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*Promovarea democrației și a drepturilor omului*

# Report

MONITORING  
ON APPOINTMENT/TERMINATION  
OF APPOINTMENTS  
TO PUBLIC OFFICES IN 2017



Chisinau, 2018



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# MONITORING REPORT ON APPOINTMENT/TERMINATION OF APPOINTMENTS TO PUBLIC OFFICES IN 2017

*Report developed for Promo-LEX Association  
by Mariana Kalughin, independent expert*

Chisinau, 2018

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# PRELIMINARY CONSIDERATIONS: METHODOLOGICAL GUIDELINES

In the period of 26.07.2016-25.07.2019, the Promo-LEX Association is implementing the Democracy, Transparency and Responsibility Project within the Monitoring Democratic Processes Programme. In order to promote active citizenship and increase political accountability of authorities and other political actors, the project provides for such activities as monitoring, raising public awareness, advocacy on issues related to political and governance processes.

This Report has been drafted following the monitoring activities, initiated by the Promo-LEX Association in 2017 with reference to 2016, and presents a continuation of the Monitoring Report „On the appointment / termination of appointments to public offices in 2016”<sup>1</sup> (Previous report). With regard to the monitored period, the year 2017, we maintain the same methodological approaches, which are adjusted to the current monitoring objectives.

The monitoring activity aims at analyzing and evaluating the practices applied by the subjects to monitoring (Moldovan President, Parliament, Government, institutions in their subordination) in ensuring compliance with the legal framework for the appointment and termination of appointments to public offices.

The subject to monitoring is the mode of appointing / terminating public offices. By public office we mean: public positions; senior management positions; leading positions.

To achieve this goal, the following objectives are pursued::

- analysis and evaluation of the legal framework relevant to the purpose of monitoring (depending on developments of 2017 – subordinated laws and normative acts in the version in force until 01.01.2018, if these were not analyzed in the previous Report);
- analysis and evaluation of the institutional framework relevant to the purpose of monitoring (depending on the developments of 2017 – competition committees established and functional, if these were not analyzed in the previous Report);
- analysis and evaluation of the level of implementation of legal provisions relevant to the purpose of monitoring;
- analysis and evaluation of the goal - guaranteeing the principles of lawfulness, independence, integrity and transparency, through the legal and institutional framework, as well as through the existing practices;
- monitoring the implementation of the recommendations made in the previous Report<sup>2</sup> and developing, starting with the developments of 2017, a set of recommendations to improve the legal provisions and practices.

Thus, monitoring remains multi-faceted and encompasses, starting with the objectives, four dimensions: the legal framework; the institutional framework; implementation; outcome.

Starting from the developments of 2017 (appointment / termination of office), we monitored in particular the positions occupied / terminated on the basis of the decisions of the President of Moldova, Parliament, Government, namely:

1 Monitoring Report: On the appointment / termination of appointments to public offices in 2016, Chisinau, 2017 <https://promolex.md/11142-monitorizarea-modului-de-ocupareincetare-a-functiilor-publice-in-anul-2016/?lang=ro>

2 Monitoring Report: On the appointment / termination of appointments to public offices in 2016, Chisinau, 2017, pp. 45-47, <https://promolex.md/11142-monitorizarea-modului-de-ocupareincetare-a-functiilor-publice-in-anul-2016/?lang=ro>

|  |  |
|--|--|
| <ul style="list-style-type: none"> <li>● Deputy Prime Minister;</li> <li>● Minister;</li> <li>● Deputy Minister;</li> <li>● Chief, Territorial Office, SC;</li> <li>● Deputy Chief, Territorial Office, SC;</li> <li>● Director, ANRCETI;</li> <li>● Deputy Director, ANRCETI;</li> <li>● Deputy General Director, ANSA;</li> <li>● Director, AGRM;</li> <li>● General Director, Moldsilva Agency;</li> <li>● Deputy General Director, Moldsilva Agency;</li> <li>● Deputy General Director, ARFC;</li> <li>● General Director, ARM;</li> <li>● Director, SHS;</li> <li>● president, CNAA;</li> <li>● president, ANI;</li> <li>● Vice President, ANI;</li> <li>● General Director, ANCS;</li> <li>● Deputy General Director, ANCS;</li> <li>● Counselor for complaints settlements, ANCS;</li> <li>● General Director, Administrative Board, ANRE;</li> <li>● Director, Administrative Board, ANRE;</li> </ul> | <ul style="list-style-type: none"> <li>● director, CNA;</li> <li>● deputy director, CNA;</li> <li>● President, Board of Directors, CNFP;</li> <li>● Vice President, Board of Directors, CNFP;</li> <li>● Member, Board of Directors, CNFP;</li> <li>● Vice-President, Court of Accounts;</li> <li>● Judge, CC;</li> <li>● Director, SIS;</li> <li>● Vice-President, CSJ;</li> <li>● Judge, CSJ;</li> <li>● President, Court of Appeal;</li> <li>● Vice-President, Court of Appeal;</li> <li>● President, court;</li> <li>● Vice President, court;</li> <li>● Judge, Court of Appeal;</li> <li>● Judge, court;</li> <li>● Government agent;</li> <li>● Deputy Secretary General of the President of the Republic of Moldova;</li> <li>● Secretary General of the Government;</li> <li>● Deputy Secretary-General of the Government;</li> <li>● Secretary General of the Ministry;</li> <li>● State Secretary of the Ministry</li> </ul> |
|--|--|

The following methods are used in the monitoring process:

- analysis of the relevant legal framework taking account of the methodological guidelines from the previous Report<sup>3</sup> ;
- sampling and synthesis (generalization) of quantitative and qualitative data relevant to the purpose of monitoring, including by requesting information<sup>4</sup> and three interviews with notable individuals in the field<sup>5</sup> ;
- exemplifying deficiencies (legal, institutional, implementation) by case studies;
- evaluating the dimensions, according to the rating scale used in the previous Report<sup>6</sup>. We reiterate that the evaluation does not aim at exact numerical quantification of each dimension, but rather at making an overview of the problems. In case of total unavailability of information (including denial of access to information or submission of incomplete or confusing information by authorities), the dimension is scored zero.

Starting from the purpose of monitoring, the following sources have been used:

- information provided by the authorities, including interviews;
- information placed on the official websites of the authorities;
- information contained in the analytical reports produced by the authorities;

3 Monitoring Report: On the appointment / termination of appointments to public offices in 2016, Promo-Lex, Chisinau, 2017, pp. 5-6, <https://promolex.md/11142-monitorizarea-modului-de-ocupareincetare-a-functiilor-publice-in-anul-2016/?lang=ro>

4 Information from SIS and Government (SC) was requested.

5 Interviews were held with Lilia Palii, Secretary General of the Government - 08.05.2018 (written answers); Lilian Chisca, vice-president of ANI, member of the commissions for organizing and conducting competitions for senior management positions - 08.05.2018; Victor Micu, CSM President - 17.05.2018

6 Monitoring Report: On the appointment / termination of appointments to public offices in 2016, Promo-Lex, Chisinau, 2017, p.6, <https://promolex.md/11142-monitorizarea-modului-de-ocupareincetare-a-functiilor-publice-in-anul-2016/?lang=ro>

- reports, studies, researches relevant to the purpose of monitoring, developed by other public associations;
- statements, press releases, media publications, especially journalistic investigations, relevant to the purpose of monitoring.

