3	51.0	1.1

III. The evolution and causes of corruption

7. What sources provide the most information about corruption? *(Please indicate the three most important sources)*

	Percent
1. TV	67.5
2. Radio	34.5
3. Newspapers	70.0
4. Personal experience	55.0
5. Relatives and acquaintances	52.5
6. State institutions	18.0
7. Other (specify) _____	8.5

8. In your opinion, during the last 12 months has corruption within Moldovan State institutions...

Strongly increased	Slightly increased	Stayed about the same	Slightly decreased	Strongly decreased	Don't know
27.5	11.0	37.5	3.5	-	20.5

9. Please rank the following causes influencing the spread of corruption in the Republic of Moldova:

	Very important cause	Important cause	Not very important cause	Not a cause	Don't know
1. Low salaries	55.4	25.5	7.8	5.4	5.9
2. Not holding corrupt persons to account	62.7	24.5	3.4	2.5	6.9
3. Government does not approach the problem seriously	46.1	34.8	9.8	2.9	6.4
4. Greed	23.5	28.9	25.0	12.3	10.3
5. Lack of transparency in State institutions	45.6	34.3	9.8	1.0	9.3
6. Favoritism	50.0	31.8	8.8	2.0	7.4
7. Pressure from employer	5.9	28.2	30.2	14.9	20.8
8. Tradition	14.1	27.3	17.2	30.8	10.6
9. Lack of standard of conduct for public officials	25.4	36.3	13.9	14.9	9.5

IV. Admissibility of corruption

10.1.Let us suppose that a public official accepts money from a company in exchange for a favor. How acceptable do you think this kind of behavior is if the official:

	Fully acceptable	Accep-table	Acceptable in certain situations	Unaccep-table
1. uses this money for payment of a relative's medical treatment	4.1	8.1	16.8	71.0
2. uses this money to build a medical clinic in his/her village or city	8.1	9.6	20.9	61.4

10.2 If a public officer uses his position in order to employ a friend or a relative, how acceptable is this kind of behavior if:

	Fully acceptable	Accep-table	Acceptable in certain situations	Unaccep-table
1. the friend or relative is not otherwise qualified to do the work	4.2	2.1	8.3	85.4
2. the person is qualified to do the job, but is not the best candidate for the current position	2.1	5.2	30.9	61.8

V. Dissemination of corruption

11. In your opinion, how frequently are the problems with the public officials solved with money, presents or personal contacts?

Sector	Never	Seldom	Often	Always	Don't know
1. Fiscal inspections	5.5	11.0	45.5	15.5	22.5
2. Customs	3.6	4.1	38.8	30.1	23.4
3. Police	4.5	12.5	39.5	21.0	22.5
4. Public Prosecutor's office	5.0	13.6	28.1	12.1	41.2
5. Sanitation and fire inspections	4.5	13.6	31.2	21.6	29.1
6. Obtaining import/export licenses	4.5	11.5	37.5	20.5	26
7. Access to bank credit	6.5	22.6	18.6	9.0	43.3
8. Property registration	6.0	19.6	24.6	13.6	36.2
9. Privatization	9.5	12.5	33.0	16.0	29
10. State property rents	4.5	14.1	30.8	16.2	34.4
11. Courts of law	5.0	8.5	42.6	11.0	32.9
12. Public procurement	5.0	13.5	20.5	14.5	46.5
13. Education	3.0	11.5	49.5	26.5	9.5
14. Health care	2.0	10.5	40.5	40.5	6.5
15. Ministries and departments	6.0	11.5	39.5	15.0	28
16. Local administration	8.0	14.6	34.2	13.1	30.1
17. Civil Registration Office	17.1	33.2	14.1	5.5	30.1
18. Passport offices	13.6	27.6	26.6	9.5	22.7
19. Housing and public utilities	15.0	32.5	14.0	7.0	31.5
20. Notary offices	30.5	22.0	12.5	5.5	29.5
21. Registration office	11.0	21.5	16.0	6.0	45.5
22. Lawyers	12.6	12.1	20.7	21.2	33.4

VI. Personal experience in contacting the public sector

We assure you once again about the confidentiality of this interview.

12. Sometimes people are asked to make unofficial payments or to offer gifts to obtain public services. In some cases people have to pay to avoid problems with the police or other state bodies. Yet in some other cases people have to pay to get a favor (a job, a contract, an authorization etc.). Have you or any of your family members made any unofficial payments or offered gifts to persons from the following institutions during the previous 2 years?

