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First Evaluation Round

Draft Evaluation Report on Moldova

Adopted by GRECO
at its 15th Plenary Meeting
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I. INTRODUCTION

1. The Republic of Moldova was the thirty-second GRECO member to be examined in the first evaluation round. The GRECO Evaluation Team (hereafter "GET") comprised the following members: Mr Carlos José PIRES PASCOAL, Chief Inspector, Criminal Investigation Department (Portugal, law enforcement expert), Mr Octavian LUPESCU, Prosecutor, Anti-Corruption Division, Public Prosecutor's Department at the Supreme Court of Justice (Romania, criminal justice expert) and Ms Claire HUBERTS, Deputy Adviser, Directorate General of Human Rights and Criminal Legislation, Ministry of Justice (Belgium, general policy expert). This team, accompanied by a member of the Council of Europe Secretariat, visited Chisinau from 1 to 4 October 2002. Before the visit, the GET experts had received replies from the Moldovan authorities to the evaluation questionnaire (Greco Eval I (2002) 36F).
2. The GET met representatives of the following Moldovan Governmental institutions: the Supreme Court of Justice, the court of appeal, the Public Prosecutor's Department, the Parliamentary Committee on National Security, the Parliamentary Legal Committee on Appointments and Immunities, the Ministry of the Interior (Directorate of Internal Security), the Information and Security Service, the Centre for Fighting Economic Crimes and Corruption, the Ministry of Finance, the Tax Inspectorate, the Court of Auditors, the Customs Department, the National Public Procurement Agency and the National Securities Commission. The meeting with the Anti-Corruption Co-ordinating Council in the Office of the President of the Republic of Moldova, which the GET had been looking forward to eagerly, was cancelled during the visit by the Moldovan authorities.
3. The GET also met a fairly large group of media representatives and the Executive Director of Transparency International Moldova.
4. It should be noted that GRECO agreed at its 2nd plenary meeting (December 1999) that the first evaluation round would run from 1 January 2000 to 31 December 2001¹ and that, under Article 10.3 of its Statute, the evaluation procedure would focus on the following aspects:
 - Guiding Principle 3 (hereafter "GPC 3"): authorities in charge of preventing, investigating, prosecuting and sanctioning corruption offences: legal status, powers, means for gathering evidence, independence and autonomy;
 - Guiding Principle 7 (hereafter "GPC 7"): specialised persons or bodies in charge of fighting corruption, means at their disposal;
 - Guiding Principle 6 (hereafter "GPC 6"): immunity from investigation, prosecution or penalties in respect of corruption offences.
5. Following the meetings indicated in paragraphs 2 and 3 above, the GET experts submitted to the Secretariat their individual observations on each sector concerned and proposals for recommendations, on the basis of which the present report has been prepared. The principal objective of this report is to evaluate the measures adopted by the Moldovan authorities, and wherever possible, their effectiveness in terms of complying with the requirements deriving from GPCs 3, 6 and 7. The report will first describe the situation of corruption in Moldova, general anti-corruption policy, the institutions and authorities in charge of combating corruption (their operation, structures, powers, expertise, resources and specialisation) and the system of immunities preventing the prosecution of certain persons for acts of corruption. The second part contains a critical analysis of the situation described previously, assessing, in particular, whether

¹ At its 7th plenary meeting (December 2001), GRECO agreed to extend the first evaluation round until 31 December 2002.

the system in place in Moldova is fully compatible with the undertakings resulting from GPCs 3, 6 and 7. Finally, the report includes a list of recommendations by GRECO to Moldova designed to help the country to improve its level of compliance with the GPCs under consideration.

II. GENERAL DESCRIPTION OF THE SITUATION

6. Moldova has an area of 33 700 km² and a population of 4.32 million. It has borders with Romania and Ukraine. Located along the Ukrainian borders, the Transnistria is a region of the Republic of Moldova which claimed independence in 1991. It elected a President, established a Constitution, a Government, a Parliament, and its own army as well as a network of autonomous customs which would make it independent *de facto*, but it is not recognised by the international community. This situation has never been accepted by the authorities in Chisinau, who consider the unity and territorial integrity of Moldova an unalterable element of the country. It is separated from the Black Sea by the Ukrainian region of Odessa, and its border runs along the Danube for a few hundred metres in the far south of the country. Following the collapse of the USSR, Moldova declared independence on 27 August 1991 and has been a parliamentary republic since then. The most recent parliamentary elections were held on 25 February 2001. The transition process that began in 1991 has led to a significant fall in GDP (down by 55.9% from 1991 to 2001), resulting in a sharp decline in living standards. Although the economy began recovering in 1997, when GDP rose by 1.6%, the financial crisis in the region in 1998 once again compromised economic growth until 2000. In 2001, GDP grew by 6.1%, with inflation at 6.3% (as against 18.4% in 2000). According to ILO estimates, unemployment stood at 6.3% (or 105 000 people) in 2001. The average nominal salary stood at 519.2 lei (approximately €33.50) in 2001, i.e. 27.6% up on 2000, with the increase unevenly distributed between the various sectors of the economy. Lastly, in 2001, the incomes of 85.2% of the population were below the poverty line.²

a. **The phenomenon of corruption and the way it is perceived in Moldova**

i) *The legislation*

7. Section 2 of Act 900 of 27 June 1996 on Combating Corruption and Nepotism (hereafter “Act 900”) defines corruption as an “antisocial act which involves unlawful collusion between two parties, one of which offers or promises illicit privileges or benefits, while the other, being a public official, accepts or receives such privileges or benefits in return for performing or failing to perform certain acts that form part of his duties, and which includes elements that constitute an offence under the Criminal Code (the full text of this Law appears in Appendix I). At the time of the visit, the provisions on corruption were set out in Chapter VIII of the 1961 Criminal Code, entitled “Offences committed by persons holding positions of responsibility”. The GET was informed by the Moldovan authorities that the country’s parliament had adopted a new Criminal Code on 13 September 2002, which would come into force at the same time as the new Code of Criminal Procedure³. Article 183 of the 1961 Criminal Code defines the concept of persons holding positions of responsibility in both the public and private sectors, without, however, listing such persons: “Persons holding positions of responsibility shall mean persons in public authorities, firms, institutions or organisations (...) who, by law, appointment, election or the assignment of a specific task, are assigned certain rights and obligations with a view to exercising the functions of public authority or of enterprises responsible for administrative or organisational activities.” It further states that “Persons holding positions of high responsibility shall mean persons holding

² Sources: National Bank of Moldova.

³ The new Criminal Code came into force on 12 June 2003.

*positions of responsibility whose method of election or appointment is governed by the Constitution and institutional acts (...)*⁴. This includes also Members of Parliament.

8. The Criminal Code sets out the following offences involving corruption⁵:
- Passive bribery (Article 187), subject to 3 to 10 years' imprisonment in its basic form or 5 to 15 years or 10 to 25 years if aggravated. Regardless of the form taken by the offence, the Code provides for the confiscation of the offender's assets⁶ and the deprivation of certain rights.
 - Complicity (in corruption) as an accessory (Article 187-1), subject to 2 to 8 years' imprisonment in its basic form and 7 to 15 years or 10 to 20 years if aggravated, combined with confiscation of the offender's assets in the latter case. The last paragraph provides that accessories to corruption or bribe-taking are exempt from criminal prosecution if they report their actions to the relevant judicial authorities without realising that the authorities already knew about these actions.
 - Active bribery (Article 188), subject to 3 to 8 years' imprisonment or, if aggravated, 7 to 15 years or 10 to 20 years, with confiscation of assets in the latter cases. The last paragraph provides that persons offering bribes are exempt from prosecution if the bribes were extorted from them or if they report their actions to the relevant judicial authorities without realising that the authorities already knew about these actions.
 - Influence peddling (Article 188-1), subject to 2 to 8 years' imprisonment in its basic form or 5 to 15 years or 10 to 25 years if aggravated, with confiscation of assets in all cases.
 - Acceptance by a public servant of illicit rewards (Article 189-3), subject to a maximum of 2 years' imprisonment or a fine and deprivation of certain rights⁷.

In addition to the above, the Criminal Code sets out penalties for the offences of abuse of authority (Article 184), exceeding authority or responsibilities (Article 185), forgery of official documents (Article 189) and failure by persons holding positions of responsibility to comply with the provisions of the Act on Combating Corruption and Nepotism (Article 189-4) (the relevant provisions are set out in Appendix II).

9. Legal entities cannot be held liable for relevant corruption or money-laundering offences⁸.
10. According to information supplied by the Moldovan authorities, on 15 November 2001 the country's parliament passed Act 633-XV on Preventing and Combating Money Laundering. Section 1 provides that the purpose of the act is to prevent and combat money-laundering operations. Article 164-9 of the Criminal Code defines the offence and sets out the penalties for the laundering of income obtained by unlawful means: "the performance of lawful transactions with financial resources or other assets knowingly obtained by unlawful means shall be subject to

⁴ The concept of persons holding positions of responsibility and positions of high responsibility has been retained in the new Criminal Code (Articles 123-124). The same article also introduces the new concept of "persons managing commercial, public or other non-state organisations".

⁵ The new Criminal Code sets out the same offences involving corruption, both for persons holding positions of responsibility and for persons managing commercial, public or other non-state organisations. Article 256 also sets out penalties for extortion of illicit rewards by public servants who do not hold such positions but work in the fields of commerce, food supplies, transport, municipal services and health.

⁶ According to the information provided by the Moldovan authorities, this has to be interpreted as confiscation only of proceeds of crime.

⁷ Under the new Criminal Code, the penalties for corruption offences have been reduced. For instance, the penalty for active bribery has fallen from a maximum of 20 years to 12 years, that for passive bribery from a maximum of 25 years to 15 years and that for influence peddling from a maximum of 25 years to 10 years.

⁸ Article 63 of the new Criminal Code sets out penalties in respect of the criminal liability of legal entities.

a fine equal to 1 000 to 3 000 times the minimum wage (20,000 to 60,000 Moldovan Lei = approximately 1310 to 3940 euros) or imprisonment for up to five years, in both cases with or without deprivation of the right to exercise certain functions or perform certain activities for a period of two to five years.” These penalties are increased to up to 10 years if the offences are committed repeatedly, by several persons, in a manner that takes advantage of the offender’s professional status, on a major scale or by criminal organisations⁹.

ii) *General policy*

11. The Government of the Republic of Moldova has declared the prevention and punishment of corruption priorities. The first major step in the efforts undertaken by the Moldovan government to combat corruption was the passing in June 1996 of “Act 900” (see paragraph 7 above). The act sets out a range of measures mainly geared towards preventing and detecting corruption within the public service, which covers conflicts of interest, bans on accepting gifts of any kind and the obligation for public servants to declare their assets, all on pain of dismissal. It also gives the Centre for Fighting Economic Crimes and Corruption (set up in 2002, see below), the Public Prosecutor’s Department, the Information and Security Service and the Court of Auditors specific powers for combating corruption and nepotism. Under Section 16 of the Act, the Parliamentary Committee on National Security and Public Order is responsible for supervising the implementation of the legislation and co-ordinating the activity of the above-mentioned authorities.
12. In November 1999, the Moldovan Government adopted an ambitious national programme for combating crime, corruption and nepotism over the period from 1999 to 2002. The programme, which was published in the Official Gazette, provided for the amendment of legislation, the strengthening of international co-operation, improvements in the system for controlling and preventing crime and financial and technical support for prosecuting authorities. It clearly specifies the public bodies responsible for implementing the measures and the relevant deadlines. Under the programme, bodies specifically responsible for combating corruption were set up within the Public Prosecutor’s Department, the Office of the President of the Republic and, more recently, the police, and various new laws were passed. In November 1999, for instance, an anti-corruption unit was set up within the Public Prosecutor’s Department, with specific responsibility for combating corruption in the highest organs of the state, the judiciary, the police and supervisory bodies such as the Court of Auditors. In September 2001, an anti-corruption co-ordinating council was set up in the Office of the President of the Republic to co-ordinate the work of the public authorities in charge of combating corruption. In particular, the co-ordinating council is responsible for analysing the implementation of the legislation on corruption, the effectiveness of the above-mentioned authorities’ efforts and the causes of corruption and the factors that contribute to it, while proposing detailed anti-corruption programmes, as well as amendments to legislation, measures to increase the effectiveness of the authorities responsible for dealing with corruption and measures of a preventive nature. Lastly, Act 1104-XV of 6 June 2002 set up the Centre for Fighting Economic Crimes and Corruption, which is mainly responsible, at police level, for preventing, detecting and investigating economic crimes and corruption. In spite of these developments, however, the government’s plan appears not to have been very effective according to the people the team met during its visit. Many of the measures involved have not had any real effect. This appears to be due more to the inadequacy of the financial resources allocated for implementing the plan than to a lack of political will.

⁹ This article has been modified by the Law of 8 August 2003.

