Republic of Moldova

Open Local Government and Public Ethics

HANDBOOK

A tool to promote public ethics, accountability, transparency, and citizen participation

The Congress
Le Congrès

COUNCIL OF EUROPE
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REPUBLIC OF MOLDOVA

Handbook on Open Local Government and Public Ethics

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Parts of this third edition of the Handbook, such as domestic context, legislation, guidelines, good practices and case law were prepared by Galina Bostan, expert on corruption prevention at the Centre for Analysis and Prevention of Corruption, and Promo-LEX, a non-governmental organisation in the Republic of Moldova. The international context and standards were updated by Jeff Lovitt, senior expert in good governance and democracy. The research work and drafting of the previous editions was carried out by Veronica Crețu, national expert in open government, and Tim Hughes, senior expert in open government and democracy. The overall co-ordination was ensured by the Co-operation and External Relations Division of the Secretariat of the Congress of Local and Regional Authorities of the Council of Europe.

The Handbook is part of the series of country-specific Handbooks that aim to preserve and share the lessons learnt and best practices identified during the implementation of co-operation projects. For more information on various Handbooks please refer to the bE-Open tool that has been developed by the Congress to support all local and regional governance actors in their efforts to improve the quality of local democracy in their villages, cities, and regions, as well as any citizen interested in public ethics, accountability, transparency and citizen participation (https://www.coe.int/en/web/congress/beopen).

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FOREWORD

Governments can function effectively only if they enjoy and sustain the trust of citizens in their commitment to delivering services and policies that serve the citizens. Open local government and a high level of public ethics are key to building confidence in the institutions of government. Local government, municipalities and their elected representatives and civil servants have a crucial role in fostering and sustaining trust-building and participatory decision-making, since they have a certain degree of autonomy over the distribution of resources, play an intermediary role with regards to central governments, and usually represent the first interface between citizens and elected representatives. The professionalism and integrity of elected local government officials and local administrations, and their ability to function in a transparent, responsive, and accountable manner, are a prerequisite for the delivery of enhanced, fair, and equitable services to citizens. Local and regional elected representatives must therefore act as role models in the areas of public ethics, transparency, accountability, and participatory decision-making.

In order to fulfil this role, elected representatives must be well versed in the principles and standards underpinning public ethics. Furthermore, they should understand the legislation in force and the mechanisms and institutions through which the laws are implemented and enforced at the local level. The government authorities should also raise awareness among the public so that they also understand their legal rights and know where they should turn to make a complaint.

However, we cannot ignore the fact that local authorities, as any public authority, are susceptible to corruption, which poses a major threat to the legitimacy of democratic institutions, as well as to the degree of trust that citizens place in their representatives and public officials. A deficit of transparency and shortfalls in public ethics are problems faced by all levels of government, including the local and regional levels. They undermine the provision of services to citizens and businesses alike and pose a threat to the universal access to basic services and to sustainable local economic development. The fight against corruption needs to be a long-term priority for local and regional governments and their associations. Concerted preventive action and the monitoring of corruption risks are both paramount in order to foster economic growth, improve living conditions, and develop citizens' trust.

Where the decentralisation of power and financial resources advances, the quality of local governance becomes even more crucial. Therefore, along with the introduction and consistent application of criminal law provisions against corruption, it is essential to promote public ethics, transparency, accountability, and participatory decision-making in order to reduce the risk of corruption and boost citizens' confidence in local and regional authorities.

The Congress of Local and Regional Authorities of the Council of Europe took a firm step in the promotion of ethical governance by adopting in 1999 the European Code of Conduct for the Political Integrity of Local and Regional Elected Representatives. An advisory group revised this Code, which was then adopted as the European Code of Conduct for all Persons Involved in Local and Regional Governance in November 2018. The updated text addresses new challenges, including new forms of communication, the impact of digital technology and the need to respect the privacy of data, and enlarges the scope of its application to all actors involved in local and regional governance, and not just elected officials.

In its priorities for 2021-2026,[1] the Congress underlines the importance of promoting the quality of local and regional democracy and citizen participation. At the same time, the Congress devotes its attention to the challenges arising from the Covid-19 pandemic and underlines the necessity of adapting work and activities to a new situation, including corresponding social, economic, and political changes. The thematic priorities of the Congress also include reducing social inequalities and ensuring that digitalisation and artificial intelligence enhance citizen participation. The Congress underlines that local and regional authorities should be the main actors for change and points out the importance of the fight against corruption and clientelism, and the participation of citizens in decision-making processes, for the proper functioning of local and regional democracies.

The Congress is determined to sustain a comprehensive, long-term engagement in corruption prevention, and in this spirit has established the position of Spokesperson on Promoting Public Ethics and Preventing Corruption at the Local and Regional Levels. The publication of this *Handbook* and our intention to actively promote its use are further demonstration of our determination to make this a priority activity for the years to come.

The attitudes and expectations of our citizens with regards to public governance are changing. To renew and sustain confidence in public administration, we need to set up effective mechanisms for the implementation of, and compliance with, standards of ethical conduct. Preventing corruption, reducing its risks, and developing effective, accountable, and transparent institutions at all levels are key components of just and inclusive societies.

With this in mind, this *Handbook on Open Local Government and Public Ethics* is aimed at local authorities, mayors, local councillors, and civil servants, to support them in their efforts to improve the quality of local governance in their villages, towns and cities. The *Handbook* provides local authorities with practical guidelines on transparency and citizen participation, identifying the relevant international standards and domestic legislation, and providing case-law examples and good practices that can be applied and promoted by all local authorities.

Andreas Kiefer
Secretary General
Congress of Local and Regional Authorities

PURPOSE AND STRUCTURE OF THE HANDBOOK

Transparency and citizen participation are key concepts in the development of good governance. Both help to create the conditions for citizens to understand and evaluate the decisions that the government is taking on their behalf, as well as to ensure that their own needs and views are taken into account in the decision-making process.

Effective application of tools to promote transparency and citizen participation, coupled with stronger accountability and public ethics, can help to drive out corruption and government malpractice. Both concepts also serve to help generate positive and enabling momentum to foster increased trust in public governance.

Finally, they help governments to draw on the skills, knowledge and experience of citizens to enable more informed decision-making, early identification of negative impacts of prospective policies, greater ownership of the resulting decisions, and the delivery of more effective public services.

The *Handbook on Open Local Government and Public Ethics in the Republic of Moldova* aims to support local authorities in their efforts to improve the quality of local governance in line with the principles of the European Charter of Local Self-Government (ETS No. 122) and its Additional Protocol on the Right to Participate in the Affairs of a Local Authority (CETS No. 207). It provides them with practical guidance on public ethics and accountability, transparency, citizen participation, and countering corruption, based on Council of Europe principles and guidelines, and drawing on international standards and examples of model legislation.

To fulfil its purpose as a practical reference guide to support local authorities in their daily work, the *Handbook on Open Local Government and Public Ethics in the Republic of Moldova* includes specific information about domestic anti-corruption legislation and provides examples of mechanisms and tools to raise standards in public ethics and accountability, transparency, and citizen participation. The *Handbook* provides a concise assessment of the most prevalent corruption risks and a set of good practices to introduce and implement public ethics and open government.

The implementation of the mechanisms included in this *Handbook* will also help local authorities contribute to attaining the United Nations' Sustainable Development Goals (SDGs)[2] of the 2030 Agenda for Sustainable Development,[3] namely goals 5 (gender equality), 11 (sustainable cities and communities), 16 (peace, justice and strong institutions) and 17 (partnerships for the goals). In this regard, the implementation of open local government will serve as a powerful driver for deepening the commitment to good governance in the context of sustainable development.

The *Handbook* is structured in four main chapters:

- **Chapter 1 – Public Ethics and Accountability:**

  This chapter highlights the importance and challenges of public ethics and accountability in the Republic of Moldova. It demonstrates the essential role that public ethics and accountability play in bringing about effective, transparent and participatory governance.

- **Chapter 2 – Transparency:**

  This chapter introduces five transparency mechanisms, which have been selected to represent the diversity of approaches to transparency. The account of each mechanism includes an introductory description and an outline of international standards. This is followed by four sections summarising key domestic laws and presenting practical guidelines and best practices which can serve as examples for local authorities in their efforts to enhance transparency.

- **Chapter 3 – Citizen Participation:**

  This chapter introduces five citizen participation mechanisms, which have been selected to represent the diversity of approaches to citizen participation. Following the same structure as in the previous chapter, an introductory description is provided for each mechanism followed by an outline of relevant international standards. The concluding four sections summarise key domestic laws and present practical guidelines and best practices which can serve as examples for local authorities in their efforts to foster and improve inclusive citizen participation.

- **Chapter 4 – Corruption Risks:**

  This chapter introduces the most common corruption risks identified in the Republic of Moldova and outlines relevant international anti-corruption standards, along with the domestic legal framework pertinent to each form of corruption. This is then supplemented with examples of case law and good practices related to each type of corruption.

Chapter 1

PUBLIC ETHICS AND ACCOUNTABILITY

INTRODUCTION

Public ethics and accountability are essential concepts underpinning an effective local or regional authority. They refer to the culture, processes, structures and rules that ensure those in public office act in the wider public interest, rather than their own self-interest. They are an essential feature of good governance, and it is important that they are respected and monitored by relevant organisations.

Ethics embody the rules that define the conduct of public officials[4] in order to ensure that the public is treated fairly and equitably. Ethics help officials make better decisions in the public interest and help people evaluate the decisions taken on their behalf by public officials.

Public accountability ensures that officials are openly answerable for the decisions they are taking on behalf of the public.

In the absence of public ethics and accountability, corruption and malpractice are able to thrive. As outlined in the final chapter, corruption is damaging to individuals, society, the economy, and government in a number of respects. The prioritisation of public ethics and accountability can help curb the worst excesses of power and encourage more responsible and fairer decision-making by local authorities.

Even where corruption is not endemic, the absence of public ethics and accountability can be corrosive to public trust in government, public institutions and officials. While the relationship between public ethics and accountability is complex, consistent and timely application of both can help to build and strengthen trust between the public and government.

Furthermore, public ethics and accountability can contribute to a positive environment where it is recognised that citizens and other stakeholders contribute to the quality of the decision-making process. Combined with citizen participation tools, public ethics and accountability can help to ensure that citizens' personal experiences, expertise, knowledge and scrutiny add value to, and strengthen, decisions taken by government and public officials.

Elected representatives should be aware of the process by which declarations of assets are monitored and by which body, and which sanctions can be applied, and how, in the event that an office-holder makes a false or incomplete declaration. They should know the rules governing whistle-blowing and which official or officials are responsible for considering whistle-blowers' complaints and reports of wrongdoing. Local authorities need to ensure in-house training for newly elected representatives and provide regular refresher training for all elected officials. Knowledge and understanding of the legal and institutional framework are essential if elected representatives are to succeed as role models of political integrity.

Finally, public ethics and accountability are key to improving public services because public services that are more responsive and accountable to people – and benefit from their insights, ideas, energy, and scrutiny – will work better for people and the community as a whole.

Taken together, public ethics and accountability help to ensure that decision-making and resource allocation are fair, efficient and effective, which in turn helps to enable a flourishing democracy, economy and society. To this end, the Congress of Local and Regional Authorities of the Council of Europe adopted the European Code of Conduct for all Persons Involved in Local and Regional Governance,[5] encouraging local and regional authorities and associations of local and regional authorities to design appropriate educational programmes in integrity management and to implement advisory services to help their staff to identify and deal with potential ethical risk areas and conflict-of-interest situations.

Transparency and citizen participation are important mechanisms for promoting public ethics and accountability in central and local government. A recent report for the European Committee of the Regions on "Preventing Corruption and Promoting Public Ethics at the Local and Regional Level in Eastern Partnership Countries" found that lack of transparency was the main vulnerability in all of the cases assessed.[6] This handbook outlines a range of transparency and citizen participation mechanisms that can be adopted by local and regional authorities.

GENERAL DOMESTIC CONTEXT

While the Republic of Moldova has managed to make serious progress in passing anti-corruption legislation, a significant portion of which was adopted between 2011 and 2013 as part of the EU Visa Liberalisation Action Plan, one fundamental obstacle to democratic development in the country remains the lack of accountability within the governance system, which generates a negative political environment that affects the trust of citizens in political processes, undermines the rule of law, leads to heavy migration, impedes the delivery of basic services, and enables corruption to thrive.

2019 brought unprecedented events in the political landscape of the Republic of Moldova demonstrating the gravity of the ways in which state structures operate, the political influence in the decision-making process and the vulnerability of the judiciary. The Republic of Moldova's February 2019 Parliamentary elections took place during a period of serious democratic backsliding and ruling party efforts to consolidate power. A national government, formed on the last consultation day (8 June 2019), was the result of an unexpected coalition between the pro-EU and pro-Russian parties and was seen rather as a protest to the ongoing one. The immediate and controversial decisions of the Constitutional Court to declare invalid any following decisions during June 2019 have demonstrated the need for substantial changes across all branches of government. 12 November 2019 brought a no-confidence vote for Prime Minister Maia Sandu's pro-Western government and generated even more despair and lack of trust in the government among the general population.

According to the widely-respected Public Opinion Barometer (POB),[7] a low level of trust in central government still prevailed as of June 2020: 48.1% of respondents said they did not trust their government at all, 27.3% somewhat trusted the government, while only 5.2% trusted the government fully. When it comes to the level of trust in local public administration, particularly the mayors' offices, the same POB shows that the level of trust is different hereof: 16.6% of respondents said they highly trusted their mayor's office, 36.3% somewhat trusted it, 18% of the respondents did not quite trust it, and 24.6% did not trust it at all.-

In addressing the above challenges, the central government has established a National Integrity Authority[8] and strengthened the independence of the National Anti-Corruption Centre. Since 2018, the Republic of Moldova's National Integrity Authority (ANI) has a new structure and a new body of integrity inspectors who are in charge of verifying officials' asset declarations.

Among the positive developments are the submission of asset declarations online and the possibility of accessing asset declarations through the Declarations Portal of the ANI,[9] while Article 31 of Law No. 82 on Integrity of 25 May 2017 foresees the issuing of Integrity Certificates for those who are applying for eligible public positions.

The Republic of Moldova's 2019-2020 Open Government Partnership (OGP) Action Plan was based on the principles of access to information, data, citizen engagement, and transparency.[10] The National Integrity and Anti-Corruption Strategy for 2017–2020[11] has a separate objective for Pillar 2, "Developing the integrity, accountability, transparency, and resistance to corruption risks of the public agents, government members, and locally elected officials", with the aim to address areas of the public sector that are vulnerable to corruption, such as the local public administration.

Local level efforts to strengthen democracy and citizen engagement in policymaking are being mandated by Law No. 436 on Local Public Administration, which regulates transparency in decision-making (Article 8). Law no. 100 of 22.12.2017 on Legislative Acts provides rules for public authorities to consult on draft laws with interested authorities and agencies. Moreover, all draft laws and decisions of the government are subject to mandatory corruption proofing by the National Anti-Corruption Centre.

Proper implementation of the above provisions by all key state actors, at all levels, could bring the citizens of the Republic of Moldova closer to the decision-making and policy-making processes, and thus generate public services that better respond to the increased needs and demands of the population. Ultimately, it may generate more trust in the government, both at local and national levels.

1.1. CODES OF ETHICS AND PROFESSIONAL CONDUCT

Codes of ethics establish basic principles by which public servants must abide, such as integrity, selflessness and openness. A code of conduct draws on the code of ethics to formulate standards and practices that should be applied to the particular circumstances of an institution.

A code of conduct sets out specific standards of professional behaviour expected in a host of situations and provides public officials with guidance for handling them. In addition, codes of conduct bring transparency and public accountability into governmental operations.

International standards

Well-designed codes of ethics and codes of conduct will help meet the growing expectations from the public, business leaders and civil society for greater transparency and integrity in government, and will places an onus on governments to ensure high ethical standards amongst public officials and elected representatives. As such, they can support the development of trust between the public and government institutions and officials. It is important that codes of conduct are in place for both civil servants and elected officials, and that training and guidance is provided to ensure a full understanding of the codes by all office-holders. Disciplinary measures and sanctions should be clearly stipulated and consistently applied in the event of noncompliance with the codes.

The following international conventions and standards relate to codes of ethics and professional conduct:

- The **Committee of Ministers of the Council of Europe's Recommendation on Codes of Conduct for Public Officials**[12] and the **European Code of Conduct for all Persons Involved in Local and Regional Governance**[13] are the reference texts for local and regional authorities in Europe for ensuring political integrity.
- The **Committee of Ministers of the Council of Europe's Guidelines on Public Ethics**[14] consolidate in one single document Council of Europe core principles, standards and recommendations in this field, covering all categories of public officials, be they elected, appointed or employed. They are complemented by the **Guide on Public Ethics: Practical steps to implementing public ethics in public organisations**,[15] a living document which provides case studies and examples from Council of Europe member states.
- The **OECD Recommendation on Public Integrity**[16] shifts the focus from ad hoc integrity policies to a context-dependent, behavioural, risk-based approach with an emphasis on cultivating a culture of integrity across the whole of society.
- The **Transparency International paper on Implementing Effective Ethics Standards in Government and the Civil Service**[17] provides practical mechanisms for institutionalising high standards of ethical integrity for elected officials and civil servants.

Domestic context

In the Republic of Moldova, a civil servant must follow the Code of Conduct approved by the government back in 2008. The Code also compels state officials to rationally use public means, state property, and work time, to strictly observe laws, be impartial, professional, and loyal. This Code has the potential to tackle corruption and increase transparency and accountability in the public sector if fully embraced by civil servants and with compliance mechanisms in place.[18]

The Code is not applicable to mayors and other persons of public dignity. It is applicable only to the civil servants from municipal administration, but not to the local elected representatives. In their case, the Law on the Status of Persons of Public Dignity[19] and the Law on the Status of Local Elected Representatives apply.[20] However, these laws have no specific provisions on the conduct of local elected representatives.

Legislation

Discussions about the need for a code of conduct for public servants in the Republic of Moldova took place in 2004. It took four years to develop, consult, and approve a Law on the Code of Conduct (Law No. 25 of 22 February 2008). The goal of the Code is to establish norms of conduct for the civil service and inform citizens about the conduct civil servants should have in order to:

- improve the quality of civil service;
- ensure a better administration in promoting public interest;
- contribute to the prevention and elimination of bureaucracy and corruption in public administration; and
- create an environment that would enhance citizens' trust in public authority.

Additionally, Article 23 of the Law on Integrity No. 82 of 25 May 2017 stipulates as a requirement the respect for the norms of ethics and deontology and describes the responsibilities of the head of the public entity, among which are: establishing and implementing norms of ethics and deontology; ensuring that public agents receive relevant training, and serve as a good example

for other public agents with regard to the implementation of these norms; using accountability mechanisms, particularly in cases when violations contain elements of certain contraventions or crimes, in order to notify the responsible anti-corruption authority.

Guidelines

Back in 2013, a methodological guide was developed by the Moldova State Chancellery in order to provide practical support for the implementation of the current Code.[21] The guide provides clear examples on ways a public servant shall be guided by the following principles: legality, impartiality, independence, professionalism and loyalty. The guide has a separate chapter on the legal implications of non-compliance with the provisions of the Law.

The Methodological Guide covers all the provisions of the Law on the Code of Conduct for Civil Servants of the Republic of Moldova and includes a compliance-related chapter. It is a guidebook that aims to support both public servants and citizens in understanding the value of the Code of Conduct in the public sector.

Despite limited resources, local authorities can fully embed the principles of the Code of Conduct into everyday activities:

- Local authorities can organise mini training sessions on the Code of Conduct, based on the guide, and ensure that both local authorities' staff and members of the Local Council are familiarised with the provisions of the Code.
- A mini guide, with most essential aspects, can be compiled and handed out to all staff of local authorities, and an ongoing updating process can take place once every few months.
- The Code can be published online, on the websites of local authorities.
- Local authorities can assess the effectiveness and improvement opportunities against some baseline data and targets, develop a list of indicators to help measure progress, and communicate the results to the citizens.

In addition to the above, a guide for the local elected representatives has been written with the support of development partners, aiming to address 100 questions related to local good governance in the Republic of Moldova.[22]

Back in 2017, the government had created a Training Module on the Ethics and Integrity of Civil Servants. However, according to the *Public Administration and Local Governments Reforms in Eastern Partnership Countries* report (2017),[23] the training programmes stipulated by existing legislation in the Republic of Moldova are not fully implemented, and the mandatory number of training hours for each civil servant is not fulfilled in practice.

Good practices

According to the authors of the *Guide on the Code of Conduct*,[24] the guide itself is considered to be a best practice, given its simplicity and relevance for any public servant. It has been distributed in several hard copies in all central and local public administration authorities across the country. The guide is used for reference in the training program on Public Servant Integrity, which is delivered on a regular basis (as part of a state order) by the Academy for Public Administration. In 2017 alone there have been four training courses organised for national authorities and one for local authorities (based on the Government Decision No. 1400/2016). However, no monitoring process is currently in place to follow the compliance of public servants with the Code of Conduct.

At the same time, progress can be seen in representatives of local authorities endorsing the practice of adopting Codes of Conduct for public servants and employees of the district council. For example, the Ștefan-Vodă District Council adopted such a Code of Conduct in January 2018[25] and the Leova District Council adopted one in February 2018.[26] At local level, only 27% of local authorities have published their codes on ethics and deontology, according to a report from 2017 on the Monitoring and Evaluation of the Implementation of the National Strategy on Integrity and Anti-Corruption.[27]

1.2. COMPLAINTS MECHANISMS

Complaints mechanisms allow citizens to provide feedback to public authorities on the standards of services they receive. They provide an important accountability mechanism which allows civil servants and elected officials to identify where public services are being delivered ineffectively, inefficiently or inequitably. When such mechanisms result in the prompt and effective handling of complaints, they can help to create the conditions for increased trust of citizens in government administration.

International standards

To ensure confidence in the mechanisms, local authorities should endeavour to consider and resolve each complaint promptly and comprehensively. Complaints mechanisms can be made more accessible by applying the one-stop shop approach so that citizens do not need to search among different offices and websites.

If government takes a proactive approach to pre-empt repetition of similar causes for complaint, complaints mechanisms can also help governments to identify new approaches to service delivery and to increase citizen participation. To this end, complaints mechanisms should be combined with periodic evaluations of service delivery, including the use of public opinion surveys, and exchange of experience and tools with other local authorities to encourage wider adoption of good practice and tried and tested tools.