Institutions	12.1. Have you contacted the institution?		12.2. If yes, how many times ? (average)	12.3. Have you paid unofficially?		12.4. If yes, what have you paid for?		12.5. How many times have you paid unofficially? (Average)	12.6. Total amount (lei)
	Yes	No		Yes	No	To get a favor	To avoid problems		
1. Fiscal inspections	46.9	53.1	46.9	18.8	81.2	19.0	81.0	2.6	1230
2. Customs	39.4	60.6	39.4	21.8	78.2	19.0	81.0	2.4	728
3. Police	29.1	70.9	29.1	20.6	79.4	37.5	62.5	1.9	226
4. Public Prosecutor's office	7.9	92.1	7.9	6.9	93.1	-	100	1.0	120
5. Sanitation and fire inspections	13.3	86.7	13.3	31.0	69	50.0	50.0	1.2	370
6. Obtaining import/export licenses	19.1	80.9	19.1	14.3	85.7	50.0	50.0	1.0	422
7. Access to bank credit	5.2	94.8	5.2	-	-	-	-	-	-
8. Property registration	18.0	82	18.0	10.0	90	20.0	80.0	2.0	233
9. Privatization	15.6	84.4	15.6	13.0	87	75.0	25.0	1.4	1733
10. State property rents	18.8	81.2	18.8	12.5	87.5	75.0	25.0	3.2	1120
11. Courts of law	11.9	88.1	11.9	18.9	81.1	85.7	14.3	1.0	833
12. Public procurement	3.2	96.8	3.2	8.7	91.3	-	100.0	1.0	400
13. Education	61.3	38.7	61.3	47.0	53	62.7	37.3	3.7	594
14. Health care	70.9	29.1	70.9	58.4	41.6	80.8	19.2	4.0	886
15. Ministries and departments	36.6	63.4	36.6	25.7	74.3	82.6	17.4	2.3	235
16. Local administration	31.4	68.6	31.4	15.7	84.3	83.3	16.7	2.9	1040
17. Civil Registration Offices	16.4	83.6	16.4	16.3	83.7	83.3	16.7	1.0	460
18. Passport offices	45.9	54.1	45.9	14.0	86	66.7	33.3	1.4	122
19. Housing and public utilities	31.1	68.9	31.1	11.6	88.4	55.6	44.4	2.8	157
20. Notary offices	36.8	63.2	36.8	2.5	97.5	33.3	66.7	1.3	60
21. Registration office	17.2	82.8	17.2	6.8	93.2	-	100.0	1.3	180
22. Lawyers	14.1	85.9	14.1	10.5	89.5	100.0	-	1.0	1667

VII. Engaging against corruption

13. If you were in a difficult situation, would you agree to pay a bribe?

1	Yes	21.8
2	No	31.7
3	Depends on the situation	46.5

14.1. Which would you personally prefer, to pay more money officially or to give a bribe?

1	To pay officially	70.2
2	To give a bribe	14.6
3	Neither	15.2

14.2. If you would prefer to pay officially, how much more than the officially set price?

1	50 %	11.1
2	25 %	14.9
3	10 %	20.0
4	5 %	14.1
5	Other: _____	14.0
6	Without opinion / don't know	25.9

15. Have you or any of your family members faced corruption cases during the previous 2 years?

1	Yes	66.8
2	No	33.2

15.1. Have you tried to address a complaint (request) about the corruption case you have faced?

1	Yes	66.8
2	No	33.2

15.2. If you have not addressed a complaint, what were the reasons?

1	Did not know where to address	2.6
2	I tried, but without success	2.6
3	It would take too much time	22.8
4	Nothing would change	48.3
5	It would entail problems	18.4
6	Other reason (specify)_____	5.3

15.3. Should you have to address a complaint, whom would you address to?

1	Police	2.7
2	Lawyers	15.9
3	Judge	2.7
4	Official anti-corruption body	19.5
5	NGO	10.6
6	Press	15.8
7	Superior officer	1.8
8	Friends, relatives, neighbors	19.5
9	Other (specify)_____	11.5

15.4 If you have addressed a complaint, whom have you addressed to?

1	Police	13.6
2	Lawyers	18.2
3	Judge	18.2
4	Official anti-corruption body	4.5
5	NGO	9.1
6	Press	-
7	Superior officer	22.8
8	Friends, relatives, neighbors	4.5
9	Other (specify)_____	9.1