## I. CADRUL LEGAL

The year 2017 was marked by the launch of reforms in the central public administration through the adoption of Law no. 136 of 07.07.2017 on the Government (Law No. 136/2017)<sup>7</sup>, which has replaced Law no. 64 of 31.05.1990 on the Government<sup>8</sup>. The following innovations that have been introduced are essential:

- Renouncing to the establishment of government structure by law. Under Art. 10 para. (3) of the Law no. 136/2017, the list of the Government (the list of candidates for the position of Government member and the list of ministries) shall be submitted to the Parliament by the candidate for the position of Prime Minister in order to obtain the vote of confidence. According to the above mentioned norms, when drawing up the list of candidates for the position of Government member, the candidate for the position of Prime Minister must take account of the legislation on ensuring equal opportunities for men and women, correlated with the criteria of professionalism and merit. Under Art. 10 para. (4) of the cited law, the Prime Minister has the right to request the Parliament, during the exercise of its mandate, to amend the list of ministries in case of their constitution, reorganization or dissolution;
- depoliticization of the Government, by delimiting the political positions (ministers) from the administrative ones (secretary generals of state and state secretaries);
- enhancing the competencies of the State Chancellery (SC). By virtue of art. 31 of Law no. 136/2017, the SC is the public authority that ensures the organization of the Government's activity; establishes the general framework for defining government priorities; provides methodological, organizational and coordination support for the system of public policy planning, elaboration and implementation at the level of ministries and other central administrative authorities; monitors the implementation of the government work program; presents the analytical and informational materials; prepares the draft decisions, ordinances and provisions of the Government and verifies their execution; develops, promotes and implements state policy in the field of human resources in public administration and coordinates the human resources management within ministries, in other central administrative authorities, subordinated to the Government, and in organizational structures within their sphere of competence.

Obviously, the reforming process required compliance with the legal framework for the appointment / termination of several public offices.

### 1. Legal framework for the appointment / termination of appointments to public offices

The general regime of the public office, the legal status of the person holding a public office, as

<sup>7</sup> Law no. 136 of 07.07.2017 on the Government, Official Gazette of the RM, 2017, no. 252, art. 412.

<sup>8</sup> Law no. 64 of 31.05.1990 on the Government, Official Gazette of the RM, 2002, no. 131-133, art. 1018.

well as other relations resulting from the exercise of public positions, continue to be regulated by the framework law, Law no. 199 of 16.07.2010 on the status of persons holding a public position (Law no. 199/2010)<sup>9</sup>. In 2017, the cited law was amended by several laws for amending and supplementing some legislative acts, namely: Law no. 153 of 14.07.2017<sup>10</sup>; Law no. 172 of 21.09.2017<sup>11</sup>; Law no. 314 of 22.12.2017<sup>12</sup>; Law no. 213 of 21.12.2017<sup>13</sup>; Law no. 305 of 21.12.2017<sup>14</sup>. Based on these legislative acts:

- The following positions were excluded from the category of public offices: Deputy Minister, Secretary General of the Government, Deputy Secretary General of the Government, as well as Chief, Deputy Chief of the Territorial Office of the State Chancellery;
- the provisions of art. 12 para. (1/1) of the law, authorizing persons acting as Deputy Minister or Deputy Secretary-General of the Government to perform paid work in the Board of Directors of a State Enterprise and in the Board of a Joint Stock Company, where the State holds a share of the authorized capital, were excluded;
- some conditions for granting social guarantees in connection with the termination of the mandate have been amended (Article 17 para. (2)) – the provided lump sum discharge allowance is not granted, if the dignitary has been in office for less than 2 years);
- provisions were introduced, stipulating that persons with public offices receive a retirement pay under the law, with the exceptions, provided for by the special law;
- positions of pretor and vice-pretor were included into the category of public offices.

Taking into account the purpose and objectives of monitoring, we reiterate the shortcomings of Law no. 199/2010 stated in the previous Report<sup>15</sup> :

- lack of general requirements for public office candidates such as citizenship, domicile, education, experience, reputation;
- use of notions that are undefined in the legislation, such as didactic, scientific and creative activity. Neither the Code of Education of the Republic of Moldova<sup>16</sup>, nor Code no. 259 of 15.07.2004 on Science and Innovation of the RM<sup>17</sup>, are explicit in this respect;
- use of interpretable notions, such as: remunerated / paid activity / position. The concepts should be defined in such a way as to include remunerated / paid activities / positions;
- lack of general provisions that would refer to the grounds for termination of the mandate ahead of schedule;
- excessive discretion in engaging / not engaging the dignitary's accountability.

9 Law no. 199 of 16.07.2010 on the Status of Persons Holding a Public Position, Official Gazette of the RM, 2010, no. 194-196, art.637.

10 Law no. 153 of 14.07.2017 on the amendment and supplementing of some legislative acts, Official Gazette of the RM, 2017, no.301-315, art. 523.

11 Law no. 172 of 21.09.2017 on the amendment and supplementing of some legislative acts, Official Gazette of the RM, 2017, no.359a, art. 602.

12 Law no. 314 of 22.12.2017 on the amendment and supplementing of some legislative acts, Official Gazette of the RM, 2017, no. 464-470, art. 812

13 Law no. 213 of 21.12.2017 on the amendment and supplementing of some legislative acts, Official Gazette of the RM, 2017, no. 471-472, art. 818

14 Law no. 305 of 21.12.2017 on the amendment and supplementing of some legislative acts, Official Gazette of the RM, 2018, no. 7-17, art. 66

15 Monitoring Report: On the appointment / termination of appointments to public offices in 2016, Chisinau, 2017, p.7, <https://promolex.md/11142-monitorizarea-modului-de-ocupareincetare-a-functiilor-publice-in-anul-2016/?lang=ro>

16 Code of Education of the RM no. 152 of 17.07.2014, Official Gazette of the RM, 2014, no. 319-324, no.634.

17 Code no. 259 of 15.07.2004 on Science and Innovation of the RM, Official Gazette of the RM, 2018, no. 58-66, art. 131.