13. The GET was informed that a new national anti-corruption plan for 2003-2005 was under preparation¹⁰. The GET was unable to obtain concrete information on the measures the new plan would include.
14. As far as co-ordination of efforts to combat corruption is concerned, the GET was informed of the existence of the National Anti-Corruption Working Group, which brings together representatives of the Ministries of the Interior, Justice, Customs, and Finance, the Public Prosecutor's Department and the Information and Security Service, along with a representative of Transparency International.
15. In addition, following lengthy discussions, Act 1264-XV on the Declaration and Monitoring of the Income and Assets of State Dignitaries, Judges, Prosecutors, Public Servants and Certain Persons holding Managerial Positions was passed on 19 July 2002. Under this new legislation, central and departmental supervisory committees must be set up and provision is made for the publication of certain data. At the time of the visit, however, uncertainty still surrounded the arrangements for publishing this data¹¹. The Ministry of Justice is responsible for drawing up the rules of procedure for the committees. At the time of the visit, the arrangements for the operation of the committees had not been finalised.
16. Public awareness about corruption is raised by the media and several non-governmental organisations, including the Moldovan chapter of Transparency International, the UNDP Agenda 21 project and the Viitorul Foundation, in particular through publications and seminars. The Moldovan chapter of Transparency International is particularly active and published four reports on different aspects of corruption in 2002. It was also involved in preparing expert analyses of several laws and is represented on the National Anti-Corruption Working Group.

iii) Preventive measures

17. With regard to the prevention of corruption, various measures exist concerning the selection of public servants and codes of conduct have been drawn up for certain professions. During the visit, the GET was informed that, in general, the procedure for selecting public servants was far from flawless and checks were not always made to make sure that candidates had no criminal records¹². Special care has, however, been taken regarding the recruitment of staff for the Centre for Fighting Economic Crimes and Corruption (see section b3 below), in terms both of professional skills and of integrity. The GET was also informed that draft legislation prepared by the Information and Security Service to improve the selection of candidates for public service and monitor more effectively the integrity of the staff recruited was being finalised. As far as codes of conduct are concerned, the Conference of Judges approved a code of professional conduct for judges on 4 February 2000. A code of conduct for prosecutors was also agreed on 7 April 2000 and the general assembly of solicitors adopted a code of conduct in 1999¹³. The professional conduct of other categories of public servants is governed by institutional acts such as the Act on

¹⁰ After the visit, the Moldovan authorities informed the GET that on 27 December 2002 the Government had adopted the "Program of State for fighting against criminality and corruption for the years 2003-2005".

¹¹ According to information supplied by the Moldovan authorities after the visit, and in accordance with Section 13 of Act 1264-XV, entered into force on 1 January 2003, some data will be published in the media. Central and departmental supervisory committees have been set up.

¹² According to information supplied by the Moldovan authorities after the visit, the Policy Framework for Public Service Employees, which received parliamentary approval on 18 July 2002, entered into force on 29 August 2002. This lays down the system for recruiting and selecting public servants and assessing their performance and makes provision for setting up a committee on the management of human resources. The committee has already been set up.

¹³ The Ministry of the Interior approved a code of conduct for the police on 9 January 2003.

the Status of Members of Parliament and the Act on Public Service. However, Moldova does not have a code of conduct applicable to all public servants. Nor does it have a code of conduct for people holding electoral mandates.

iv) *International co-operation*

18. Moldova has signed the Criminal and Civil Law Conventions on Corruption. According to the Moldovan authorities, they are due to be ratified in 2003 following the entry into force of the new criminal and civil codes and the adoption of the new codes of criminal and civil procedure¹⁴. Moldova has ratified the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, the European Convention on Extradition and the two protocols thereto and the Convention on Mutual Assistance in Criminal Matters and the protocol thereto. It is a party to numerous multilateral treaties on mutual assistance in criminal matters, in particular within the Commonwealth of Independent States (CIS) and with neighbouring countries. Mutual assistance in criminal matters is governed by Articles 18 to 18-5 of the Code of Criminal Procedure of 24 March 1961¹⁵.
19. Insofar as mutual assistance in matters of corruption is concerned, with regard to countries having ratified the Criminal Law Convention on Corruption, difficulties concerning the requirement of dual criminal liability could arise in view of the limited nature of the corruption offences provided for in the existing Criminal Code. The Ministry of Justice and the Public Prosecutor's Department have not received any requests for mutual assistance between courts concerning corruption offences. Article 17, para 3, of the Constitution and Article 18-5, para 1, of the Code of Criminal Procedure prohibit the extradition or expulsion of Moldovan citizens accused of committing offences in other states. At the request of the states concerned, however, criminal charges may be brought against the relevant individuals in Moldova.

¹⁴ According to information supplied to the GET after the visit, the Moldovan authorities have already carried out part of the domestic procedure for ratifying the two conventions on corruption and the additional protocol of the Criminal Convention on Corruption by tabling amendments to the Criminal Code that meet the requirements of the conventions, including those on foreign public officials. Given parliament's heavy workload, ratification is scheduled for the autumn session 2003.

¹⁵ There is a Chapter (IX) on international cooperation in the new Code of Criminal Procedure.

v) *Statistics*

20. Table of corruption offences supplied by the Moldovan Ministry of the Interior (offences)

Type of offence under Criminal Code	1997		1998		1999		2000	
	Offences recorded	Offences identified						
Article 160/3 (accepting illicit rewards)	26	12	20	13	11	5	17	8
Article 184 (abuse of authority)	144	56	135	45	141	53	80	46
Article 185 (exceeding authority)	71	54	105	55	91	54	108	96
Article 187 (passive bribery)	105	31	100	33	107	30	105	75
Article 188 (active bribery)	11	5	8	5	13	4	22	11
Article 187/1 (complicity in corruption)	1	0	1	1	6	1	4	0

Table of corruption offences (convictions)

Type of offence under Criminal Code	1997	1998	1999	2000
	Persons convicted	Persons convicted	Persons convicted	Persons convicted
Article 160/3 (accepting illicit rewards)	8	0	5	2
Article 184 (abuse of authority)	22	26	30	16
Article 185 (exceeding authority)	37	28	34	39
Article 187 (passive bribery)	22	13	20	27
Article 188 (active bribery)	6	5	2	5
Article 187/1 (complicity in corruption)	0	0	0	0

21. In the 2002 Corruption Perceptions Index published by Transparency International, Moldova was ranked 93rd (scoring 2.1 out of 10). In addition to the statistics in the above tables that were supplied to the GET by the Moldovan authorities during the visit, other Ministry of the Interior¹⁶ statistics show that 412 cases of corruption were recorded during 2001 and 228 offences were identified, 211 of which were referred to the relevant judicial bodies. There was a fall in 2002, when 314 offences were recorded and investigations were carried out concerning 200 individuals.
22. According to the information supplied to the GET, there are close links between organised crime groups and corruption. The growth in corruption and organised crime is hindering the country's economic growth and development and resulting in the bankruptcy of many firms, thereby affecting all sectors of the national economy. Civil society representatives informed the GET that bribery of a number of senior civil servants with a view to facilitating illegal trafficking, money laundering and trafficking in human beings was fairly widespread in Moldova.

b. Bodies and institutions responsible for combating corruption

b1. The police

i) Organisation, recruitment and training

23. The Act on the Police (Act 416-XII of 18 December 1990) lays down the role and the operating principles of the police within the system of central and local administration, as well as the main tasks, powers, rights and obligations of the police and the arrangements for supervising police activity. The Moldovan police are part of the Ministry of the Interior.
24. The Moldovan police are divided into national police and municipal police¹⁷, which both come under the General Inspectorate of Police. There are approximately 6 000 officers in the Moldovan police force. The organisational structure and staffing of the national police are approved by the Government upon proposals from the Ministry of the Interior (and those of the municipal police by the municipal authorities and the Ministry of the Interior).
25. Police officers are recruited by means of competitive examination. They are trained at the Stefan cel Mare Police Academy which includes also the Dimitrie Cantemir Police College¹⁸. Both are specialised Ministry of the Interior training institutes. The Police Academy is an academic and cultural training centre that offers vocational training, organises and carries out academic research and develops teaching and scientific methods.
26. The General Inspectorate of Police, which is made up of various directorates, offices, departments and divisions, is part of the Ministry of the Interior. It also includes three departments which can, between other tasks, collect evidence on corruption cases during the first stage of the investigation: the Department for Fighting Organised Crime, the Criminal Investigation Department and the Directorate of Cross-Border, Financial and Data Processing Offences¹⁹.

¹⁶ <http://www.mai.md>

¹⁷ The national police operate throughout the country, while municipal police forces operate within the relevant municipalities.

¹⁸ Following the GET visit, a police cadet's high school was set up.

¹⁹ According to information supplied by the Moldovan authorities after the visit, under Article 269 of the new Code of Criminal Procedure, the Centre for Fighting Economic Crimes and Corruption has sole responsibility for dealing with corruption offences. However, under Article 270 of the new Code of Criminal Procedure, the Public Prosecutor's Department has sole responsibility for conducting investigations and prosecutions in the case of offences (including corruption) committed by the State President, Members of Parliament, Government members, judges, prosecutors and prosecution officials. By order of

ii) *The Directorate of Internal Security*

27. The Directorate of Internal Security is an independent division within the Ministry of the Interior. Its main aims are preventing and combating breaches of the law and corruption offences and nepotism among police officers and Ministry of the Interior staff. It has the status of an operational investigation body responsible primarily for internal security matters and inquiries involving personnel. The Directorate is composed of two sections: the section of internal security and the internal inspection section. 17 people work in these two sections.
28. Every year, the Directorate examines approximately 550 cases of breaches of legislation and internal discipline. In order to maintain lawfulness and discipline within the ministry, the directorate regularly sends reports containing practical proposals and recommendations to the various units throughout the country. In 2002, 238 cases involving police staff have been investigated; six of them concerned bribery, the rest abuse of public authority, violation of Highway Code, frauds, falsification of public acts and some others.

iii) *Other police bodies and criminal investigation bodies*

29. Article 99 of the Code of Criminal Procedure of 24 March 1961 defines “criminal investigation bodies” as “the police, the commanders of military units, the heads of military establishments, the Information and Security Service, border guards, the customs service, the Centre for Fighting Economic Crimes and Corruption and the heads of correctional establishments and high-security criminal investigation centres, education centres and treatment centres²⁰.”

b2. Information and Security Service

30. This service was set up in 1989 under an institutional act. It is made up of central and regional units that come under service directorates. Its purpose is to prepare reports at the request of the Supreme Security Council, the President of the Republic, Parliament and the government.
31. One of its roles is preventing and combating corruption and nepotism in central government bodies. Its specific field is gathering information and it mainly focuses its investigations on senior civil servants involved in the misappropriation of public funds, espionage or other offences that affect the public interest.
32. Although the service is authorised to carry out certain preliminary investigations, it is up to the Public Prosecutor’s Department to decide whether an offence has been committed and criminal charges can be brought.

b3. Centre for Fighting Economic Crimes and Corruption

33. This centre was created in February 2002 under Institutional Act 1104-XV (published in the Official Gazette on 6 June 2002). It began operating on 15 September 2002. It is a specialised

the Government of 5 August 2003, the organization of the Ministry of the Interior has changed: the General Inspectorate of Police does not exist any more. It has been replaced by the Department for operational services, which coordinates the activities of the Centre for Fighting Economic Crimes and Corruption and the Directorate of Cross-Border, Financial and Data Processing Offences.

²⁰ Under the new Code of Criminal Procedure, these criminal investigation bodies no longer exist as such. Article 253 provides that investigations are conducted by prosecution officers from the police, the Information and Security Service, the Customs Department and the Centre for Fighting Economic Crimes and Corruption.

independent body whose purpose is to enforce the legislation on combating tax evasion, financial and economic crime and corruption.

34. The centre is based on the merger of departments that previously existed within the Ministry of the Interior (Economic and Financial Directorate and Department for Combating Corruption and Organised Crime) and two departments in the Ministry of Finance (Control and Audit Department and Tax Inspectorate Department).
35. The centre's staff come from these four departments. They include civil servants (especially from the Control and Audit Department), technical staff and secretariat staff. They were selected on the basis of age, experience and merit. Only 25% of the centre's officials are officers or junior officers tasked with investigative and operational activities. They may not perform other tasks (except in the teaching, academic or creative fields). The centre's organisational chart includes one thousand posts, 700 of which are filled at present.
36. The centre is headed by a director appointed for four years by the government. S/he is entitled to attend the government meetings. It is a single centralised body made up of a central service and ten regional units throughout the country. It includes an operational inquiries department, a control and audit department, a criminal prosecution department, an internal security department and various auxiliary units. At central level, there are 45 staff responsible for operational inquiries.
37. The centre's staff enjoy full autonomy in the performance of their duties: no interference in their work is allowed. They are subordinate only to the law and their immediate superiors, and no one else may interfere in their activities.
38. The centre has the power to undertake operational and investigative activities in line with the law, to conduct acts related to criminal investigations, to monitor the economic and financial activities of individuals and businesses and to carry out forensic studies. It may also block suspicious financial transactions. It may ask public authorities, firms, organisations and state institutions to hand over the information and documents necessary for criminal investigations.
39. The centre performs the following tasks: a) the prevention, investigation and punishment of tax, economic and financial crimes, b) combating corruption and nepotism and c) combating the laundering of funds obtained by illicit means.
40. The centre is authorised to use a number of special investigative techniques (see paragraph 55). By law, the Public Prosecutor's Department is responsible for monitoring and supervising the investigating activities of the centre's staff.

b4. The Moldovan judicial system and the judicial bodies responsible for combating corruption

- i) *The Moldovan judicial system: principles, appointment, dismissal, organisation and training of judges and prosecutors*
41. Under the Constitution of 29 July 1994, Moldova is a democratic state governed by the rule of law whose form of government is a republic based on separation of, and co-operation between, the legislative, executive and judicial authorities, the latter being made up of independent and irremovable judges (Article 116-1), subject only to the law (Article 114).