15.5. Has the problem been solved?

1	Yes	4.5
2	Partially	9.1
3	No	72.7
4	The problem is still unsolved	13.6

16. In your opinion what would be the most efficient measures for reducing corruption in Moldova?

	Absolutely inefficient	Inef-ficient	Efficient	Very efficient	Don't know
Introducing severe sanctions for corrupt behavior	3.9	20.6	36.8	38.7	-
Teaching ethics courses in educational institutions	15.5	33.5	35.5	14.5	1.0
Implementing the system of declaration of income and assets by public officials	9.3	26.0	36.7	26.5	1.5
Reducing the number of state interventions in the economy	18.1	18.6	32.7	21.6	9.0
Conducting public awareness campaigns about the threat of corruption	12.4	22.9	40.8	21.4	2.5
Introducing of codes of conduct for public officials	15.3	30.7	30.7	20.8	2.5
Ensuring independence of judges	7.4	18.8	24.7	34.7	14.4
Public discussion of budgets	7.7	26.5	33.7	25.5	6.6
Introducing some performance standards for public officials	5.9	21.8	38.7	27.2	6.4
Introducing tougher sanctions against those who take bribes	2.9	14.7	27.0	55.4	-
Introducing tougher sanctions against those who pay bribes	13.7	20.1	25.5	38.7	2.0
Increasing salaries	4.4	12.7	23.5	58.4	1.0

17. With which of the following statements do you agree most? In the Republic of Moldova ...

1	corruption cannot be confined	6.4
2	corruption will always exist, but can be limited	49.0
3	corruption can be substantially reduced	39.2
4	corruption can be completely eradicated	5.4

Time the interview ended _____

Thank you for your cooperation!

Annex 3

QUESTIONNAIRE FOR BUSINESSMEN

The interviewer reads the following to the respondent:

Transparency International – Moldova is carrying out this opinion poll to study the causes and the extent of corruption in public institutions. The results of the poll will be used to introduce proposals to combat corruption in the Republic of Moldova.

The coordinator of the study is the Executive Director of Transparency International – Moldova, Dr. Lilia Caraşciuc, tel./fax 21-05-95, e-mail: office@transparency.md

We would like to thank you in advance for your participation and assure you that ALL OF THE INFORMATION WHICH YOU OFFER WILL BE KEPT STRICTLY CONFIDENTIAL. Your name will not be indicated on any documents. Please, try to be as candid as possible in answering these questions.

Individual code of interviewer: _____
*Date of interview:*_____
*Place of interview:*_____
Time at the beginning of the interview: _____

I. The respondent

1. Age:

Age	Percent
18-24	5.7
25-29	14.1
30-39	26.7
40-49	35.6
50-59	14.4
≥60	3.5

2. Gender:

	Percent
Male	64.2
Female	35.8
Total	100.0

3. Education:

	Percent
Secondary	3.5
Specialized secondary	16.8
Higher, including incomplete	79.7

4. Residential environment:

	Percent
Urban	91.2
Rural	8.8
Total	100.0

5. How would you asses your family current income?

	Percent
1. Income does not suffice for the most necessary things	5.4
2. It hardly suffices for the most necessary things	26.2
3. It suffices for a normal life, but we cannot afford luxury goods	44.3
4. It suffices for a normal life, sometimes we can afford luxury goods	22.1
5. We can afford everything we need	2.0

II. Main problems

6. In your opinion, to what extent the following factors impede the development of your business?

Factor	Not at all	Slightly	Impedes	Strongly impedes	Don't know
1. Inflation	11.2	28.8	39.0	19.9	1.1
2. Lack of property to mortgage	37.1	15.4	24.1	17.7	5.7
3. Fiscal legislation	11.6	14.6	35.4	36.6	1.8
4. Limited access to financial resources, bank credits	27.7	18.7	26.2	22.4	5
5. Crime	26.9	20.6	26.1	23.1	3.3
6. Corruption	15.8	16.8	31.9	34.2	1.3
7. Lack of skilled labor	31.8	21.8	26.6	17.4	2.4
8. Poor market infrastructure	18.9	21.9	36.1	18.9	4.2
9. Monopoly	26.9	20.4	31.9	16.7	4.1
10. police harassment	44.3	24.8	16.3	10.0	4.6
11. Lack of raw materials	44.7	20.9	14.8	9.8	9.8
12. Too much time spent with various inspectors	19.7	34.3	25.4	16.7	3.9
13. Political instability	21.4	19.4	33.1	22.6	3.5
14. Unforeseen changes in the legislation, regulations, instructions	11.9	16.4	33.7	35.5	2.5
15. Complicated rules for starting a new business	24.4	22.7	30.2	19.0	3.7
16. Import-export procedures	29.9	19.0	23.4	18.5	9.2
17. Price control	41.7	21.3	23.3	7.4	6.3
18. Foreign currency regulations	47.8	19.3	16.5	7.8	8.6
19. Labor regulations (high payments to the social fund)	15.8	27.5	28.3	23.5	4.9