Proper treatment of these shortcomings is essential. At the same time, the special legislation is not always explicit and comprehensive, either. The table below contains an analysis of this, in the light of developments (appointment /termination of office) in 2017.

| Election and appointment to office   | Incompatibilities / Responsibility / Termination of office   |
|--|--|
| Law no. 192 of 12.11.1998 on the National Commission of Financial Market <sup>18</sup> (CNFP)  |  |
| <p>Articles 10-13. CNFP is headed by the Board of Directors, a collegial body composed of 5 members, including the President and two Vice Presidents of the Council, who are, respectively, the President and Vice Presidents of the CNFP. Members are appointed by the Parliament for a five-year term, at the proposal of the President of the Parliament, with the prior positive opinion of the parliamentary committee and with the written consent of the candidates. If the candidate is a member of a party or other social-political organization, his/her agreement must contain a commitment to suspend membership of the party or other social-political organization. A member may be any citizen of the Republic of Moldova with a record of service of at least 10 years in the financial, economic or banking sphere, provided the person has a clean professional integrity record for the past 5 years, has no negative result in the professional integrity test for breach of the obligation stipulated in art. 7 para. (2) clause a) of Law no. 325 of 23.12.2013 on the assessment of institutional integrity<sup>19</sup> (Law no.325/2013). Thus, the provisions contain certain eligibility conditions for candidates for membership of NCFM. These conditions do not impose additional requirements (e.g. management experience) on Candidates for President / Vice President.</p> | <p>Articles 14-15. Membership of the Board of Directors shall cease in the event of the expiry of the term, for which it was appointed; revocation by the Parliament, at the proposal of the President of Parliament, including at the initiative of the CNFP President; resignation; death. Members are revoked by the Parliament (a simple majority of votes (50% + 1) of the total number of MPs) in cases expressly provided by the law, including for reasons of integrity failure. Articles 27-28 specify the obligations and responsibilities of members. Among the obligations, there is the obligation to refrain from any activity or action incompatible with the membership or employment of the NCFM. The following persons are incompatible with membership: persons that are relatives or affiliates between themselves and with the President of the Republic of Moldova, the President of Parliament, the Prime Minister and the Governor of the NBM; have a criminal record; perform any other type of remunerated activity, except for scientific, didactic and creative activities; are members of boards of directors, boards of directors, management committees, review committees and other governing bodies of legal entities that are subject to oversight by the CNFP; hold more than 0.5% of the shares, or other securities of professional participants and issuers; abuse of their attribution for advertising purposes. With reference to these provisions, we reiterate the need to define in legislation (possibly Law no. 133 of 17.06.2016 on the declaration of wealth and personal interests<sup>20</sup> (Law No. 133/2016)) the notions of didactic, scientific and creative activity.</p> |
| Law no. 1104 of 06.06.2002 on the National Anticorruption Center <sup>21</sup> (CNA)   |  |
| <p>Article 8. The CNA is headed by a Director, appointed by the Parliament with the vote of the majority of elected MPs, for a term of five years, without the possibility of appointment for another term. The candidate is selected on the basis of a competition, organized by the Parliament's Legal Committee for Appointments and Immunities, with representatives of civil society or academics as observers. The candidate must meet the following requirements: he/ she shall hold the citizenship of the Republic of Moldova and be domiciled on its territory; have</p>   | <p>Article 8 contains provisions on grounds for cessation of duties and incompatibilities (the position of director is incompatible with any other remunerated activity, except for scientific, didactic and creative activities), to which we reiterate the need to define these notions in the legislation.</p>  |

18 Law no.193 of 12.11.1998 on the National Commission of Financial Market, Official Gazette of the RM, 2007, no. 117-126bis, art.91

19 Law no. 325 of 23.12.2013 on Institutional Integrity Assessment, Official Gazette of the RM, 2016, no. 277-287, art. 586..

20 Law no. 133 of 17.06.2016 on the Declaration of Wealth and Personal Interests, Official Gazette of the RM, 2016, no. 245-246, art.513

21 Law no. 1104 of 06.06.2002 on the National Anticorruption Center, Official Gazette of the RM, 2012, no.209-211, art.683.

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| <p>full exercise capacity; have a degree in law; have a record of service of at least 10 years; enjoy a perfect reputation; not be and not have been a member of a political party for the last 2 years, not be and not have been employed in the standing bodies of any political party; have no criminal record; know the state language; be medically fit to exercise his / her duties.</p> <p>Thus, the requirements to be met by the candidate are listed, without mentioning the need for management experience. Similarly, the lack of any provisions regarding the competition should be noted.</p>   |  |
| <p>Law no. 131 of 03.07.2015 on Public Procurement<sup>22</sup></p>   |  |
| <p>Art. 75/1. The National Agency for Complaints Settlement (ANSC) has seven counselors for settlement of complaints, including the General Director and the Deputy General Director. The counselors are appointed by the Parliament, with the vote of the majority of the MPs present, at the proposal of the Parliamentary Committee for Economy, Budget and Finance, for a term of 7 years, without the possibility of appointment for another term. The selection of counselors is based on professional skills, as a result of an open, impartial and transparent competition, organized by the Committee for Economy, Budget and Finance. The provisions contain requirements for counseling position candidates (citizen of the RM, full exercise capacity, higher education, at least 10 years of service record in the legal, economic or technical sphere, as well as at least 3 years' experience in the field of public procurement, knowledge of the state language, absence of deprivation, by the decision of the final court, of the right to occupy certain positions or to perform a certain activity, a clean professional integrity record for the past 5 years, no negative result in the professional integrity test for breach of the obligation, stipulated by Article 7 paragraph (2) clause a) of the Law no. 325/2013; non-membership of a political party). However, lack of additional requirements for ANSC managers (e.g. management experience), as well as lack of rules regulating the competition.</p> | <p>Article 75/1. Provisions specify the activities that are incompatible with the counseling position for the complaints settlement agency, such as conduct of business activities directly or through intermediaries; being a shareholder or member of a management, an administrative or controlling body in a commercial company, including banks and other crediting institutions, insurance institutions, financial corporations, state-owned enterprises, or joint stock companies where the state has shares of the authorization capital; holding any other public or private remunerated position, except for those relating to teaching activity, scientific research or literary and artistic creation; pursuing any other professional activity. In this respect, we reiterate the need to define these notions in the legislation.</p> <p>Similarly, the provisions stipulate (expressly and explicitly) the situations, in which the counselor is not entitled to participate in the settlement of a complaint. The rules also contain provisions for the termination of the counselor's mandate, including the conditions under which the counselor may be revoked.</p> |
| <p>Law no. 132 of 17.06.2016 on the National Integrity Authority<sup>23</sup> (ANI)</p>   |  |
| <p>Art. 9-11. The ANI is headed by a President, assisted by a Vice President, who are appointed by the President of the Republic of Moldova on the proposal of the Integrity Council (IC), following a competition. The articles specify the requirements for the candidates, including the integrity one. The law also establishes the conditions and the procedure for conducting the competition, development of the norms in this sense being delegated to the IC.</p> <p>The procedure for validation of the results poses certain problems: the results of the competition are validated by the IC within 15 days of test to detect simulated behavior (polygraph), the winner being the candidate who has the highest score in the competition and who passed the simulated behavior test (polygraph). Thus, the result of the</p>   | <p>Articles 13 and 15 contain provisions on the termination and incompatibilities with the office. Thus, the positions of the President and Vice President of ANI are incompatible with any other remunerated position or activity, except for didactic, scientific and creative activities. With regard to these provisions, we reiterate the need to define the notions in the legislation.</p>  |