There are no specific international standards for complaints mechanisms relating to public services. However, mechanisms and procedures for responding to complaints are incorporated into an international legal guarantee to the right to participate in the affairs of a local authority, and there are a number of helpful civil society guidelines and handbooks. See for example:

- The **Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207)**[28] provides an international legal guarantee to this right, including the establishment of mechanisms and procedures for dealing with and responding to citizen complaints and suggestions.
- **Transparency International's Complaints Mechanisms: Reference Guide for Good Practice**[29] sets out guiding principles and good practices for establishing and implementing complaint mechanisms that provide safe channels for citizens to alert a public or private institution about any corruption risks or incidences.
- The **Danish Refugee Council's Complaints Mechanism Handbook**[30] describes how to set up and manage a complaints mechanism.

- **World Vision's Overview of NGO-Community Complaints Mechanisms**, with an overview of mechanisms and tools used by development agencies to receive complaints.[31]

Domestic context

According to the World Justice Project Rule of Law Index 2019,[32] the Republic of Moldova scores 0.49, with scoring ranging from 0 to 1, where 1 indicates the strongest adherence to the rule of law. Thus, the Republic of Moldova ranks 83 in the global rank (with 126 participating countries), and ranks 9 in the top 13 countries of Eastern Europe and Central Asia, which Georgia leads.

Given the broad definition of complaints mechanisms and right to participate in public affairs, a range of different remedies may be required, but an existing and functioning judiciary that is independent and impartial is necessary to all.

The Good Governance component (central and local administration) in the Action Program of the Government for 2016-2018[33] (22) states: *"To introduce minimum quality standards for public services and an indicator system to monitor/assess their quality, as well as instruments to submit complaints related to public services provided under standard."* However, there is no evidence of the results of this activity from the plan.

When it comes to accountability in the public sector, it is important to mention that the Ombudsperson's institution has not reached full operational capacity, while citizens' right to compensation for damage caused by maladministration or omissions is not fully ensured. Among weaknesses related to service delivery are:

- Public services delivered to citizens are not based on the same standards across all public institutions and no institution is responsible for defining and ensuring minimum quality benchmarks in service delivery;
- An institutionalised legal framework to protect citizens against maladministration and unjustified administrative decisions does not exist;
- Users with special needs face many challenges in accessing public services and obtaining information about services.[34]

Legislation

In order to ensure high quality public services, the Government of the Republic of Moldova established its Public Services Agency on 26 April 2017. The Public Services Agency was set up in accordance with the provisions of the Public Administration Reform and the Action Plan on the Reform of Public Service Modernisation for 2017-2021. It is based on the one-stop shop principle for providing public services and ensuring their digitisation, including the streamlining of operational processes and the reduction of costs incurred by citizens.[35]

The Law on the Administrative Code no. 116 as of 19.07.2018[36] introduced a separate procedure for regulating citizens' complaints, and local authorities ought to follow the established complaints mechanism to receive feedback on the services they provide.

Guidelines

The good governance component of the Government Programme for 2016-2018 introduced minimum quality standards for public services and monitoring indicators for quality assessment, as well as tools for the submission of complaints regarding public services delivered.[37] The current Government Programme for 2020-2023 includes objectives such as the increase of the quality

and accessibility of public services provided to citizens and businesses, and the improvement of the electronic services provided to citizens and entrepreneurs.[38]

Good practices

So far, the Citizen Report Card survey,[39] conducted for the first time in the Republic of Moldova in 2010, is the only comprehensive exercise that took place in the public space, providing comprehensive information on services delivered by 30 public institutions. The survey was conducted in 173 locations, of which 12 were urban communities and 161 rural ones. At the 95% confidence level, the survey has a ±1.7% error margin. Key issues addressed by the survey were the level of utilisation and means of accessing and contacting public institutions, perceptions of the quality-of-service provision, and difficulties faced by citizens in accessing the services.

The study has revealed that there are levels of dissatisfaction with the delivery of public services which should be further investigated if improvements are to be made. Qualitative studies would help identifying the causes of such dissatisfaction, as well as finding out in further detail how the public feels that service provision might be improved. Still, according to the same survey, the local public administration received high satisfaction ratings – District Councils (86%), Mayor's offices and town halls (78%).

Local authorities can use the methodology of this study to conduct their own regular Citizen Report Card surveys at local level, which would help them identify gaps/irregularities and areas for improvement.

1.3. GRIEVANCE REDRESS MECHANISMS

Grievance redress mechanisms (GRMs) are tools that go beyond complaints mechanisms and other feedback channels as citizens can use a GRM to address government institutions and local municipalities with concerns about the impact of policies and their implementation on the citizens themselves. When the policy of a public agency affects the interests of the citizens, or the decision made by the central or local governmental bodies causes a grievance on the part of the citizens, interested parties can use the redress system created by the government agencies and local municipal bodies to present their grievance. A grievance redress mechanism is not used to replace the court or audit system or formal investigation; nor is it the appropriate mechanism for grievance about potentially criminal acts, such as instances of corruption. GRMs are designed for collaborative solutions of grievances.

International standards

Redress mechanisms serve as a frontline service to be used by citizens to effectively resolve complaints and/or grievances. Furthermore, business organisations can use GRMs to mitigate risks to their business operations and GRMs can become a prompt and effective mechanism for dispute settlement short of legal action.

Effective redress mechanisms can serve to identify patterns of corruption and malpractice, and to forge corruption prevention policies. To ensure greater access, it is important to raise public awareness about GRMs and to provide free advice to citizens on the formulation of grievance claims and how to proceed when seeking redress.

Standards for grievance redress mechanisms are mostly set by international organisations such as the World Bank, Asian Development Bank (ADB), Organisation for Economic Co-operation and Development (OECD), United Nations Development Program (UNDP) and European Commission. These standards are mostly connected with setting the legal framework for the protection of citizens' rights. These standards are presented in the following guidelines:

- **Reliability of Public Services: Ensuring Citizens' Rights**[40] from the OECD addresses citizens' rights to be heard using the legal framework established by state institutions.
- **OECD, Recommendation of the Council on Public Service Leadership and Capability, OECD/LEGAL/0445**[41] – the recommendation has 14 principles and defines the responsiveness of public service.
- **How to make a complaint at EU level by European Commission**[42] is a pamphlet outlining the opportunity for citizens to contact and submit a complaint to the European Commission.
- Guidance developed by the international institutions on the protection of citizens' rights during the implementation of a business project includes the **ADB's Building Capacity for Grievance Redress Mechanisms**.[43]

Domestic context

The provision of timely and high-quality public services in the Republic of Moldova is a priority of the central and local authorities. Consecutive strategic policy documents have been implemented nationwide in this sense.[44] Mostly, the previous governments have focused their efforts on systemic institutional and financial reforms. The regulatory framework has continuously been optimised to ensure compliance with the international law, the Development Agenda 2030[45] and the harmonisation with the EU Acquis. The provision of public services has been modernised through the creation of one-stop shops[46], electronic services[47], including electronic payments to adapt to the citizens' needs.

Still, the instruments designed to measure nationwide citizens' satisfaction with the accessed services[48] were only sporadically implemented and are not constantly observed. Integrated data are available within public perception surveys, such as the Public Opinion Barometer[49] conducted bi-annually, by the Survey on the Impact of the National Integrity and Anti-corruption Strategy for 2017-2020[50], conducted in two editions and other sectorial surveys. In an attempt to implement the reforms, the authorities are conducting surveys on their official webpages, although lately this practice is scarce. At the moment, a consolidated mechanism for ensuring observance and redressing of the citizen's rights as a person or as a business when these are breached by public authorities is not available.

The local authorities provide a wide range of administrative services in the educational, healthcare and social fields, administrate housing-and-communal services, tax, cadastral and civil status services. Still, the redressing procedures are treated as usual complaints and the authorities do not keep track of the number of solutions identified upon citizen requests for an administrative intervention. Usually, after the examination of a complaint, in case of a non-satisfactory solution, the applicant is advised to take the case to the court. Nonetheless, citizens are entitled to expect a high level of transparency, efficiency, swift execution and responsiveness, regardless of whether they are making a formal complaint or exercising their right of petition.

Legislation

Until 2018, some elements of the administrative procedure were regulated by a few documents, such as the Law no.793/2000 on the Administrative Court[51] and the Law no. 190/1994 on

petitioning.[52] The lack of coherence, clarity and accessibility combined with misinterpretation during application led to frequent infringements on citizen's legitimate rights and interests.

During the legislative procedure[53] for the approval of the new Administrative Code, the Government of the Republic of Moldova emphasised the need for a unified document that clearly describes the remedies available and the procedure to be followed for the submission of an appeal, the immediate correction of any clerical, arithmetic or similar error and the procedure to be followed for the revision of decisions adopted which affect adversely the interests of a person and those which are beneficial to that person. [54]

The Administrative Code adopted by the Law no.116[55] in 2018 assembled the legal norms on the administrative procedure conducted by the public institutions (Book 1), systematised the regulations and legal institutions specific to the administrative procedure (Book 2 of the Code) and those related to the judicial examination of administrative litigations (Book 3) aiming to ensure compliance with the rights and freedoms, safeguarded by the law, of the physical persons and legal entities.

The Integrity Law no.82 as of 25.05.2017[56] regulates the field of integrity in the public sector at political, institutional, and professional levels, including the responsibilities of public authorities for cultivating, consolidating and controlling integrity and sanctioning the lack of integrity in the public sector. The Law also provides the elimination of the consequences of corruption acts, inter alia, establishing the right of the competent authority to order (Article no. 48, para. 1), upon the request of the victim, the reparation of damages caused by certain contraventions if there are no divergences regarding the damage extent.

A swift communication channel between citizens and authorities is represented by the Anti-Corruption and information telephone lines system. The Regulation of the anti-corruption telephone line systems' operation approved by the Law no. 252 of 25.10.2013[57], describes three levels of the telephone line system comprised by: national (of the National Anti-corruption Centre) and specialised anti-corruption lines and institutional lines for information. All these three lines are intended to be active simultaneously within the central and local authorities in order to receive, by telephone, any information regarding corruption acts, to examine the information received and take the necessary measures, including the presentation of that information to the competent body and/or provide assistance to the citizens.

An additional redress mechanism is provided by the Law on the People's Advocate (Ombudsperson) no. 52/2014.[58] According to art.18, the Ombudsperson examines the complaints on the decisions, actions or inactions of the public authorities, organisations and companies, regardless of the type of property and legal organisation form, of the non-commercial organisations and responsible officials at all levels who, in the petitioner's opinion, did violate his/her rights and freedoms.

Guidelines

The Administrative Code[59] empowers public authorities to conduct their own administrative procedures for solving a complaint and restoring a citizen's breached right. It also describes in detail the administrative procedure, distinct from the prior request and the administrative law judicial litigations. According to the article no.9 of the Law, any request, notification or proposal addressed by a physical person or legal entity to a public authority is treated as a petition:

- The request calls for the issuance of an individual administrative act or the performance of an administrative operation;

- The notification informs the public authority about a matter of personal or public interest;
- The proposal seeks for the performance of some actions of public interest by the public authority.

The Code describes in Book 2 the non-judicial administrative procedure, establishing:

- the statute of the participants, their competencies and representation within the administrative procedure,
- terms, initiation and finalizing stages within the procedure,
- institutional, transparency, communication and costs aspects,
- clarification of the examined situation and obtaining evidence, including witnesses and experts' citation and hearing,
- administrative acts' issuance procedure, the legal regime applied to the administrative contracts and their execution,
- the preliminary administrative procedure (prior to the administrative court procedure).

Extremely relevant for the local public authorities, as part of the issuance of administrative acts procedure, are:

- Chapter 4 of the Title 3, articles 143-153 which regulate various options for the public authorities to cancel and terminate the legal effects of individual administrative acts, up to the prior request.
- Title 4 Administrative Contract provides the possibility for the public authorities to sign an administrative contract with the person to whom the administrative act would have been addressed instead of issuing an individual administrative act, which may take the form of a reconciliation contract or exchange contract.

Good practices

A dedicated redress mechanism is available at the central level in the field of public procurement, where the National Agency for Settlement of Complaints was created.[60] Annually, 10% of the total number of purchases are contested. However, within about three years (July 2017 - June 2020), the value of appeals reached the total amount of MDL 12.5 billion, which is about 50% of the total value of purchases. The resolution of the appeals, according to the legal norms, is the responsibility of the seven counsellors from the National Agency for the Settlement of Complaints.[61]

Another redress mechanism is that for redressing the existing legislation, through the contribution of the citizen as the addressee of the legal norms, which is offered by the ReLawed Platform[62]. The tool allows any citizen to report laws or normative acts, by describing (including anonymously) the problematic provisions, which as a result of their own experience are ambiguous or interpretable, The National Anti-corruption Centre (NAC) reviews and confirms the reported corruption risks, identifies and addresses relevant amendments to other public authorities. By now, 17 reports were submitted and examined, and their status is publicly available on the platform. NAC referred the reported issues to the responsible authorities signalling the norms generating corruption, and in three issues the Ministry of Justice initiated promotion of the relevant amendments.

1.4. PROTECTION OF WHISTLE-BLOWERS

Corruption and other actions harmful to the public interest, including to public health, are more prevalent in organisations that lack a culture of transparency and oversight. A whistle-blower is a person who exposes information on illegal or unethical activities in a private or public organisation, and the rights of a whistle-blower who discloses wrongdoing, or acts and omissions harmful to the public interest, should be protected under "whistle-blowing" laws. Although usually an employee, the whistle-blower could also be a sub-contractor, supplier, unpaid trainee or volunteer. The protection of whistle-blowers is important also in the private sector, not least where they might uncover bribery to public officials or practices damaging to the environment or public health and safety.

International standards

Most whistle-blowers raise their concerns internally or with regulatory or law enforcement authorities rather than blowing the whistle in public. The protection of whistle-blowers, and an organisational culture that prioritises transparency and dialogue, serves to promote accountability, builds confidence in the integrity of government, and encourages the reporting of misconduct and corruption. Whistle-blower protection can motivate employees to report wrongdoing without fear of reprisals, and fosters transparency and trust within an organisation, as well as outwards to citizens, that ethics are upheld and misconduct detected and remedied.

The rights of whistle-blowers can be strengthened by stipulating clear processes and providing secure confidential channels for disclosure. Explicit remedies, including penalties, to redress reprisals against whistle-blowers should be introduced and consistently applied. Training of human resources staff in local government and government agencies needs to be complemented by awareness-raising among the public so that citizens and government employees alike understand the positive results from whistle-blowing in terms of sustained value for money, trust in public authorities, and quality of services.

The following international conventions and standards relate to the protection of whistle-blowers:

- Creating comprehensive and effective mechanisms to protect those who disseminate information in the public interest is a recommendation of both the United Nations and the Council of Europe,[63] as well as the Organization for Economic Co-operation and Development (OECD).[64] The **Congress of the Council of Europe's resolution and recommendation on *The protection of whistle-blowers Challenges and opportunities for local and regional government*** call on "local and regional authorities to establish and disseminate a whistle-blowing policy, with appropriate internal and anonymous reporting channels and to ensure that independent designated institutions exist to oversee and process the disclosure of information".[65]
- The **United Nations Convention against Corruption**[66] is the only legally binding universal anti-corruption instrument.
- It is supported by the **Technical Guide to the Convention**.[67]
- The **EU Directive on the Protection of Persons who Report Breaches of Union Law** requires EU governments to meet minimum standards for establishing reporting channels and ensuring legal protection for whistle-blowers.[68]

- The **Council of Europe's Criminal Law Convention on Corruption (ETS No. 173)**[69] aims to co-ordinate criminalisation of corrupt practices and to improve international co-operation in the prosecution of offences.
- The **Council of Europe's Civil Law Convention on Corruption (ETS No. 174)**[70] defines common international rules for effective remedies for persons affected by corruption.

Domestic context

Whistle-blowers are one of the most far-reaching sources for uncovering illegal and unethical practices at the workplace, regardless of whether it is a public or private institution. They have the best knowledge on the situation from the inside, can report violations "directly from the source" and should be an essential element of the institutional integrity climate of any entity in the Republic of Moldova, as established by the Integrity Law no.82 as of 25.05.2017[71] and developed by special legislation. However, the implementation of the whistle-blowing mechanism faces some challenges.

Whistle-blowers are often associated with "snitches". Employees may also be reluctant to make disclosures, as their professional or personal lives may be affected.

A solution to overcome the challenges outlined above could involve awareness raising on the importance of disclosing illegal practices at the workplace, the provision of accessible information on the whistle-blowing procedures and protection guarantees, and training for legal professionals on the enforcement of the national and international regulatory framework in the field of whistle-blower protection.

Legislation

The Republic of Moldova has created a satisfactory legal framework on whistle-blowing: Law no. 122 of 12.07.2018 on Whistle-blowers[72] and Government Decision no. 23 of 22.01.2020[73] for the approval of the Regulation on examination and internal reporting procedures for the disclosure of illegal practices. Until the entry into force of these normative acts, the whistle-blowing disclosure field was covered by the Government Decision no. 707 of 09.09.2013 on the approval of the framework Regulation on whistle-blowers[74], repealed on 24.01.2020.

The Law no. 122 on whistle-blowers[75] regulates disclosures of illegal practices within public and private entities, the procedure for examining such disclosures, the rights of whistle-blowers and their protection measures, the obligations of employers, the competencies of the authorities responsible for examining such disclosures and of the whistle-blower's protection authorities.

The purpose of the Law on whistle-blowers is to increase the number of cases of disclosure of illegal practices and other disclosures of public interest by promoting the integrity climate in the public and private sectors; ensuring the protection of whistle-blowers in the process of investigation of public interest disclosures of illegal practices; preventing and sanctioning retaliation against whistle-blowers.

For the effective implementation of some provisions of the Law on whistle-blowers, by Decision no. 23 of 22.01.2020, the Government approved the Regulation on the procedures for examination and internal reporting of disclosures of illegal practices. It establishes the procedure for the internal reporting of disclosures of illegal practices by employees of public and private entities, the procedure for recording and examining disclosures of illegal practices, the recognition procedure of the whistle-blowers' status and the application of protective measures against employees who disclose in good faith and in public interest an illegal internal practice.

Guidelines

According to the Law on whistle-blowers, the whistle-blower is the employee who makes a disclosure. The employee is defined as a physical person, who has or has had in the last 12 months the status of employee, trainee or volunteer as per the labour legislation, or contractual or civil legal relations with an employer, be it a public or private entity.

The disclosure (good faith disclosure by an employee of an illegal practice that constitutes a threat or harm to the public interest) may be made to the employer (internal disclosure), to the National Anti-Corruption Centre (external disclosure) or publicly (mass media, posts on social networks, etc.). The employee can make the disclosure:

- in writing, following the model forms in the Annex 1 and 2 of the Law on whistle-blowers;
- online, through the electronic disclosure system of the employer (if any) or of the National Anti-Corruption Centre;
- verbally, by communicating to the anti-corruption telephone line of the employer or of the National Anti-Corruption Centre.

Article 11 of the Law establishes the conditions for the registration of a disclosure of illegal practices in the Register of Illegal Practices and Integrity-related disclosures and, implicitly, the recognition of the whistle-blower' status. The authorities responsible for examining disclosures of illegal practices are the employers, in case of disclosures of internal illegal practices, and the National Anti-Corruption Centre, in case of external illegal practices disclosures.

The term for examining the disclosure of illegal practices is 30 days, calculated from the date of registration in the Register of Illegal Practices and Integrity-related disclosures. The whistle-blower will be informed about:

- the term for examining the disclosure of illegal practices;
- the extension of the term;
- the fact that the disclosure will be examined under the conditions and terms provided by the Contravention Code or by the Criminal Procedure Code when a contravention or a criminal process is initiated based on the disclosure.

If the whistle-blower is subject to retaliation (through actions, inactions or threats) by the employer or another person within the public or private entity in which they operate, he/she is entitled to seek protection. The protection authorities are either the employer (in case of internal disclosures of illegal practices) or the Ombudsperson (in case of external and public disclosures of illegal practices). The Ombudsperson examines the request for the protection of whistle-blowers and contributes to their defence in accordance with the Law no. 52/2014 on the Ombudsperson[76].

The request for protection is examined within 15 days, calculated from the date of its registration. The whistle-blower is informed about the results of the examination.

Section 14 of the Law on whistle-blowers sets out the following safeguards for whistle-blowers' protection:

- the transfer of the whistle-blower or of the person undertaking retaliation actions, during the examination of the protection request, to another subdivision of the public or private entity in which they operate, while maintaining the specificity of their activity, in order to exclude or limit the influence of the person undertaking retaliation actions in connection with the disclosure of integrity incidents or illegal practices;

- sanctioning the person who retaliated in connection with the disclosure of integrity incidents or illegal practices or, as the case may be, of the head of the public or private entity for failing to ensure protection measures;
- cancelation of the disciplinary sanction, which was applied to the employee as a result of a public interest disclosure made in good faith;
- compensation for material and moral damages incurred as a result of revenge.

The liability for violating the provisions of the Law on Whistle-blowers is set out in Article 18. Thus, the disciplinary and/or contraventional liability of the Employer or of the National Anti-Corruption Centre (including their representatives) is valid for failure to take the measures to ensure the disclosure of illegal practices within the entity; non-observing the confidentiality of the employees who disclose illegal practices; failure to ensure protection measures for the employees recognised as whistle-blowers; disclosure of the whistle-blowers' identity to the persons allegedly responsible for the illegal practices he/she invokes. Meanwhile, contraventional or, as the case may be, criminal liability may be incurred for failure to take measures to terminate or suspend the acts that are prejudicial to the public interest and / or to prevent the acts that may cause subsequent damage to the public interest; retaliation against the whistle-blower.

Good practices

In order to effectively implement the legislation on whistle-blowers, the National Anti-Corruption Centre (examination authority) has created a section[77] dedicated to whistle-blowers on its website. It contains information on the regulatory framework, forms and instructions for filing disclosures online, by telephone and in writing, including the possibility to check the status of online disclosures[78], as well as videos on whistle-blowing. Currently the National Anti-Corruption Centre has registered eight disclosures, which are in the process of examination.