42. Under Article 115 of the Constitution, justice is administered by the Supreme Court of Justice, the Court of Appeal, five courts of second-instance and the courts of first instance²¹. Judges are appointed by the President of the Republic of Moldova on proposals from the Judicial Service Commission (“Higher Magistrates Council”) (Article 116-2). They are initially appointed for probationary periods of five years, following which they are granted tenure in their posts until the statutory age of retirement. The President and the members of the Supreme Court of Justice are appointed by Parliament on proposals from the Judicial Service Commission. They must have at least fifteen years’ work experience as judges. Judges may only be promoted or transferred with their own consent (Article 116-5). The office of judge is incompatible with holding any other public or private position, except in the fields of teaching or scientific research (Article 116-7).
43. The organisation of justice is governed by Act 514-XIII of 6 July 1995. This prohibits any interference in the administration of justice. Criminal or administrative penalties apply to any attempts to pressurise judges to prevent them dealing thoroughly and impartially with a case or to influence their decisions. Organisational arrangements, funding and the execution of the judgments of all Courts are supervised by the Ministry of Justice. The use of this supervision (or any other forms of pressure) to influence judges or restrict their independence is prohibited.
44. Under Act 544-XIII of 20 July 1995, the status of “magistrate” (member of the legal service) is assigned to judges of all courts, assistant judges in the Supreme Court of Justice and the members of the Judicial Service Commission.
45. The Judicial Service Commission is made up of 11 members appointed for four years. The Minister of Justice, the President of the Supreme Court of Justice, the President of the Court of Appeal, the President of the Court of Audit and the Prosecutor General are ex officio members. Three of its members are elected by the members of the Supreme Court and three by Parliament from among accredited university professors²². The Judicial Service Commission is responsible for the appointment, transfer and promotion of judges, as well as disciplinary sanctions against them (Article 123-1 of the Constitution).
46. Judges and prosecutors do not receive initial training. There is no legal service training college in Moldova. A Ministry of Justice in-service training centre runs seminars (three or four 1-week/10-day seminars a year) to train prosecutors in dealing with corruption and economic crimes.
- ii) *Judicial bodies and institutions dealing with corruption*
47. Courts of first instance adjudicate cases of passive bribery, complicity in corruption as an accessory, and active bribery. Cases involving corruption offences committed by judges of lower jurisdictions and prosecutors of an equivalent level are heard at first instance by the Court of Appeal²³. The Supreme Court of Justice is competent to adjudicate offences involving corruption

²¹ According to information supplied by the Moldovan authorities after the visit, this applied until 15 May 2003. Act 191-XV of 8 May 2003 supplementing the legislation on the organisation of the judicial system and the status of judges reduces the number of levels of jurisdiction to three: the Supreme Court of Justice, five Courts of Appeal and the Regional (District) Courts in each district.

²² Act 191-XV (see footnote 19) increased the membership of the Judicial Service Commission from 11 to 12. The Minister of Justice, the Prosecutor General and the President of the Supreme Court of Justice are ex officio members, while 2 members are elected by the Supreme Court of Justice, 2 by the plenary assembly of the judges of the four Courts of Appeal, 2 by the assembly of the judges of the Regional Courts and 3 by Parliament (from among accredited university professors).

²³ Under the new Code of Criminal Procedure, cases involving corruption offences are dealt with by the courts of first instance. They are heard by one judge or, in the case of offences that are extremely serious or of great importance to society, three judges (Article 30).

by high civil servants, judges from the Court of Appeal and Supreme Court of Justice, prosecutors of an equivalent level and Court of Auditors counsellors.

48. Under Articles 124 and 125 of the Constitution, the Public Prosecutor's Department represents the public interest, defends public order and the rights and freedoms of citizens, conducts prosecutions and represents the prosecution in court hearings in accordance with the law. The department comprises the Prosecutor General's office, regional prosecution offices and specialised prosecution offices. The Prosecutor General is appointed for five years by Parliament on a proposal from the Speaker. Lower-level prosecutors are appointed by the Prosecutor General, to whom they are accountable.
49. Act 902-XII (amended) of 29 January 1992 on the Public Prosecutor's Department²⁴ sets out the principles for the organisation and activity of the department, as well as the structure of the various prosecution offices and their tasks, rights and obligations. It provides that the Public Prosecutor's Department is an independent body within the judicial system. In performing their duties, prosecutors enjoy complete independence from the authorities and may not be influenced by any local or regional considerations. They do not receive instructions from the Minister of Justice and are not answerable to him/her for activities carried out in their professional daily work.
50. The Prosecutor General heads the activity of all of the prosecution offices, issuing instructions and recommendations to that end. She/He has the power to rescind documents produced by prosecutors and any decisions they may have taken that breach the law. Even though there are no rules establishing in a precise manner the hierarchical relations between the state prosecutors, the Moldovan authorities informed the GET that the heads of the Public Prosecutor's Departments are regularly informed about the cases dealt with within the department. Senior prosecutors are empowered to give orders to colleagues on the follow-up to be given to individual cases. Prosecutors who are not in agreement with their superiors' decision can make their objections heard before one of the hierarchically superior prosecutors or the Prosecutor General. Decisions to dismiss a case can however be appealed by defendants before the senior prosecutor or jurisdictions.
51. Prosecutors and investigators in the Public Prosecutor's Department²⁵ may not belong to political parties or other political movements or organisations. The office of prosecutor is incompatible with holding any other public or private position, except in the fields of teaching or scientific research.
52. The Public Prosecutor's Department is divided into three levels: the Prosecutor General's Office, district offices (in addition to a municipal office in Chisinau), municipal and sector offices employing almost 800 people.
53. In November 1999, an anti-corruption unit was set up within the Prosecutor General's Office²⁶. It deals with complex corruption cases and cases involving prosecutors, judges, senior officers and high civil servants. It also supervises the lawfulness of the activities of the Centre for Fighting Economic Crimes and Corruption. It has five prosecutors and two investigators. According to

²⁴ According to information supplied by the Moldovan authorities, on 14 March 2003, parliament passed new legislation on the Prosecutor's Department (Act 118-XV). It entered into force on 18 April 2003.

²⁵ Under the new act on the Public Prosecutor's Department, the post of investigator no longer exists in prosecution offices.

²⁶ According to information supplied by the Moldovan authorities after the visit, an anti-corruption prosecution office, replacing the existing anti-corruption unit, has been set up. Its main tasks are: 1) heading inquiries concerning corruption conducted by officers from the Centre for Fighting Economic Crimes and Corruption and, 2), investigating cases of corruption among judges, prosecutors, prosecution officials, members of parliament and government members.

information supplied during the visit, the unit investigated 77 corruption cases in 2001. 18 other cases were brought before the courts in the first half of 2002.

b5. Special investigative methods in corruption cases

54. Moldovan criminal procedure complies with the principle of the mandatory prosecution²⁷ with a certain number of exceptions provided by law²⁸. Prosecutors are responsible for ensuring compliance with the law during investigations. During preliminary investigations, the bodies conducting operational inquiries may employ conventional investigative techniques and, in some cases, special investigative methods²⁹. Operational investigations are conducted under the supervision of prosecutors. The Code of Criminal Procedure does not allow anonymous accusations to be used as a basis for bringing charges. Moldovan criminal law makes no provision whatsoever for seeking the co-operation of suspects or defendants in return for their release or reductions in their sentences³⁰, except the case of whistle blowers (Articles 187 and 188 of Criminal Code).
55. With regard to corruption offences, Section 6 of Act 45-XIII of 12 April 1994 on Operational Investigative Activities provides that *“operational investigative methods such as checking postage parcels, tapping telephone and other conversations, gathering information by other means of telecommunication, applying marking using chemical and other substances and infiltrating operatively into criminal organisations staff from operational divisions and persons co-operating covertly with the bodies conducting operational investigations shall only be used by the Ministry of the Interior, the Information and Security Service and the Centre for Fighting Economic Crimes*

²⁷ As already mentioned in footnote 20, four bodies are authorised to conduct investigative activities: the police, the Information and Security Service, the Customs Department and the Centre for Fighting Economic Crimes and Corruption. Officers from the four bodies are required to submit all the relevant material to prosecutors within 24 hours. The latter decide whether the cases should proceed and set deadlines for the investigations.

²⁸ Article 275 of new Criminal Code provides:

“Circumstances which exclude criminal prosecution

The criminal prosecution can not start and in case it started it can not be carried out and stops in the cases when:

- 1) the deed of the crime does not exist;
- 2) the deed is not defined by the criminal law as a crime;
- 3) the deed does not cumulate the elements of the crime, except the cases when the crime was committed by the legal entity;
- 4) the terms of limitation or amnesty occurred;
- 5) the death of the perpetrator occurred, with the exception of the rehabilitation cases;
- 6) the complaint of the plaintiff lacks, in case that the criminal prosecution already starts, according to the provisions of the article 276, it can start only on the grounds of the plaintiff's complaint;
- 7) there is a final court judgment regarding a person, related to the same charges, or through which the impossibility of criminal prosecution on the same grounds was found;
- 8) there is a not annulled decision of starting or cessation of criminal prosecution regarding a person according to the same charges;
- 9) there are other circumstances provided by the law which condition the exclusion or, depending on the case, exclude the criminal prosecution.”

²⁹ Under Section 6 of Act 45-XIII of 12 April 1994 on Operational Investigative Activities, the bodies carrying out operational investigations may interrogate citizens; gather information; tail individuals; conduct proceedings and gather documentation using advanced methods and techniques; collect material (evidence) for the purpose of comparative investigation; make controlled purchases and deliveries of freely available or restricted goods; examine objects and documents; identify individuals; search premises, buildings, plots of land and means of transport; check postage parcels; check the correspondence of convicts; tap telephone and other conversations; gather information by other means of telecommunication; interview suspects using lie detectors; apply marking using chemical and other substances; infiltrate operatively into criminal organisations staff from operational divisions and persons co-operating covertly with the bodies conducting operational investigations; and monitor the transfer of funds or other extorted assets.

³⁰ According to information supplied by the Moldovan authorities after the visit, Moldovan criminal law does now allow seeking the co-operation of suspects or defendants in return for their release or reductions in their sentences.

and Corruption on the basis of the law and only if the relevant measures are necessary to ensure national security, public order and economic welfare, etc³¹.”

56. A specific law was recently passed on forensic examinations and reports, which are frequently required in investigations conducted by the Public Prosecutor's Department and other criminal investigation bodies³². To this end, a scientific research and auditing institute had been set up within the Ministry of Justice. During the GET's visit, it was not operating because funding levels had been inadequate and the experts had stopped working.
57. Act 1458-XIII of 28 January 1998 on State Protection of Victims, Witnesses and Other Parties in Criminal Proceedings defines the persons it covers, the requirements for granting protection, the protection measures and the bodies authorised to provide such protection. The act offers state protection to individuals who have contributed to the detection, prevention, identification and discovery of crimes. It applies to witnesses, victims and their legal representatives, defendants, suspects, convicted persons and relatives of these groups.
58. Protective measures are put in place by decision of a judge or prosecutor. They are divided into two categories: ordinary measures and extraordinary measures. The latter are complex in nature (involving changes in individuals' work or studies, addresses or identities), while the ordinary measures include surveillance of the individuals concerned, their homes and their assets, personalised protection, communication and information measures or temporary housing in safe houses. The law does not allow witnesses to give evidence anonymously, but it does allow hearings to be held *in camera* if necessary³³. Since 1999, the Ministry of the Interior has had a special unit responsible for protecting individuals and property. The Centre for Fighting Economic Crimes and Corruption and the Information and Security Service have also set up specialised divisions for this purpose.

b6. Other bodies and institutions

59. There are other authorities in Moldova that are not directly involved in fighting corruption but nevertheless play a key role in preventing and detecting it. In this connection, reference should be made to ombudsmen, the Court of Auditors, the Customs Department, the National Public Procurement Agency and the Tax Inspectorate.

i) Ombudsmen

60. The activity of Moldova's ombudsmen is governed by Act 1349-XIII of 17 October 1997 (in which they are called parliamentary commissioners). They make sure that human rights and freedoms are respected by central and local authorities, state firms, institutions and organisations. Parliament appoints three ombudsmen for five-year terms. The three ombudsmen and their auxiliary staff form an independent institution now known as the Centre for Human Rights. The centre's main task is to consider complaints by citizens whose rights and legitimate interests have

³¹ According to information supplied by the Moldovan authorities after the visit, and further to the recent changes in legislation, special investigative methods such as the interception of correspondence, telephone tapping are permissible only in the case of very serious and exceptionally serious crimes: under Article 16 of the new Criminal Code, this involves crimes subject to over 15 years' imprisonment.