22 Law no. 131 of 03.07.2015 on Public Procurements, Official Gazette of the RM, 2015, no. 197-205, art. 402.

23 Law no. 132 of 17.06.2016 on the National Integrity Authority, Official Gazette of the RM, 2016, no.245-246, art.511.

|   |   |
|---|---|
| <p>polygraph test could be eliminatory, which is contrary to international standards and to specialized laws. Similarly, unbalanced composition of the IC should be noted, requiring the completion of the IC with another two representatives of the civil society.</p>  |   |
| <p>Law no. 136/2017</p>   |   |
| <p>Article 2. The Government is a collegial body, made up of members of the Government. In the exercise of its duties, the Government is guided by its activity program, accepted by the Parliament by granting the confidence vote to the Government. The procedures of Government investment are governed by Art. 8. Provisions on the term of office, structure and government membership are contained in Articles 9-10. The law, through art. 16, establishes the requirements to be met by the Government member, without any being related to work experience in the field, or management experience. Similarly, the provisions specify the mode, in which candidate's compliance with the job requirements is assessed.</p> | <p>Article 2. The Government is responsible for its activity to the Parliament. Members of the Government are responsible for the areas of activity under their responsibility and the Government's work, as a whole. Article 11. Government member mandate ceases: on the date of the validation of elections for a new Parliament; in the case of a vote of no confidence expressed by the Parliament; in the event of the Government's full resignation; if the Prime Minister is unable to perform its duties, in the event of its resignation or death. The law lists the cases, in which the Prime Minister is considered to be unable to exercise its duties definitively, determining: the conditions under which the Government's term of office expires at the date of the validation of elections for a new Parliament (Article 12); the conditions, in which the Government's mandate ceases due to the vote of no confidence expressed by the Parliament (Article 13); the conditions, in which the Government's mandate ceases, when the Government or the Prime Minister resigns (art.14). The grounds for the cessation of the member of the Government office are listed in art. 17, the norms being stipulated in the provisions of art. 18 (resignation), art. 19 (revocation), art. 20 (incompatibilities). As far as incompatibilities are concerned, we reiterate the need to clarify the notion of remunerated activity in the legislation (Law no. 133/2017).</p> |
| <p>Law no. 174 of 21.09.2017 on Energy Supply<sup>24</sup></p>  |   |
| <p>Article 10. The members of the Administrative Board of ANRE are appointed by the Parliament based on a competition, organized by the parliamentary committee and are publicly held. The law contains provisions on the competition, as well as the requirements to be met by the candidates, without imposing additional requirements on the candidate for the position of General Director.</p>   | <p>Article 10 contains provisions on termination of the office, establishing special post-employment restrictions (within one year after the termination of the term of office of the Board of Directors, the person concerned is not entitled to occupy positions in the energy enterprise, whose activity is regulated by the ANRE.</p>   |
| <p>Regulation on the organization and functioning of the Material Reserves Agency, approved by the Government Decision no. 827 of 16.12.2009<sup>25</sup></p>   |   |
| <p>Point 8. The Material Reserves Agency (ARM) is headed by the General Director, appointed and dismissed by the Government. The General Director has a Deputy General Director, the appointment, modification, suspension and termination of its service term is done, under the law, by the Government. The provisions are general, without imposing special requirements on candidates for the position.</p>   | <p>Point 8. The General Director of the ARM ensures and bears personal responsibility, including for the performance of the core obligations and competences of the ARM, deriving from the Regulation, as well as for the rational use of ARM's financial resources and ensuring the integrity of its material values. The normative act does not contain provisions on incompatibilities and cessation of positions.</p>   |

24 Law no. 174 of 21.09.2017 on Energy Supply, Official Gazette of the RM, 2017, no.364-370, art.620.

25 Government Decision no. 827 of 16.12.2009 on the Approval of the Regulation on the Organization and Functioning of the Material Reserves Agency, Structures and Limit Body of its Central Apparatus, Official Gazette of the RM, 2009, no.189-190, art.919.

Thus, reiterating the recommendations of the previous Report<sup>26</sup>, in order to standardize the practices, it is necessary to:

- develop Law no. 199/2010 by offering general provisions on the requirements of the public dignity office and the grounds for terminating it before the expiry of the term;
- strengthen the mechanisms for dignitaries' accountability, by excluding from art. 23 para. (3) of the Law no. 199/2010 the word „may”, exposing the text to the following wording: „The non-execution or inadequate execution, by the person in charge of public office, of his/her duties, prerogatives and powers, regardless of the presence of guilt, entails revocation or dismissal”;
- define in the legislation (possibly in Law no. 133/2016) the notions of didactic, scientific and creative activity, as well as the notions of remunerated activity/ paid position.

Additionally, it is recommended:

- laying out the Art. 11 para. (12) of the Law no. 132 of 17.06.2016 on the National Integrity Authority (Law No. 132/2016) in the following wording: „The candidate, who has obtained the highest score in the competition tests and undergone a polygraph test, shall be the winner.” Thus, the provisions will comply with international and national standards in the field;
- laying out Art. 12 para. (1) clause f) of Law no. 132/2016 in the following wording: „four representatives of the civil society”. Thus, the Integrity Council will become more credible, the interests of the powers being balanced in relation to the general public interest through the representatives of civil society;
- drafting a single legislative act that would provide for the organization and conduct by the Parliament of the competition for public offices. Thus, practices will be uniformed and streamlined, ensuring the predictability, security and credibility of the appointment process. It should be noticed that a project in this respect was registered with the Parliament in 2016, by a group of MPs, but the terms of its examination reveal that the Parliament is not interested in the regulation of this issue<sup>27</sup>. In fact, the draft was negatively endorsed by the Government<sup>28</sup>. The executive considers that the proposed legislative solution does not add value. In the view of the Government, it is impossible to create a single committee for organizing and conducting competitions for leading positions within the institutions under parliamentary control, or whose appointment is made by the Parliament, establishing the same eligibility conditions and procedural stages of the competition. According to the Executive, the draft law would affect the substance of the special procedures, established in relation to each category of public office. Thus, the Government criticizes a concept, although it implements a similar one in the appointments it makes. Obviously, the draft law is to be improved, making the necessary adjustments related to special legislation. However, the draft may serve as a reference and support to launch important debates on the regulated subject matter.

26 Monitoring Report: On the appointment / termination of appointments to public offices in 2016, Promo-Lex, Chisinau, 2017, p.8, <https://promolex.md/11142-monitorizarea-modului-de-ocupare-incetare-a-functiilor-publice-in-anul-2016/?lang=ro>

27 Draft Law on the procedure for the selection, by a public competition, of managers and members of institutions under parliamentary control, or whose appointment is made by the Parliament, no. 288 of 24.06.2016, <http://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/3327/language/ro-RO/Default.aspx>.

28 Government Decision no. 990 of 19.08.2016 for the approval of the opinion on the draft law on the procedure for the selection, by public competition, of managers and members of the institutions under parliamentary control, or whose appointment is made by the Parliament, Official Gazette of the RM, 2016, no. 277-287, art. 1076. The opinion itself can be accessed here: <http://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/3327/language/ro-RO/Default.aspx>.