The Ombudsperson, as the body responsible for the protection of whistle-blowers, has created an online platform[79] for filling in the request for whistle-blowers' protection. According to the Ombudsperson's Office, since the entry into force of the Law on whistle-blowers, 11 requests for protection have been registered, all of which have been accepted for examination." So far only one case has been resolved, in a few others - the examination procedure has ended. In 5 cases, the recommendations of the Ombudsperson were not implemented and the whistle-blowers challenged the sanctioning orders in court. The Ombudsperson intervened in the process to submit conclusions for defending the rights, freedoms and legitimate interests of persons. In a case that reached the Supreme Court of Justice, the SCJ ruled in favour of the employer."[80]

The law on whistle-blowers also leaves room for the involvement of civil society in protecting the rights of whistle-blowers. The National Anti-Corruption Centre and the Office of the Ombudsperson welcome and encourage the involvement of civil society in this process at all stages, including by participating at informative seminars on the whistle-blowing, organised by specialised NGOs.

Lastly, the blog "Whistle-blowers. Information and communication platform"[81] created by the Centre for Analysis and Prevention of Corruption, provides information on whistle-blowers: informative articles, video tutorials, infographics, legislation, cases involving whistle-blowers in the Republic of Moldova, as well as cases and experiences of other states in this field. The blog also contains practical guides for Whistle-blowers[82] and for Judges and Prosecutors[83].

1.5. DISCLOSURE: DECLARATION OF ASSETS AND CONFLICTS OF INTEREST

Disclosure is the act of routinely publishing and updating particular types of information, sometimes required by law, such as the financial interests of public officials. It can support anti-corruption measures by requiring the routine publication of assets and interests that could represent a conflict of interest. A conflict of interest arises, or can be perceived to arise, when the private assets or interests of public officials can improperly influence policies and decisions taken during the exercise of their official duties.

International standards

Disclosure requirements can build citizens' trust in the transparency and integrity of local decision-making. They also assist public officials in having regularly updated information that prevents conflicts of interest arising among employees. Disclosure of financial assets also provides important information to help clarify if elected officials or civil servants do not have wealth that is disproportionate to their income, either protecting them from false accusations or serving as evidence in the case of suspected illicit enrichment.

Service delivery at the local government level, whether it be construction or tendering of waste-management services, is often subject to conflicts of interest due to the proximity of local entrepreneurs to government officials.

Confidence of the public and business that competition for local government tenders, for instance, is open to all without discrimination will be much greater if both elected officials and civil servants involved in design of the tenders and assessment of tender submissions have completed declarations of assets and interests (including of close family members).

It is important that the institutions responsible for gathering and monitoring declarations are provided with protection against political or other interference in their work, for instance through oversight by independent ethics committees. Likewise, local government officials should be provided with clear guidance on what to declare, and also on prevailing anti-corruption legislation. A well-implemented and regularly updated and monitored assets declaration system can complement the work of an effective prosecution service.

Disclosure is an important element in the conventions and standards against corruption listed elsewhere in this handbook. Of particular relevance are:

- The **Committee of Ministers of the Council of Europe's Recommendation on Codes of Conduct for Public Officials**[84] and the **European Code of Conduct for all Persons Involved in Local and Regional Governance**[85] require private interests to be declared, made public and monitored.
- The **Congress of the Council of Europe's Resolution and Recommendation on Conflicts of interest at local and regional level**[86] call on local and regional authorities to promote the proactive disclosure of declarations of interest prior to public request and to ensure that disclosure policies are accompanied by appropriate measures for resolving conflicts of interest.
- The **OECD's Managing Conflict of Interest in Public Service: Guidelines and Country Experiences**[87] provides practical instruments for modernising conflict-of-interest policies.
- The **OECD's Asset Declarations for Public Officials: A Tool to Prevent Corruption**[88] identifies the key elements of asset declaration systems.

- **Consultation, Participation & Disclosure of Information,** International Bank for Reconstruction and Development / The World Bank.[89]

Domestic context

While the e-declaration system introduced by the National Integrity Authority is mandatory, together with a mechanism for filling in civil servants' assets and conflict of interest statements, challenges remain, such as concerns about the Authority's independence, stemming from its selective delivery of certificates of integrity to individuals who had been sentenced to jail.

Some other challenges include low salaries for integrity inspectors, which have been drastically reduced under the new Law on a Unitary Salary System, and a lack of collaboration with CSOs and the journalists who brought to its attention substantiated cases of corruption.[90]

Legislation

Despite general agreement that the system for the verification of asset declarations should be improved, the reform has been met with strong political resistance. New legislation introduces harsher sanctions for unjustified wealth and conflicts of interest, and ultimately would affect many dishonest public servants and dignitaries. The European Union and the World Bank reacted decisively to the resistance of the Government of the Republic of Moldova, suspending financial assistance and requiring specific structural reforms, including one that is aimed at strengthening the oversight role and independence of anti-corruption institutions.

Thus, by mid-2016 the legislative package on integrity was passed by the government and Parliament:

- Law No. 132 of 17 June 2016 on the National Integrity Authority;
- Law No. 133 of 17 June 2016 on Declaration of Assets and Personal Interests, and;
- Law No. 134 of 17 June 2016 on the Amendment and Completion of Legislative Acts,
- all of which are part of the package of laws on integrity.

Article 13 of the Law on Integrity No. 82/2017 sets the framework for the *"compliance with the regime for declaring assets and personal interests"*, while Article 14 of the same law sets up the framework for the compliance with the conflicts of interest regime.

Guidelines

The National Integrity Authority has the responsibility to control assets and personal interest declarations of public agents and manages the "e-Integrity" portal allowing the submission of the assets and personal interests declaration, as well as ensuring transparency and public access to this information. The new legislation provides for an online submission and verification of asset and interest declarations (E-integrity system).[91] It is expected that it will increase the efficiency and speed of verification procedures, as the system will be connected to all public and private registers. The electronic submission of declarations has been mandatory since January 2018.

Good practices

One of the most ambitious examples in this case is the publishing of data on beneficial ownership (i.e. who owns companies) through the e-portal IDNO (idno.md), which allows users to search for data and look into a company's historic information, as well as to generate infographics. Currently, there is data available on approximately 215,000 companies that have been registered in the Republic of Moldova since 1991. Data on the platform is being updated automatically on a monthly basis. The OpenMoney.md[92] platform allows to establish the links between institutions, companies and persons within the public procurement process using open data. Another useful portal with data on beneficial ownership is the Open Database of the Corporate World (opencorporates.com). Beneficial ownership data can be used effectively for accountability when examining declarations of income and assets. For instance, cross-checking the information against other land registers and beneficial ownership data can uncover criminal activity.

Chapter 2

TRANSPARENCY

INTRODUCTION

The principle of transparency is applied to ensure that those affected by administrative decisions have comprehensive information about the results and implications of policies and about the process of decision-making. The public availability of information about government policies, programmes and activities enables citizens and local communities to gain a clear understanding of government actions, make informed choices, and participate in local decision-making processes. It also enables elected officials, those in government and those in opposition, to take informed decisions and to exercise effective scrutiny and hold the executive to account for their actions. In addition, access to information is essential for journalists and civil society representatives to effectively perform their watchdog functions and hold the government accountable.

Local government should make data available to the public in an accessible format and it should do so in a timely manner. This enables citizens and stakeholders to participate in decision-making processes from an informed perspective, and to monitor and evaluate government implementation of policies and decisions in order to hold public officials accountable for their actions. Transparency is achieved through a range of mechanisms, building on the right of citizens to access information. These include the disclosure of the financial assets and interests of senior public officials and elected office-holders, and the publication of information in accessible, intersearchable open data formats.

According to the definition of the Open Knowledge Foundation, "open data is data that can be freely used, re-used and redistributed by anyone – subject only, at most, to the requirement to attribute and share alike."[93] Therefore, the concept of open data goes beyond the availability of public information and focuses on its use, out of which additional economic, social and political benefits are generated.[94] To make it happen, the data published should be complete, permanent, non-exclusive, non-discriminatory, and non-proprietary, as well as provided by primary sources, in a timely manner and in machine-readable formats.[95]

Limited access to public information negatively affects public trust towards public institutions, increases potential corruption risks, and restricts opportunities for various stakeholders to monitor government performance. It also inhibits citizens and stakeholders' efforts to participate in policymaking and to design evidence-based policy recommendations for positive changes. The practice shows that access to information legislation and proper enforcement measures are an essential part of the enabling environment for citizens' access to information.

Public procurement is considered to be one of the key areas susceptible to corruption. It accounts for around 12 percent of global gross domestic product,[96] and in most high-income economies the purchase of goods and services accounts for one-third of total public spending. In short, public procurement is a significant area for potential corruption, collusion, and other illegal practices. To avoid public procurement-related corruption risks, electronic means and platforms operating through open data solutions are increasingly available and used by government authorities to reform state procurement tendering procedures. Combined with open contracting (where bids and contracts are made public), the increase in fully accessible, well-publicised procurement processes opens tendering to more bidders and reduces the scope for anti-competitive practices and bribery.

Another important component of transparency principle is the openness of the financing of political parties and election campaigns, as it is important for the electorate to know the sources of financing, and how the money is spent, in order to make informed decisions and to understand which financial, political or other interests are supporting particular candidates or parties. The transparency of political donations is a preventive measure against the use of money emanating from illicit and criminal sources in politics and elections.

Finally, to ensure that state resources are used in an economical, efficient and effective way, the independence and institutional capacity of the body responsible for external audit should be secured. Members of the wider public should have the possibility to familiarise themselves with reports and major recommendations issued by the auditor. External audit is important to identify major challenges in the public sector, improve transparency and performance of public institutions, and design evidence-based policies.

GENERAL DOMESTIC CONTEXT

In the Republic of Moldova, citizens are guaranteed both access to public information (Law No. 982 of 11 May 200 on access to public information) and the possibility to participate in the decision-making process (Law No. 239 of 13 November 2008 on transparency in the decision-making process). According to the 2020 Freedom House Report,[97] there are no major regulatory drawbacks related to transparency and access to information. A 2020 State Chancellery Report on ensuring transparency in the decision-making process by the central public administration authorities[98] concluded that about 94% of the draft decisions and laws were made available for public consultation with the interested stakeholders, prior to their adoption. However, civil society organisations show that challenges remain in this regard. As per the CSO Meter Moldova Report[99], the deficiencies related to transparency, participation in decision-making processes and co-operation with the state remained mostly unchanged in 2020. The transparency of the decision-making processes at the local level is lower than at the central level.[100]

With regard to Open Data, the Republic of Moldova embarked on a national open data initiative in 2011. Currently, the platform data.gov.md is a key pillar for the Technological Modernization of Government agenda, which aims to facilitate citizens' access to data from ministries and central public administration institutions. Today, more than 1,100 datasets are on the portal and several apps are based on this data. In August 2021, for the first time in the Republic of Moldova, a Deputy Prime Minister for Digitization was included in the composition of the Government.[101] He is responsible, among others, for public sector innovation and modernisation of public services and administrative processes.[102]

Public procurement in the Republic of Moldova is mainly governed by Law No.131 of 3 July 2015 on public procurement[103]. The government has further approved a set of secondary legislation intended to facilitate the implementation of this law. Since March 2018, economic operators can use the MTender (mtender.gov.md) e-procurement system, to sign contracts online, both public and commercial ones. Public bodies funded from the state budget may use MTender to sign any public contract and register it with the Treasury of the Republic of Moldova.

The Court of Accounts (CoA) is assigned as the responsible institution for the external audit of the management of public funds under the Law No. 260 of 7 December 2017. Since then, the CoA focused its external public audit actions on mandatory financial audit missions. This type of audit is performed with the aim of providing an opinion on the reliability and credibility of financial information. According to the CoA 2020 Report,[104] the implementation of recommendations by the audited public institutions denotes an increase of the quality of financial management within many of these entities.

The Central Electoral Commission (CEC) is responsible for the supervision and control of political financing (both for political parties and election candidates). However, according to the civil society's reports on monitoring political parties and electoral campaign financing, the current impact of the CEC's activity in this area is very low. This is mostly due to the fact that the central electoral authority does not have effective tools, resources and mechanisms to fully check the correctness of the information included in the reports on political parties' financing. As a result, the national observers noted a low level[105] of transparency and comprehensiveness of the reports on political financing submitted by the political parties and election candidates.

2.1. ACCESS TO INFORMATION

Access to information is the legal right for citizens to request and receive information from public authorities. It is often enacted by Freedom of Information legislation. As an integral part of the right of freedom of expression, access to information is a human right[106] and everyone should have the right to access information from public bodies and public agencies in accordance with the principle of maximum disclosure subject to only a narrow, clearly defined, set of exceptions proportionate to the interest that justifies them (e.g. grounds of security or data privacy).

International standards

Access to information supports accountability, oversight of government, and monitoring of corruption. It is also critical to informed citizen participation in decision-making, and is therefore fundamental for the effective functioning of democracies. Free access to information empowers civil society to monitor and scrutinise the actions of local authorities, it serves to prevent abuse of power by public officials and provides data for informed public debate.

The proactive publication of the maximum amount of information in the most accessible formats serves to reduce the need for citizens and stakeholders to file individual requests for the release of information. As well as providing the maximum amount of information electronically, local authorities should prioritise the designation of Freedom of Information officers in their municipalities. Such officers should prepare and publish detailed recommendations for both citizens and local authorities, and provide clear guidance on the appeals process in the event that a request for information is not granted. It is also important to analyse information requests from citizens and stakeholder groups, in particular trends and duplication, so that the authorities can subsequently release such information on a proactive basis.

Access to information is a fundamental component of a number of the conventions and standards against corruption listed elsewhere in this handbook. It also underpins a number of key UN human rights documents. The following specifically relate to Access to Information:

- The **Council of Europe's Convention on Access to Official Documents (CETS No. 205)**[107] affirms an enforceable right to information.
- The **Congress of the Council of Europe's Resolution and Recommendation on Transparency and open government**[108] call upon local and regional authorities to increase the use of open data and records management by their administrations, and to publish these in comprehensive, accessible and reusable ways.

- The **Aarhus Convention**[109] grants rights, including access to information, in decisions concerning the environment.
- The **OECD Recommendation of the Council on Open Government**[110] identifies on-demand provision of information and proactive measures by the government to disseminate information as an initial level of citizen participation.
- **Resolution 59 of the UN General Assembly** adopted in 1946, states that "freedom of information is a fundamental human right", and Article 19 of the **Universal Declaration of Human Rights** (1948) states that the fundamental right of freedom of expression encompasses the freedom "to seek, receive and impart information and ideas through any media and regardless of frontiers".[111]
- **Directive 2003/98/EC on the re-use of public sector information, nowadays called the Open Data Directive,**[112] previously known as the PSI Directive, encourages EU member states to make as much public sector information available for re-use as possible.

Domestic context

According to the Freedom in the World Global Report for 2021, the Republic of Moldova scores 61/100 with 26/40 in political rights and 35/60 score in civil liberties, which places the Republic of Moldova in a 'partly free' status country.[113]

Also, according to the widely-respected Public Opinion Barometer (POB),[114] a medium level of access to information prevails as of June 2021: 66.4 % of respondents said that people have access to information to a very large extent or to a large extent, while 30.8% said that people have little or no access to information.

The right to information is guaranteed by the Constitution of the Republic of Moldova in Article 34.[115] The Law on Access to Information has been granting access to public data since 2000.[116] However, there are numerous challenges still associated with requesting access to public information, including obstruction by government officials, refusals or delays in replying to requests for access to information, and purposefully incomplete or vague responses to requests for information.[117]

One of the major challenges in the implementation of the Republic of Moldova's right to information system is the absence of an institution responsible for monitoring the implementation of the guarantees of access to information and aggregating statistical data on the number of public information requests submitted, accepted, or refused by state administration bodies. In the case of a refusal to share information, the applicant usually does not know what to do and is not informed of the grounds for refusal and the right to appeal.

A Freedom House report from 2020[118] states that "all principles of transparency and access to public information have been neglected while promoting major draft decisions, with a strong impact on corruption prevention and on society as a whole. In certain cases, under the cloak of 'personal data protection', access to information of public interest was systematically restricted (depersonalisation of court decisions)".

The Republic of Moldova's regulatory framework has great potential to address corruption, ensuring transparency, accountability, and open government overall. However, much needs to be done until the relevant law is implemented in practice. Efforts are being put in place by the Parliament of the Republic of Moldova to improve access to information: *"Now, public authorities understand better than ever how important it is to guarantee access to information, particularly because being opened to society means having the advantages of credibility, efficiency and responsibility"*.[119]

Between 2019 and 2020 the Republic of Moldova implemented its 4th National Action Plan on Open Government, based on the principles of access to information, open data, and transparency. By 2020, 45% of the actions included in the Action Plan have been implemented, 49% were in process of implementation and 6% were not implemented.[120] However, IRM Transitional Results Report states that overall, the commitment to "Access to information and use of open data" did not significantly change the Republic of Moldova's open data and access to information practices compared to the previous action plan cycle.

Legislation

The Law on Access to Information (adopted in 2000) only restricts public access to state secrets, confidential business information submitted to public institutions under conditions of confidentiality, and personal data, the disclosure of which may be considered interference in one's private life.[121]

Subjects of the present law are information providers and information seekers. Information providers that are holders of official information required under the present law to provide such information to applicants are:

1. local and central public authorities;
2. local and central public institutions – organisations founded by the state, represented by public authorities that are financed by the state budget, who are responsible for administrative activities, those in social-cultural domains or other non-commercial activities;
3. natural and legal persons who, based on the law or the contract with the public authority or public institution, are empowered to manage public services and collect, select, possess, store, dispose of official information.

In addition to the Law on Access to Information,[122] here are some other important legislative acts:

- The Law on Personal Data Protection (2011)
- The Code of Audio-visual Media Services of the Republic of Moldova (2018)
- The Law on National Security Agencies (1995) (excerpts)
- The Law on State Security (1995) (excerpts)
- The Law on Informatics (2001) (excerpts)
- The Law on Informatisation and State Information Resources (2004) (excerpts)
- The Criminal Code (2009) (excerpts)
- The Law on Integrity (2017)
- The Law on State Secrets (2008).

Article 21 of the Law on Integrity stipulates that *"Ensuring access to information of public interest should be made more efficient through fostering active participation of citizens in decision-making processes, through guaranteeing access to information of public interest regarding the activity of public institutions."*

The People's Advocate (Ombudsperson) in the Republic of Moldova has the authority to oversee the implementation of the law; however, this office lacks the capacity and resources to exercise control.[123] Article 5 of the Law on Access to Information stipulates that the direct subjects of this law are both the central and the local public administration authorities.

Citizens' access to public information is not fully ensured, because the law does not fully clarify the obligations of the public administration to proactively make it available, and the

implementation of the law is not monitored.[124]

The Law on Libraries[125] was adopted on 20 July 2017, after over a year of deliberation and consultation. This new legislation enshrines public libraries' role as providers of free and inclusive public access to information and locally relevant community services. Article 17 describes the roles and responsibilities of the local public administration authorities under this law.

Guidelines

A practical guide on access to information for public interest was developed by Lawyers for Human Rights and United Nation Democracy Fund. It provides step by step guidance in the process of submitting a request of information, taking into account relevant legislative innovations, such as the repeal of the Law on Petitions and the Law on Administrative Litigation and the entry into force of the Administrative Code.[126]

A guide for journalists on legal access to government information was developed by Access Info Europe and the Network for Reporting on Eastern Europe. It provides a very detailed step by step guidance on access to information, data security, and how to submit a request for information among others.[127]

Another guide for public servants and journalists was developed in 2015 by the Independent Journalism Centre in the Republic of Moldova and Civil Rights Defenders. It provides a clear illustration of how the Law on Access to Information should be implemented, with specific tips for public servants and journalists.[128]

Local authorities have an important role to play in the implementation of the "right to know" at local level. Hotlines, a user-friendly website for the community, a spokesperson, surveys, information campaigns, and information boards are just a few examples. Local authorities should consider the following advice when developing a website to support access to information:

- Publish local council decisions on the local authority website;
- Digitalise local open data as much as possible, making it available on the website (following the open data principles);
- Ensure that any content published on the website is applicable or relevant to community members;
- Provide citizens with the opportunity to make a request or contact someone for more information;
- Keep information up to date;
- Provide links/references to information available elsewhere, on other governmental or non-governmental websites (e.g. links to national platforms on e-services, national legislation, opportunities for studies, etc.);
- Include a comments section for feedback and provide "feedback on feedback".

Good practices

The tools most frequently used by local public authorities in order to ensure transparency and access to public data are information panels and web portals. In the past years there has been an increase in the use of social networks, which allow local authorities to place timely and relevant information about their activity online.

In an IDIS (Institute for Development of Social Initiatives) "Viitorul" report on Transparency of the Local Public Administration Authorities (2019), all 32 monitored local authorities have webpages, through which access to information is provided. According to the report, a good practice is the use of several search engines for documents developed, examined and adopted by local authorities, including decisions, as it is the case of the Local Councils of Soroca, Ceadâr-Lunga and Strășeni.[129]

According to the Promo-LEX Report on monitoring the transparency of the activity of level-two local public authorities and ATU Găgăuzia (2021),[130] the webpage has remained the most widely used source of communication for both LPAs and stakeholders - at 95.58%, followed by social networks - 78.37%, e-mail - 58.66%; information panel - 58.36% and newspapers - 45.58%. As compared to the first semester of 2019, Promo-LEX found an increased use of social media by both parties and a lower use of e-mail, information panel and newspapers.

2.2. OPEN DATA

Open data is the publication of data and information in a format that may be freely used, modified and shared. The OECD states that open data is *"a set of policies that promote transparency, accountability and value creation by making government data available to all"*. By making data generated through the activities of public bodies available, government becomes more transparent and accountable to citizens. It also supports business growth and the development of services centred on citizens, and provides important data for research and innovation by public bodies, the private sector, and civic stakeholders.

International standards

The promotion of open data through one-stop portals can further increase the scope for interoperability of datasets in terms of search and analysis. The results can improve the efficiency and reach of service delivery and reduce corruption. Awareness-raising among stakeholder groups, the media, businesses, and the wider public can result in effective co-operation among different stakeholders and improvements in solutions on transportation, recreation facilities, parking zones, health services, and much more.

It is important to adopt consistent open data standards for all open data to ensure maximum interoperability and searchability of data. Local authorities should also ensure that qualified staff manage the municipality's open data publication, and train relevant employees in open data standards.

Open data is a relatively new phenomenon without officially endorsed standards. However, a number of useful guidelines exist:

- The **Congress of the Council of Europe's Resolution and Recommendation on Open data for better public services**[131] explain its importance for improving local democracy.
- The **Congress of the Council of Europe's Resolution and Recommendation on Transparency and open government**[132] call upon local and regional authorities to increase the use of open data and records management by their administrations.
- The **United Nations Guidelines on Open Government Data for Citizen Engagement**[133] introduce policy guidelines and good practice recommendations.