III. The evolution and causes of corruption

7. What sources provide the most information about corruption? *(Please indicate the three most important sources)*

	Percent
1. TV	74.8
2. Radio	35.9
3. Newspapers	53.5
4. Personal experience	46.0
5. Relatives and acquaintances	54.2
6. State institutions	18.8
7. Other (specify) _____	3.2

8. In your opinion, during the last 12 months has corruption within Moldovan State institutions...

Strongly increased	Slightly increased	Stayed about the same	Slightly decreased	Strongly decreased	Don't know
21.1	12.4	42.4	12.7	1.2	10.2

9. Please rank the following causes influencing the spread of corruption in the Republic of Moldova:

	Very important cause	Important cause	Not very important cause	Not a cause	Don't know
1.Low salaries	58.0	25.2	8.7	6.9	1.2
2.Not holding corrupt persons to account	61.3	28.6	5.8	1.0	3.3
3.Government does not approach the problem seriously	50.9	35.0	6.4	4.2	3.5
4.Greed	32.0	32.5	20.7	11.8	3.0
5.Lack of transparency in State institutions	30.5	41.0	16.0	3.8	8.7
6. Favoritism	46.9	31.5	11.9	6.2	3.5
7.Pressure from employer	4.5	24.3	25.1	30.3	15.8
8.Tradition	18.2	30.6	23.6	21.9	5.7
9.Lack of standard of conduct for public officials	21.1	33.5	22.6	14.3	8.5

IV. Admissibility of corruption

10. . Let us suppose that a public official accepts money from a company in exchange for a favor. How acceptable do you think this kind of behavior is if the official:

	Fully acceptable	Acceptable	Acceptable in certain situations	Unacceptable
1. uses this money for payment of a relative's medical treatment	3.5	9.4	19.8	67.3
2. uses this money to build a medical clinic in his/her village or city	7.2	17.7	21.1	54.0

V. Dissemination of corruption

11. In your opinion, how frequently are the problems with the public officials solved with money, presents or personal contacts?

Sector	Never	Seldom	Often	Always	Don't know
1. Fiscal inspections	11.4	25.7	32.9	24.8	5.2
2. Customs	8.9	14.4	30.7	33.4	12.6
3. Police	13.0	19.1	35.9	21.0	11
4. Public Prosecutor's office	19.1	20.0	22.8	10.9	27.2
5. Sanitation and fire inspections	16.6	26.7	28.0	20.3	8.4
6. Obtaining import/export licenses	22.5	28.5	21.3	18.6	9.1
7. Access to bank credit	27.2	23.8	18.6	9.4	21
8. Property registration	26.8	24.1	21.6	10.4	17.1
9. Privatization	21.5	18.3	27.2	11.9	21.1
10. State property rents	21.0	22.0	17.8	14.1	25.1
11. Courts of law	16.8	15.8	27.3	16.3	23.8
12. Public procurement	19.0	13.5	17.5	12.2	37.8
13. Education	14.1	18.1	39.1	17.3	11.4
14. Health care	9.9	15.6	36.0	32.3	6.2
15. Ministries and departments	11.6	20.8	31.2	13.1	23.3
16. Local administration	20.5	22.8	28.7	11.4	16.6
17. Civil Registration Office	35.4	26.7	7.9	3.5	26.5
18. Passport offices	34.7	27.5	17.3	6.9	13.6
19. Housing and public utilities	36.5	25.8	10.9	4.5	22.3
20. Notary offices	47.3	25.6	10.4	4.0	12.7
21. Registration office	35.5	21.3	15.6	8.2	19.4
22. Lawyers	28.4	16.5	20.9	13.5	20.7

VI. Personal experience in contacting the public sector

12. In conducting business activities do you consider that the State …

1. Helps a lot	1.2
2. Helps somewhat	4.5
3. Sometimes helps, but is mostly neutral	10.0
4. Is absolutely neutral	25.2
5. Sometimes impedes	39.6
6. Mostly impedes	19.5