## 2. Legal framework for the appointment / termination of appointment to senior and leading offices

In the spirit of amendments to Law no. 199/2010, the corresponding provisions / concepts of other relevant laws (such as Law No. 158 of 04.07.2008 on the public office and the status of civil servant<sup>29</sup> (Law No. 158/2008)) and subordinated normative acts (such as the Regulation on the Organization and Functioning of the State Chancellery, approved by the Government Decision No. 657 of 06.11.2009)<sup>30</sup> have been revised. Moreover, in 2017, Law no. 158/2008 was amended and supplemented by several laws, namely: Law no. 38 of 24.03.2017<sup>31</sup>; Law no. 153 of 14.07.2017<sup>32</sup>; Law no. 172 of 21.09.2017<sup>33</sup>; Law no. 185 of 21.09.2017<sup>34</sup>; Law no. 213 of 21.12.2017<sup>35</sup>; Law no. 305 of 21.12.2017<sup>36</sup>; Law no. 315 of 22.12.2017<sup>37</sup>. The above legislative acts, along with the amendments to the legal framework, relevant to the status of the persons holding public office, ensure correspondence with the law and clarify some provisions on the transfer and assignment of civil servants; on suspension from office; on the body that is competent to examine disciplinary misconduct; on the mode of setting goals and performance indicators, as well as on the evaluation of certain categories of civil servants.

In the same context, by Government Decision no. 653 of 16.08.2017<sup>38</sup>, some modifications and additions are made to the Regulation on the Competition for Public Office, approved by the Government Decision no. 201 of 11.03.2009<sup>39</sup>.

Thus, in addition to amending the provisions of the competition committee, several procedural regulations are amended. By way of example, the competition for the senior leading public offices includes competition of CVs and an interview, while for the management and execution public offices, a written test and an interview are required.

With regard to the competition of CVs, the competition committee shall determine the date, time and place of the competition and ensure that information about the competition is placed on the website of the public authority and on the information panel at its headquarters. The competition represents a selection of candidate / candidates for the senior public office on the basis of candidates' files submitted and the evaluation of candidates' motivation, experience and reputation. The results of the competition are recorded in a report. Within no more than 2 days

29 Law no. 158 of 04.07.20108 On the Public Office and the Status of Civil Servant, Official Gazette of the RM, 2008, no.230-232, art.840.

30 Government Decision no 657 of 06.11.2009 on the Approval of the Regulation on the Organization and Functioning of the Structure and Limit Body of the State Chancellery, Official Gazette of the RM, 2009, no.162, art.724.

31 Law no. 38 of 24.03.2017 amending and supplementing Law no. 158/2008 On the Public Office and Status of the Civil Servant, Official Gazette of the RM, 2017, no. 134-143, art. 216.

32 Law no. 153 of 14.07.2017 amending and supplementing certain legislative acts, Official Gazette of the RM, 2017, art. 301-315, art. 523.

33 Law no. 172 of 21.09.2017 amending and supplementing certain legislative acts, Official Gazette of the RM, 2017, no. 359a, no. 602.

34 Law no. 185 of 21.09.2017 amending and supplementing certain legislative acts, Official Gazette of the RM, 2017, no. 371-382, art. 632.

35 Law no. 213 of 21.12.2017 amending and supplementing certain legislative acts, the Official Gazette of the RM, 2017, no. 471-472, no. 818, art. 818.

36 Law no. 305 of 21.12.2017 amending and supplementing certain legislative acts, the Official Gazette of the RM, 2018, no.7-17, art.66.

37 Law no. 315 of 22.12.2017 amending and supplementing certain legislative acts, the Official Gazette of the RM, 2018. No. 7-17, art.72.

38 Government Decision no. 653 of 16.08.2017 amending and supplementing Annex no. 1 to Government Decision no. 201 of 11.03. 2009, Official Gazette of the RM, 2017, no. 301-315, art. 753

39 Government Decision no. 201 of 11.03.2009 on the enforcement of the provisions of Law no. 158-XVI of 4 July 2008 on the Public Office and the Status of Public Servant, Official Gazette of the RM, 2009, no. 55-56, art. 249.

after the completion of the competition, the competition committee will require the selected candidates to present the following: opinion on the integrity framework issued by the ANI; Record of Professional Integrity issued by the CNA; information on the absence or existence of risk factors that may harm the rule of law, state security, public order issued by the SIS.

The interview shall be held no later than 5 working days after the date of the written test or the date of the competition of CVs. The list of candidates admitted to the interview, the date and time of the interview are placed on the website of the public authority and on the information panel at the headquarters of the public authority.

The arithmetic mean of the scores obtained in the written test and the interview is considered the candidate's final score in the competition. In the case of the competition for senior public office, the score obtained at the interview is considered the final score in the competition. The results of the competition shall be recorded in a report which, within 2 working days after the competition is held, shall be presented to the person / body having the legal competence to appoint. In the case of competitions for senior public offices, the list of candidates who have passed the competition and a copy of the minutes shall be presented, within 2 working days, together with the information submitted by the specified authorities, to the head of the public authority, for the position to which the competition was held.

In accordance with the amendments to Law 158/2008, for holding the competitions for the public positions, the following have been established:

- competition committee for the superior leading positions and deputies to the heads of the public authority apparatus (the Parliament, the President of the Republic of Moldova, the Superior Council of Magistracy, the Constitutional Court, Supreme Court of Justice, the General Prosecutor's Office, the Court of Accounts, the People's Advocate Office) shall be established by the respective public authorities;
- competition committee for the senior public office of Secretary General of the Government, competition commission for the senior public office of Deputy Secretary-General of the Government, the Secretary General of State and the Secretary General of Ministry, Deputy Head of the administrative authority, composed of 7 members with remarkable activity and experience in the public administration, appointed by the Government, one of which is delegated by the head of the public authority for the position, to which the competition is organized.

With regard to the amendments to the Regulation on coming into office by competition, we would like to draw attention to the opinion on integrity framework (point 18/2), which is found under different names in different legal acts: information about unresolved incompatibility and conflicts of interest in respect of which there is a sanctioning decision in force (Article 31 (2) of the Integrity Act, No 82 of 25.05.2017<sup>40</sup>); certificate of integrity (Article 49 para. (1) clause f) of the Electoral Code, no. 1381 of 21.11.1997<sup>41</sup>). In order to unify the terminology, a group of MPs registered with the Parliament the draft law for amending and supplementing certain legislative acts, no. 26 of 07.02.2018<sup>42</sup>. Obviously, the project needs improvement, taking account of the recommendations made by the civil society in this regard<sup>43</sup>.