- This **World Bank Toolkit**[134] starts from the basics, through to planning and implementation, as well as avoiding common pitfalls.
- The **Five Star Open Data Deployment Scheme**[135] provides five steps to fully opening data, explaining the costs and benefits of each.
- The **International Open Data Charter**[136] sets out six principles for open, timely and interoperable government data.
- The **OECD Recommendation of the Council on Open Government**[137] identifies on-demand provision of information and proactive measures by the government to disseminate information at an initial level of citizen participation.

Domestic context

The Republic of Moldova embarked on a national open data initiative in 2011 as part of its Governance eTransformation Agenda. The initiative has drawn support from the highest levels of government, with two prime-ministerial directives and new legal provisions solidifying the country's commitment to opening up government data by default. Led by the e-Government Centre, the initiative has spurred the release of 782 datasets from 39 institutions across the government.

Today, there are more than 1,000 datasets on the portal and several apps based on this data.[138] One critical factor contributing to the success of the initiative was the political support from the Prime Minister and the State Chancellery. Other crucial elements have been the solid legal framework and the development of the open data portal (date.gov.md).

The Republic of Moldova participated in two editions of the Open Data Barometer (2015/2016), having one of the highest rates among Eastern Partnership countries.[139]

Since 2020, the Republic of Moldova is included in the annual Open Data Maturity assessment.[140] This is a research project on the state of maturity of open data in EU Member States, EFTA countries, and Eastern European Partnership countries, including the Republic of Moldova. According to the 2020 Open Data Maturity Study,[141] the Republic of Moldova scored 58% on the maturity level.

Legislation

The Republic of Moldova succeeded in developing a solid legal and policy framework to pave the foundations for its open data initiative. Open data principles were embedded in the Governance eTransformation Agenda (Strategic Programme for Governance Technological Modernisation (eTransformation), approved in September 2011.

The passing of the Law on Public Sector Information (PSI), in line with European Union directives, aimed to boost the open data agenda in government. To enforce this law, the Ministry of Information Technology and Communications developed methodological norms for implementation.[142] These set out the terms and conditions for accessing and reusing PSI and developed an open data license for the Republic of Moldova's public data.[143]

In addition, the Republic of Moldova approved a national open data policy which aims to achieve open data in government by default. The policy brings clarity to the data publishing process, provides for machine-readable formats to be used for the publication of data, and defines standards on data collection, archival, and publishing. Every ministry and government agency are to embed an open data action plan in their sectoral governance e-transformation action plan, which is to support and expand the implementation of open data initiative in government.[144]

Guidelines

A methodology for publishing open government data has been approved through the Government Decision No. 701 of 25 August 2014.[145] It sets clear guidelines for the publication of open data and is mandatory for all central public administration authorities. It sets clear requirements for the open data portal, the nature of the data to be released via the portal, who is going to have access to publish the data, and the rights and responsibilities of the persons involved in releasing the data. The methodology also specifies the format and frequency of the data publishing.

The guidelines were developed by the eGovernment Centre of the Republic of Moldova back in 2014, based on the G8 Open Data Charter principles.[146]

Good practices

More than 1000 open data sets are available on the national open data portal, www.date.gov.md, with several valuable applications being available to the public sector, local governments, and citizens. The Chișinău municipality launched an online application based on open data in order to allow the monitoring in real time of the special vehicles across the capital. This allows application users to track where and what kind of equipment is involved, and for what kind of work. Each truck/vehicle (there are 109 altogether) is fitted with a GPS monitoring system that transmits relevant information to the central server (gps.navisat.md).

2.3. PUBLIC PROCUREMENT

Public procurement refers to the process by which public authorities, including local authorities, purchase work, goods or services. As public procurement is an essential part of public service provision for local and regional authorities, efficient, cost-effective procurement is key to good governance.

International standards

As procurement involves a large proportion of public expenditure and the transfer of public resources to the private sector or non-profit organisations, it is particularly vulnerable to corruption. Public authorities should deploy new technologies to increase transparency over public procurement and encourage new economic actors to enter bidding processes in the confidence that free and fair competition is applied. By posting all tenders on a common online platform, the occurrence of unpublished tenders and direct awards will be minimised. Use of open contracting and open bidding solutions also allows greater scrutiny of the process, further reducing the scope for corrupt practices. Open contracting systems include a preventive effect because officials will refrain from manipulating the contracting process if they know that comprehensive disclosure of the bidding and contracting processes will be revealed.

Local authorities should ensure that there is a comprehensive system in place to monitor compliance with public procurement legislation, and that there is a responsive mechanism for reviewing appeals and complaints, including prompt and comprehensive replies. Authorities should also monitor contract implementation, in particular time extensions and cost increases, to ensure that the benefits in terms of value for money and quality of delivery are not compromised during contract implementation.

The following international conventions and standards relate to public procurement:

- The **Congress of the Council of Europe's Resolution and Recommendation on Making public procurement transparent at local and regional levels**[147] and the **OECD Checklist for Enhancing Integrity in Public Procurement**[148] provide guidance for enhancing transparency and promoting integrity in procurement.
- The **OECD Recommendation of the Council on Public Procurement**[149] promotes a strategic and holistic use of public procurement systems across all levels of government and state-owned enterprises. The online **Public Procurement Toolbox**[150] provides policy tools, specific country examples as well as indicators to measure any public procurement system.
- The **WTO Agreement on Government Procurement**[151] establishes rules requiring that open, fair, and transparent conditions of competition be ensured in government procurement.
- The **EU Directive on Public Procurement**[152] ensures the best value for money for public purchases and guarantees the respect of the EU's principles of transparency and competition.
- The **UNCITRAL Model Law on Public Procurement**[153] is a legal template available to governments seeking to introduce or reform public procurement legislation for their internal market.
- The **European Bank for Reconstruction and Development (ERBD) Guide to Electronic Procurement Reform**[154] provides information on and assistance with designing and implementing domestic eProcurement reforms.
- **Open Contracting Data Standard (OCDS)**,[155] providing open data standard for publication of structured information on all stages of a contracting process: from planning to implementation.
- **UNODC's (United Nations Office on Drugs and Crime) Guidebook on anti-corruption in public procurement and the management of public finances**,[156] which provides good practices in ensuring compliance with article 9 of the United Nations Convention against Corruption.
- **World Bank's Annual Reports**[157] – Benchmarking Public Procurement, which have been assessing public procurement regulatory systems in different countries.

Domestic context

According to a report of the European Committee of Regions, some of the main problems in the Republic of Moldova regarding public procurement, as reported by experts, are: lack of transparency (77%), nepotism (65%), and untrained personnel (54%).[158]

Other public services affected by corruption in the procurement process are the medical and educational centres that fall under the authority of local administrations (given the process of decentralisation). Studies show that the most widespread practice is to organise and arrange public procurements through dubious schemes related to the execution of the contracts. Most frauds in the public procurement sector contain an element of corruption and conflict of interest. A conflict of interest occurs when the representatives of the contracting authorities involved in the procurement process use their status and position to award contracts to companies in which they have financial or managerial interest. For example, cases were identified with contracts being awarded to companies whose founders were relatives of the decision-making representatives.

Legislation

The Ministry of Finance has been working throughout the past years on designing and implementing public procurement policies that help ensure a functional, efficient and transparent legal framework for public procurement, including its harmonisation with EU Directives and international standards.

Public procurement in the Republic of Moldova is mainly governed by Law No.131 of 3 July 2015, which entered into force on 1 May 2016. The law is transposing the EU Directives 2004/18/CE, 89/665/CCE, and (partially) 2014/24/UE. The government has further approved a set of secondary legislation intended to facilitate the implementation of this law.

The Ministry of Finance developed the 2016-2020 Strategy for the Development of the Public Procurement System and the Action Plan on its implementation, approved by the Government Decision No. 1332 of 14 December 2016, in order to implement the provisions of the EU-Moldova Association Agreement and the World Trade Organisation Government Procurement Agreement, which the Republic of Moldova had joined on 14 July 2016.

Amendments to Law No. 131 of 3 July 2015 were adopted by Parliament in September 2016 and as a result, the National Complaints Agency was to be then established by Parliament; this only happened a year later, in September 2017. Establishing this entity aimed to eliminate the conflict of competencies from the activity of the Public Procurement Agency, a specialised body subordinated to the Ministry of Finance, which ensures the implementation of the public procurement policy. In 2020 the number of complaints filed by economic operators increased by 25% (by 256 more complaints) compared to 2019. Overall, since the establishment of the National Complaints Agency (September 2017) and until 31 December 2020, 3234 appeals have been registered and examined.[159]

On 30 November 2016, a memorandum was signed between the Ministry of Finance, the Public Procurement Agency, the Electronic Governance Centre, several business associations, and CSOs and IT companies. It aimed to pilot the new multi-platform hybrid eProcurement system for micro value procurements.

Order No. 30 of 10 February 2017 of the Minister of Finance *On Piloting the Public Procurement System for Low Value Contracts* entered into force, according to which the Ministry of Finance and all subordinate administrative authorities shall apply the e-procurement system in pilot regime for low value public procurement.

On 27 July 2018, the Law No. 131 on Public Procurement was amended and electronic tendering procedures have been introduced as a standard for all public sector entities in the Republic of Moldova.

Guidelines

In April 2017, a pilot of the MTender (mtender.gov.md) e-procurement system – a partnership between the Ministry of Finance and four commercial electronic platforms – was launched with support from European Bank for Reconstruction and Development (EBRD).

Since March 2018, economic operators registered in the Republic of Moldova are able to use MTender for signing online contracts, both public and commercial ones. Public bodies funded from the state budget may use MTender for signing any public contract and registering it with the Treasury of the Republic of Moldova.

On 27 July 2018, the Law on Public Procurement No. 131 was amended in order to introduce electronic tendering procedures as a standard for all public sector entities in the Republic of Moldova.

Starting from 15 October 2018, new types of electronic tendering procedures became available on MTender, to suit different types of contracts and serve different public and commercial buyers, including state-owned enterprises.

Thus, according to legal provisions, local public authorities must carry out public procurement through the digital public procurement system MTender, with the exception of low-cost procurement for which the organisation of online tenders is only optional.[160] According to IDIS Viitorul, to ensure greater transparency as to how public authorities purchase goods and services using public funds, it is necessary for low-cost procurement to be included in the digital public procurement system as well.[161]

MTender uses all eGovernment solutions that have been developed by the e-Government Agency (egov.md) with the support of the World Bank: MCloud, MConnect, MPass, MSign, MPay, and eFactura.

The EU Delegation to the Republic of Moldova is currently supporting the Ministry of Finance on the further development of MTender for the years ahead.

Good practices

MTender (mtender.gov.md) is a unique and innovative multi-platform electronic procurement service using open source, open data and open contracting data standards. It aims to support all key relevant stakeholders in the implementation of the principles of Open Government, based on the principles of transparency, accountability, and stakeholder engagement in the collaborative delivery of public services. It provides an open data scheme describing how to release documents and data at each stage of a contracting process as machine readable, flexible, complete and re-useable data.

The MTender system aims to ensure the electronic processing of the full procurement cycle, from the procurement planning stage to the last payment made when the public procurement contracts are finalised. It also aims to provide tools dedicated to the special ways of awarding public contracts, such as electronic auction, electronic catalogues, and framework agreements. MTender consists of a web portal, the Open Data central database unit, three main networking commercial electronic platforms interconnected with the portal and the central database, as well as several e-government services, in order to provide a seamless digital procurement service for public sector and commercial buyers in the Republic of Moldova.

MTender represents the 2.0 version of the State Registry of Public Procurement automated information system and is an information system compatible with Cloud computing, to be hosted on the MCloud. MTender is a state-of-the-art modern, cloud-based, integrated and interoperable e-government solution, using the latest technologies to deliver end-to-end digital public procurement, from planning public spending to payment for public contracts.

2.4. EXTERNAL AUDIT

External audit is the regular, independent scrutiny of accounts and financial information to ensure that public money is used appropriately and effectively. External audits are undertaken in accordance with relevant laws and rules to support those external to government to hold it to account. As well as audit of the financial statements of local budget institutions, external audit can look beyond finances to assessing the performance of government against its own objectives, or in providing programmes and services.

International standards

- The **International Public Sector Accounting Standards**[162] focus on the accounting, auditing, and financial reporting needs of central, regional, and local governments, related governmental agencies, and the constituencies they serve.
- The **International Standards of Supreme Audit Institutions**[163] website contains a complete collection of professional standards and best practice guidelines for public sector auditors.
- A number of the conventions and standards for combatting corruption include provisions and clauses relating to external audit.

Domestic context

The EU-Moldova Association Agreement includes commitments (Article 22) related to Public Administration Reform. Among the key areas for co-operation in the field of public finances are: budgetary policy, internal control, financial inspection, and external audit which regulates the budgetary and accounting systems, internal control, financial inspection and external audit, the fight against corruption and fraud.[164]

In addition to this, Article 49 (e) of the same agreement puts in place external audit standards set internationally by the International Organisation of the Supreme Audit Institutions (INTOSAI).[165]

Legislation

The Court of Accounts (CoA) is a Supreme Public Audit Institution and acts in accordance with the provisions of the Law on the organisation and operation of the Court of Accounts No. 260 of 7 December 2017.[166] It exercises control over the formation, administration and use of public financial resources and public patrimony management by the country, by conducting external audit in the public sector and ensuring compliance with international standards on best practices in the field of external public audit. The relevant law guarantees the independence of CoA.

The Public Administration Reform Strategy for 2016-2020 sets out the government's vision, including the goals of *"developing effective, accountable and transparent institutions at all levels"* (SDG target 16.6)[167] and to *"ensure responsive, inclusive, participatory and representative decision-making at all levels"* (SDG target 16.7).[168] External and internal audits are foreseen in the PAR strategy.

Article 87 of the Law on Local Public Administration also provides that the method of financial management organisation and control in the public local administration authority is subject to internal and external audit.

Guidelines

The Court of Accounts is assigned as the responsible institution for the external audit of the management of public funds in Article 3 of the Law No. 260 of 7 December 2017 on the organisation and operation of the Court of Accounts. The CoA has successfully performed a number of audits in recent years.

According to the Court of Accounts Report on the administration and use of public financial resources as well as public patrimony during 2020, the Court recorded a lower degree of compliance of the local public authorities with the Court's audit recommendations.[169] While the degree of compliance with audit recommendations at the level of central public authorities is about 60%, at the level of local public administration it is much lower (20%), and in some cases there is no compliance.

There are several guides developed by the Court of Accounts:

- Guidance on the audit of state revenues;
- Guide on key indicators for evaluation of the audit activity, including for monitoring the execution requirements and implementation of the Court of Auditors' recommendations;
- Guidance on the strategic planning process of performance audits;
- Quality Framework Guidelines.[170]

Good practices

The EU Twinning Project on Developing an Effective Internal Control and Audit Environment in the Public Sector was closed in 2019.171 The project provided support to the Ministry of Finance of the Republic of Moldova in the process of reforming public finance management, by strengthening the internal control and audit environment in line with best EU practices.

As a result of the project, amendments were made to the Law on Public Internal Financial Control; a range of secondary regulations, guidelines, and methodologies related to the sector were developed; 15 trainers/multipliers in the field of internal audit have been trained, and the level of expertise of internal auditors in the public sector, of managers and coordinators of internal managerial control has increased.

These results were obtained by training employees, exchanging experience with EU Member States' experts, implementing surveys and other assessments. The final results of the project and its benefits for citizens in the Republic of Moldova will become more visible once the new normative framework is implemented and the new methodologies begin to be applied, thus facilitating both the development of internal managerial control systems and the increase of quality in internal audit activity.

The project must be seen as a library, a toolbox that experts have filled with instruments, methodologies, and recommendations, which may be used anytime and transposed into practice.

2.5. FINANCING OF POLITICAL PARTIES

Financing of political parties and election campaigns is a necessary component of the democratic process. It enables the expression of political support and competition in elections.

Principles governing the financing of political parties should include fairness in the distribution of state funding, strict rules concerning the transparency and limits on the size of private donations, ceilings on campaign expenditure, full transparency of funding and expenditure, independent election commissions, independent audit of campaign finance, and the consistent imposition of proportionate sanctions on candidates and political parties that violate the rules (such as fines or a reduction in state contributions to future election campaigns).

International standards

Clear rules and transparent reporting of political campaign financing and expenditures are essential to sustain trust in political candidates, political parties, and government institutions. An imbalance in funding of political parties may result in an unfair advantage, handing undue influence to powerful narrow interests, running the risk that policies will be "captured" by narrow private interests, serving their goals over the public interest.[172]

Mechanisms and rules on limits on party political financing, and on state financing of political campaigns, should be designed in a way that provides a level playing field for the different political candidates and parties competing in elections and serves to preserve the political forces' independence from financial supporters.

The following international conventions and standards relate to the financing of political parties:

- The **Congress Resolution 402 (2016) on "The misuse of administrative resources during electoral processes"**;[173]
- The **Guidelines and report on the financing of political parties** (Council of Europe, Venice Commission, 2001);[174]
- The **Compilation of Venice Commission Opinions and Reports concerning Political Parties** (Council of Europe, Venice Commission, 2013);[175]
- The **Recommendation Rec(2003)4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns**.[176]

Domestic context

Current regulations of the process of financing political parties were adopted based on international standards in the field. However, given the fact that some international standards have recently been revised or published in a new version[177], national normative acts should be revised accordingly.

The Central Electoral Commission is responsible for supervising and controlling the political parties' financing. However, according to civil society reports on monitoring political parties and electoral campaign financing[178], the capacity of the Central Electoral Commission is still quite low in this regard. With a few exceptions (verification of donors and their income), the electoral authority does not have effective tools and mechanisms to fully check the correctness of the information in political parties financing reports regarding their political promotion activities.

On 28 May 2021 the President of the Republic of Moldova held a meeting with the Supreme Security Council to discuss the topic of the risk of corruption in the process of political parties and electoral campaigns financing. As a result of this meeting, it was decided that the Presidency of the Republic of Moldova would set up a working group to further develop recommendations for the amendment of the legal framework on political parties and electoral campaigns financing, as well as of the criminal legislation, thus tightening sanctions for illegal financing of political parties or electoral campaigns.

The Promo-LEX election observation and monitoring of political financing in the Republic of Moldova shows the following conclusions on political parties and electoral campaigns financing:

- Political parties' activity and their financing is mostly based on subsidies from the state budget to the detriment of other sources of income.

In 2020, the revenues reported by political parties were constituted at 62% from the subsidies allocated from the state budget, and only 33% from membership fees and donations (5% were from other sources).[179] This shows a decrease in citizens' involvement in political activities, including through donations made to the political parties.

- Low level of transparency regarding political parties and electoral campaigns financing.[180]

Despite the fact that the legal framework requires the submission of semester-based and annual reports to the Central Electoral Commission and publication of those reports (in the case of elections - weekly reports), under the shield of personal data protection, public access to the data from political parties' financial reports is limited. Thus, interested parties do not have access to data about donors, such as their job / occupation, place of residence, which makes it difficult to identify whether specific donors, especially those working in the public administration indeed had the resources to make the respective donations (usually the salaries of public servants are low and often their donations are suspected of not being always legitimate). In addition, the submitted reports, which are accessible to the public, do not meet the criteria of open data – the format used for their publication does not allow an analysis of the information.

- Low transparency and large discrepancy between political parties' observed/monitored expenses and official expenses reported to the Central Electoral Commission.

The political parties do not report all the expenses incurred for the political activities carried out during the inter-electoral and electoral periods. According to Promo-LEX monitoring reports on political parties' finances[181] elaborated during 2017-2021, there was a constant significant difference between parties' officially declared expenses and expenses observed by monitors.

Legislation

Political parties financing in the Republic of Moldova is regulated by the following normative acts:

- Constitution of the Republic of Moldova [182];
- Law no. 294 of 21 December 2007 on political parties[183];
- Electoral code[184];
- Contravention code[185];
- Criminal code[186];
- Tax code[187];
- Annual budget law;
- Government's Regulation on Use of Cash Registers (CR) for Cash Settlements, adopted on 27 February 2019[188];
- Central Electoral Commission's Regulation on Political Parties Financing [189], etc.

According to the legal framework, political parties are financed both from private sources (membership fees, financial and material donations, and other legally obtained income) and the state budget (subsidies). Donations in support of political parties can be made both by legal entities (legally registered in the Republic of Moldova) and by individuals – citizens of the Republic of Moldova (residing on the territory of the Republic of Moldova or abroad). Public authorities and public institutions (including local authorities), public organisations and enterprises, other legal entities financed from the public budget or which have state capital, as well as international companies or companies created both by national and international

representatives, are not allowed to finance or offer material support in any form for the activities of political parties, initiative groups, electoral campaigns or electoral contestants. In addition, legal entities that have been contracted for public procurement are not allowed to make donations to political parties.

According to Article 41 of the Electoral Code, for financing the activity of political parties, initiative groups and electoral campaigns only financial resources from the activity of employee, be it entrepreneurial, scientific or creative can be used. However, the legal framework does not regulate how to investigate, analyse and resolve cases in which citizens make donations that do not comply with Article 41 (when the source of the finances cannot be proven).

For example, in total, during the 2020 presidential elections and 2021 parliamentary elections, at least 800 registered donors giving over MDL 4 million did not declare any income or declared an income much smaller than the actual donated amount. Due to legal framework loopholes, the Central Electoral Commission has not been able to take any measure to investigate and assess those donations.

According to Article 43 of the Electoral Code, political parties' promotion through all services and actions provided free of charge by physical and legal persons, as well as all voluntary activities during the period of signature collection or electoral campaign, must be evaluated and should be mandatorily indicated in the financial reports. However, political parties and electoral contestants do not report services, which were freely provided by volunteers. For example, during the presidential elections in 2020 and parliamentary elections in 2021, an estimated MDL 7 million[190] were not reported by electoral contestants for activities carried out by volunteers. Nevertheless, the responsible institutions did not apply sanctions based on these findings.

Guidelines

Since January 2020, political parties' financial reports must be submitted to the Central Electoral Commission through a special information system developed by the electoral authority "Financial Control" Information System[191], which is a part of the State Automation Information System "Elections" (SAISE). Interested parties should use the same information system to monitor, analyse and assess political parties' financial reports.