³² Act 197-XV of 15 May 2003 supplementing the legislative provisions on the matter allows the Centre for Fighting Economic Crimes and Corruption to carry out criminal-science/forensic examinations within the limits of its powers.

³³ Under Article 110 of the new Code of Criminal Procedure, special measures for hearing and protecting witnesses have been introduced. For instance, courts may allow witnesses to be questioned using technical means such as teleconferencing without actually being present in court. Only investigated judge knows the witness's identity.

been violated. In 2002, the centre has received 3 200 complaints (2 000 in writing and 1 200 verbal). The statistics on the centre's web site (last updated in 1999) show that free access to information, personal safety, free access to justice, personal dignity, the right to work, social cover and so on have been the subject of frequent complaints.

ii) *The Court of Auditors*

61. The Court of Auditors is a collegial body made up of seven members appointed by Parliament, which takes majority decisions. It comes under the responsibility of Parliament, which approves its staff complement. The court currently has 68 auditors, but this figure is due to increase substantially in the near future. It scrutinises the use of public funds and the management of national assets. The relevant legislation provides for preventive mechanisms and machinery for supervising public finances, as well as compensation for losses resulting from fraudulent management. The Court of Auditors' decisions are transmitted to the commitments officers and heads of the bodies audited so that they can rectify the shortcomings identified and provide compensation for any losses/damage caused. If the auditors believe that offences have been committed, the cases are referred to the Public Prosecutor's Department. The Court transmits these cases to the Centre for Fighting Economic Crimes and Corruption as well.³⁴
62. The irregularities most frequently identified by the Court of Auditors are abuses of authority, exceeding authority, forgery, the improper use of appropriations and tax evasion. They often involve large-scale misappropriation of funds. The court is part of the system set up under Section 5 of the Act on Combating Corruption and Nepotism, whose purpose is to fight the latter. A draft co-operation agreement between the Court of Auditors and the relevant specialised divisions of the Centre for Fighting Economic Crimes and Corruption, the Information and Security Service and the Public Prosecutor's Department is under preparation.³⁵
63. As a supervisory body, the court is statutorily required to submit any evidence of offences to the police or the Public Prosecutor's Department. The latter inform the Court of Auditors about the decisions taken in each case. In 2001, 44 files were referred to the Public Prosecutor's Department, 27 criminal investigations were launched and 9 sentences were handed down, including a number of prison sentences. During the visit, the GET was informed that 80% of the cases dealt with by the division of the Public Prosecutor's Department responsible for economic and financial crime investigations had been referred by the Court of Auditors and that criminal proceedings had been brought in 60% of the cases reported.
64. All Court of Auditor's decisions are published in the Official Gazette. The court produces, *inter alia*, an annual report on the use of public funds, which is submitted to Parliament and also published in the Official Gazette. In 2002, Parliament decided to debate the report in plenary session and held public hearings with the heads of the ministries criticised.

iii) *The Customs Department*

65. The Customs Department is a single body comprising a central office and 15 custom bureaus which supervise the work of 16 custom posts. 8 of them, located in Transnistria, are not controlled

³⁴ According to information supplied by the Moldavian authorities after the visit, the new legislation requires the Court to transmit findings related to violations of law to the Center for Fighting Economic Crimes and Corruption.

³⁵ Further to the adoption of new Criminal and Criminal Procedure Codes, Moldavian authorities did not estimate suitable to finalize this draft co-operation agreement.

by the central Customs Department. It has a staff of 1 500, including 100 at its headquarters in Chisinau.

66. The Customs Department performs two main functions: collecting customs duties and combating smuggling and customs offences. The latter function is performed by the special anti-smuggling unit, with a staff of four, and the criminal investigations unit. In 2001, 90 criminal investigations were launched. In the first half of 2002, the figure was 38, 19 of which were referred to the courts. The GET was informed that investigations had recently begun concerning a case of smuggling by two individuals, in which six customs officers were involved, the sum in question being 749 000 lei (approximately €46 900).
67. The illegal practices mentioned most frequently to the GET were failure by customs officers in exchange of benefits or a sum of money to register goods crossing the border or registering smaller quantities than actually crossed the border. Although the salaries are very low, many people want to work as customs officers, as the offices are spread throughout the country. Salaries at border posts are higher, however. According to the people the GET met, the low salaries are an obstacle to the fight against corruption: attempting to pursue a policy of preventing corruption without increasing salaries to allow decent standards of living is bound to end in failure. Customs officers do not receive specialised training; they are trained on the ground and the training they receive in the relevant legislation is inadequate. For reasons of a financial nature (in particular, the cost of the housing made available to officers), there is little rotation of customs officers, even if they are under serious suspicion. Although customs officers are required to report offences that come to their knowledge, they do so only very rarely, as such reporting is not looked on favourably. In cases where evidence of wrongdoing by customs officers is found, the officers concerned are automatically dismissed.
68. In 2001, the inspection division set up in 1997 was reformed. According to this reform, an operational directorate, with a staff of three, was set up. According to the information supplied by the Public Prosecutor's Department, in 2001, 9 corruption investigations were carried out, 8 of which were dismissed. In 2002, 4 investigations were started: at the time of the visit, they were still under investigation. The GET was told by customs authorities met during the visit that the inadequate staffing levels of the Directorate does not allow to carry out deeper investigations.

iv) *The National Public Procurement Agency*

69. Act 1166-XIII of 31 December 1997 on the Procurement of Goods, Works and Services for Public Needs established the National Public Procurement Agency. The agency comes under the Ministry of Economic Affairs and has a staff of ten working in a legal directorate and a procurement directorate. The purpose of the act is to guarantee transparency in tendering procedures and make sure that tenders are examined fairly in line with international and European public procurement standards. The agency runs seminars to raise officials' awareness of the technical regulations on public procurement procedures.
70. The agency's main tasks are drawing up specifications and approving contracts. It publishes a weekly bulletin listing calls for tenders. Suppliers purchase the necessary documents and submit their tenders, which are opened and published by a procurement committee. All of the documents are submitted for examination to a working group comprising 5 to 15 representatives of the ministry concerned, which selects a bid in line with the specifications and the relevant legal requirements, giving reasons for its decision. If the agency does not detect any irregularities in the selection procedure, it authorises the relevant ministry to conclude the contract. The results of

the tendering procedures are published once a month in the bulletin. Firms are required to pay a deposit of 15% of the contract amount as a guarantee for performance. They lose this sum if the contract is not properly executed.

71. The Ministry of Finance does not execute contracts that are not approved by the agency. The agency often turns down contracts and its decisions are frequently challenged in the commercial court. Any tenderer may challenge the agency's decisions. The relevant decisions are then suspended and the files sent back to the assessment group in the relevant ministry. If no friendly settlement can be reached with the tenderer and the rejection of the contract is confirmed, the tenderer may bring legal proceedings. The main reasons for turning down tenders are failure to comply with the rule of the lowest bid and failure to meet the specifications. In the event of appeals after the contracts have been signed, the latter may be rescinded and the relevant costs recovered. There is a statutory requirement to declare any conflicts of interest. If suspicions arise, the agency refers the matter to the relevant legal bodies.
72. In the first four years, there were numerous problems with the enforcement of the legislation, which therefore had to be amended. At the time of the visit, there were plans to increase the thresholds, which were no longer appropriate (for instance, the threshold above which tendering procedures were mandatory would rise from 45 000 lei to 100 000 lei, ie from approximately €2 800 to €6 200), and sanction suppliers that did not meet their obligations by excluding them from future tendering procedures (blacklisting).

v) *The Tax Inspectorate*

73. Under Title V (Fiscal Administration) of the Tax Code, authority in fiscal matters is exercised by the Principal Tax Inspectorate in the Ministry of Finance and its subordinate regional inspectorates. The Tax Inspectorate has a staff of 2 500, 600 of whom are involved in tax audits.³⁶ In the case of individuals, the Tax Inspectorate checks all annual income tax returns. Under Title V of the Tax Code, which entered into force in July 2002, it is entitled to make visits and demand proof of expenditure. As far as firms are concerned, the Tax Inspectorate has a plan of action. The firms in question are notified a few days before the tax inspectors arrive, and the inspectors are required to present them with the authorisation for carrying out the inspection, which must indicate its purpose. Tax inspections may not last longer than thirty days and individual firms may only be inspected once a year. However, more inspections may be carried out if there is concrete evidence of offences or at the request of the judicial authorities.
74. The Tax Inspectorate has a preselection programme based on the risks of tax evasion. In view of the number of officials assigned to the inspections, individual companies are inspected in respect of corruption only around once every ten years. Tax evasion was detected in over 60% of the inspections carried out, with the amount in question totalling over 120 million lei (approximately €7 500 000). This figure, which was put forward during the visit, is regarded as very high given the small number of firms inspected. In 2001, the Tax Inspectorate referred 35 cases to the Public Prosecutor's Department and 8 sentences were handed down. Most of the cases reported involved tax evasion and none involved corruption.
75. The Internal Monitoring Directorate, which had a staff of four at the time of the visit, conducts internal checks on the Tax Inspectorate's 2 500 officials. The GET was informed that many officials had been dismissed. However, no figures were given on the number of cases

³⁶ Under Act 197-XV of 15 May 2003 amending the legislation on the Center for Fighting Economic Crimes and Corruption, the latter was granted the powers of a fiscal authority, including the right to enforce collection of taxes.

investigated, disciplinary measures applied and criminal prosecutions brought or about the type of offences identified. With regard to the preventive measures applied within the Tax Inspectorate, the GET was informed that firms were inspected by teams of two inspectors and that, in practice, no single inspector ever inspected the same firm twice in succession. Steps had also been taken to facilitate public access to information. No initial training is provided to tax inspectors. Most of them are economists and, when recruited, they receive in-service training: the Specialised Centre of the Ministry of Finance organises, once per year, some courses lasting one or two weeks on case-law, special matters related to tax inspections and ethics. There is no code of conduct/ethics for officials of the tax departments. When asked about the Tax Inspectorate's role in combating corruption, the people the GET met during the visit said that the tax authorities were not involved in that. In case tax inspectors detect any suspicious case of corruption, they shall report it to the law-enforcement bodies.

c. Immunity from investigation, prosecution and punishment of corruption

76. Under Article 81 of the Constitution, the President of the Republic of Moldova enjoys immunity and may not be held liable for any personal opinions expressed while discharging his duties. Only Parliament may indict the President (on the basis of a two-thirds majority vote) if he commits an offence. In that event, it is the Supreme Court of Justice that is competent to try him. If convicted, the President is removed from office on the date the sentence becomes final.
77. The immunity of the members of the Moldovan parliament is governed by Chapter II (Parliamentary Immunity) of Act 39-XIII of 7 April 1994. Members may not be held liable for opinions expressed while discharging their duties. Except in cases of flagrant breaches of the law, they may not be arrested, subjected to searches or put on trial without the consent of Parliament (Article 70 of the Constitution). Requests to waive the immunity of members suspected of having committed an offence with a view to placing them in custody or conducting searches are submitted by the Prosecutor General to the Speaker of Parliament. The latter announces such requests in plenary session within seven days and submits them to the Legal Committee on Appointments and Immunities for consideration. The members of that committee consider the merits of the requests and vote on them in secret within a maximum of 15 days. The committee has not adopted any criteria on the waiving of immunity. The committee's reports are submitted to Parliament (plenary session), which, in turn, decides by secret vote. Until 2002, the Prosecutor General has submitted four such requests to Parliament. No one concerned corruption investigations. Two of them were accepted.
78. Prosecutors and investigators are granted immunity of procedure³⁷. They may only be prosecuted by the Prosecutor General³⁸, who gives consent with regard notably to searches, telephone tapping and checking and confiscating mail, objects and documents. The Court of Appeal is competent to adjudicate cases involving judges except when they have equivalent functions to Court of Appeal and Supreme Court judges in which case the Supreme Court is competent to adjudicate. The GET was informed that final judgments have been handed down in respect of three prosecutors over the last past years: two have been convicted, with one being sentenced to ten years' imprisonment.
79. Section 19 of the Act on the Status of Judges provides that criminal proceedings may be instituted against judges solely by the Prosecutor General and with the consent of the Judicial

³⁷ Act 118-XV abolished prosecutors' immunity. As regards investigators, see footnote 25.

³⁸ The new act on the Prosecutor's Department provides that senior police officers may initiate criminal investigations in respect of prosecutors without the Prosecutor General's consent.