40 Integrity Law, no. 82 of 25.05.2017, Official Gazette of the RM, 2007, no.229-243, art.360.

41 Electoral Code, no. 1381 of 21.11.1997, Official Gazette of the RM, 1997, no.81. art.667.

42 Draft Law amending and supplementing certain legislative acts (Integrity Law, Law on the National Integrity Authority; etc.) <http://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/4073/language/ro-RO/Default.aspx>

43 Promo-Lex, Legislative Initiative on the Integrity Certificate needs improvement, Promo-Lex informs, <https://promolex.md/11654-initiativa-legislativa-privind-certificatul-de-integritate-necesita-imbunatatire-semnaleaza-asociatia-promo-lex/?lang=ro>

The table below provides an analysis of related legislation, starting from developments of 2017. Although not always comprehensive, the gaps are, in a way, covered by the provisions of Law no. 158/2008. Similarly, both Law no. 158/2008 and Law no. 199/2010 make use of interpretative concepts (e.g. remunerated activity), as well as of notions that are not defined by the legislation (e.g. scientific, didactic and creative activity)<sup>44</sup>. These deficiencies can be overcome by amending Law no. 133/2016.

| <b>Election an appointment to office</b>  | <b>Incompatibilities / Responsibilities / Termination of office</b>   |
|---|---|
| Law no. 1536 of 25.02.1998 on hydro-meteorological activity <sup>45</sup>   |   |
| Art.8. The administration of the State Hydro-meteorological Service (SHS) is provided by its Director, appointed by the Government.<br>Absolutely inadequate provisions on the requirements specific for this position.   | Lack of provisions on termination of office, responsibilities and incompatibilities imposed on the job.     |
| Regulation of the Agency for Geology and Mineral Resources, approved by the Government Decision no. 485 of 12.08.2009 <sup>46</sup> (AGRM)  |   |
| Points 7-9. The AGRM is headed by the Director, appointed and dismissed from office by the Government, at the proposal of the Minister of Environment. In its activity, the Director is directly subordinated to the Minister of Environment. The Director has a Deputy Director, appointed and dismissed by the Minister of Environment, at the proposal of the Director. Absolutely inadequate provisions regarding the requirements specific for the position. | Lack of provisions on termination of the office, responsibilities and incompatibilities imposed on the job. |
| Government Decision no. 401 of 03.04.2003 On Certain Aspects of the Hydro-meteorological Activity in the Republic of Moldova <sup>47</sup>  |   |
| Points 4-5. The administration of the SHS is provided by its Director, appointed and dismissed by the Government. The Director has a First Deputy Director and a Deputy Director, appointed and dismissed by the Minister of Environment at the proposal of the Director.<br>Absolutely inadequate provisions regarding the requirements specific for the position.   | Lack of provisions on termination of the office, responsibilities and incompatibilities imposed on the job. |

44 The finding was emphasized in the previous Monitoring Report on the appointment/termination of appointments to public offices in 2016, Promo-Lex, Chisinau, 2017, p.16, <https://promolex.md/11142-monitorizarea-modului-de-ocupare-inceputa-a-functiilor-publice-in-anul-2016/?lang=ro>

45 Law no. 1536 of 25.02.1998 on hydro-meteorological activity, Official Gazette of the RM, 1998, no.060, art.409.

46 Government Decision no. 401 of 03.04.2003 on some aspects of the hydro-meteorological activity in the Republic of Moldova, Official Gazette of the RM, 2003, no.67-69, art.423.

47 Government Decision no. 401 of 03.04.2003 On Certain Aspects of the Hydro-meteorological Activity in the Republic of Moldova, Official Gazette of the RM, 2003, no.67-69, art.423.

### 3. Legal framework for verification of public office candidates and holders

In 2017, the framework Law no. 271 of 18.12.2008 on the verification of public office candidates and holders<sup>48</sup> (Law 271/2008) has not been amended or supplemented, but some legal provisions (Articles 5 clause e) and 15 para. (2), (4) and (5)) have been declared by the CC unconstitutional, by its Decision no. 32 of 05.12.2017<sup>49</sup> in the part relating to the screening of candidates for the office of judge and judges in office.

We reiterate that art. 5 clause a) of the law stipulates the obligation to subject holders and candidates to public offices, which have obtained the mandate directly following the elections, except for parliamentary or local elections, or indirectly, by appointment, specified in Law no. 199/2010.

By the contested rules of art. 15 provides that:

- the holders, candidates to the public office are considered compatible with the interests of the public office, if they meet the requirements and restrictions, established by the law on public office and if no risk factors have been discovered;
- in the case of a decision of incompatibility with the interests of the public office, the candidate cannot occupy the respective public office.
- the decision on the incompatibility of the holder with the interests of the public office serves a basis for his/her dismissal. The holder, with his/her consent, may be transferred, as appropriate, to a position that is not concerned in art. 5.

Thus, the exception of unconstitutionality, raised by Judge Domnica Manole and lawyer Viorica Grecu in a case pending the examination of the SCJ, was admitted. In its argumentation, the CC reiterated, in principle, that the verification of the degree of fulfillment of the requirements for the office, the authenticity of the information communicated in the documents, filed for the public office, or the possible risks to the national security, may be applied to all the professional categories of public servants. However, this must be done by taking account of the guarantees of respect for privacy, the right to a fair trial, as well as those of the rule of law and the separation of powers in the state.

In the present case, the CC found that the contested provisions allow discretionary and uncontrolled intervention into the work of the judiciary by the SIS, which is a body outside the judiciary. Moreover, the SIS, whose director is appointed and dismissed by the Parliament, is a body under the control of another power, and therefore, cannot meet the requirements of its independence. Attention was also drawn to the SIS's unlimited competence to collect data on the holder or candidate for public office, whatever their nature, both from the public and private spheres, although the entity does not meet the conditions on the guarantees of respect for fundamental rights relating to the intimate, family and private life and to the confidentiality of correspondence, in particular, the condition relating to a civilian entity subjected to democratic control. In the view of the CC, the assessment of the fulfillment of the requirements and the observance of restrictions, established by the law, by the holders or candidates for public office is

48 Law no. 271 of 18.12.2008 On the Verification of Public Office Candidates and Holders, Official Gazette of the RM, 2009, no.41-44, art.118

49 Decision of the Constitutional Court no.32 of 05.12.2017 on the exception of unconstitutionality of some provisions of Law no. 271-XVI of 18 December 2008 on the verification of public office candidates and (verification of the judges by the Security and Intelligence Service) (notification No. 115g / 2017), Official Gazette of the RM, 2018, no. 40-47, art. 14.

in the competence of the public entities, where they are or will be employed, being an improper task of the SIS.

The CC noted that the disputed provisions are also problematic in terms of their automatic nature, namely, that of compulsory release from office as a result of a risk factor identified. Such a situation suppresses the constitutional role of the Supreme Council of Magistracy of a guarantor of the independence of the judiciary, turning it into an illusory and ineffective one. Similarly, while admitting that the risk factors listed in the law, in some cases, are so serious that the release of a public servant from the office is proportionate / appropriate, the automatic release of the public servant for any risk factor identified by the SIS does not ensure compliance with the principle of proportionality between offenses committed and sanctions applied. At the same time, the CC noted that the law fails to regulate the possibility of separately challenging the opinion of the SIS in court.

Moreover, the CC noted that, at the time of the constitutionality review, the law on the assessment of qualifications, integrity and conflicts of interest had a number of regulations, normative acts with a primary or secondary character that were already in force (Law no. 132/2016 and Law no. 133/2016).

For all these arguments, the CC found that the contested rules violate the constitutional provisions of art. 1 para. (3) on the rule of law and the principle of legality, art. 28 and 30 on intimate, family and private life, respectively, the confidentiality of correspondence, in the light of the lack of guarantees required by those rights, art. 6 on the separation of powers and art. 116 on the independence of the judiciary.