However, until September 2021, the Central Electoral Commission did not adopt any guidelines for using the "Financial Control" Information System. Instead, periodically, the Central Electoral Commission (CEC) and the Centre for Continuous Electoral Training (CCET) organise trainings for political parties' treasurers on drafting and submitting Financial Management Reports. In addition, at stakeholders' request, the CEC and the CCET are able to organise trainings for other interested parties.

All delivered financial reports are available on the CEC official web page[192]. Political parties' financial reports can be found through the "Financial Control" Information System or in pdf format (depending on the format used by political parties to deliver those reports to the CEC). On the other hand, financial reports delivered during electoral period are not yet available through the "Financial Control" Information System. Those reports can be found only in the specific section dedicated to a specific type of scrutiny[193]. Unfortunately, the published reports do not meet the criteria of open data – their published format does not allow a free analysis of the information reflected in the reports.

In order to verify the information from political parties' reports, the following public data can be consulted: Public Procurement Agency's official data regarding the awarded contracts for public procurement[194] and official data regarding legal entities registered in the Republic of Moldova.[195]

Good practices

The "Financial Control" Information System is an electronic tool which is meant to make the drafting and submitting of Financial Management Reports easier for political party treasurers. Although nowadays financial reports must be submitted both on paper and electronic format (in order to test, verify, assess and ensure "Financial Control" Information System efficiency), in the future, given its capacities, the system is expected to improve the reporting process and transparency of political financing (i.e. there are possibilities to integrate the "Financial Control" Information System with other electronic state registers). In addition, the information system will facilitate the activity of civil society organisations in the process of monitoring, analysing and assessing political party financing (should the Central Electoral Commission eliminate all the loopholes identified and reported earlier by the civil society organisations).[196]

Chapter 3

CITIZEN PARTICIPATION

INTRODUCTION

"The right of citizens to participate in the conduct of public affairs", including at the local level, is explicit in the European Charter of Local Self-Government,[197] and the Additional Protocol which states that "the right to participate in the affairs of a local authority denotes the right to seek to determine or to influence the exercise of a local authority's powers and responsibilities".[198] When local authorities consult with and engage citizens in the design of, and evaluation of, public services, they pave the way for better policy outcomes and also for greater mutual trust between citizens and government.

Citizen participation involves outreach to a range of local stakeholders, such as civil society activists, journalists, members of academia, business representatives, local communities, and active citizens. It is important that it is inclusive, taking into consideration the views of the wider public, expert stakeholders, and representative groups, including the vulnerable and marginalised. Moreover, stakeholder engagement must include outreach to those whose lives and interests will be affected by the implementation of the decisions under consideration. To ensure that such stakeholders are identified, public consultations should be launched before a commitment to action has been made or before a draft decision has been tabled. A more open consultative process first invites stakeholders to discuss and identify the problems, challenges and opportunities, then examines the different policy scenarios, before any decisions are drafted.

Participatory mechanisms can be grouped in the following categories that reflect different levels of engagement:

- informing the public about local priorities, government programmes and plans;
- holding consultations with the public and/or particular groups of people regarding public policies and collecting their experience or expertise;
- collaborating with the public and/or particular groups of people to develop solutions to local problems (including co-creation processes such as in the formulation of Open Government Partnership (OGP) Action Plan commitments);
- engaging local communities in decision-making processes through deliberative processes, voting (such as participatory budgeting and referendums), and other decision-making tools.

According to the Additional Protocol, "the law shall provide means of facilitating the exercise" of the participative right of citizens. In order to ensure that the above-mentioned forms of participation are genuine engagement rather than token exercises, the consultation process around the formation of new policies and legislation needs to be backed up by laws, regulations and guidelines, and also by strong political will.

Inclusive policymaking must at the same time be effective, and the public should be well informed about their rights, opportunities and ways how they can participate in local decision-making. The policymaking processes need to be clearly stated well in advance to enable citizens and stakeholder groups to prepare their submissions and interventions. Timeframes with clear entry-points for citizen engagement need to be published to ensure that citizen participation is a meaningful exercise, and the local authorities should provide feedback to those who make

policy proposals or recommendations. The local authority should ensure that the viewpoints and positions of stakeholders are properly reflected and considered when adopting policies, and feedback should provide clearly stated reasons for the decisions to adopt proposals, or not to adopt them. This inclusive approach ensures that policies are relevant, evidence-based, cater to intersectional needs, and are responsive to public demands.

Local authorities also need to employ officials trained in managing public consultations and ensuring that the feedback to citizens is prompt and comprehensive.

Such inclusive approaches ensure that local authorities make better and more relevant decisions that reflect public interests and are well understood by all citizens. In tandem, local communities can develop a sustained capacity to voice their concerns, design solutions and monitor their proper implementation, resulting in improved public trust towards local service delivery.

GENERAL DOMESTIC CONTEXT

The right of citizens to be informed and the obligation of the authorities to inform are enshrined in constitutional norms in the Republic of Moldova, which oblige the public administration authorities to ensure the correct information of citizens on public affairs and on matters of personal interest. Though the national regulatory framework contains provisions that oblige the authorities to consult citizens on different matters, the study "Transparency and accountability in public administration" conducted by the EU technical assistance project on "Public administration reform"[199] highlighted that the provisions of the Law on ensuring transparency in decision-making[200] do not clearly specify the methodology of consultation with citizens on draft regulations and administrative acts that may have social, economic or environmental consequences.

According to the 2020 State Chancellery Report,[201] the most effective public consultation mechanisms used by the public authorities are:

- working meetings / creation of working groups, public debates;
- requesting the opinion of experts in the field / civil society organisations, only in online format, under restrictions imposed by the public health situation related to Covid-19.

The 2019 IDIS "Viitorul" Report on the Transparency of Local Public Administrations in the Republic of Moldova states that public consultation with citizens on key decisions is sporadic and riddled with deficiencies. The results show that 41% of the districts and 58% of the towns and villages monitored as part of the report have not held any public consultations during 2019. When consultations are being organised, the results of these processes are not being communicated to or shared with citizens.[202]

Regarding participatory budgeting, local public authorities have shown a good level of openness in 2019 in terms of drafting the district and local budget. Only a fifth of the districts did not publicly consult the draft budget and just over 40% of cities and villages did not fulfil this legal obligation. Good results can also be seen in the communication of the adopted budget. Almost 80% of the districts and 60% of the towns and villages published the locality's budget on the web. [203] Furthermore, in several localities of the Republic of Moldova (Ialoveni, Budești, Bălți, Chișinău, Călărași, Florești, Ungheni, Cahul, and Cimișlia),[204] the city halls allocate a part of their annual budgets for "Participatory budget" and citizens vote for different projects proposed by the communities to be funded and implemented.

Other forms of citizens' participation – public petitions and local referendums are provided by the Constitution of the Republic of Moldova: Article 52- Right to Lodge Petitions, Article 75- Referendum, and Article 109- Basic principles of local public administration.[205]

3.1. OPEN POLICYMAKING

Open policy making is a broad term describing policy development that is transparent and participatory. It describes a way of making policy and decisions that draw on the latest interactive tools that open up policymaking to different stakeholders in an increasingly digital world. There is no one-way to do open policy making: different policy decisions will need different approaches.

International standards

Open policy making approaches enable governments to reach more informed and better designed policy outcomes through collaborative approaches that draw on a variety of perspectives and expertise. Different digital tools and analytical techniques are deployed so that policy is more evidence-based and data-driven. Models of engagement can include a representative citizens panel, crowdsourcing of policy ideas, or the use of collective intelligence to draw on the knowledge and expertise of a diverse public.

By the use of open data and citizen engagement, more informed, inclusive decisions can be reached, and more innovation applied in both the policymaking process and the resulting policy decisions. To maximise the possible gains of open policy making, local authorities could set up an open policy making team that publishes the data used to inform and shape policy decisions, and trains public officials in working with data to inform policymaking.

Although there are no specific open policy making standards, the following are useful points of reference:

- The **Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207)**[206] provides an international legal guarantee to this right, including the establishment of measures to ensure citizen participation.
- The **Council of Europe's Guidelines for civil participation in political decision making**[207] sets out standards for engaging with citizens and civil society.
- The **Committee of Ministers of the Council of Europe's Recommendation on the participation of citizens in local public life**.[208]
- The **Congress of the Council of Europe's Resolution and Recommendation on Transparency and open government**[209] provide standards and mechanisms to enhance transparency and promote the involvement and participation of citizens in the local public life.
- The **Code of Good Practice for Civil Participation in the Decision-Making Process,** adopted by the Conference of International NGOs of the Council of Europe.[210]
- **Civil Participation in Decision-Making Processes. An Overview of Standards and Practices in Council of Europe Member States**, European Center for Not-for-profit Law (ECNL) for the European Committee on Democracy and Governance.[211]
- The **OECD Recommendation on Open Government**[212] helps to design and implement successful open government strategies and initiatives.
- The **OECD's Guiding Principles**[213] support the development of a culture of openness.
- The **OECD's Focus on Citizens: Public Engagement for Better Policy and Services**[214] explores how to put open policy making into practice.

- The **OECD's Observatory of Public Sector Innovation**[215] lists useful toolkits and resources.
- The **Open Government Partnerships Guide**[216] and **Toolbox**[217] provide an extensive range of support.
- The **OECD Background Document on Public Consultation**[218] defines consultation and provides a summary of consultation tools.
- Both **Australia**[219] **and the UK**[220] have produced useful **toolkits**.
- The Royal Society of the Arts, UK, and the Forum for Ethical AI addressed some of the AI challenges posed by new technology in **Democratising decisions about technology. A toolkit**.[221]

Domestic context

As a member of the Open Government Partnership since 2012, the Republic of Moldova has been using the term *open policymaking* in relation to the open government agenda and the co-creation of national action plans on open government. This agenda brings a whole new culture of openness in government (both at central and local levels).

Open policymaking goes deeper than transparency and public consultation: it brings together the right tools, approaches, and techniques in order to be able to listen to a diverse group of citizens, irrespective of their age, social status, or religion, among others.

In the period 2012–2020, in the Republic of Moldova four Open Government Partnership (OGP) Action Plans were drawn up and implemented. According to the State Chancellery reports, the level of implementation of the plans was quite modest. For instance, 40% of the total planned actions in the 2012-2013 Action Plan, 54.5% of actions planned in the 2016-2018 Action Plan and 45% of actions planned in the 2019-2020 Action Plan were implemented.[222] The following were invoked among the reasons for the non-fulfilment of these actions: insufficient financial means, specifically, for the establishment of information systems and modernisation of public services, limited personnel capacity, and insufficient involvement of certain institutions in the implementation of action plans.

In 2021, the State Chancellery drew up the Concept for the drafting of the Programme for Open Government for 2021-2024 and an Action Plan for its implementation for 2021-2022.[223] In the document, starting from the conclusions of the self-assessment and alternative assessment reports, several priority areas for the coming years have been specified: open data, open contracting, integrity and anti-corruption, open budgets, modernisation of public services, and transparency of expenditures and procurements in the healthcare sector.

Legislation

The Law on Transparency in Decision-Making Processes of 2008 has been modified and amended. Following this, it was supplemented by the Government Decision on Consultation Mechanisms with Civil Society on Decision-Making of 8 August 2016. The current government decision sets the framework for consultation, describing the step-by-step tasks, roles, and responsibilities of the authorities, including deadlines, consultation methods, and transparency of the adoption of decisions. It also recommends that local public administrations update their internal procedures related to the transparency of the decision-making process.[224] Article 16/1 of the Law on Transparency in Decision-Making mentions that a person infringing this law would bear disciplinary and administrative responsibility.

Specific commitments to ensure a participative decision-making process for drafting and promoting draft normative acts and policy documents were part of the National Action Plan on Open Government 2016-2018, along with a commitment on promoting the e-Legislation system as a new public consultation mechanism in order to involve citizens more actively in the drafting of normative acts. However, the completion of this commitment is limited, and the recommendation was to include it in future action plans until the commitment is fulfilled.[225]

Guidelines

There are no specific guidelines related to the implementation of the Law on Transparency in Decision-Making. However, back in 2014, as part of the National Action Plan on Open Government for 2014, one of the commitments was the development of a guide on citizen engagement (fully based on the Law on Transparency in Decision-Making of 2008). It was a civil society-driven commitment and the guide is available as a Google site, which allows it to be updated at any time.[226]

Good practices

An external evaluation report by Social Impact on USAID's Accountability in the Republic of Moldova project[227] reveals several good practices in the field of open policy-making and co-creation between citizens and local authorities. Specific tools, such as needs assessment surveys, problem identification, public consultations, public hearings, monthly newsletters, social media, etc. have become more widely used by local authorities in their interaction with citizens. Increasingly, such engagement is related to producing regional development strategies and planning for local services upgrades (waste and water management, green spaces, libraries, and educational institutions). Under AIM's LEADER activity, for example, 25 local action groups (LAGs) across the Republic of Moldova allowed local CSOs and active citizens to engage in decision-making. Several representatives of local authorities referenced the LEADER model as a flexible, grassroots model that enabled co-operation among communities' public, private, and civic sectors to address local development problems while building the capacity of active citizens and strengthening civic participation.

Through a process of LAG-participant selection, identification of a community priority to address, and provision of funding to address this priority, *"people are getting more confident at the local level and engaging more often in decision-making processes",* noted one implementing partner. *"[LAGs] are important local platforms."*

The same report shows that mayors and local CSOs frequently mentioned local needs assessments as good instruments to engage communities; in fact, over half of mayors interviewed for this report had conducted such assessments (which engage 500 to 1,000 households) to define community development priorities in alignment with citizen needs. Other popular citizen consultation tools experiencing increasing use were public hearings, petitions, and local civil society councils, with good quality public hearings taking place in Borogani, Sărata Veche, Leova, Dubăsari, and Comrat.

3.2. PARTICIPATORY BUDGETING

One of the crowdsourcing forms of citizen participation, participatory budgeting invites citizens and community groups to propose new initiatives or improvements to public services that should be funded by the local authority. Different models include voting by citizens, often online, on different projects. It provides a way for community members to have a direct say in how public money should be spent. It creates opportunities for engaging, educating, and empowering citizens. It can also promote transparency, which in turn can help reduce inefficiency and corruption.

International standards

Participatory budgeting began in Porto Alegre, Brazil, in the late 1980s and has spread worldwide. To ensure that participatory budgeting is inclusive and reaches out to different groups, including minority groups and the disadvantaged, both online and in-person information events need to be organised, and support provided to citizens and different community groups and stakeholders in how to prepare a proposal for consideration. The introduction of gender-sensitive participatory budgeting can increase outreach and accessibility and can be planned in close co-operation with local civic groups with a focus on inclusion.

Although there are no specific standards for implementing participatory budgeting, the following serve as important reference materials:

- The **Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207)**[228] provides an international legal guarantee to this right, including the implementation of measures that would facilitate its exercise.
- The **Congress of the Council of Europe's Resolution on Gender budgeting**[229] recommends to introduce gender budgeting methods in the annual budgets at local and regional levels.
- The **OECD Policy Brief No. 22**[230] provides a series of policy recommendations for how key stakeholders can contribute to successful participatory budgeting.
- The **World Bank's book *Participatory Budgeting***[231] provides an overview of the underlying principles, analyses current practice, and includes seven in-depth case studies.
- The **UN Habitat's 72 Frequently Asked Questions about Participatory Budgeting**[232] explores how to implement participatory budgeting.
- The **World Atlas of Participatory Budgeting**[233] represents the widest compilation of data on the situation of these processes worldwide.
- The **UK's Participatory Budgeting Unit has a useful list of resources and toolkits**.[234]
- The **Subnational Open Budget Survey Questionnaire**[235] of the International Budget Partnership sets out a range of metrics for measuring the openness of local government budgets.
- The **Principles of Public Participation in Fiscal Policy**[236] of the Global Initiative for Fiscal Transparency.

Domestic context

The Republic of Moldova participated in the latest Open Budget Survey (OBS) 2019:[237] OBS is the world's only independent, comparative and fact-based research instrument to assess public access to central government budget information.

One component of the OBS measures public access to information on how the central government raises and spends public resources, scoring each country on a scale of 0 to 100. The Republic of Moldova got 57/100, and the main recommendations are related to improving budget transparency by producing and publishing a comprehensive mid-year review online in a timely manner.

The OBS also assesses formal opportunities offered to the public for meaningful participation in the different stages of the budget process, scoring each country on a scale from 0 to 100. The Republic of Moldova has a public participation score of 4 (out of 100).

While the Republic of Moldova's Ministry of Finance has established public consultations during budget formulation, to further strengthen public participation in the budget process it is important that:

- Mechanisms to monitor budget implementation are piloted;
- Mechanisms during budget formulation are expanding so as to engage any civil society organisation or member of the public who wishes to participate.
- Actively engage with vulnerable and underrepresented communities, directly or through civil society organisations representing them.

At the same time, the Republic of Moldova's Parliament should prioritise allowing members of the public or civil society organisations to testify during its hearings on budget proposals prior to their approval. Additionally, it ought to allow members of the public or civil society organisations to testify during its hearings on the Audit Report.

Back in 2011, the Government of the Republic of Moldova opened up millions of rows of government expenditure data to the public, but the information remained inaccessible to most citizens, because they did not know how to interpret large amounts of data. Raw data is used mostly by experts and policymakers in their research, while most members of the public often do not see the direct benefits of open data and how it affects their daily lives. Participatory budgeting started being more actively implemented as a mechanism for citizen engagement, transparency and accountability during the past years, particularly with the support of donor-funded projects, and evidence shows that more and more communities across the country are piloting it.

For example, through the "My School" project, implemented by Expert-Grup, between 2013 and 2018, 100 schools involved in the project published their detailed budget data and made them available to students, parents, teachers and all those interested.[238]

Legislation

Even though there are no specific regulatory frameworks in place which would regiment the implementation of participatory budgeting in the Republic of Moldova, it fits within the existing framework and does not require additional legal adjustments.

More specifically, Law No. 436 of 28 December 2006 on Local Public Administration[239] stipulates that citizens should be consulted: (1) about issues of primary importance for the community (it can be done through a referendum), (2) about the local/specific issues that preoccupy most of the population (through consultations, public hearings, and discussions/debates, under the

existent legal framework), (3) on the decisions of the local councils. Article 43 (v) of the same law stipulates that public consultations will be organised for draft decisions of local interest that can have an economic, environmental or social impact, as well as on other problems of importance to the local population.

At the local level, several public authorities approved their own regulatory framework for participatory budgeting. In 2017 at the initiative of several activists, the Chișinău City Hall approved a regulation on the civil budget in the municipality, and in August 2020 a revised version was approved.[240] It establishes a general and procedural framework for the submission, evaluation, selection, implementation and monitoring of projects of public interest, initiated by citizens and financed from the municipal budget through the civil budget of Chișinău. Later, in December 2020 the Leova City Hall also approved regulation regarding participatory budgeting.[241]

Guidelines

A methodology of participatory budgeting was developed in 2020 by IDIS "Viitorul"[242]. It provides practical guidance on how to prepare the participatory budget, how to achieve it and what to look for when implementing voted initiatives.

Although there are not many guidelines on participatory budgeting, there is a general acknowledgment that the quality of life and comfort of the ordinary citizens depends on the quality of budgeting processes (planning, public consultations, implementation, monitoring, and evaluation), be it at central or local levels. Given the importance of the local budget document, its development, preparation, and execution should be done ensuring maximum transparency.

All local authorities should make their draft budgets publicly available for consultation, by publishing them on the municipal websites, posting them on other local platforms, organising local discussions/debates and presentations. Another important aspect for local authorities is to publish the updated budget document and indicate the feedback received during the consultations. This will generate more trust and more engagement of the population in the long run. It is equally important to publish reports about the execution of the budgets (i.e. progress reports).

Good practices

According to an external evaluation report by Social Impact on USAID's Accountability in the Republic of Moldova project,243 "five years ago, there was no discussion about participatory budgeting; now local organisations in 25 cities [are] work[ing] with local governments to learn how to do budgeting together." There are several examples of participatory budgeting initiatives across the country: i.e. the mayor's office of Cahul launched a call for proposals for the local budget 2019, aiming to improve citizen engagement in decision-making processes.244 Another good example is the portal "Buget Participativ" (bugetareparticipativa.viitorul.org) by IDIS "Viitorul", which provides both guidelines and examples of good local practices.

3.3. PUBLIC CONSULTATION

Public consultation is a formal, often legally required, process for citizens and other stakeholders to give their views at key stages of the policy process. It can be both online and offline, or a mixture of both. Its main goals are to improve efficiency, transparency, and public involvement in important decisions. Done in a timely and effective way, public consultation can increase the quality of decision making, improve cost-effectiveness, render more sustainable policy solutions, and generate greater public trust in decision-making.

International standards

Different forms of consultation range from informing and consulting citizens to crowdsourcing ideas for policies, deliberative debates and assemblies where citizens can develop potential policy solutions to inform decision-making, and collaboration where social enterprises, civil society organisations or expert groups either participate in the design or delivery of services.

To improve both the inclusiveness and efficiency of public consultations, each local authority should aim to have a unit that takes responsibility for coordinating the guidelines and procedures for implementing public consultations, and for ensuring that they are in accordance with the prevailing legislation. Such a unit could also train officers in different departments on running public consultations. In the case of smaller local authorities with more limited resources, a unit in the central government's responsible ministry, such as a ministry of regional development, could provide such training and support on coordinating and updating guidance and procedures for public consultations at the local level.

Although there are no specific standards for implementing public consultations, the following are useful reference materials:

- The **Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207)**[245] provides an international legal guarantee to this right, including the establishment of measures to ensure citizen participation, such as consultative processes and local referendums.
- The **OECD Background Document on Public Consultation**[246] defines consultation and provides a summary of consultation tools.
- The **Council of Europe's Guidelines for civil participation in political decision making**[247] set out the different types of civil participation in decision making.
- The **Committee of Ministers of the Council of Europe's Recommendation on the participation of citizens in local public life**.[248]
- The **OECD Recommendation of the Council on Open Government**[249] supports initiatives for designing and delivering public policies and services, in an open and inclusive manner.
- **Reaching Out: Guidelines on Consultation for Public Sector Bodies** sets out good practice in the Republic of Ireland.[250]

Domestic context

Citizens' trust in administration is one of the core aspects of democracy. It depends on people's personal experiences of fairness of administration, but also on opportunities to take part in and influence decision-making processes. The quality of citizen engagement depends hugely on the quality of public administration and the capacity of public servants to engage with citizens

meaningfully (e.g. on public policy reforms, innovations in different sectors, strategies, etc.). The key pillars of this new engagement paradigm are: being citizen-centred, open, transparent, and collaborative; acting as an enabler of innovation and technology, and being accountable to citizens. Citizen consultation processes should comply with both national legislations dealing with this issue and internationally recommended practices.