Service Commission and of the President of the Republic or of the Parliament. The Parliament's consent is required in the case of Supreme Court judges be involved. Judges may not be detained, brought by force, arrested or put on trial without the consent of the Judicial Service Commission and the President of the Republic or, depending on the circumstances, Parliament. Criminal cases against judges are heard by the court of appeal and, in the case of court of appeal or Supreme Court judges, by the Supreme Court. The GET was informed that the Judicial Service Commission had never refused to waive the immunity of judges suspected of having committed offences. To date, there have apparently been three cases of judges, including a court president, being finally sentenced for corruption offences. In 2001, two corruption cases of judges were carried out, one of which led to a sentence and the other one to an acquittal. In 2002, two cases of judges taking bribes were investigated but no charges were brought. A proposed amendment to Section 19 of the Act on the Status of Judges was turned down. The GET was told that judges' immunity represents an essential protection when carrying out their duties, notably vis-à-vis attempts to destabilise them (false accusations, questioning of their integrity, etc.), when dealing with sensitive cases.

80. Section 30 of the Act on the Court of Auditors provides that proceedings may be brought against its members at the request of the Prosecutor General, with the consent of Parliament³⁹. They do not enjoy any privileges in terms of the courts that hear their cases. The Supreme Court is competent in first instance to adjudicate offences involving corruption by Court of Audit members.

III. ANALYSIS

a. General anti-corruption policy

81. In the course of the transition to the market economy, Moldova has been faced with a number of serious economic and social problems, including high levels of tax evasion and the emergence of a parallel economy and criminal trafficking. Corruption is regarded as a very worrying problem that affects many sectors of the public service and seriously undermines the operation of government and democracy. The sectors usually mentioned as being worst affected are the judiciary, the police, the customs service, the tax inspectorate and public procurement. The population is generally distrustful of the authorities and does not really co-operate with them in reporting/detecting corruption. According to studies conducted by Transparency International (see paragraph 21 above), Moldova is among the countries most affected by corruption worldwide. It was ranked 93rd out of 102 countries in 2002. A study conducted in 2000 by the Moldovan chapter of Transparency International showed corruption to be the population's second most serious concern after poverty. The latter and the low salary levels in the country were frequently mentioned during the visit as major causes of corruption.
82. Corruption offences are said to account for 7% of all of the offences investigated and referred to the courts. According to the Moldovan authorities, the statistics do not, however, reveal the full extent of the corruption in the country. The GET was informed that a wide range of individuals had been prosecuted for corruption offences: judges, prosecutors, junior and senior police officers, mayors and deputy mayors, customs officers and company managers.
83. Lastly, although the Moldovan authorities state that there is no concrete evidence of links between corruption and organised crime, the existence of such links was indicated to the GET during the visit: the media and civil society representatives were insistent that the links between corruption among public officials (including at political level) and organised crime were obvious.

³⁹ According to the law of 23 May 2003, the consent of Parliament is not needed any more.

They are convinced that criminal trafficking, smuggling and other illegal activities that occur regularly and quite openly in the country could not take place without the consent, if not the more or less direct involvement, of those actually responsible for combating them.

84. Against the background of this particularly serious situation, there is no official study that could provide a clearer insight into the scale of the corruption in Moldova, the forms it takes, the areas mainly affected or its causes. The GET believes that the information from such a study could be used to draw up a more appropriate and hence also more effective anti-corruption plan. This is all the more urgent since corruption affects key state institutions such as the police and the judiciary and is generally regarded as one of the main obstacles to the country's economic and social development. **The GET therefore recommends that the necessary studies be carried out in order to gain a clearer insight into the scale of corruption and its various features so that anti-corruption initiatives and plans can be targeted more effectively.**
85. As far as the national programme for combating crime, corruption and nepotism over the period from 1999 to 2002 was concerned, the GET was unable to obtain much information about its development, follow-up action or the results produced. Although the people the team met during the visit were aware of the programme's existence and, in some cases, its main thrusts, they were often unable to provide details about its implementation, even in the particular public service that employed them. The GET therefore concluded that the programme had been inadequately publicised, both in the public services involved in fighting corruption and in the media and society at large. Yet effective action against corruption is not possible unless public servants and, more generally, the wider population are closely involved in the authorities' efforts by means of transparent and regular information on the measures taken, their implementation and the results produced. Awareness-raising of this kind would make it possible to combat the sense of the corrupt (both bribers and bribe-takers) being able to act with impunity by highlighting the penalties applicable and illustrating the effectiveness of the investigations carried out, while also increasing public confidence in the actions of the country's leaders and the police and judicial authorities. In this connection, the GET noted with satisfaction the efforts made by the management of the Centre for Fighting Economic Crimes and Corruption to inform the public about its recent establishment and raise their awareness of its activities. According to the media and civil society representatives the GET met during the visit, after being much criticised at the time it was set up, the centre now seems gradually to be winning the trust of the public and generating hopes of more independent efforts to fight corruption. For that reason, **the GET recommends that the relevant Moldovan authorities involve in their anti-corruption efforts:**
- **public servants by introducing measures aimed at facilitating, at their level, the recognition and whistle blowing of suspicious acts of corruption;**
 - **the public by informing it, regularly, in particular through the media, about the content of the National Programmes, the Government activities, their implementation, the results achieved and about the court judgements.**
86. The GET also believes that regular information about the anti-corruption measures taken and the results achieved should go hand in hand with raising awareness among the public about the dangers of corruption, the penalties that apply and are applied and the importance of their co-operating with the bodies charged with combating offences of this kind. **The GET therefore recommends that the public be made aware on a regular basis of the dangers of corruption and informed about the means available for reporting cases of corruption known to them.**

87. Three bodies mainly comprising representatives of the same public authorities are responsible for co-ordinating anti-corruption efforts, i.e. the Parliamentary Committee on National Security and Public Order, the Anti-Corruption Co-ordinating Council and the National Anti-Corruption Working Group. During the visit, the GET was told that the above parliamentary committee dealt with the aspects of anti-corruption efforts that were related to national security, while the co-ordinating council dealt more with the “structural” aspects and the national working group met only rarely. No information was obtained about co-ordination of the activities of the three bodies themselves. Lastly, the GET was also told that this three-tier system of co-ordination was excessive and counterproductive. **The GET therefore recommends that the Moldovan authorities streamline the work of the anti-corruption co-ordination bodies by defining their responsibilities, by establishing their respective priorities and tasks to ensure a more effective cooperation.**

b. General preventive measures

88. The authorities have taken a number of measures designed to prevent corruption. These have included improvements in the procedure for selecting staff for the Centre for Fighting Economic Crimes and Corruption and the development of codes of conduct, notably for judges and prosecutors. However, it is unfortunate that there is no code of conduct applicable to all public servants. By laying down the duties and obligations of public servants, such a code would enable them clearly to identify conduct that was inappropriate, provided that the code was regularly brought to their attention. It could also help instil a greater sense of responsibility in them by reminding them of their duties towards the public. **The GET therefore recommends that a code of conduct for public servants be adopted and regularly circulated among public servants and the public at large.**

c. Legislative framework

89. Although the co-ordinated criminalisation of national and international corruption (Guiding Principle 2) is not covered in this evaluation, the GET nevertheless examined the definition of corruption offences under Moldovan legislation insofar as it is directly related to the scope of the rules set out in Guiding Principles 3, 6 and 7. The legal framework for combating corruption is based on the amendment of certain existing laws and the adoption of new laws. For instance, the Criminal Code and the Code of Criminal Procedure were drawn up in a social, political and economic environment totally different to the situation today. To take account of the changed situation, the legislation has been amended and new codes have been drawn up (Criminal Code and Code of Criminal Procedure in particular). These reforms are used to define corruption offences more clearly, extend the groups that can be prosecuted for such offences and simplify preliminary investigation procedures.

90. Although the Moldovan parliament has voted to require public servants to declare their assets and incomes on pain of dismissal, the GET understands that the relevant legislation, Act 443-XIII of 4 May 1995 on Public Service and Act 900 of 27 June 1996 on Combating Corruption and Nepotism, has never been enforced. Provided they were properly checked, declarations of this kind could, however, be useful tools for preventing and detecting corrupt practices in a country where there are regular cases of public servants on low salaries suddenly becoming rich. Act 1264-XV of 19 July 2002 on the Declaration and Monitoring of the Income and Assets of State Dignitaries, Judges, Prosecutors, Public Servants and Certain Persons holding Managerial Positions explicitly extended this requirement to the country's leaders and the judiciary and provided for the establishment of monitoring committees. At the time of the visit, however, many

arrangements still had to be finalised, in particular with regard to publication of the declarations and the operation of the committees, leading the GET to fear a delay in the implementation of the law that was due to enter into force on 1 January 2003. In these circumstances, the GET believes that the Moldovan government should display clear political will by implementing without delay the act of 19 July 2002, taking particular care to put in place effective machinery for checking the declarations. **The GET therefore recommends that Act 1264-XV of 19 July 2002 on the Declaration and Monitoring of the Income and Assets of State Dignitaries, Judges, Prosecutors, Public Servants and Certain Persons holding Managerial Positions be implemented without delay and that the declarations be checked properly.**

d. Bodies and institutions responsible for combating corruption

91. The independence of investigating officers discharging their investigative duties is guaranteed by law, and the representatives of each department concerned confirmed the application of the law to the GET. In particular, the Public Prosecutor's Department is defined as an independent body within the judiciary, and prosecutors discharge their duties without interference by the authorities, and particularly by the Minister of Justice. Prosecutors' work is realised in such a way that the hierarchically senior prosecutor is informed about cases dealt with in his/her office. The GET was told that there had never been any cases of investigations being dropped because of political office holders exerting pressure of any kind. The independence of the staff of the Centre for Fighting Economic Crimes and Corruption is guaranteed by the ban on any kind of interference in their activity as well as for the investigators from the Ministry of the Interior.
92. The GET welcomes the establishment of the new Centre for Fighting Economic Crimes and Corruption, the only specialised body in this area. It is clear from the legislation that the centre is the main tool for combating corruption. The Public Prosecutor's Department has no specific body for dealing with corruption, apart from an anti-corruption unit attached to the office of the Prosecutor General that was set up on the latter's instructions, has no statutory basis and has very limited human resources in relation to the task to be performed. **In this connection, the GET recommends that the anti-corruption unit within the Public Prosecutor's Department (or any other anti-corruption body of the Public Prosecutor's Department) be strengthened by providing it with the additional human and financial resources needed for its activity, in particular in terms of the number of specialised prosecutors.**
93. As the Centre for Fighting Economic Crimes and Corruption has ten regional divisions and a central service, **the GET also recommends that the anti-corruption unit within the Public Prosecutor's Department (or any other anti-corruption body of the Public Prosecutor's Department) be organised in such a way to provide interface with the Centre for Fighting Economic Crimes and Corruption, for example by creating regional divisions.**
94. The visit revealed a serious lack of resources in the bodies responsible for fighting corruption and the related offences. Moldova's economic hardship is reflected in poor logistical resources, undermining the effectiveness of anti-corruption efforts. In particular, the lack of resources makes it difficult to enforce legislation such as the Act on Operational Investigative Activity and the Act on State Protection of Victims, Witnesses and Other Parties in Criminal Proceedings. The low salaries paid to police officers and prosecutors are inappropriate and could in fact lead them to opt for better-paid activities or to becoming involved in corruption. **The GET therefore recommends that prosecutors and police officers be paid adequate salaries within the general context of salary scales paid in the country.**

e. Training

95. No specialised training is provided on a regular basis for investigating officers working on corruption cases. Apart from initial training at the Police Academy or in universities, criminal investigators involved in the specific field of economic crimes occasionally attend special courses in training centres run by investigative or judicial bodies and may also attend seminars abroad. The in-service training centre for prosecutors and judges organises three or four seminars (each lasting roughly a week) every year, which are attended by 20 to 25 persons. These cover a wide range of topics, including corruption. In 2002, however, no initiatives were taken in this area. The Ministry of the Interior runs in-service training at the Police Academy in the form of placements, retraining and colloquies. However, combating corruption is not one of the priorities and is not therefore usually taken into consideration. **The GET therefore recommends that initial and in-service training of the staff of the Centre for Fighting Economic Crimes and Corruption, prosecutors and judges particularly in combating economic and financial crimes and related offences such as tax evasion and, more specifically, corruption be stepped up.**

f. Other bodies and institutions

96. In overall terms, the bodies the team held discussions with were keen to combat corruption and, more generally, economic and financial crime. Major steps had been taken to improve the transparency of the regulations and the decisions by the bodies in question and remedy shortcomings in regulatory procedures. The team also noted that there was active co-operation between the Court of Auditors and the other authorities involved in tackling corruption, in particular the Public Prosecutor's Department.
97. With regard to the general anti-corruption policy pursued within the Customs Department, in spite of the good intentions of the officials the team met, major shortcomings were identified, mainly resulting from the inadequacy of the financial resources available. Being unable, for financial reasons, to remove officials suspected of corruption from their posts, periodically rotate the staff working in the most sensitive posts or, more crucially, offer staff appropriate and regular training on regulations and professional conduct is not compatible with effective efforts to fight corruption. The restructuring of the Customs Department's internal monitoring unit a few weeks before the visit meant that it was not possible to assess its operation. **The GET therefore recommends that the necessary financial and technical resources be allocated to the operational directorate of the Customs Department and that officers be given initial and in-service training in regulations and professional conduct.**
98. The GET was struck by the obvious lack of interest in the problem of corruption shown by the senior officials from the Ministry of Finance and, more particularly, the Tax Inspectorate whom it met during the visit. It should be noted here, first of all, that the Tax Inspectorate is one of the departments most exposed to the risks of corruption because of its particularly sensitive activities and its frequent contacts with the public and businesses and was, in fact, mentioned several times during the visit, both by official and by civil society representatives, as one of the most corrupt government bodies. Secondly, in view of the irregularities they may reveal, inspections carried out by the Tax Inspectorate can help detect cases of corruption. Lastly, the national anti-corruption programme specifically provides for the involvement of the Ministry of Finance. With more particular regard to the directorate responsible for internal monitoring of tax officers within the Ministry of Finance, little relevant information was obtained on its operation. Nevertheless, providing so few staff for a department responsible for monitoring 2 500 officials in a sector regarded in Moldova as one of the most exposed to the dangers of corruption is unrealistic and

does nothing to discourage corrupt practices. At the very least, an effective internal monitoring system requires adequate levels of staff both for the task of informing officials about their professional obligations and for that of conducting the necessary internal inquiries. **The GET recommends that officials of the Tax Inspectorate be made aware of the problem and dangers of corruption and their role in fighting it and that concrete measures be taken to ensure that the internal monitoring directorate performs stricter checks on the activities of Tax Inspectorate officials.**

g. Protection of victims, witnesses and other persons affording assistance in criminal proceedings