Without going into detail, it is worth noting that the arguments are not entirely convincing<sup>50</sup>. We will lay down just a few limitations. Obviously, the political independence of the SIS is questionable. However, if it is assessed on the basis of the appointment of directors, the same level of independence is held by the judges, vice presidents and the president of the SCJ, whose appointment is also carried out by the Parliament. Moreover, following this logic, the CC's independence could also be challenged, with two of the six members of the CC being appointed by the Parliament.

It remains unclear how a mere substitution of the SIS with a civilian body would provide the necessary guarantees of respect of fundamental rights relating to intimate, family and private life, and to the confidentiality of correspondence.

There is a legal framework for controlling personal wealth and interests (Law 132/2016 and Law 133/2016), but it cannot and should not be applicable to candidates for public office.

Indeed, Law no. 271/2008 has shortcomings (including ambiguities regarding the advisory / binding nature of the opinions issued by the SIS, or the way of challenging the actions of the verification body), but they could be repaired by legislative amendments. In fact, some recommendations have been made in the previous Report<sup>51</sup>. These interventions are appropriate precisely to ensure the safety and predictability of the rules. There have been multiple cases of appointment of judges (as well as promotion to positions) despite the risk factors identified by the SIS<sup>52</sup>.

50 In a sense, our opinion is also confirmed by Victor Micu's opinion expressed in the interview, according to which, in the appointment activity, the CSM needs additional information about the candidate. It is, therefore, necessary to promote the change of the legal framework so that the CSM can request additional information from other authorities.

51 Monitoring Report: On the appointment / termination of appointments to public offices in 2016, Promo-Lex, Chisinau, 2017, p.17-18, <https://promolex.md/11142-monitorizarea-modului-de-ocupareincetare-a-functiilor-publice-in-anul-2016/?lang=ro>.

52 Anastasia Nani, Victor Mosneag, Judges with Nine Lives, <https://anticoruptie.md/ro/investigatii/justitie/judecatorii-cu-noua-vieti->

Verification of public office holders and candidates is a tool for recruiting and evaluating staff<sup>53</sup>. This is in line with international anti-corruption standards, which controls that the integrity of the public office be ensured. Thus, by virtue of art. 7 para. (1) clauses (a) and (b) of the United Nations Convention against Corruption (New York, 31.10.2013), each State Party strives, if necessary and in accordance with the fundamental principles of its legal system, to adopt, maintain and strengthen systems for recruitment, employment, encouraging loyalty, promotion and retirement schemes for civil servants and, where appropriate, other unnamed civil servants who: (a) shall act based on the principles of efficiency and transparency and objectivity, such as merit, equity and aptitude; (b) provide for adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions.

Obviously, the provisions are general, leaving it to the discretion of the States to decide on the mechanisms and procedures of their implementation. Starting from the fact that this instrument contributes to ensuring integrity, it is of major importance for the judiciary as integrity is a precondition for a credible justice. Being established by the Bangalore Principles of Judicial Conduct, integrity is found to be the key value in several relevant international documents. Recommendation no. (94) 12 of the Committee of Ministers of the Council of Europe, „On the Independence, Efficiency and Role of Judges” states that all decisions relating to the professional career of judges should be based on objective criteria and judges’ selection and career should be based on merit, taking into account assessments, integrity, abilities and efficiency. Integrity in the exercise of office and in private life is one of the basic requirements, imposed on judges by the Consultative Council of European Judges in Opinion no. 3 (2002), „On the principles and rules governing judges’ professional conduct, in particular ethics, incompatible behavior and impartiality.”

In our opinion, in the case of judges, as well as of candidates for judges, verification of the past is justified and pertinent. By virtue of point 3.2 of the European Charter on the Statute for Judges, the State may determine the circumstances, in which a candidate’s previous activities, or those engaged in by his or her close relations, may, by reason of the legitimate and objective doubts to which they give rise as to the impartiality and independence of the candidate concerned. Starting from the Explanatory Memorandum of the Charter of Judges, the provisions do not refer to the situation of absolute incompatibilities that would prevent the appointment of judges for reasons related to a candidate’s previous activities or those of their close associates. However, when appointing a judge to a particular court, account must be taken of the above-mentioned circumstances, when they can give rise to legitimate and objective doubts as to impartiality and independence. By way of example, a lawyer who previously served in a city cannot be immediately appointed judge in the same city, and it is also difficult to conceive a person to be assigned as a judge to a court in a city, where his/her spouse or parent, for example, is a mayor or a deputy. Therefore, when judges are assigned to a particular court, the statutory rules must take into account the situations that may give rise to objective and legitimate doubts about the independence and impartiality of judges.

In fact, verification of holders and candidates for judges was one of the issues, assessed by the GRECO in the fourth round of evaluation. It is deeply concerned about the fact that some candidates, for whom risk factors have been identified, are appointed judges<sup>54</sup>. In view of unfortunate effects of such dubious practices, the GRECO considers that a system that would avoid proposals for questionable appointments of judges is necessary. The Republic of Moldova

53 For more details, see: CAPC, Report on Assessing the Implementation of Anti-Corruption Instruments in the Judicial System, pp. 8-13, [http://capc.md/files/RAPORT%20DE%20EVALUARE\\_FINAL\\_2.05.2017\\_versiune%20finala.pdf](http://capc.md/files/RAPORT%20DE%20EVALUARE_FINAL_2.05.2017_versiune%20finala.pdf).

54 Moldova’s Evaluation Report, adopted by GRECO at its 72nd Plenary Meeting, Strasbourg, June 27 - July 1, 2016, §§ 98, 101-102, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c9b1a>.

has received a specific recommendation in this respect: to take appropriate measures, taking into account the independence of the judiciary, which would allow to avoid the appointment or promotion of persons with integrity risks to the positions of judges. Our country has to comply with the recommendation and to inform the GRECO of the activities undertaken by 31.01.2018.

## 4. Legal framework for polygraph testing

In 2017, the basic law in the field - Law no. 269 of 12.12.2008 on the application of the simulated behavior detector (polygraph)<sup>55</sup> (Law No 269/2008) was not amended or supplemented.

No modifications or additions were made to the normative framework subordinated to the law, this being:

- Regulation on the Organization and Functioning of the State Commission for Polygraph Testing, approved by the Government Decision no. 475 of 19.06.2014<sup>56</sup>;
- Nomenclature of the positions, to which persons, falling under Article 7 of Law no. 269-XVI of December 12, 2008 on the application of the simulated behavior detector (polygraph), approved by the Government Decision no. 475 of 19.06.2014, are appointed (exercise duties);
- Regulation on the attestation of polygraphist and registration of the polygraphists and their assistant, approved by the Decision of the State Commission for the Use of Polygraph Testing no. 1 of 24.04.2015<sup>57</sup>;
- Code of Ethics of the polygraphists and their assistants, approved by the Decision of the State Commission for the use of polygraph testing, no. 2 of 24.04.2015<sup>58</sup>;
- Unified methodological norms for conducting tests using the polygraph, approved by the Decision of the State Commission for the Use of Polygraph Testing no. 3 of 02.03.2016<sup>59</sup>.