The platform www.particip.gov.md was developed to increase the efficiency of participants in the process of elaboration and public consultation of normative acts and to provide a mechanism for real-time monitoring and administration of consultation processes. On this platform, public authorities publish normative acts for public consultation.

The 2019 IDIS "Viitorul" Report on the Transparency of Local Public Administrations in the Republic of Moldova states that public consultation with citizens on key decisions is sporadic and riddled with deficiencies. The results show that 41% of the districts and 58% of the towns and villages monitored as part of the report have not held any public consultations during 2019. When consultations are being organised, the results of these processes are not being communicated to or shared with citizens.[251]

Legislation

According to Article 3 (4) of the Law on Transparency in Decision-Making, public authorities will consult citizens, associations, and concerned parties about drafts of legislative and administrative acts. The law is applicable to both central and local authorities, including local public administration authorities: local councils (of village, commune, town, municipality, district significance), mayors of villages (communes), towns (municipalities), chairpersons of districts, decentralised public services, and institutions of local significance.

The Government Decision No. 188 of 3 April 2012 on the Official Websites of Public Administration Authorities requires an increase in the level of transparency of public authorities and access to public information through official websites, and establishes mandatory minimum requirements for the official websites of public authorities. Moreover, individual ministries' websites should have a page dedicated to decisional transparency, where draft laws are published for consultation. From the date of their publication, there is a deadline of 10-15 days for comments on draft legislation.

At local level, Law No. 436 on Local Public Administration regulates transparency in decision-making (Article 8). Law No. 100 on Normative Acts provide rules for public authorities to consult with interested authorities, agencies and civil society representatives on draft laws. All draft laws and decisions of the government are subject to mandatory anti-corruption expert examination by the National Anti-Corruption Centre.

Article 20 of the Law on Integrity (2017) stipulates the requirements for ensuring transparency in the decision-making process. The rules related to the procedures for ensuring transparency in the decision-making process of the public entity and the derogations from such rules are set forth in the Parliament's Rules of Procedure, the Law No. 239/2008 on Transparency in the Decision-Making Process, and the normative acts of the government.

Guidelines

Although some government agencies provide online guidelines on transparency in the decision-making process or develop internal rules concerning the provision of transparency in the decision-making process, there is not a government manual outlining the participatory process in the review of draft laws and policies.

In line with this, one of the commitments of the National Action Plan on Open Government for 2014 related to the elaboration of guidelines that could help any public servant follow the main stages of the decision-making preparation processes based on the Law on Transparency in Decision-Making (2008). Given that there is no one-size-fits-all model for citizen engagement, these guidelines also serve as a concise and practical reference tool for the successful implementation of citizen engagement by both central and local public administration authorities. The guide provides nine stages of the decision-making preparation process, guiding principles for each stage and what this means in practical terms. [252]

Good practices

As part of the project "Implementation of the Principles of Open Government in the Inclusion of Citizens in the Decision-Making Process in the Republic of Moldova",[253] an online interactive Citizen Engagement Guide[254] was developed to support the Government of the Republic of Moldova in increasing the transparency of decision-making. The guide provides a set of tools and templates for civil servants in implementing the Law on Transparency in Decision-Making.

The Law on Transparency of Decision-Making contains principles and procedures to be followed in the daily work of public authorities, and contributes to improving the quality of decisions drafted and approved, the accountability of authorities to citizens, and to increasing the support of citizens for the policies approved and actions undertaken. The Government Decision on the public consultation mechanism with civil society in the decision-making process provides more detailed and practical information for citizen engagement, including the procedures for ensuring transparency in the process of drafting and adopting decisions.

3.4. PUBLIC PETITIONS

Public petitions enable citizens to raise issues with public authorities. The number of signatures collected can indicate the level of support for the issues raised. They aim either to raise the profile of the issue or to demand that specific actions be taken. Petitions are often inspired by civil society activity, but they are increasingly submitted through official, often online, platforms whereby petitions with a defined number of signatures will receive an official response.

International standards

It is important that the official response is provided promptly, and that clear and well-argued reasons are provided for the decisions taken or not taken in response to a public petition.

For public petitions to become a tool that resonates with the wider public, local authorities and civil society organisations should raise awareness of the nature of petitions and the procedures for gathering signatures and submissions of the petitions in their municipalities. Clarity should also be given on the status of electronic signatures to ensure that there is full transparency about the conditions that a public petition must satisfy to receive an official response.

The following international conventions and standards relate to public petitions:

- The **Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207)**[255] provides an international legal basis for this right, including the establishment of measures to ensure citizen participation, such as public petitions.
- The **OECD's Promise and Problems of e-Democracy**[256] provides information on the value and challenges of establishing an online petitioning platform.

Domestic context

Article 52, *Right to Lodge Petitions*,[257] of the Constitution of the Republic of Moldova stipulates that: *"(1) All citizens shall be entitled to refer to public authorities by way of petitions formulated only on behalf of the signatories. (2) Legally established organisations shall have the right to lodge petitions exclusively on behalf of the bodies they represent."*

In the past few years, citizens of the Republic of Moldova have started to use this right more often. In 2018, the number of petitions examined by the State Chancellery[258] was 4,047, of which 598 were in electronic form. This is 185 more petitions than in 2017 and 608 more than in 2016. Data shows that the most common areas of issues which citizens wanted to address via petitions were pensions, recovery, and indexation, while most petitions concerned health services, law enforcement bodies, and central and local public administration authorities. Accordingly, 2,555 petitions were redirected to the relevant ministries and 908 to local authorities. Various subdivisions of the State Chancellery examined in total 998 petitions in 2018. The official websites of the Government of the Republic of Moldova (gov.md) and of the State Chancellery (cancelaria.gov.md) have been updated to meet the need of permanently informing citizens about the examination of petitions and hearing results.

Legislation

The Administrative Code of the Republic of Moldova No. 116/2018, as well as the Law on Petitioning No. 190/1994 (Article 5), repealed on 1 April 2019, indicate that a petition should be submitted in electronic form and in compliance with all requirements, including the digital signature (Article 5 (2)).

Experts in the field consider it necessary to amend the Law on Access to Information and the Administrative Code in order to exclude any confusions related to requests for information and petitions, specifically in order to avoid the situations where requests for information are examined based on the requirements for a petition; also, in order to avoid the use of digital signature in cases of electronically submitted requests for information. According to the IDIS "Viitorul" report for 2019,[259] there are cases where public authorities refuse to provide a response to electronic requests for information, motivating that these are petitions, and accordingly need to be submitted following all legal requirements.

Web portals of local public administration authorities ought to provide the possibility to submit an online petition, as well as requests for information, while observing the procedures for petitions and legislation on access to information.

Guidelines

An administrative procedure may be initiated by a petition or it may be part of an already initiated administrative procedure. The petition can be: a) submitted in writing to the public authority or sent by post or fax; b) transmitted in electronic form; c) submitted verbally, being recorded in a report. An official body to which petitions are addressed has the obligation to receive and immediately register the petition or other documents submitted in the administrative procedure. The public authority does not have the right to refuse to receive petitions solely on the grounds that it does not consider itself competent or because it considers the petition to be inadmissible or unfounded (Article 73 of the Administrative Code).[260]

If the petition falls within the competence of another public authority, the original of the petition shall be sent to the competent public authority within 5 working days from the date of registration of the petition, of which the petitioner is informed (Article 74 of the Administrative Code).[261]

The administrative procedure is finalised by performing an administrative operation or by issuing an individual administrative act, respectively concluding an administrative contract.

Good practices

One good example of ways citizens are being guided on how to submit petitions is the portal of the Public Services Agency (asp.gov.md/petitii). It provides step-by-step information about how to receive and review electronic applications addressed to the Public Services Agency.

An example of an electronic system of petitions is the Information System for the electronic management of petitions in the Parliament (https://petitii.parlament.md/). Its aim is to increase the efficiency of the organisation, development and monitoring of the petition management processes. The webpage of the Parliament of the Republic of Moldova offers the possibility to file petitions online. However, in the case of petitions in electronic form, the petition must comply with the legal requirements set out for an electronic document, including the electronic signature.

According to Promo-LEX reports on monitoring the degree of transparency of level-two local authorities and of the Autonomous Territorial Unit of Găgăuzia (ATUG) throughout 2017-2019, an improvement concerning access to information of public interest through the petition process has been attested. Thus, while in 2017 replies were given within the legal deadlines to only 56% of petitions submitted by the Promo-LEX monitors, in 2020 the respective proportion was 80%.[262]

3.5. LOCAL REFERENDUMS

Local referendums, which are widespread in Council of Europe member States, provide a mechanism for local authorities to sound out the citizens' will on concrete issues that directly affect their everyday lives or for citizens to propose an initiative that they would like to see implemented, or even to block a planned decision.[263]

International standards

When initiated by citizens or groups of stakeholders, a referendum might form part of a campaign against a perceived harmful impact on their livelihoods or the natural environment, such as a plan for a new industrial park, a tunnel to re-route cars under a river or some other urban development.

Where there is both legislation providing for local referendums, and guidelines on how to hold referendums, there is usually a minimum percentage of the eligible voting population whose signatures are required to initiate a referendum. In some cases, the mayor or elected council can also decide to formulate a question for a local referendum. Depending on the legislative framework, the referendums may be binding on the local government or consultative, where the final decision rests with the elected council.

It is important that the legislation and procedures are clear, so that citizens know the framework within which the results of a referendum will be acted upon, and what response is required from the executive or elected council of the local authority. As with public petitions, it is important to raise awareness of the procedures for gathering signatures and the status of electronic signatures to ensure that there is full transparency about the conditions that need to be met before a referendum will take place. Transparency on political party financing should also be applied to the funding of a referendum campaign, including ceilings on expenditure, and an independent audit of funding and expenditure.

The following international conventions and standards relate to local referendums:

- The **European Commission for democracy through law (Venice commission), code of good practice on referendums**[264] – provides the principles of holding referendums and practical advice on how to implement those principles.
- **The Council of Europe Committee of Ministers' Declaration on the Code of Good Practice on Referendums**[265] – invites public authorities in the member states to be guided by the Code of Good Practice on Referendums.
- The **Congress of Local and Regional Authorities, Resolution 472 (2021) on Holding referendums at local level**[266] – provides guidelines for member States to use local referendums responsibly and according to Council of Europe standards,
- **UN Sustainable Development Goal 16: Peace, Justice and Strong Institutions; Target 16.7:**[267] Ensure responsive, inclusive, participatory and representative decision-making at all levels.

Domestic context

A referendum is a direct form of exercising national sovereignty. According to the Constitution of the Republic of Moldova, the most important issues of the society and state can be settled through a referendum. Moreover, consulting citizens on local problems of special interest is a core principle of local public administration.

In the Republic of Moldova, local referendums can be initiated for two reasons: consulting citizens regarding topics of special interest for the locality or the dismissal of mayors. The Decision is considered adopted through a local referendum if the majority of the participating citizens are in favour. At the same time, the Decision regarding the dismissal of a mayor is considered adopted through a local referendum if an equal or greater number of voters than during the election of the mayor, but not less than half of the total number of voters who participated at the referendum, voted in favour of it. On one hand, this legal provision safeguards the mandate of a mayor elected

via a majority vote, while on the other hand, allows for the dismissal of the mayor if a sufficient number of votes is gathered.

As of 2012, seven local referendums were held in total.[268] All were held with the purpose of dismissing the sitting mayor. Unfortunately, no referendum was initiated to debate issues of special interest for the locality, and which are of the local public administrative bodies' competence. In all seven referendums, the respective mayors were not dismissed. Five referendums were declared invalid due to the fact that less than a third of the voters participated, one was suspended, and in one case the number of votes was not sufficient to approve the Decision of dismissal.

Three of the seven referendums were initiated through Local Council Decisions, and four were initiated by citizens (10% of the number of citizens with the right to vote who reside in the respective locality). Also, according to the legislation, a local referendum may be initiated by the mayor of the locality, except for the purpose of dismissing the mayor, and by ATU Găgăuzia.

Thus, in the Republic of Moldova, local referendums are not often used.

Legislation

The requirements for the initiation, organisation and conduct of a local referendum are regulated by the Constitution of the Republic of Moldova, the Electoral Code, the Law on Local Public Administration and other relevant normative acts.

The Constitution expressly establishes the role of the referendum in a democratic society, as well as stresses the importance of the principle of consulting the citizens on issues of special importance for the locality (Art. 75 and 109).[269] The Electoral Code contains a separate chapter dedicated to the regulation of local referendums (Chapter 14, Art. 185-212).[270] It specifies the issues that can be voted upon at a referendum, the responsible electoral bodies and the procedures for the initiation and organisation of the referendum, as well as for vote counting and confirmation of results. The Law on Local Public Administration determines the powers of the local public administration regarding the initiation of the referendum (Art. 8, 14, 29).[271] Moreover, certain aspects concerning organisation and conduct of the referendum are regulated by instructions and regulations of the Central Electoral Commission.

The procedure for convening local referendums through popular initiative involves setting up initiative groups which must collect signatures from the members of the community in favour of starting the procedures. The legal norm provides that signatures from at least 10% of the total number of citizens with the right to vote who have their domicile in the respective administrative-territorial unit must be collected. Also, the law specifies that when the initiative to start a local referendum comes from citizens, an initiative group must be formed, comprising at least 20 citizens with the right to vote who have their domicile in the respective administrative-territorial unit.

Still, according to the Promo-LEX referendum observation mission which was held on 19 November 2017, "there is a multitude of aspects that are not explicitly regulated and leave room for interpretation, for instance: the insufficiently regulated status of the participant at a referendum, including the absence of a definition thereof in the Electoral Code; the restrictive approach regarding the categories of participants at a referendum; the interpretive nature of the concept of election campaign in the context of a referendum…".[272]

The suggested additions to the legal framework concern namely the normative act of the Central Electoral Commission which must describe more explicitly the method of application of the legal provisions in the case of organisation and conduct of a local referendum. Furthermore, Promo-

LEX observers have stressed the importance of approving a separate act that would regulate the local referendum campaign: *Instruction on the mode of participation in a local referendum election campaign*.[273] Such an Instruction presently is approved only for a referendum held at the national level. In addition, both Instructions must take into account the need to include independent candidates in the list of participants at a referendum.

Guidelines

The *Code of Good Practices on Referendums*, adopted by the Council for Democratic Elections at the 19th meeting (Venice, 16 December 2006) and the Venice Commission at its 70th plenary session (Venice, 16-17 March 2007)[274] is the reference document reflecting the principles of the European electoral heritage on the subject of referendums. At the national level, in the Republic of Moldova there are no guidelines on how to organise referendums, including at the local level, and/or regarding participation to them.

The Central Electoral Commission, as a specialised body in electoral matters, draws up and publishes, in the context of general local, parliamentary or presidential elections, guidelines for the members of lower-level electoral bodies, voters, observers, journalists, etc.[275] However, there are no guidelines that would reflect the special nature of the organisation, conduct and the behaviour of various actors in the election campaign for local referendums.

The analysis of the legal and normative framework carried out by Promo-LEX emphasizes the fact that, specifically at the level of implementation of legislation, certain clarifications are needed for all participants in the process: electoral bodies, participants, voters, observers, other interested parties. To this end, the electoral authority must draw up and make available guidelines to participants that would facilitate the understanding of the procedures and make the process more predictable and legitimate. The issues to be clarified, according to the observers, are as follows: registration of the participants at the referendum, the issue of voters who have domicile and residence simultaneously in the context of a referendum, the use of the certificate for the right to vote.[276]

Good practices

At the local level, in the last decade, in the Republic of Moldova seven local referendums were held, of which four were started at the initiative of citizens. For comparison, not even one referendum at the national level of those three conducted in accordance with the provisions of the Electoral Code were started by citizens.

The most recent example when the will of more than 10% of the citizens eligible to vote got materialised into a local referendum took place in Chișinău municipality. The group that initiated the procedure collected 75,442 valid signatures and initiated the process of organising the referendum of 19 November 2017 on the dismissal of the Chișinău General Mayor.[277]

Although local referendums are a good example of citizens' involvement at the local level, the absence of referendums organised for the purpose of consultation on issues of special interest for the locality shows that citizens' participation in political life is not yet sufficiently developed in the Republic of Moldova. Direct involvement of citizens in decision-making processes remains a challenge hindering social development and cohesion.

Chapter 4

CORRUPTION RISKS

INTRODUCTION

In the absence of ethics and public accountability, corruption and malpractice are allowed to thrive, which undermines the foundations of a peaceful, prosperous, and just society.

Corruption is a major challenge to democracy and the rule of law. It results in decisions and resource allocation that do not reflect the interests of the public and concentrates political power in the hands of the few. It in turn causes political leaders and institutions to lose legitimacy and public trust, which reduces their ability to govern.

Corruption poses a great threat to sustainable development, increasing poverty and inequality. Consequently, strengthening local self-government and their active participation in the fight against corruption is one of the essential preconditions for democratic development. Corruption at the local level is a specific phenomenon and requires a specific approach tailored to municipalities.

Corruption also causes local and regional authorities to be inefficient and ineffective in exercising their duties. It results in decisions being made not on the basis of what is in the interests of society at large, but what is in the self-interest of decision-makers and their associates. It leads to public money being misspent, with contracts being awarded to inferior providers and budgets being misallocated. At its worst, it enables public officials to misappropriate money and resources, using their position to get rich to the cost of those they have a duty to serve.

One of the major challenges for societies worldwide is the development of accountable and transparent systems that provide effective public services. Because of their proximity to the public, local governments are well positioned to deal with this challenge and to fight and prevent corruption at local level.

Under the current trend of decentralisation, local authorities are given not only resources, but also the discretionary power to use those resources. Thus, local governments have the potential to either reduce corruption and improve public services at the local level or, conversely, increase corruption and worsen the quality-of-service delivered.

Corruption can also result in public officials being appointed on the basis of favouritism rather than merit, meaning that local and regional authorities do not have access to the brightest and best talent. This in turn creates a fertile environment for further corruption and reduces even more the efficiency and effectiveness of the administration.

Inefficient and ineffective organisations, staffed by individuals who gained their positions on the basis of criteria other than merit, result in poor-quality public services and infrastructure, thereby eroding public trust and the legitimacy of public institutions. More importantly, however, they result in significant human costs, including poverty, deaths, illness, and restricted life chances.

Finally, corruption harms economic development. It leads to public money being directed to uncompetitive businesses, rather than those that offer more innovative or cheaper products and services. Uncompetitive markets, coupled with the negative impact of corruption on the quality of local public services and infrastructure, means that businesses do not have a solid foundation (of staff, security, investment, etc.) on which to build. In the end, this may cause private and international investors to avoid investing in an area.

GENERAL DOMESTIC CONTEXT

During the last decade, the anti-corruption legal framework has been reset to a great extent. A new system aiming to build integrity in the public sector has been enforced and several anti-corruption policy documents, such as the National Anti-Corruption Strategy 2011-2016[278], National Integrity Anti-Corruption Strategy 2017-2020[279], the 2030 Development Agenda[280], and the EU-RM Association Agreement[281] have shaped the agenda of the legislative, executive and judiciary, leading to substantive progress in building an integrity framework in the public sector.

In 2017, a new framework Integrity Law[282] was adopted for building, strengthening and controlling integrity in the public sector. The Law on Institutional Integrity Assessment[283], reinforced also in 2017, provides the purpose, methods, procedures and legal effects of the institutional integrity assessment of public entities. This Law includes the integrity testing mechanism, which was reshaped after the constitutional contesting in 2015 of the initial version of the law. Now, the law includes judiciary approval for the integrity testing stage of the assessment.

According to the national legislation, the professional integrity of the public agents is derived from the political integrity climate and the institutional integrity. The corruption manifestations described in the subsequent chapters, such as bribery, conflict of interests, embezzlement, fraud, and so forth, are affecting the integrity climate of the local authorities. Between 2017 and 2020 the public sector followed the Action Plan set for the Pillar 2 of the National Integrity and Anti-Corruption Strategy for 2017-2020:[284] *Government, public sector and local public administration*. The local level authorities had to implement Local Anti-Corruption Action Plans[285] in 34 districts.

To assess the progress, the second National Integrity and Anti-corruption Strategy Impact Monitoring Survey[286] was published in February 2020, revealing an integrated indicator for the General objective no. 3 of the Strategy: *Ethics and Integrity in the Public, Private and Non-Government Sectors*, which registered 5.3 points in 2019 and 5.4 in 2017, on an increasing scale from 1 to 10. Mostly, the population and business community have appreciated with average marks the integrity of the public agents and institutions from different fields. Still, the local administration registered slightly higher scores regarding its transparency in decision-making, public finance management, procurement and services, at 25% compared to 16% at the central level and 20% for the legislative and executive powers. Also, the town halls/ local councils (first level local public authorities) have the highest confidence share at 22% (being marked with *Enough* or *Very much confidence*) among the public and private institutions in 2019 (26% in 2017). Concurrently, the second level local public administration scored 11% in 2019 and 15% in 2017, and the Government even less – 12% in 2019 and 9% in 2017. According to the same survey, first level local public administration is considered less corrupt with 31% (36% in 2017) of answers by the population as *Not at all / slightly corrupt* and 21% for the second level of the local administration. The same study reveals that 6% of the respondents have offered informal payments when accessing services provided by the local public administration.

The institutional integrity assessment methodology[287] applied to assess and appreciate the integrity level within the public sector institutions, including at the local level,[288] distinguishes between internal and external functions and activities of the institutions that trigger corruption acts. Therefore, the management of information, finances, goods, services and human resources on the internal side, and the collection of payments and taxes, contract awarding, investment decisions, permits issuing and control on the external side, are the functions that often create vulnerabilities to corruption.

The lack of standard operating procedures within the local authorities combined with the personal and political interests of the locally elected persons, result in corruption deeds involving members of public agents' families, or politically driven relationships. In 2020, the National Anti-

Corruption Centre has investigated[289] 63 cases involving local public authorities, including 23 mayors/ deputy-mayors, 3 public agents from local authorities and 2 secretaries of the local councils.