99. As indicated in the descriptive part of this report (see paragraph 57 above), Act 1458-XIII of 28 January 1998 on State Protection of Victims, Witnesses and Other Parties in Criminal Proceedings is relatively recent. As the protection measures provided for in the act have only been implemented very rarely to date, there is not enough information to be able to analyse the act's effectiveness in depth. Moreover, during the visit, serious financial difficulties were cited as the reason for the virtual non-implementation of the act and for problems in the units responsible for implementing it. **The GET therefore recommends that, the financial and technical resources provided for the departments responsible for implementing witness-protection and related programmes be increased and make sure that the Act 1458-XIII of 28 January 1998 be properly implemented.**

h. Immunities

100. The GET believes that the immunities enjoyed by the President, Members of Parliament and members of the judiciary and Court of Auditor's counsellors are generally acceptable and in line with Guiding Principle 6 on limiting immunity to the level strictly necessary in a democratic society.
101. However, the GET noted that there are no clear guidelines for persons deciding on whether or not to lift the immunity, in particular members of Parliamentary Committee on Appointments and Immunities. Although binding rules or criteria would not be compatible with the essence of the institution of procedural immunity, in the GET's view, such guidelines – contained, for example, in the rules of procedure – would be an useful tool to prevent it from being politically abused. Such guidelines should recall that, as a rule, immunity should be an exception and should not be maintained if there is evidence that the suspect used his official position to gain an undue advantage. **Accordingly, the GET recommends to establish guidelines for Deputies of the Parliament, and especially its Committee on Appointments and Immunities, containing criteria to be applied when deciding on requests for lifting immunities.**

IV. CONCLUSIONS

102. The Republic of Moldova is without any doubt one of the countries deeply affected by corruption. The Moldovan authorities are aware of the danger corruption represents for the operation of the state and democracy. In order to tackle the problem and meet the relevant international standards, they have implemented various legislative and institutional reforms to make anti-corruption efforts more effective. While certain measures such as the adoption of the new criminal and criminal procedure codes and the setting up of the Centre for Fighting Economic Crimes and Corruption are very positive developments, other reforms appear to be being slowed down or blocked by the very limited financial resources assigned to implementing them. In addition, the

effectiveness of the anti-corruption efforts undertaken by the Moldovan authorities is not being helped by the mood of resignation among the public. If the public are to regain trust in the authorities, extensive and regular information must be provided on the action taken, the resources deployed and the results obtained. While anti-corruption efforts are made particularly difficult by the severe economic difficulties facing the country and the low salaries and wages paid, it must be remembered that the effectiveness of these efforts cannot be assessed in an abstract manner: it must be based on practical results. And they have been very limited to date.

103. Moreover, there is a very widespread belief in Moldovan civil society that very close links exist between local organised crime (which is very large in scale and has significant international ties) and certain representatives of the authorities most directly involved in preventing and combating organised, economic and financial crime. Such links are sometimes acknowledged by representatives of certain public institutions. The openness with which certain illegal activities (trafficking in women and drugs, tax evasion, smuggling and so on) are carried out is often mentioned by the media and civil society in support of their belief that close links exist between organised crime and the public authorities.

104. In the light of the above, GRECO addresses the following recommendations to Moldova:

- i) **that the necessary studies be carried out in order to gain a clearer insight into the scale of corruption and its various features so that anti-corruption initiatives and plans can be targeted more effectively;**
- ii) **that the relevant Moldovan authorities involve in their anti-corruption efforts:**
 - **public servants by introducing measures aimed at facilitating, at their level, the recognition and whistle blowing of suspicious acts of corruption;**
 - **the public by informing it, regularly, in particular through the media, about the content of the National Programmes, the Government activities, their implementation, the results achieved and about the court judgements;**
- iii) **that the public be made aware on a regular basis of the dangers of corruption and informed about the means available for reporting cases of corruption known to them;**
- iv) **to streamline the work of the anti-corruption co-ordination bodies by defining their responsibilities, by establishing their respective priorities, and tasks to ensure a more effective cooperation;**
- v) **that a code of conduct for public servants be adopted and regularly circulated among public servants and the public at large;**
- vi) **that Act 1264-XV of 19 July 2002 on the Declaration and Monitoring of the Income and Assets of State Dignitaries, Judges, Prosecutors, Public Servants and Certain Persons holding Managerial Positions be implemented without delay and that the declarations be checked properly;**
- vii) **that the anti-corruption unit within the Public Prosecutor's Department (or any other anti-corruption body of the Public Prosecutor's Department) be strengthened by providing it with the additional human and financial resources needed for its activity, in particular in terms of the number of specialised prosecutors;**

- viii) that the anti-corruption unit within the Public Prosecutor's Department (or any other anti-corruption body of the Public Prosecutor's Department) be organised in such a way to provide interface with the Centre for Fighting Economic Crimes and Corruption, for example by creating regional divisions;
 - ix) that prosecutors and police officers be paid adequate salaries within the general context of salary scales paid in the country;
 - x) that initial and in-service training of the staff of the Centre for Fighting Economic Crimes and Corruption, prosecutors and judges in combating economic and financial crimes and related offences such as tax evasion and, more specifically, corruption be stepped up;
 - xi) that the necessary financial and technical resources be allocated to the operational directorate of the Customs Department and that officers be given initial and in-service training in regulations and professional conduct;
 - xii) that officials of the Tax Inspectorate be made aware of the problem and dangers of corruption and their role in fighting it and that concrete measures be taken to ensure that the internal monitoring directorate performs stricter checks on the activities of Tax Inspectorate officials;
 - xiii) that, the financial and technical resources provided for the departments responsible for implementing witness-protection and related programmes be increased so that the relevant and make sure that the Act 1458-XIII of 28 January 1998 be properly implemented;
 - xiv) to establish guidelines for Deputies of the Parliament, and especially its Committee on Appointments and Immunities, containing criteria to be applied when deciding on requests for lifting immunities.
105. Finally, in conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the Moldovan authorities to present a report on the implementation of the above-mentioned recommendations by 30 June 2005.

APPENDIX I

Act on Combating Corruption and Nepotism

The Parliament of the Republic of Moldova adopts the following act.

CHAPTER I

General provisions

Section 1: Purpose

The purpose of this act is to protect citizens' rights and freedoms, defend the public interest, guarantee national security and ensure the proper functioning of the legislature, executive and judiciary and administrative authorities and discharge of duties by public servants and assimilated persons in line with the Constitution and other legislation by preventing, detecting and eradicating offences related to corruption, eliminating the consequences and punishing guilty parties, as well as by preventing, detecting and eradicating nepotism.

Section 2: Definitions

For the purpose of this act, corruption shall mean an antisocial act which involves unlawful collusion between two parties, one of which offers or promises illicit privileges or benefits, while the other, being a public official, accepts or receives such privileges or benefits in return for performing or failing to perform certain acts that form part of his duties, and which includes elements that constitute an offence under the Criminal Code.

Section 3: Persons concerned by acts of corruption and nepotism

The persons concerned are public servants who by law, appointment, election or by virtue of a specific task have been permanently or temporarily assigned certain rights and obligations for performing duties in a public service, other state institution, enterprise or organisation, public servants exercising specific administrative, organisational or economic functions, persons holding positions of high responsibility whose appointment or election is governed by the Constitution and institutional acts, and persons to whom public servants and persons holding positions of responsibility have delegated their authority who have committed illegal acts that are subject to disciplinary, administrative or criminal penalties under the legislation in force.

Section 4: Scope of application of the act

This act shall apply to relations involving public authorities, public servants, officials of other state institutions, enterprises and organisations, at both central and local level, and other persons authorised to perform administrative duties whose activity is regulated by the legislation in force.

Section 5: Public authorities with the power to combat corruption and nepotism

(1) The public authorities shall combat corruption and nepotism within the limits of their powers under the legislation in force.

(2) The specialised system for combating corruption and nepotism shall include specialised divisions of the Centre for Fighting Economic Crimes and Corruption, the Information and Security Service of the Republic of Moldova, the Public Prosecutors' Department and the Court of Auditors.

CHAPTER II

Measures to prevent corruption and nepotism

Section 6: State guarantees to prevent corruption and nepotism

Corruption and nepotism shall be prevented by means of:

- a) strict legal regulation of the activity of the authorities, ensuring the transparency of said activity and scrutiny thereof by government and civil society;
- b) improving the structure of the public service and the procedure for solving problems affecting the interests of individuals and legal entities;
- c) ensuring that public servants are paid salaries and enjoy benefits in line with their competencies and responsibilities that offer them and their families decent living standards;
- d) guaranteeing protection by the government and the judiciary of the rights and legitimate interests of persons authorised to exercise administrative duties;
- e) restricting, on the basis of the legislation in force, certain rights and freedoms of public servants insofar as is necessary to protect the constitutional system, the rights and legitimate interests of individuals and legal entities, as well as non-governmental organisations and citizens' associations that benefit from services provided by the public authorities;
- f) taking certain special financial and fiscal control measures so as to rule out the legalisation (laundering) of funds acquired illegally with a view to bribing persons authorised to exercise administrative functions;
- g) restoring the rights of individuals and legal entities who have suffered injustices and eliminating other dangerous consequences of corruption and nepotism.

Section 7: Special requirements applying to public servants

(1) Upon appointment, public servants shall voluntarily accept the restrictions imposed by this act and other regulatory acts prohibiting actions that may entail abuses of official status or authority for the purpose of satisfying their own, group or other non-service interests.

(2) Public servants may not:

- a) use their official status, authority or the connections generated by them to intervene in the activity of other government or non-governmental organisations unless such intervention forms part of their duties;
- b) take part with voting or decision-making rights in the consideration or settlement of problems involving their own interests or those of their relatives;
- c) give certain individuals or legal entities illicit preferential treatment when preparing and taking decisions;
- d) afford any individual any type of assistance not provided for in legislation with that individual's activity, represent third parties in the authority where they are employed or to which they are subordinate, including activities they are responsible for monitoring;
- e) use in their own or group interests information obtained by virtue of their official status if such information may not be disclosed;
- f) refuse to provide individuals or legal entities with information that may be disclosed under the relevant legislation, delay the provision of such information or offer incorrect or selective information;

- g) transfer financial or material resources belonging to the state to the election funds of particular candidates or political or social organisations;
- h) violate the procedure laid down by law for examining and dealing with applications submitted by individuals or legal entities and any other matters within their responsibilities;
- i) make bets or place stakes on horse races or take part in other games of chance involving money or other assets.

Section 8: Prohibited activities

(1) Public servants shall not:

- a) obtain for the performance of their duties any rewards in cash or services, etc, from any individuals or legal entities, or from non-governmental organisations or public associations;
- b) obtain, by virtue of their official status, gifts or services, except for symbolic tokens of recognition in line with customary standards of politeness and hospitality or symbolic souvenirs relating to protocol or other official activities, the value of which does not exceed one minimum wage. Gifts exceeding that value obtained without their knowledge or received from individuals or legal entities from foreign countries for performing official duties shall be transferred into a special state fund in accordance with the provisions of the law;
- c) accept invitations for tourist trips or health improvement and treatment, etc, within the Republic or abroad at the expense of Moldovan or foreign individuals or legal entities, except for trips, etc, at the invitation of relatives or in cases stipulated under international agreements;
- d) use for their personal benefit or that of groups or other non-service interests the premises, means of transport and telecommunication, computer equipment, money and other state assets made available to them for discharging their duties unless provided for in other legislation;
- e) take advantage of their official status to obtain benefits for themselves or third parties in terms of access to credit or loans or of purchasing securities, property or other assets;
- f) take advantage of their official status to undertake any other action to obtain income or material or other benefits or receive illicit services.