13. How much of your time do you lose (in %) solving your problems with public officials? - 24.4% - average.

14. How many control authorities have visited your company how many times during last 12 months?

	Visits per year (average)
1. Tax Inspector	3.6
2. Economic Police	3.9
3. Fire inspectors	2.4
4. Power networks inspector	6.1
5. Sanitation inspector	4.2
6. Financial Guard	3.9
7.Others (Department of Standards, Mayoralty, etc)	5.4
8. Other	1.9

15. How does the inspector usually act when he discovers an infringement of the Tax Code?

1. Reports the findings and proceeds in accordance with the rules	35.1
2. Names the price for "correcting" the report	4.4
3. "Wink-wink" factor	28.0
4. Registers the violation and then suggests that additional payment is needed	28.9
5. Other	3.6

16. If the inspector discovers a law infringement for which you are fined, what part of that sum do you have to pay directly to the inspector in order to "find a solution" for the infringement (% of fine)?- 37.8% - average

17. If you have a concrete case, please describe it:

We assure you once again about the confidentiality of this interview.

18. Sometimes people are asked to make unofficial payments or to offer presents to obtain public services. In some cases people have to pay to avoid problems with the police or other state bodies. Yet in some other cases people have to pay to get a favor (a job, a contract, an authorization etc.). Have you or any of your family members made any unofficial payments or offered presents to persons from the following institutions during the previous 2 years?

Institutions	18.1. Have you contacted the institution?		18.2. If yes, how many times ? (average)	18.3. Have you paid unofficially?		18.4. If yes, what have you paid for?		18.5. How many times have you paid unofficially? (average)	18.6. Total amount (lei)
	Yes	No		Yes	No	To get a favor	To avoid problems		
1. Registration Office	37.8	62.2	2.3	2.3	97.7	72.5	27.5	1.9	285
2. Fiscal inspections	73.2	26.8	6.1	6.1	93.9	20.8	79.2	7.7	1224
3. Customs	35.8	64.2	8.7	8.7	91.3	35.6	64.4	30.3	2904
4. Getting visas	17.1	82.9	4.9	4.9	95.1	72.4	27.6	3.0	3878
5. Obtaining licenses	38.8	61.2	2.6	2.6	97.4	69.4	30.6	2.1	9215
6. Police	40.9	59.1	4.5	4.5	95.5	20.3	79.7	5.3	919
7. Public Prosecutor's office	10.5	89.5	3.9	3.9	96.1	33.3	66.7	4.3	175
8. Civilian Registration offices	16.8	83.2	3.8	3.8	96.2	85.0	15.0	1.7	513
9. Passport offices	27.5	72.5	2.0	2.0	98	76.2	23.8	1.7	398
10. Vehicles registration and checkup offices	46.9	53.1	2.2	2.2	97.8	72.6	27.4	3.8	330
11. Cadastre offices	20.4	79.6	3.9	3.9	96.1	82.6	17.4	1.5	314
12. Issue of building licenses	15.5	84.5	3.2	3.2	96.8	56.0	44.0	1.6	3349
13. Local administration	35.4	64.6	8.4	8.4	91.6	75.9	24.1	2.9	492
14. Water supplier	31.9	68.1	4.9	4.9	95.1	56.3	43.8	2.1	317

15. Power supplier	41.5	58.5	5.8	5.8	94.2	57.9	42.1	2.0	4642
16. Moldtelecom	34.4	65.6	5.5	5.5	94.5	61.5	38.5	2.2	790
17. Heat supplier	15.0	85	3.9	3.9	96.1	61.5	38.5	1.0	1075
18. Gas supplier	14.2	85.8	3.4	3.4	96.6	50.0	50.0	1.2	533
19. Financial Guard	17.5	82.5	2.2	2.2	97.8	25.0	75.0	1.7	5917
20. Public procurement	7.3	92.7	2.7	2.7	97.3	50.0	50.0	2.3	350
21. Sanitation, fire, environment and industrial safety inspections	47.3	52.7	4.2	4.2	95.8	46.8	53.2	3.5	600
22. Banks	43.1	56.9	10.2	10.2	89.8	54.2	45.8	5.4	404
23. Courts of law	15.2	84.8	8.8	8.8	91.2	45.0	55.0	1.7	4782

VII. Public Procurement

19. During the last 2 years have you bid on any public acquisition? 14.6% of the total number of companies that took part in the survey.