Lately, there are increasingly more criminal investigations on the management of resources related to the creation/provision of services, infrastructure projects (water, sanitation, lighting) and there is an escalating demand for transparency for these activities by the population, media and CSOs. Another issue still pending on the agenda of the national authorities is the transparent management and criminal investigation of the external funds misuse. Although the fraud, embezzlement and misuse of administrative resources during the electoral campaigns are incriminated and there is a modest progress in criminal cases statistics, there is no integrated database on the allocation of external funds across the local administrative units, nor sound criminal cases were registered involving public officials.

4.1. BRIBERY

Bribery is the promise, offer, acceptance or solicitation of a personal advantage (e.g. gift, loan, reward, favour, etc.) in exchange for an unethical or illegal action. Bribery results in decisions not being taken in the public interest, which reduces public trust in institutions and leads to poor public services.

International standards

The following international conventions and standards relate to bribery:

- The **OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions**[290] establishes legally binding standards to criminalise bribery of foreign public officials in international business transactions. It is the first and only international anti-corruption instrument focused on the 'supply side' of the bribery transaction.
- The **International Anti-Bribery Standard 37001**[291] specifies a series of measures to help organisations prevent, detect and address bribery.
- The **OECD Good Practice Guidance on Internal Controls, Ethics, and Compliance**[292] which supports the convention on combating bribery.

Domestic context

An impact assessment report of the National Integrity and Anti-Corruption Strategy 2017-2020 indicates that the estimated volume of bribes accounted for in 2019 was 516 million Moldovan Lei (MDL): MDL 319.4 million from the general population and MDL 197.3 million from the economic units. In 2017 the same indicator accounted for MDL 405 million.[293]

The same study shows that the general incidence of informal payments is relatively low. According to the survey data, 7% of the respondents from the general population and 4.7% of the business units have recognised that they have offered informal payments during 2019. The average number of times a person from the general population offered a bribe is 5.4 times per year (as compared to 3.7 in 2017); in case of a business unit, it is 3.5 times (as compared to 6.1 in 2017).

Data shows that the maximum amount of the offered bribe has also decreased, as compared to previous years: the value of informal payments varied between MDL 50 and MDL 20,000 both in

the case of business units and general population. In 2017 these amounts varied between MDL 100 and MDL 500,000 in the case of business units, and between MDL 50 and MDL 8,000 in the case of general population.

Overall, the general population, as per the above assessment, have become less tolerant towards corruption, and now consider any corruption situation to be unacceptable, by stating that they would not agree to give bribes, regardless of the situation and personal benefit.

When it comes to attitude change among the general population vis-à-vis reporting of an act of bribery, there is a positive change: about 87% of the survey respondents stated that in encountering such situations they would most probably/certainly report the corruption acts to the anti-corruption agencies through different means.

Legislation

Article 43 of the Integrity Law no. 82[294] establishes disciplinary, civil, administrative or criminal liability for corruption offences. The next articles no. 44, 45 and 46 list all corruption acts, corruption connected acts, and corruptible deeds. Public agents, including foreign ones, private individuals, and corporate entities shall bear liability, pursuant to the provisions of the Criminal Code, for the commission of corruption acts. The legislation of the Republic of Moldova currently prohibits, among others, active corruption, bribe giving, corruption of voters, passive corruption, bribe taking, receiving illicit remuneration for carrying out works related to population servicing; traffic of influence, event manipulation, arranged bets, illegal financing of political parties or electoral campaigns, violation of financial means' administration within political parties or electoral funds, conflict of interest, abetting personal assets and interests, illicit enrichment, embezzlement of public patrimony, embezzlement of means from foreign funds, use of means from internal loans or foreign funds contrary to their destination.[295]

Currently, regulations on gifts in public administration are stipulated in the following normative acts: Law No. 25 on the Code of Conduct of the Civil Servant of 22 February 2008; Law on Integrity No. 82 of 25 May 2017, and the Government Decision on the legal regime of gifts No. 116 of 26 February 2020.

Additionally, Law No. 325 (2013) on Institutional Integrity Assessment sets forth the regulatory purpose, principles, means, methods, procedures, and legal effects of institutional integrity in the context of public entities. Article 2. of this law stipulates that *"The assessment of institutional integrity is carried out for the purpose of: (a) enhancing the accountability of the leaders of public entities and organisations in order to develop, maintain, and strengthen the climate of professional integrity within the public entities; (b) ensuring professional integrity of public agents, preventing and combating corruption within the public entities; (c) the identification, assessment, and elimination of corruption risks within public entities; (d) increasing the number of tip-offs relating to manifestations of corruption admitted by public agencies."*

Article 16 of the Law on Integrity No. 82 of 25 May 2017 sets forth the legal regime of gifts. It stipulates that the leaders of public entities, as well as public agents, are prohibited from soliciting or accepting gifts (goods, services, favours, invitations, or any other advantages). Such requests or acceptance of inadmissible gifts constitute acts of corruption within the meaning of criminal legislation and of the provisions of Chapter VI of the current law.

Additionally, the Government Decision No. 116/2020 on the Legal Regime of Gifts stipulates that the total allowed value of the gifts offered out of politeness or on the occasion of certain protocol actions amounts to a maximum value of MDL 1,000 for one year. The current decision stipulates that a commission for recording and assessing gifts must be established within all public entities,

in which public agents operate in the framework of Article 3 of the Law of Integrity No. 82/2017. The Government Decision No.134 of 22 February 2013 is repealed by the Government Decision No. 116/2020.[296]

The National Anti-Corruption Centre has launched the "reLAWed" online platform with the aim to provide people with the possibility to get involved in the process of improving the legal framework, take action, identify and notify/communicate about deficient or interpretable normative acts, which have generated or may generate acts of corruption, abuse, or other illegalities.[297]

Example of case law

Back in 2019, the Mayor of Floreni, a village in the Anenii Noi district, along with a local councillor, were detained by National Anti-Corruption Centre officers and anti-corruption prosecutors in two criminal cases, based on passive corruption and peddling. The Mayor and the local councillor were suspected of having demanded from a local businessman MDL 350,000 to legalise his possession of a piece of land he had been using for several years. According to the file on this case, the suspects were planning to influence members of the local council to issue a decision to lease the land, of which the businessman would then abusively take full possession. In order to give him legitimate rights over the land, the two are said to have proposed to the businessman to lease him the lot and then to give him the possibility to buy it. The money was sent in three instalments, under the control of National Anti-Corruption Centre: MDL 200,000, MDL 10,000 and MDL 140,000. Two cases were initiated for passive corruption and for influence peddling.[298]

4.2. CONFLICT OF INTEREST

A conflict of interest is where an individual is in a position to derive personal benefits from the actions or decisions they take in an official capacity. Conflicts of interest – either if they are actual, perceived, or potential –[299] result in decisions that are, or are considered to be, unfair and self-interested. This reduces public trust in institutions and results in worse outcomes for the public.

International standards

- The **Committee of Ministers of the Council of Europe's Recommendation on Codes of Conduct for Public Officials**[300] and the **European Code of Conduct for all Persons Involved in Local and Regional Governance**[301] cover the general issues normally thought to be necessary for avoiding such conflicts.
- The **Congress of the Council of Europe's Resolution and Recommendation on Conflicts of interest at local and regional level**[302] propose a set of measures to mitigate the risks of conflict of interest and ensure that it is identified at an early stage.
- The **OECD Guidelines for Managing Conflict of Interest in the Public Service**[303] identify principles and standards for developing policies.
- The **Congress of the Council of Europe's Resolution and Recommendation on Making public procurement transparent at local and regional levels**[304] and the **OECD Checklist for Enhancing Integrity in Public Procurement**[305] provide guidance for enhancing transparency and for promoting integrity in procurement.

Conflict of interest is also covered by the following international standards and guidelines:

- The **United Nations Convention against Corruption**[306] is the only legally binding universal anti-corruption instrument.
- It is supported by this **Technical Guide to the Convention**.[307]
- The **Council of Europe's Criminal Law Convention on Corruption (ETS No. 173)**[308] aims to co-ordinate criminalisation of corrupt practices and to improve international co-operation in the prosecution of offences.
- The **Council of Europe's Civil Law Convention on Corruption (ETS No. 174)**[309] defines common international rules for effective remedies for persons affected by corruption.
- The **European Union's Convention against Corruption Involving Officials**[310] aims to fight corruption involving officials from the EU or its Member States.
- The **OECD Recommendation on Public Integrity**[311] shifts the focus from ad hoc integrity policies to a context dependent, behavioural, risk-based approach with an emphasis on cultivating a culture of integrity across the whole of society.

DOMESTIC CONTEXT

According to the art.10 of the Integrity Law no.82 of 25.05.2017[312], the climate of institutional integrity, among others, is cultivated by observing the legal regime of conflicts of interest.

The Law no. 133 of 17.06.2016 on the declaration of assets and personal interests, in art.11 establishes the general principles of avoiding conflicts of interest, which must be observed by the subjects of the declaration, in the process of fulfilling their duties:

- serving the public interest with impartiality and objectivity;
- ensuring transparency and public control of the activity;
- individual responsibility and personal example.

At the same time, the Integrity Law no. 82 of 25.05.2017[313], in art.14 provides the obligations of the public agent and the head of the public entity related to the identification and treatment of conflicts of interest.

The control of conflicts of interest is carried out by the National Integrity Authority (ANI) in accordance with the provisions of the legislation regulating the NIA statute and of the legislation regarding the declaration and control of assets and personal interests.

Among the most recent developments in the regulation of the conflicts of interests is the establishment of an e-declaration system by the National Integrity Authority which became mandatory in January 2018, together with a mechanism for filing in civil servants' assets and conflict of interest statements. Compared to 2017, 2018 saw the number of declarations double thanks to the e-declaration system. Due to the e-Integrity information system, 65 232 declarations of assets and personal interests of civil servants were submitted in 2021, of which 6 052 statements were repetitive. The number of subjects to the declaration of assets and personal interests registered in the system was 57,028 in 2021.[314]

The public agents must submit their electronic declarations annually through the on-line service available on the official website of the National Integrity Authority (ani.md) using the electronic signature issued for free, through the Special Telecommunications Centre, in the manner established by the Government.[315]

LEGISLATION

The legal framework providing the legal regime of conflicts of interest includes:

- Law no. 133 of 17.06.2016 on the declaration of assets and personal interests;[316]
- Law no. 132 of 17.06.2016 on the National Integrity Authority;[317]
- Integrity Law no. 82 of 25.05.2017.[318]

According to Law no. 133 of 17.06.2016 on declaring assets and personal interests, a conflict of interest arises when the subject of the declaration has a personal interest that influences or could influence the impartial and objective exercise of his/her obligations and responsibilities under the law.

The Law no. 133 of 17.06.2016 on the declaration of assets and personal interests states in art. 13 the following categories of conflicts of interest:

- Potential - in this case the subject of the declaration has the obligation to declare a potential conflict of interest, and the hierarchically superior manager advises on avoiding the occurrence of a real conflict as an effect of the potential one.
- Real - in case of a real conflict of interest, until the adoption of a decision on the case, the subject of the declaration is obliged to inform the head or the hierarchically superior body about the real conflict of interest and to refrain from adopting a decision on the case. At the same time, art. 14 of the Law regulates in an exhaustive way the method for solving the real conflict of interests.
- After the fact - in this case, the head of the entity will inform the National Integrity Authority about the situations in which the persons working in the public organisation that she or he leads have admitted conflicts of interest, in order to sanction them.

As for the legal effect of acts issued, adopted or concluded with the violation of the provisions on conflict of interest, the Law (art. 15) establishes that they are annulled unless their annulment would harm the public interest.

Failure to declare and resolve the conflict of interests is sanctioned as a contravention (art. 313 of the Contravention Code of the Republic of Moldova, Law no. 218 of 24.10.2008), and the exercise of duties in the public sector in a conflict of interest is sanctioned criminally (art. 326 of the Criminal Code of the Republic of Moldova, Law no. 985 of 18.04.2002).

Example of case law

According to the NIA Analytical Study "Judicial practice on contravention cases of conflict of interest"[319] published in 2019: "in the first year of activity of integrity inspectors within the National Integrity Authority, 109 contravention cases were issued, of which 77 of contravention lawsuits, and 25 contravention files were sent to the court". At the same time, according to the same Study "10 acts of finding concerning the observance of the conflicts of interests' legal regime, published on the website of the National Integrity Authority, remained final as they were not contested within 15 days from their receipt, 3 of them were completed by termination of the control procedure because no violation of the conflicts of interest' legal regime was found by the integrity inspectors. Out of the total published acts, 4 were initiated by the National Integrity Commission, subsequently being examined in control procedures by NIA".

4.3. EMBEZZLEMENT

Embezzlement is the illegal appropriation of money, goods or other resources by an official to whom they have been entrusted. This results in the loss of public money, which reduces the capacity of authorities to act in the interests of the public, resulting in worse services and outcomes for people. It also undermines public trust in government.

International standards

As one type of corruption, embezzlement is covered by the following international standards and guidelines:

- The **United Nations Convention against Corruption**[320] is the only legally binding universal anti-corruption instrument.
- It is supported by this **Technical Guide to the Convention**.[321]
- The **Council of Europe's Criminal Law Convention on Corruption (ETS No. 173)**[322] aims to co-ordinate criminalisation of corrupt practices and to improve international co-operation in the prosecution of offences.
- The **Council of Europe's Civil Law Convention on Corruption (ETS No. 174)**[323] defines common international rules for effective remedies for persons affected by corruption.
- The **European Union's Convention against Corruption Involving Officials**[324] aims to fight corruption involving officials from the EU or its Member States.

Domestic context

The Republic of Moldova has known several cases in which ghost companies were used to stole domestic budget funds, 'laundered dirty money', embezzled budget money from public procurement, stole from the budget under the cover of litigations, etc.

An IMF Report from March 2020[325] points out the lack of progress in recovering fraudulently-acquired assets in the Republic of Moldova, specifically from perpetrators involved in the 'grand theft' of US$ 1 billion from the banking system in the Republic of Moldova between 2012 and 2014. *"Little progress has been made to recover assets stolen during the 2014 fraud when several money-laundering operations facilitated the theft of around 12% of GDP from the Republic of Moldova's largest banks"*, says the report.

With reference to the local level, according to National Anti-Corruption Centre data in the field of prevention and combating corruption in the local public administration, in the first nine months of 2018, 60 criminal cases were started.[326] Out of these, two criminal cases (3%) refer to the embezzlement of foreign property and specifically embezzlement of financial means in the process of performance of construction and repair works.

Legislation

The Criminal Code of the Republic of Moldova (Law No. 985-XV of 18 April 2002) currently sets the provisions and sanctions related to embezzlement.

The misappropriation of foreign property (i.e. the misappropriation of the assets of another person) entrusted to the administration of an individual is punishable by a fine of up to 850 conventional units[327] or by imprisonment for up to three years, in both cases with or without

deprivation of the right to hold certain positions or to practice certain activities for a term of up to three years. Where committed by use of an official position, as per Article 191(d), embezzlement is punishable by a fine in the amount of 850 to 1,350 conventional units or by imprisonment for two to six years, in both cases with the deprivation of the right to hold certain positions or to practice certain activities for up to five years.

Example of case law

In February 2020, Chișinău City Hall received the results of an independent external audit on the repair of the Ștefan cel Mare boulevard. Data from the report showed that EUR 7 million had been laundered during the repair of this boulevard with acts of embezzlement reported too. The mayor of Chișinău stated that a series of legal procedures on this matter have been taken. The repair of the Ștefan cel Mare boulevard started in 2015, as part of a project aimed at restoring six streets in the capital. Although the works on the boulevard were finished in 2017, the certificate of acceptance was not signed as deficiencies were discovered, with the asphalt being badly deformed in several places.[328]

4.4. FRAUD

Fraud is the use of deceit in order to gain an unfair or illegal advantage. Fraud erodes public trust in government and reduces the capacity of government to act. It often results in the loss of public money, which harms public services and the ability of governments to address the public's needs and aspirations.

International standards

As one type of corruption, fraud is covered by the following international standards and guidelines:

- The **United Nations Convention against Corruption**[329] is the only legally binding universal anti-corruption instrument.
- It is supported by this **Technical Guide to the Convention**.[330]
- The **Council of Europe's Criminal Law Convention on Corruption (ETS No. 173)**[331] aims to co-ordinate criminalisation of corrupt practices and to improve international co-operation in the prosecution of offences.
- The **Council of Europe's Civil Law Convention on Corruption (ETS No. 174)**[332] defines common international rules for effective remedies for persons affected by corruption.
- The **European Union's Convention against Corruption Involving Officials**[333] aims to fight corruption involving officials from the EU or its Member States.

Domestic context

During the past couple of years, the Republic of Moldova has been severely affected by what was called the "theft of the century". In late 2014 a huge corruption case hit the Republic of Moldova, the infamous "one-billion-dollar bank fraud". The scandal, involving three of the largest banks of the country, Banca de Economii, Banca Socială and Unibank, holding approximately one third of

the country's assets at the time, put the fragile economic and banking system of the Republic of Moldova severely at risk, robbing the country of at least one billion dollars, around 15% of its annual GDP. Expert analysis and investigations showed that this operation was conducted in a highly coordinated, structured way and was made possible thanks to the support of key financial and political institutions. Experts argue that little or no progress has been made in recovering the assets from the bank fraud. There is no indication as to whether the Republic of Moldova requested the mutual legal assistance of foreign jurisdictions on starting the recovery of the stolen assets.[334]

Legislation

The Criminal Code of the Republic of Moldova (Law No. 985-XV of 18 April 2002) currently sets the provisions and sanctions related to fraud, through Chapters VI and X.

Fraud is punishable by a fine between 550 and 850 conventional units, by community service ranging from 120 up to 240 hours, or by imprisonment for up to three years. When committed by use of an official position, fraud is punishable by a fine in the amount of 850 to 1,350 conventional units or by imprisonment for two to six years, in both cases with the deprivation of the right to hold certain positions or to practice certain activities for up to three years. Point (4) of the same Article states that "the actions mentioned in paragraphs (1) - (3) committed on a large scale shall be punished by imprisonment from 7 to 10 years with the deprivation of the right to hold certain positions or to practice specific activities for up to 5 years".

Example of case law

In May 2020, a criminal case against V.P. was opened with charges including the creation of an organised criminal group, extortion, and fraud. The Republic of Moldova will seek his extradition from the United States. As former head of the Democratic Party, V.P. fled the country in June 2019 after being forced out from Parliament as part of a government shakeup. He has been linked to what is known as the 'theft of the century,' a scandal involving the disappearance of more than US$ 1 billion – totalling nearly one-eighth of the Republic of Moldova's GDP – from the country's largest banks between 2012 and 2014.

The charges against V.P. based on "indisputable evidence" from the international investigative firm Kroll. The report documented how companies and individuals with connections to a 28-year-old businessman took control of three major banks during the period of the scandal, in which money was funnelled overseas through dubious loans, shell companies, asset swaps, and shareholder deals. The businessman I.S., then allegedly issued massive loans to his companies during a three-day period in November 2014, according to the report, which was later leaked and published by an opposition lawmaker. I.S., who is currently believed to be in Israel, was charged in 2016 and later convicted of money laundering and embezzlement in connection with the theft. Also in 2016, the former Prime Minister V.F. was found guilty of taking bribes related to the theft. He was released early in December 2019 after serving three years in prison. Prosecutors said that through I.S., V.P. allegedly withdrew US$ 100 million from the former state bank Banca de Economii. The funds were subsequently covered from the reserves of the National Bank in order to buy the insurance company Asito, a hotel, a fashion business, and a personal jet.[335]

4.5. NEPOTISM

Nepotism is the exploitation of an official position to unfairly benefit a family member or friend (e.g. through giving a job or favour). Nepotism, and other forms of favouritism, results in local and regional authorities not having access to the brightest and best talent. This in turn creates a fertile environment for further corruption and reduces the efficiency and effectiveness of the administration.

International standards

As one type of corruption, nepotism is covered by the following international standards and guidelines:

- The **United Nations Convention against Corruption**[336] is the only legally binding universal anti-corruption instrument.
- It is supported by this **Technical Guide to the Convention**.[337]
- The **Council of Europe's Criminal Law Convention on Corruption (ETS No. 173)**[338] aims to co-ordinate criminalisation of corrupt practices and to improve international co-operation in the prosecution of offences.
- The **Council of Europe's Civil Law Convention on Corruption (ETS No. 174)**[339] defines common international rules for effective remedies for persons affected by corruption.
- The **Congress of the Council of Europe's Resolution and Recommendation on Fighting nepotism within local and regional authorities**[340] sets out standards for good practice and presents strategies for preventing corruption in the recruitment procedures of European local and regional governments.
- The **European Union's Convention against Corruption Involving Officials**[341] aims to fight corruption involving officials from the EU or its Member States.

Domestic context

Clientelism and nepotism tend to be persistent in the Republic of Moldova year after year. The most negative effect of maintaining clientelism and nepotism in the country is endemic corruption.

The most prevalent form of corruption in the Republic of Moldova, according to experts, is favouritism in public procurement (83%), followed by nepotism in appointing public officials (48%) and conflicts of interests (48%). Experts also believe that there is a high concern amongst citizens about the prevalence of favouritism in public procurement, thus reflecting a much higher awareness of the public regarding institutional distortions in the Republic of Moldova.[342] A Transparency International report states that *"the level of tolerance for corruption is very high. The public considers that corruption and nepotism are culturally bound and cannot be reduced."*[343]

The same report suggests two important measures that might help the country address the issue of nepotism:

- Elaboration of a mechanism of declaration of incomes and ownership for high-ranking public officers and their relatives while undertaking and being freed from the position.
- Reduction of staff in public sector, and the de-politicisation of the government, by introducing an obligatory system of professional promotion on the basis of performance and competitiveness.

Legislation

The provision of any support, preferences, privileges or creation of advantages to some individuals or legal entities in decision-making undertaken during the exercise of the position of public agent, whenever these actions are carried out for the benefit of the relatives is called nepotism. The Law on Integrity No. 82 of 25 May 2017[344], introduced a policy for the Avoidance of favouritism through Article 15. Therefore, for the purpose of ensuring the serving for the public interest with impartiality and objectivity, the public agents shall avoid favouritism in their professional activity.

The public agent shall not admit favouritism in his/her professional activity, shall observe the obligations in line with the provisions set forth in art.13 of the same law, whenever the situation leading to favouritism meets the elements of a conflict of interest. The head of the public entity, of the superior public entity shall not admit intentionally favouritism practices in the professional activity of the public agents, should report the cases of favouritism to the National Anti-Corruption Centre.