(2) Members of public servants' families shall not accept gifts or services, invitations for tourist trips or health improvement and treatment, etc, at the expense of Moldovan or foreign individuals or legal entities with which the public servants have official dealings. Public servants shall transfer to the special state fund, in the manner laid down by law, any benefits of this kind obtained illegitimately by their family members.

(3) Violation of the provisions of this section by public servants shall lead to their dismissal if it does not constitute a criminal offence liable to sanctions.

Section 9: Other measures to prevent corruption and nepotism

The government may adopt additional measures to combat corruption and nepotism through the legislation on the public service and other legislation.

Section 10: Financial checks to prevent corruption and nepotism

(1) Upon appointment and every year thereafter, public servants shall submit declarations of their income, movable and immovable assets, bank deposits, securities and financial liabilities, including

those abroad. Persons who refuse to submit declarations or submit incorrect information shall not be appointed or shall be dismissed.

(2) The income declarations of the highest officials and other public servants whose appointment and election are governed by the Constitution shall be published annually in the authorities' official publications. The income declarations of persons seeking to hold posts of this kind shall also be published.

(3) The Centre for Fighting Economic Crimes and Corruption, the Information and Security Service, the Public Prosecutor's Department, the National Tax Inspectorate, the Court of Auditors and the bodies with government supervisory responsibilities shall be entitled to have access to the declarations submitted to the authorities and, if necessary, receive copies of such declarations and use the information obtained within the limits of their competence.

CHAPTER III

Liability for acts of corruption and nepotism

Section 11: Liability for acts of corruption and nepotism

(1) Public servants guilty of acts of corruption shall be punished in accordance with the Criminal Code and dismissed from their posts, while being deprived of the right to work in the public service for five years.

(2) Public servants guilty of acts of nepotism shall be liable to administrative sanctions and shall be dismissed.

Section 12: Liability of managers of public authorities and other state institutions, enterprises and organisations in respect of failure to observe the provisions of this act

(1) Managers of public authorities and other state institutions, enterprises and organisations shall take the necessary measures with regard to subordinates guilty of acts of corruption or nepotism and shall bring relevant cases to the attention of the authorities listed in Section 5(2).

(2) Managers of public authorities and other state institutions, enterprises and organisations who deliberately fail to take the measures provided for in paragraph 1 above shall be held liable under the law.

CHAPTER IV

Elimination of the consequences of acts of corruption and nepotism

Section 13: Recovery of illegally acquired assets or the value of services rendered illegally

In all cases of enrichment through corruption, the illegally acquired assets or the value of the services rendered illegally shall be transferred to the state on the basis of the relevant court ruling.

Section 14: Invalidation of measures and actions resulting from corruption and nepotism

Measures and actions resulting from corruption and nepotism shall be invalidated by the authority or public servant authorised to adopt or invalidate the respective measures or actions or by the courts, at the request of the individuals or legal entities concerned, the Centre for Fighting Economic Crimes and Corruption or the prosecution service.

CHAPTER V

Final and transitional provisions

Section 15: Supervision of compliance with the act

The Prosecutor General and his subordinates shall supervise strict and uniform compliance with the act.

Section 16: Scrutiny of compliance with the act

The Parliamentary Committee on National Security and Public Order shall scrutinise compliance with the act and co-ordinate the activity of the public authorities responsible for combating corruption and nepotism.

Section 17: Date of effect

This act shall take effect on the date of its publication.

Section 18: Bringing legislation into line with the act

Within a month of publication of the act, the Government shall:

- table proposals in Parliament on bringing the legislation in force into line with the act;
- bring its regulations into line with the act.

THE SPEAKER OF PARLIAMENT
Chisinau, 27 June 1996
Act 900-XIII

PETRU LUCINSCHI

APPENDIX II

Moldovan Criminal Code of 24 March 1961

Article 17-1: Criminal organisation

A criminal organisation shall mean any stable association of criminals or criminal groupings whose activity is based on the distribution between its members or structures of the tasks of organising and carrying out its criminal intentions with a view to influencing the economic or other activity of individuals or controlling them in order to obtain advantages or other economic, financial, material or non-material benefits.

A criminal organisation shall be deemed to have committed an offence if such has been committed by one of its members or any other person acting on its behalf.

The founders and leaders of a criminal organisation shall be held liable under the provisions of the special section of the Criminal Code for organising and running the organisation and for all crimes committed by it.

Members of a criminal organisation shall be held liable for belonging to it under the provisions of the special section of the Criminal Code and for any offences they were involved in preparing or committing.

Members of a criminal organisation may be exempted from criminal liability if they voluntarily report the organisation's existence and help to detect the crimes committed by it or to identify its organisers, leaders or members.

CHAPTER V

Economic offences

Article 160-3: Acceptance of illicit rewards for performing work or providing services for the public

Any employee of an enterprise, organisation or institution not holding a position of responsibility who accepts illicit rewards from citizens for performing any work or providing any services in the fields of commerce, food supplies, health, transport or other public services that form part of his professional duties

- shall be liable to a fine of up to 35 times the minimum wage.

Any person committing such actions on a repeated basis or on a large scale

- shall be liable to imprisonment for up to 3 years or a fine of up to 80 times the minimum wage.

CHAPTER VIII

Offences committed by persons holding positions of responsibility

Article 183: Concept of persons holding positions of responsibility

Persons holding positions of responsibility shall mean persons who, by law, appointment, election or the assignment of a specific task, are assigned certain rights and obligations with a view to exercising the functions of public authority or of enterprises responsible for administrative or organisational activities.

Persons holding positions of high responsibility shall mean persons holding positions of responsibility whose method of election or appointment is governed by the Constitution and institutional

acts, as well as persons to whom said persons holding positions of responsibility have delegated their powers.

Article 184: Abuse of authority

Any person holding a position of responsibility who, by deliberately abusing his authority in breach of his obligations, causes substantial damage to the public interest or the legally protected rights and interests of individuals or legal entities

- shall be liable to imprisonment for up to three years or a fine of 30 to 100 times the minimum wage and, in both cases, banned from exercising certain functions or conducting certain activities for a period of up to five years.

Any person committing such abuse of authority repeatedly, any person holding a position of high responsibility who abuses his authority or any person committing abuses of authority that have serious consequences

- shall be liable to imprisonment for three to eight years and banned from exercising certain functions or conducting certain activities for a period of up to five years.

Any person who abuses his authority or service position for the benefit of a criminal organisation

- shall be liable to imprisonment for five to ten years and banned from exercising certain functions or conducting certain activities for a period of up to five years.

Article 185: Exceeding authority or responsibilities

Any person holding a position of responsibility who, by committing acts that obviously exceed the limits of his rights or responsibilities under the law, causes substantial damage to the public interest or the legally protected rights and interests of individuals or legal entities

- shall be liable to imprisonment for up to three years or a fine of 30 to 100 times the minimum wage or dismissed and, in all cases, banned from exercising certain functions or conducting certain activities for a period of up to five years.

Any person guilty of exceeding his authority or responsibilities, accompanied by acts of violence, the use of arms, torture or acts that undermine the personal dignity of the injured party

- shall be liable to imprisonment for three to ten years and banned from exercising certain functions or conducting certain activities for a period of up to five years.

Any person holding a position of high responsibility who repeatedly exceeds his authority or responsibilities or any person who exceeds his authority or responsibilities for the benefit of a criminal organisation or exceeds his authority or responsibilities with serious consequences

- shall be liable to imprisonment for five to twelve years and banned from exercising certain functions or conducting certain activities for a period of up to five years.

Article 187: Taking bribes

Any person holding a position of responsibility who personally, or through intermediaries, takes bribes in the form of cash, securities, other goods or material benefits or accepts services, privileges or benefits for performing or delaying an action on behalf of the bribing party or persons the latter represents, where such action or inaction relates to the professional duties of the person holding a position of responsibility or he is able to contribute to such action or inaction by virtue of his position, or who protects the corrupt party

- shall be liable to imprisonment for three to ten years, combined with confiscation of his assets, and banned from exercising certain functions or conducting certain activities for a period of up to five years.

Any person committing the above offences on the basis of prior collusion by a group of individuals, repeatedly, by means of extortion of bribes or on a very large scale

- shall be liable to imprisonment for five to fifteen years, combined with confiscation of his assets, and banned from exercising certain functions or conducting certain activities for a period of up to five years.

Any person holding a position of high responsibility or having previously been convicted of bribe-taking or having approved bribes for services afforded to a criminal organisation who commits the offences set out in the first two paragraphs of this article

- shall be liable to imprisonment for ten to twenty-five years, combined with confiscation of his assets, and banned from exercising certain functions or conducting certain activities for a period of up to five years.

Article 187-1: Complicity in corruption as an accessory

Any person guilty of acting as an accessory to corruption

- shall be liable to imprisonment for two to eight years.

Any person holding a position of high responsibility guilty of acting as an accessory to corruption or any person guilty of acting as an accessory to corruption for the benefit of a criminal organisation,

- shall be liable to imprisonment for ten to twenty years, combined with confiscation of his assets.

An accessory to corruption or bribe-taking shall not be held criminally liable if he reports his actions without realising that the police or prosecution authorities are aware of the offence he has committed.

Article 188: Active bribery (offering bribes)

Any person guilty of offering bribes

- shall be liable to imprisonment for three to eight years.

The offering of bribes on a repeated basis or by a person previously convicted of corruption or the offering of bribes on a large scale

- shall be subject to imprisonment for seven to fifteen years, combined with confiscation of assets.

Any person who offers bribes on a very large scale or for services afforded to a criminal organisation

- shall be liable to imprisonment for ten to twenty years, combined with confiscation of his assets.

A person who has offered bribes shall not be held criminally liable if the bribes were extorted from him or he reports his actions without realising that the police or prosecution authorities are aware of the offence he has committed.

Article 188-1: Influence peddling

Any person having or claiming to have influence over a public servant who deliberately accepts or extorts cash, securities or other goods or material benefits or accepts services or promises of goods or material benefits, either personally or through an intermediary, for his own benefit or that of a third party,

with a view to having the said public servant perform or fail to perform actions forming part of his duties, shall be liable, regardless of whether or not such actions are performed, to

- imprisonment for two to eight years, combined with confiscation of his assets.

Any person guilty of these offences, if such are followed by the exercising of the promised influence or the achievement of the desired result, or committed on the basis of prior collusion, by a group of individuals or repeatedly, or involve the receipt of financial or other benefits on a large scale

- shall be liable to imprisonment for five to fifteen years, combined with confiscation of his assets.

If committed by a person having previously been convicted of similar offences or offering bribes, on a scale involving the receipt of very large financial or other benefits or in the interests of a criminal organisation, the offences set out in the first two paragraphs of this article:

- shall be subject to imprisonment for ten to twenty-five years, combined with confiscation of assets.

Article 189: Forgery of official documents

Forgery of official documents which involves the fraudulent alteration of data in such documents by a person holding a position of responsibility, the preparation and issuing of forged documents or other acts of falsification and causes substantial damage to the public interest or the legally protected rights and interests of individuals or legal entities

- shall be subject to imprisonment for up to two years or a fine of up to 100 times the minimum wage, combined, in both cases, with a ban on exercising certain functions or conducting certain activities for a period of up to five years.

Any person who repeatedly forges official documents, any person holding a position of high responsibility who forges official documents and any person who forges official documents on behalf of a criminal organisation

- shall be liable to imprisonment for two to seven years and banned from exercising certain functions or conducting certain activities for a period of up to five years.

Article 189-1: Offences committed in connection with the issuing of securities

Any person who includes in prospectuses or other documents on the basis of which securities issues are registered false or misleading information, approves issue prospectuses containing such false or misleading information or approves the results of the relevant issues, where these actions follow the application of an administrative penalty for the same offences or cause investors losses

- shall be liable to imprisonment for up to five years or a fine of up to 100 times the minimum wage and banned from exercising certain functions or conducting certain activities involving securities for a period of up to five years.

Any person guilty of committing the above offences repeatedly, on the basis of prior collusion between a group of individuals or of committing the above offences and causing investors substantial losses

- shall be liable to imprisonment for three to seven years, combined with confiscation of his assets, and banned from exercising certain functions or conducting certain activities involving securities for a period of two to five years.

Any person guilty of committing the above offences and causing investors losses on a large scale

- shall be liable to imprisonment for six to fifteen years, combined with confiscation of his assets, and banned from exercising certain functions or conducting certain activities involving securities for a period of up to five years.

Article 189-2: Offences on the securities market

Any person guilty of causing losses on a large scale through collusion by players on the securities market for the purpose of unfair trading, fraud or the involvement of other market players in actions of this kind

- [
 - shall be liable to imprisonment for up to two years or a fine of up to one hundred times the minimum wage and banned from exercising certain functions or conducting certain activities for a period of up to five years.