20. If you have not bid, how important were the following reasons?

	Very important	Important	Not very important	Not a reason
1. Procedural complexity	11.8	21.3	12.2	54.7
2. Procedural expense	11.8	19.7	13.8	54.7
3. Too much competition	9.9	18.6	18.2	53.4
4. I would not win the contract without unofficial payments	16.5	17.7	9.6	56.2
5. Public procurements procedures are not transparent and equitable	24.2	16.7	9.5	49.6
6. Direct contracts are simpler	21.7	22.0	12.2	44.1
7. It is not our specialization	50.6	11.3	11.9	16.0

(Note: about 10% stated that they did not know about public procurements and did not answer)

VIII. Engaging against corruption

21. Imagine that someone has offered a present to a public officer to solve a problem. How do you think the person who offered the present feels like after that?

1	Angry	18.8
2	Humiliated	34.0
3	Normal	25.4
4	Content	16.0
5	Happy	5.8

22. If you were in a difficult situation, would you agree to pay a bribe?

1	Yes	34.8
2	No	14.5
3	Depends on the situation	50.6

23. Which would you personally prefer, to pay more money officially or to give a bribe?

1	To pay officially	46.0
2	To give a bribe	30.8
3	Neither	23.2

24. If you would prefer to pay officially, how much more than the officially set price?

1	50 %	7.0
2	25 %	17.2
3	10%	22.3
4	5%	12.1
5	Other: _____	14.6
6	Without opinion / don’t know	26.8

25. Have you or any of your family members faced corruption cases during the previous 2 years?

1	Yes	66.5
2	No	33.5

25.1. Have you tried to address a complaint (request) about the corruption case you have faced?

1	Yes	14.0
2	No	86.0

25.2. If you have not addressed a complaint, what were the reasons?

1	Did not know where to address	1.8
2	I tried, but without success	0.9
3	It would take too much time	9.5
4	Nothing would change	49.5
5	It would entail problems	36.0
6	Other reason (specify)_____	2.3

25.3. Should you have to address a complaint, whom would you address to?

1	Police	3.9
2	Lawyers	13.2
3	Judge	4.4
4	Official anti-corruption body	25.0
5	NGO	9.8
6	Press	4.9
7	Superior officer	6.9
8	Friends, relatives, neighbors	23.6
9	Other (specify)_____	8.3

25.4. If you have addressed a complaint, whom have you addressed to?

1	Police	25.0
2	Lawyers	16.7
3	Judge	13.9
4	Official anti-corruption body	2.8
5	NGO	-
6	Press	-
7	Superior officer	22.2
8	Friends, relatives, neighbors	-
	Other (specify)_____	19.4

26. Has the problem been solved?

1	Yes	14.3
2	Partially	20.0
3	No	62.8
4	The problem is still unsolved	2.9

27. In your opinion what would be the most efficient measures for reducing corruption in Moldova?

	Absolutely inefficient	Inef-ficient	Efficient	Very efficient	Don't know
Introducing severe sanctions for corrupt behavior	6.2	14.1	42.1	36.4	1.2
Teaching ethics courses in educational institutions	25.3	34.7	26.1	10.9	3.0
Implementing the system of declaration of income and assets by public officials	17.4	26.9	36.5	15.7	3.5
Reducing the number of state interventions in the economy	15.6	25.1	37.2	16.6	5.5
Conducting public awareness campaigns about the threat of corruption	19.8	30.3	37.1	11.0	1.8
Introducing of codes of conduct for public officials	26.0	31.5	31.5	6.7	4.3
Ensuring independence of judges	15.9	27.6	32.8	17.2	6.5
Public discussion of budgets	13.8	33.0	33.5	15.7	4.0
Introducing some performance standards for public officials	11.6	28.9	37.9	14.1	7.5
Introducing tougher sanctions against those who take bribes	3.7	11.5	34.7	48.1	2.0
Introducing tougher sanctions against those who pay bribes	14.9	23.0	27.5	31.6	3.0
Increasing salaries	3.0	14.9	26.6	53.3	2.2

28. With which of the following statements do you agree most? In the Republic of Moldova...

1	corruption cannot be confined	17.3
2	corruption will always exist, but can be limited	47.6
3	corruption can be substantially reduced	30.8
4	corruption can be completely eradicated	4.3

Time the interview ended _____

Thank you for your cooperation!