The Law on Assets and Personal Interest Declaration No.133 of 17 June 2016, as well as the legislation on access to information and other normative acts do foresee the publication of key data, including information about public service enrolment and leadership of public organisations, allowing citizens to monitor and to inform accordingly the National Integrity Authority of any misconduct.

According to the Evaluation Study on the Impact of National Integrity and Anti-Corruption Strategy 2017,[345] hiring and promoting public servants at work is usually done on the basis of merit (according to 84% of public officials) and based on the evaluation of employee performance (72%). However, one in five public officials states that favouritism (relationships with the right people) and political affiliation are often practiced. The level of knowledge of the legal/illegal situations regarding the employment and promotion of public agents based on merit and professional integrity is very low. Thus, only 7% of public officials provided correct answers to all possible situations of corruption in the process of hiring and promoting public officials on the basis of merit and professional integrity.

Example of case law

The Chișinău Court of Appeal found the head of the Culture Department of the Ocnița District Council guilty as per Article 313 (1) of the Contravention Code. Being subject to the declaration of assets and personal interests, by virtue of her position, she failed to declare the conflict of interest in relationship with her daughter, a subordinate employee exercising the function of artist-instrumentalist/violinist of the folk music orchestra of the Ocnița District Council.

A sanction was imposed in the form of a fine of MDL 2250, with the deprivation of the right to hold a position in a public organisation for a period of three months. She appealed against the decision of the Chișinău Court of Appeal and on 14 May 2019, the court rejected her appeal as it was deemed groundless.[346]

4.6. MISUSE OF ADMINISTRATIVE RESOURCES IN ELECTION CAMPAIGNS

The misuse of administrative resources[347] during the electoral processes involves unlawful or abusive behaviour on the part of politicians and civil servants, who use human, financial, material, *in natura* and other immaterial resources to influence the outcome of elections, and thus undermine the fairness of the election itself.

International standards

As one type of corruption, the misuse of administrative resources in election campaigns is covered by the following international standards and guidelines:

- The **United Nations International Covenant on Civil and Political Rights**[348] (Articles 19, 21, 22 and 25), further elaborated in paragraph 25 of the Human Rights Committee's General Comment No. 25.[349]
- The **Council of Europe's European Convention on Human Rights (ETS No. 5)**, in particular Articles 10 and 11, and Article 3 of the **Protocol No. 1** to the Convention **(ETS No. 9)**.[350]
- The **United Nations Convention against Corruption**,[351] in particular Articles 7, 17 and 19.
- The **Council of Europe's Criminal Law Convention on Corruption (ETS No. 173)**.[352]
- The **Council of Europe's Civil Law Convention on Corruption (ETS No. 174)**.[353]

The misuse of administrative resources during electoral processes is covered by the following international standards and guidelines:

- The **Council of Europe's Venice Commission and the OSCE/ODIHR Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources during Electoral Processes**[354] specify a series of measures and laws to be adopted in that regard.
- The **Council of Europe's Venice Commission report on the Misuse of Administrative Resources during Electoral Processes**.[355]
- The **Congress of the Council of Europe's Resolution on the Misuse of Administrative Resources during Electoral Processes: the role of local and regional elected representatives and public officials** and its Explanatory Memorandum.[356]
- The **Congress of the Council of Europe's Resolution on Preventing corruption and promoting public ethics at local and regional levels** and its Explanatory Memorandum.[357]
- The **Congress of the Council of Europe's Checklist** for compliance with international standards and good practices preventing misuse of administrative resources during electoral processes at local and regional level.[358]
- The **Congress of the Council of Europe's booklet on *Administrative Resources and Fair Elections*** provides practical examples and guidance.[359]

Domestic context

In 2017, amendments to the Electoral Code of the Republic of Moldova changed the electoral system from fully proportional to a mixed one. Under the new system, 50 Members of the Parliament are elected through proportional representation from closed party lists in one national constituency and 51 Members of the Parliament in single member constituencies

through the first-past-the-post system. In order to win seats in the national constituency, a party must receive at least 6% of the valid votes, while an electoral block needs at least 8%. ODIHR and the European Commission for Democracy through Law (Venice Commission) have consistently recommended lowering the thresholds.[360]

The Social Impact report[361] on the *Accountability in Moldova* USAID-funded project (February 2020) states that *"voters in the Republic of Moldova have little confidence that the political parties represent their interests."* According to the Public Opinion Barometer in 2019, over 50% of citizens of the Republic of Moldova believed that no political party or civic formation represented their interests, and only 49% reported voting during the 2019 parliamentary elections.

The latest local elections in the Republic of Moldova took place in October 2019, and according to a Promo-LEX report,[362] 898 mayors' offices and 11,580 offices of first-level and second-level local councillors (100 fewer than in 2015) were to be taken up in the last general local elections. The term of office for local elected officials is four years.

Overall, the pre-election period was characterised by dominant themes such as the oligarchisation/capture of the state and the efficient management of administrative-territorial units, as opposed to geopolitical issues and the pro-Russian or pro-EU vectors of discourse prevalent in previous local elections.

In the context of general local elections and new parliamentary elections, considerable attention was given to several issues concerning the misuse of administrative resources – for example, the use of public assets and/or public office for electoral purposes. At least eight cases have been reported in this category, three of which covered the ACUM electoral bloc, two – the PSRM, the other two – the PDM and one case – the PCRM. Electoral assemblies organised at state institutions with their employees during their working hours remain to be a persistent practice of electoral candidates. During the electoral period, at least 152 cases of candidates holding such meetings were reported.[363]

In its report from October 2019[364] the ENEMO International Election Observation Mission raised concerns regarding allegations of misuse of administrative resources, namely the involvement of mayors' office workers, as well as independent candidates using their official positions to influence the election campaign. Another concern was the use of mayoral property and resources for campaigning.

Legislation

The legislation in the Republic of Moldova on the use of administrative resources during the election period, and election campaigning in particular, is deficient according to a Promo-LEX report.[365] Even though the legal framework has been modified, the problem of explicit and full regulation of the use of administrative resources still remains unsolved.

Article 52 (7) of the Electoral Code on Electoral Campaign[366] stipulates that candidates may not use public means and goods (administrative resources) during electoral campaigns, while public authorities/institutions and other related institutions may not send/grant public goods or other benefits to candidates unless a contract is concluded to this end, providing equal terms to all candidates. According to Article 22 (2) of the Central Electoral Commission General Duties, the Central Electoral Commission has the right to access the information held by public authorities at all levels, including access personal data, in compliance with the legislation on personal data protection.

The Criminal Code of the Republic of Moldova[367] has two important articles in this regard: Article 181 (1), *Corruption of Voters*, which is punishable by a fine ranging from 500 to 850 conventional

units or by imprisonment between 1 to 5 years; and Article 181 (2), *Illegal financing of political parties or electoral campaigns, violation of the management of financial means of political parties or electoral funds*, which stipulates the penalties applied for the falsification of reports on the financial management of political parties and/or of reports on the financing of electoral campaigns with the intention to substitute or hide the identity of the donors.

According to experts, the legal framework should provide a clear jurisdiction in case of electoral complaints on the misuse of administrative resources both by candidates and third parties, to provide an effective enforcement mechanism that would prevent potential violation.[368]

Example of case law

On 6 June 2019, a candidate submitted a statement (*zayavleniye*) to the Găgăuzia Central Electoral Commission and to the Ministry of Education on misuse of administrative resources. The complainant posited that the Head of the Education Department obliged all school headmasters to report on the number of personnel that participated in the elections of the Governor (Bashkan) and threatened with dire consequences, including job dismissal, for those who would not vote on 30 June in the Elections of the Governor of Găgăuzia.[369]

According to the Electoral Code (Article 66), a complaint may be filed on an action or inaction of a candidate. Since the complainant's statement concerned the actions of the Head of the Education Department, the Central Electoral Commission found it inadmissible. However, according to the Electoral Code, if the subject of a complaint does not fall within competences of an electoral organ to which it was submitted, the complaint should be forwarded to a competent organ within two calendar days (Article 67.5). The misuse of administrative resources and assistance in it are criminal offences punishable by a fine ranging from 4,000 to 6,000 conventional units[57] (MDL 200,00 to 300,000), and three years of imprisonment, along with deprivation of holding certain offices and of engaging in certain activities for two to five years (Criminal Code of the Republic of Moldova, Article 181 (2)).[370]

4.7. EXTORTION

Extortion is the use of coercion to obtain money, goods, services, or some other advantage from an individual or institution. Beyond the damage it does to the victim, extortion reduces public trust in government and can discourage business growth and investment in the area.

International standards

As one type of corruption, extortion is covered by the following international standards and guidelines:

- The United Nations Convention against Corruption[371] is the only legally binding universal anti-corruption instrument.
- It is supported by this Technical Guide to the Convention.[372]
- The Council of Europe's Criminal Law Convention on Corruption (ETS No. 173)[373] aims to co-ordinate criminalisation of corrupt practices and improve international co-operation in the prosecution of offences.

- The Council of Europe's Civil Law Convention on Corruption (ETS No. 174)[374] defines common international rules for effective remedies for persons affected by corruption.
- The European Union's Convention against Corruption Involving Officials[375] aims to fight corruption involving officials from the EU or its Member States.

Domestic context

In the Monitoring Survey on the National Integrity and Anti-Corruption Strategy Impact conducted in 2019,[376] participants were asked to answer the question whether, during the last 12 months, they encountered any corruption cases coming from public agents. The share of answers provided by the population and businesses that have encountered any of the mentioned cases does not exceed 6% in the study. Extortion of funds (obtaining money by force) was indicated by 2% of the respondents among the general population and by 1% among businesses. It can be observed that there have been few cases and, in comparison with the previous study, there has been a decrease in the share of affirmative answers for all the answer options (*Misappropriation and fraud*, *Use of working time for personal purposes*, *Requesting favours of any form*, *favouritism, bribe, abuse of power, traffic of influence*).

According to the National Anti-Corruption Centre, in 2018, there were a total of 700 corruption acts, of which 42 involved mayors, and the most affected communities were Chișinău, Bălți, UTA Găgăuzia, Cahul, Criuleni, and Soroca.

Legislation

The following articles from the Criminal Code of the Republic of Moldova set the legal framework in this field:

- Article 324 (1) on Passive corruption;
- Article 325 (1) on Active Corruption;
- Article 326 (1) on Influence peddling;
- Article 327 (1) on Abuse of power or official misconduct, and;
- Article 328 (1) on Excessive power or exceeding work attributions.

Example of case law

Three officials, including a mayor, a former mayor and a local councillor from Gotesti, Cantemir district, allegedly extorted almost MDL 600,000 from an economic agent. According to the National Anti-Corruption Centre, such action was aimed at favouring a decision of the Local Council in exchange of money, which would in turn, favour the businessman to receive around MDL 6 million for the renovation of the local Youth Centre. At the same time, National Anti-Corruption Centre representatives specify that the three officials would have claimed the equivalent of 10% of the MDA 6 million in several instalments, the amount that the Local Council was to allocate to the winning company, in order to include this on the agenda of the draft decision. Currently, two people are detained in prison and under criminal investigation, and another under criminal investigation without being detained. All three risk up to 10 years in prison, a fine and deprivation of the right to hold public office.[377]

4.8. CLIENTELISM

Clientelism is the promise and acceptance of a personal benefit (e.g. gift, loan, reward, favour, job, etc.) in exchange for political support. It is often based on an unequal relationship between a patron (e.g. political leader) and client (e.g. voter). Clientelism results in decisions that reflect the special interests of a few, rather than the wider public interest, leading to unfair and unjust outcomes.

International standards

As one type of corruption, clientelism is covered by the following international standards and guidelines:

- The **United Nations Convention against Corruption**[378] is the only legally binding universal anti-corruption instrument.
- It is supported by this **Technical Guide to the Convention**.[379]
- The **Council of Europe's Criminal Law Convention on Corruption (ETS No. 173)**[380] aims to co-ordinate criminalisation of corrupt practices and to improve international co-operation in the prosecution of offences.
- The **Council of Europe's Civil Law Convention on Corruption (ETS No. 174)**[381] defines common international rules for effective remedies for persons affected by corruption.
- The **Congress of the Council of Europe's Resolution and Recommendation on Fighting nepotism within local and regional authorities**[382] sets out standards for good practice and presents strategies for preventing corruption in the recruitment procedures of European local and regional governments.
- The **European Union's Convention against Corruption Involving Officials**[383] aims to fight corruption involving officials from the EU or its Member States.

Domestic context

Clientelist ties in the Republic of Moldova are most often based on party affiliations.[384]A regional report from 2018 on party organisation and clientelism in transition countries,[385] indicates that parties in the Republic of Moldova appear to be the more clientelism-oriented among the three investigated countries (Georgia, the Republic of Moldova and Ukraine). The Republic of Moldova's Democratic Party is the most clientelist party out of the 15 investigated in the study. Additionally, in the Republic of Moldova, the territorial coverage of the parties is the main driver for clientelism. The same study indicates that if public funding is a source for clientelism, there should be mechanisms to control the amount of financial resources allocated to parties and how political parties spend them. Like Georgia and Ukraine, which were also investigated in the above-mentioned study, the Republic of Moldova lacks the scrutiny of public funding to parties, and this may be one reason for which clientelism keeps flourishing.

Today, clientelism is still a risk in the following situations:

- The mixed electoral system voted by the parliament on 20 July 2017. The new voting system provides for 50 deputies to be elected on proportional party lists, while another 51 will be elected in uninominal constituencies (only the candidate who wins the greatest number of votes in an uninominal constituency will make it to Parliament). Political analysts and civil society have long argued that uninominal voting would encourage clientelism, nepotism, and the allocation of local resources based on clientelism.

- Political loyalty/clientelism determines the selection of civil servants at the higher levels of government.
- The political affiliation and party migration of local elected officials in order to increase the chances of the respective municipality receiving more funding from national investment funds. The new Law on Local Public Finances, implemented in 2015, has considerably reduced the political criteria in the distribution of investment funds from national level to municipal level. Before 2015, Members of the Parliament usually proposed amendments to the annual state budget law so that localities that are politically-friendly to the incumbents get more public resources and the opposition gets less.[386] Another strong reason for clientelism and the political migration of mayors is to avoid the selective pressure of representatives from opposition parties; criminal investigations have started many times without solid evidence. The ratio of mayors from opposition parties against which criminal investigations have been initiated, compared with the ones from the ruling parties, is instructive.[387]

Legislation

One of the most significant examples of clientelism in the Republic of Moldova is related to the allocation procedures for public resources from national investment funds to first-level local governments. Public resources are used as a 'lure' to ensure independent candidates' loyalty toward the political majority.

There were cases where mayors from other political parties were 'forced' to join the ruling party, having been promised the chance to benefit from capital investments. Currently, there are efforts in place to address the above issues through Law No. 68 of 5 April 2012, on the Approval of the National Decentralisation Strategy, and the Action Plan on the Implementation of the National Decentralisation Strategy for the years 2012-2018.

Given that clientelism is seen as a dominant trend when it comes to the allocation of funds to local authorities – particularly capital investments – it is important that the following core principles outlined in the World Bank's guidebook to capital investments for local governments[388] are being referred to by local authorities in negotiations with national authorities and in drafting their local budgets:

- Local government does not spend its limited resources on 'frivolous' investment in projects that should not be government business (for example, speculative commercial real estate);
- All needs are compared objectively;
- Prudent long-term fiscal policy is exercised;
- Innovative solutions at project level are considered;
- Individuals have effective channels through which to express their preferences.

Example of case law

Political clientelism undermines the economic development of the Republic of Moldova by deviating public resources from their most efficient usages. Political affiliation matters when the funds for investment are distributed through various national investment funds. There have been attempts to demonstrate such violations back in 2012-2013, with the help of open data, when the BOOST database on public spending was launched.[389] It allowed citizens to see budget allocations per each district (raion), and it was clear that the district a former Prime Minister was originally from, Hâncești, was the one with the largest budget in 2014.[390] However, these efforts have not yet led to any prosecutions.

4.9. PATRONAGE

Patronage is the use of an official position to appoint a person in a public office based on favouritism, often in exchange of political support. It can be closely linked to the concepts of clientelism, cronyism and nepotism. Patronage results in decisions being made not on the basis of what is in the interests of society at large, but what is in the self-interests of the decision maker and their associates. It violates the boundaries of legitimate political influence and the principles of merit, and leads to public money being misspent.

International standards

As one type of corruption, patronage is covered by the following international standards and guidelines:

- The **United Nations Convention against Corruption**[391] is the only legally binding universal anti-corruption instrument.
- It is supported by this **Technical Guide to the Convention**.[392]
- The **Council of Europe's Criminal Law Convention on Corruption (ETS No. 173)**[393] aims to co-ordinate criminalisation of corrupt practices and to improve international co-operation in the prosecution of offences.
- The **Council of Europe's Civil Law Convention on Corruption (ETS No. 174)**[394] defines common international rules for effective remedies for persons affected by corruption.
- The **Congress of the Council of Europe's Resolution and Recommendation on Fighting nepotism within local and regional authorities**[395] sets out standards for good practice and presents strategies for preventing corruption in the recruitment procedures of European local and regional governments.
- The **European Union's Convention against Corruption Involving Officials**[396] aims to fight corruption involving officials from the EU or its Member States.

Since the misuse of administrative resources during electoral processes is the most widespread manner to use patronage as a form of corruption, the following international standards are of relevance:

- The **Congress of the Council of Europe's Resolution on the Misuse of Administrative Resources during Electoral Processes: The Role of Local and Regional Elected Representatives and Public Officials**[397] provides international standards and best practices to tackle the misuse of administrative resources.
- **Joint Guidelines of the Venice Commission and OSCE/ODHIR for Preventing and Responding to the Misuse of Administrative Resources during Electoral Processes**[398] aim to assist decision makers in passing laws and initiating concrete measures to prevent misuse of administrative resources.

Domestic context

Reporters wrote on anticoruptie.md that 2018 was marked by several controversial appointments and promotions to senior positions in certain major state institutions of the country. Some of them raised questions about the criteria for promotion. Experts qualified these appointments as political decisions, and explained that the government had merely rotated some people from one job to another.[399]

The Survey on Anti-Corruption Strategy Impact Monitoring from 2019 measured public agents' perceptions with regards to measures needed to be taken to eliminate favouritism situations in the public sector. Of those surveyed, 62% (69% in 2017) thought that the superior hierarchical leader should be announced, 37% (41% in 2017) considered that cases of favouritism should be reported to the National Anti-Corruption Centre, and 32% in both surveys advocate for denunciation at the National Integrity Authority. Survey results show that most public agents declare that the requirements of the institutional integrity are followed in the institutions they work in. Among the main causes of non-declaration of conflicts of interest by public agents are the lack of knowledge of the procedure (47% in 2019, 54% in 2017) and the gain of personal benefits (financial, material or other) (33% in 2019, 42% in 2017).

The results of the survey indicate that public agents have a high level of knowledge regarding legal/illegal situations in the regime of conflict of interests and the non-admission of favouritism: about 87% (77% in 2017) of public agents offered correct answers to all possible situations of corruption concerning the regime of conflict of interests and non-admission of favouritism.[400]

Legislation

The Law on Integrity No. 82/2017 provides a definition for favouritism, which consists in the "support provided by the public agent whilst exercising his function to the natural persons or legal entities when solving their problems, regardless of the motives, which is not provided for by normative acts and does not meet the elements of a conflict of interests or the elements of an offence".

Article 15 on Avoidance of favouritism stipulates the following:

- For the purpose of serving public interest with impartiality and objectivity, favouritism practices in public entities are inadmissible.
- A public agent is obliged to reject favouritism in his/her professional activity;
- The head of the public entity is obliged:
  - *to not knowingly admit favouritism practices in the professional activity of the public agents from the entity he/she leads;*
  - *to report cases of favouritism to the National Anti-Corruption Centre.*

Example of case law

According to the website "Anticorruption" (anticoruptie.md), S.R. was favoured into the position of Minister of Health, Labour and Social Protection despite being suspected of numerous illegalities in its previous position. From November 2017 to April 2018, S.R. served as acting General Mayor of a large municipality, having been appointed by the former interim Mayor. During the term of office, S.R. was accused of having committed abuses and rigging public tenders.[401] In May 2018, during the electoral campaign for local elections, several representatives of civil society accused the Constituency Electoral Council of Chișinău and the Central Electoral Commission of violating the provisions of the Law on Access to Information, as well as other laws, as they admitted S.R. in the race for the General Mayor's office. Over 2,000 falsified signatures, with no identity data, of deceased persons, as well as other errors, were found in the subscription lists of the candidate. For S.R. to enter the electoral contest, five deceased persons had "signed", as well as 430 people who do not live in the relevant community and 898 who failed to indicate their ID details.[402]

CONCLUSION

Local government plays a critical role in sustaining the well-being of citizens, delivering services, and providing the first point of contact between people and public administration. The proximity with citizens can help ensure that public authorities and services are truly responsive and accountable, attuned to people's needs and aspirations, improving people's lives and strengthening their trust and confidence in local institutions.

Local governments are taking important strides in improving the legal framework towards more open and inclusive decision-making. It is essential to involve citizens and other residents in decision-making from a very early stage in the policymaking process. Local governments should translate laws and policies on open government into practice and increase their efforts to ensure transparency, accountability, and the meaningful participation of citizens in policy- and decision-making. As well as being important qualities of local democracy, transparency and civic participation can help deliver effective public services, combat and prevent corruption, and build citizens' trust in government.

The mechanisms outlined in this handbook present a variety of ways in which local and regional authorities can prevent corruption, reduce its risks, and develop effective and accountable institutions at all levels. Other reforms, such as the protection of whistle-blowers and support for independent media and civil society, are equally critical to building open government, public ethics and accountability.

The Congress of Local and Regional Authorities of the Council of Europe is committed to supporting local governments in their efforts to improve the quality of local democracy, prevent corruption, raise standards of public ethics and accountability, and promote transparency and citizen participation.

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This handbook aims to support local and regional authorities in their efforts to make communities more open, ethical and citizen-oriented. It provides easy access to relevant international standards and domestic context, legislation, case law, guidelines and examples of good practice relating to public ethics, accountability, transparency, and citizen participation. It also includes a concise assessment of the most prevalent corruption risks.

Effective application of tools to promote transparency and citizen participation, coupled with stronger accountability and public ethics, can help to drive out corruption and government malpractice. They help governments to draw on the skills, knowledge and experience of citizens to enable more informed decision-making, early identification of negative impacts of prospective policies, greater ownership of the resulting decisions, and the delivery of more effective public services.

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