Any person guilty of committing the above offences repeatedly or causing losses on a very large scale through such offences]

- shall be liable to imprisonment for three to seven years and banned from exercising certain functions or conducting certain activities for a period of two to five years.

Article 189-3: Acceptance of illicit rewards by public servants

Any servant of a public authority or other state institution, enterprise or organisation not holding a position of responsibility who accepts illicit rewards or material benefits from citizens for performing certain actions or providing services that form part of his official duties

- shall be liable to imprisonment for up to two years or a fine of up to 50 times the minimum wage and, in both cases, banned from exercising certain functions or conducting certain activities for a period of two to five years.

Article 189-4: Failure by persons holding positions of responsibility to comply with the provisions of the Act on Combating Corruption and Nepotism

Managers of public authorities who deliberately fail to take the necessary measures with regard to subordinates guilty of acts of corruption or nepotism committed repeatedly over a period of one year following the application of administrative sanctions for the same offence

- shall be liable to a fine of twenty-five to fifty times the minimum wage and dismissed from their posts.

APPENDIX II bis

Moldovan Criminal Code of 12 June 2003

Article 123. Persons holding positions of responsibility

(1) *Persons holding positions of responsibility* shall mean persons who, by law, appointment, election or the assignment of a specific task, are assigned certain rights and obligations with a view to exercising the functions of public authority or of enterprises responsible for administrative or organisational activities.

(2) *Persons holding positions of high responsibility* shall mean persons holding positions of responsibility whose method of appointment or election is governed by the Constitution of the Republic of Moldova and institutional acts, as well as persons to whom such persons holding positions of responsibility have delegated their powers.

Article 124. Person responsible for a commercial or public organisation or other non-governmental organisation

Persons responsible for a commercial or public organisation or other non-governmental organisation or a sub-division of such an organisation shall mean persons who, by appointment, election or the assignment of a specific task, acquire certain rights or obligations with a view to exercising management functions or acts.

CHAPTER X

Economic offences

Acceptance of illicit rewards for performing public services

(1) An employee of an enterprise, institution or organisation who obtains by extortion an illicit reward in exchange for a service in the fields of commerce, public food supplies, social services, housing administration, public health or a service of another nature, where that service that form part of his professional duties, shall be liable to a fine of 200 times the minimum wage or to between 120 and 180 hours= community service.

(2) Where such actions:

(a) are committed on a repeated basis;

(b) are committed by two or more persons;

(c) have been the cause of significant harm,

the person concerned shall be liable to a fine of between 200 and 400 times the minimum wage or to up to two years= imprisonment.

CHAPTER XV

Offences committed by persons holding positions of responsibility

Article 234. Taking bribes

(1) Any person holding a position of responsibility who has demanded or received cash, securities, gifts and presents, other goods or material benefits or who has accepted services or privileges not due to him for performing or delaying an action relating to his professional duties, for doing an act contrary to his duties or for the award of a distinction, a function, a contract of supply or a favourable decision on the part of the authority, shall be liable to a fine of between 1,000 and 3,000 times the minimum wage or between two years= and seven years= imprisonment and in each case shall be disqualified for holding office or exercising an activity for a period of between two years and five years.

(2) Where the above actions

(a) were repeated

(b) were committed by two or more persons;

(c) were accompanied by extortion of the goods and services referred to in paragraph (1) above;

(d) involve very significant amounts,

the person concerned shall be liable to a fine of between 3,000 and 5,000 times the minimum wage or to between five and ten years= imprisonment and in each case shall be disqualified for holding office or for exercising an activity for a period of between two years and five years.

(3) Where the acts described in paragraphs (1) and (2) above:

are committed by persons holding positions of high authority and

(a) involve very significant amounts;

(b) are committed in the interest of an organised gang or a criminal association,

the person concerned shall be liable to between seven years' and fifteen years= imprisonment or to a fine of between 1,000 and 3,000 times the minimum wage and shall be disqualified for holding office or exercising an activity for between three and five years.

Article 325. Offering bribes

(1) Anyone who has corrupted a person holding a position of responsibility by promising or supplying the goods and services set out in Article 324 above and for the purposes referred to therein shall be liable to a fine of between 2,000 and 4,000 times the minimum wage or to between two years' and five years= imprisonment.

(2) Where the above actions

(a) were repeated

(b) were committed by two or more persons;

(c) involve very significant amounts,

the person concerned shall be liable to a fine of between 2,000 and 4,000 times the minimum wage or to between three years' and seven years= imprisonment.

(3) Where the acts described in paragraphs (1) and (2) above:

(a) involve very significant amounts;

are committed in the interest of an organised gang or a criminal association,

the person concerned shall be liable to between six years' and twelve years= imprisonment or to a fine of between 1,000 and 2,000 times the minimum wage.

(4) a person who has offered or supplied goods and services will not be criminally liable if those goods and services were extorted from him or if that person has confessed, without knowing that the criminal investigation authorities, the investigating judge or the prosecuting authorities were aware of the offence.

Article 326. Influence peddling

(1) Any person having or claiming to have influence over a public servant who deliberately accepts or extorts cash, securities or other goods or material benefits or accepts services or promises of goods or material benefits, either personally or through an intermediary, for his own benefit or that of a third party, with a view to having the said public servant perform or fail to perform actions forming part of his duties, shall be liable, regardless of whether or not such actions are performed, to a fine of between 500 and 1,500 times the minimum wage or to between two years' and five years' imprisonment.

(2) Where the pressure promised has been brought to bear or the desired result has been achieved and if the actions envisaged in paragraph (1) above:

- (a) were committed on a repeated basis;
- (b) were committed by two or more persons;
- (c) involved significant amounts,

the person concerned shall be liable to a fine of between 1,000 and 3,000 times the minimum wage or to between three years' and seven years' imprisonment.

(3) The person concerned shall be liable to a fine of between five years' and ten years' imprisonment or to a fine of between 500 and 1,500 times the minimum wage:

- (a) where the actions involve values or advantages of a very significant amount; where the offence was committed in the interest of an organised criminal gang or a criminal association.

Article 327. Abuse of power or of service

(1) Any person holding a position of responsibility who has used his power in a manner inconsistent with his duties, for private purposes or with other dishonourable intentions shall, if the acts have caused serious harm to the public interest or to the legitimate rights and interests of individuals and legal entities, be liable to a fine of between 150 and 400 times the minimum wage or to up to three years' imprisonment, in each case with or without disqualification for holding office or exercising and activity for a period of up to five years.

(2) The person concerned shall be liable to a fine of between 500 and 1,000 times the minimum wage or to between three years' and five years' imprisonment, and in each case shall be disqualified for holding office or for exercising an activity for a period of up to five years:

- (a) where it is a repeat offence;
- (b) where the abovementioned actions were committed by a person holding a position of high responsibility;
- (c) where the actions entailed serious consequences.

(3) Where the abuse of power or abuse of service was dictated by the interests of a criminal association the person concerned shall be liable to between five years' and ten years' imprisonment and shall be disqualified for holding office or for exercising an activity for a period of up to five years.

Article 328. Abuse of authority or exceeding responsibilities

(1) Any person holding a position of responsibility who, by committing acts that obviously exceed the limits of his rights or responsibilities under the law, causes substantial damage to the public interest or the legally protected rights and interests of individuals or legal entities shall be liable to a fine of between 150 and 400 times the minimum wage and to up to three years' imprisonment, in each case

with or without disqualification for holding office or for exercising certain activities for a period of up to five years.

(2) If the person responsible for those acts:

- (a) has used violence;
 - (b) has used a firearm;
 - (c) has used torture or has committed other degrading acts,
- he shall be liable to between three years' and five years' imprisonment and disqualified for holding office or for exercising an activity for a period of between two years and five years.

(3) The penalty shall be between eight years' and fifteen years' imprisonment and disqualification for holding office or for exercising an activity for a period of between two years and five years:

- (a) where it is a repeated offence;
 - (d) where the abovementioned actions were committed by a person holding a position of high responsibility;
 - (e) where the actions were dictated by the interests of an organised criminal gang or a criminal association:
- where the actions entailed serious consequences.

Article 330. Acceptance of illicit rewards by a public servant

(1) Any public servant or employee of a public institution, enterprise or organisation, with the exception of persons holding positions of responsibility, who has received an illicit reward or certain pecuniary advantages for having performed acts or rendered services in the course of his duties shall be liable to a fine of between 200 and 400 times the minimum wage or to up to three years' imprisonment, in each case with or without disqualification for holding office or for exercising an activity for a period of up to five years.

(2) Where these acts:

- (a) were repeated;
- (b) involve significant sums,

the person concerned shall be liable to a fine of between 400 and 1,000 times the minimum wage or to between two years' and five years' imprisonment, in each case with or without disqualification for holding office or for exercising an activity for a period of up to five years.

Article 376. Forgery in public documents

(1) Any person holding a position of responsibility and any public servant who has written on an official document facts which are manifestly false or who has counterfeited an official document for gain or for other private purposes shall be liable to a penalty of up to 500 times the minimum wage or to up to two years' imprisonment, in each case with or without disqualification for holding office or from exercising an activity for a period of up to five years.

(2) In the case of a repeated offence, or where the actions:

- (a) were committed by a person holding a position of high responsibility;
- (b) were committed in the interests of a criminal association,

the person concerned shall be liable to a fine of between 500 and 1,000 times the minimum wage and to between three years' and seven years' imprisonment and in each case shall be disqualified for holding office or for exercising an activity for a period of between two years and five years.

CHAPTER XVI

Offences by a manager of a commercial organisation, a public organisation or another non-governmental organisation

Article 333. Corruption

(1) A manager of a commercial organisation, public organisation or other non-governmental organisation who has received cash, securities, other goods or material benefits or accepted services or privileges to which he is not entitled for doing or refraining from doing any act or for delaying the performance of an act which comes within his duties shall be liable to a fine of between 500 and 1,500 times the minimum wage or to up to five years' imprisonment and in each case shall be disqualified for holding office or for exercising an activity for a period of up to five years.

(2) Where the abovementioned acts

- (a) are repeated;
- (b) are committed by two or more persons;
- (c) are accompanied by the extortion of the goods and services referred to in paragraph (1) above;
- (d) correspond to significant amounts,

the person concerned shall be liable to a fine of between 1,000 and 3,000 times the minimum wage or to between five years' and ten years' imprisonment and in each case shall be disqualified for holding office or for exercising an activity for a period of between two years and five years.

Article 334. Incitement to corruption

(1) Any one who corruptly offers an official gifts or presents shall be liable to a fine of between 500 and 1,000 times the minimum wage or to up to three years' imprisonment.

(2) Where the facts:

- (a) were repeated;
- (b) were committed by two or more persons;
- (c) correspond to significant amounts,

the person concerned shall be liable to a fine of between 1,000 and 2,000 times the minimum wage or to between two years' and five years' imprisonment.

(3) The person who has offered or supplied goods and services shall not be criminally liable where the goods and services were extorted or where that person has confessed, not knowing that the criminal investigation authorities, the investigating judge or the prosecution authorities were aware of the offence.

Article 335. Abuse in the service

(1) A manager of a commercial organisation, public organisation or other non-governmental organisation who has used his professional situation in order to derive a pecuniary advantage or for other private purposes shall, where that fact has caused considerable harm to the public interests or to the legitimate rights and interests of individuals and legal entities, be liable to a fine of between 150 and 400 times the minimum wage or to up to three years' imprisonment.

(2) A notary, auditor or lawyer who has committed that offence shall be liable to a fine of between 500 and 800 times the minimum wage or to between two years' and five years' imprisonment, in each case with or without disqualification for holding office or for exercising an activity for a period of up to five years.

(3) Where an abuse of service;

(a) was dictated by the interests of an organised criminal gang or of a criminal association;

(b) entailed serious consequences,

the person concerned shall be liable to a fine of between 700 and 1,500 times the minimum wage or to between three years' and five years' imprisonment and in each case shall be disqualified for holding office or for exercising an activity for a period of between two years and five years.

Article 336. Exceeding the powers of the service

(1) Where the manager of a commercial organisation, a public organisation or another non-governmental organisation has committed acts that manifestly exceed the rights and powers conferred on him and has thereby caused considerable harm to the public interest or to the legitimate rights and interests of individuals or legal entities he shall be liable to a fine of between 200 and 500 times the minimum wage or to up to two years' imprisonment, in each case with or without disqualification for holding office or for exercising an activity for a period of up to five years.

(2) A police officer or a detective who has exceeded his powers under the law and used or threatened to use violence shall be liable to a fine of between 300 and 700 times the minimum wage or to up to five years' imprisonment, and in each case shall be disqualified for holding office or for exercising an activity for a period of up to five years.

(3) Where the person concerned exceeds the powers of the service:

(a) in the interests of an organised criminal gang or a criminal association;

(b) and has thereby caused serious consequences,

he shall be liable to between three years' and seven years' imprisonment and disqualified for holding office for a period of between two years and five years.