In 2017, the State Commission for the Use of Polygraph Testing approved, by Decision no. 1 of 30.11.2017, the Regulation on the disciplinary liability of polygraphists and their assistants<sup>60</sup>. The regulation sets out the grounds for disciplinary liability, the categories of disciplinary deviations, the procedure for examining complaints concerning polygraphists and assistants of polygraphists, as well as the procedure for ascertaining the decisions, adopted as a result of their examination.

It should be noted that Law no. 269/2008 does not delegate such powers to the Commission, this responsibility being provided by point 6 clause a) of the Regulation on the Organization and

55 Law no. 269 of 12.12.2008 On the Application of the Simulated Behavior Detector (polygraph), Official Gazette of the RM, 2009, no.57-58, art.161

56 Government Decision no. 475 of 19.06.2014 On Some Measures Aimed at the Implementation of Law no. 269-XVI of 12 December 2008 On the Application of the Simulated Behavior Detector (polygraph), Official Gazette of the RM, 2014, art.521.

57 Regulation On the Attestation of Polygraphologist and Registration of the Polygraphologists and their Assistants, approved by the Decision of the State Commission for the use of polygraph testing no. 1 of 24.04.2015, <https://www.cna.md/tabview.php?l=ro&idc=110&t=/Comisia-deh-stat-pentru-testari-cu-utilizarea-poligrafului/Legislatie&>.

58 The Code of Ethics of the Polygraphologists and their Assistants, approved by the Decision of the State Commission for the use of polygraph testing, no. 2 of 24.04.2015, <https://www.cna.md/tabview.php?l=ro&idc=110&t=/Comisia-de-stat-pentru-testari-cu-utilizarea-poligrafului/Legislatie&>.

59 Unified methodological norms for the use of polygraph testing, approved by the Decision of the State Commission for Testing using the Polygraph no. 3 of 02.03.2016, <https://www.cna.md/tabview.php?l=ro&idc=110&t=/Comisia-de-stat-pentru-testari-cu-utilizarea-poligrafului/Legislatie&>

60 Decision of the State Commission for the Use of Polygraph Testing no.1 of 30.11.2017 on the approval of the Regulation on disciplinary liability of polygraphologist and their assistants, [https://www.cna.md/public/files/Hot\\_r\\_rea\\_CSTUP\\_nr\\_1\\_din\\_30.11.2017.pdf](https://www.cna.md/public/files/Hot_r_rea_CSTUP_nr_1_din_30.11.2017.pdf).

Functioning of the State Commission for Polygraph Testing, approved by the Government Decision no. 475 of 19.06.2014. Article 29 of the Law, wrongly alleged by the Commission, contains only general provisions, according to which the violation of the law is punishable by disciplinary, civil, contraventional or criminal liability, according to the legislation in force. We reiterate, from the findings for 2016, that these provisions, being too general, should have been made more specific. It would be preferable to do this in the content of the legislative act and not by a hierarchically inferior normative act.

In our opinion, still there are several norms which have no legislative solutions, such as the provisions of art. 17 para. (3) of the law, according to which the polygraphist, who, when performing the test, uses a polygraph, which does not meet the stipulated requirements, bears responsibility, according to the legislation in force.

Therefore, with reference to Law no. 269/2008, we reiterate the findings and recommendations set out in the previous Report.<sup>61</sup>

The law needs to be improved, including by:

- clarifying the status of the polygraphist and assistant to polygraphist (their subordination);
- setting rates for repeated testing, initiated by the person subject to testing;
- adding provisions to ensure the liability of the polygraphist, assistant to the polygraphist, translator, lawyer;
- guaranteeing the right of the person subject to testing to have access to test materials, at least in part;
- modifying the rule of law so as to ensure that the test results are presumptive and orientative and are not the sole basis for making a decision with respect to the person being tested, at the same time, providing grounds for further verification of the information obtained in the test;
- specifying the organizational and legal statute of the State Commission for the use of polygraph testing;
- improving rules on control by the Commission on Security, Defense and Order;
- excluding the control of the Prosecutor's Office over the polygraph testing process.

In addition, from the experience of applying the legal provisions, it would be important to complement Law no. 269/2008 with provisions that would prescribe that the test be repeated, if the result is inconclusive. It is obvious that the inconclusive result should be considered as a failed test and it is inadmissible to treat it as a positive result.

We cannot help mentioning that, on 10.04.2018, the CC issued a ruling with respect to the exception of unconstitutionality of some provisions of Law no. 269/2008 and Law no. 132/2016<sup>62</sup>. The unconstitutionality exception, which served as a basis for this case, was raised by Teodor Carnat, in a case pending examination in the Chisinau District Court, Buiucani headquarters. The complainant objected to the justified nature of the legal provisions, which instituted polygraph testing, and which obliged candidates to the position of president or vice president of ANI to

61 Monitoring Report: On the appointment / termination of appointments to public offices in 2016, Promo-Lex, Chisinau, 2017, p. 18-22, <https://promolex.md/11142-monitorizarea-modului-de-ocupareincetare-a-functiilor-publice-in-anul-2016/?lang=ro>

62 Constitutional Court Decision no. 6 of 10.04.2018 on the exception of unconstitutionality of some provisions of Law no. 269 of 12 December 2008 On the Application of the Simulated Behavior Detector Test (Polygraph) and Law no. 132 of 17 June 2016 on the National Integrity Authority (polygraph test) (Notification No. 147g / 2017), Official Gazette of the RM, 2018, no. 157-166, art. 76.

pass (positively) this test. The exception was examined in the light of Articles 39 and 43 of the Constitution: the right to participate in the administration of public affairs and the right to work.

The CC noted that the contested provisions could contribute to the selection of upright persons for the position of president or vice president of ANI, as well as to prevention of corruption within this institution. It has been found that these particular purposes may be subsumed under at least the following general legitimate purposes, provided by art. 54 para. (2) of the Constitution: ensuring national security; ensuring the country's economic well-being; prevention of crime.

Regarding the rationale of the disputed legal measures and the legitimate purposes mentioned, the CC noticed that the polygraph testing is not a scientific method accepted at European or international level or a safe procedure for detecting simulated behaviors. However, this method can be corroborated with other evidence established on the basis of scientific methods.

Finally, the CC held that the scientific certainty of the polygraph test result was generally low. Even Art. 22 para. (1) clause j) of Law no. 269/2008 provides that its results are presumptive and orientative and that they cannot constitute evidence in any proceedings. However, despite a low degree of certainty, it heavily interferes with the right to participate in the administration of public affairs and the right to work. Practically, if candidates for the position of president or vice president of ANI do not have positive results in the polygraph test, they cannot be nominated winners of the competition. From this perspective, the CC considered that the obligation to pass the polygraph test with positive results is a disproportionate measure.

Starting from the above, the CC upheld in part the exception of unconstitutionality, declaring unconstitutional the text „and who passed the test of simulated behavior detector (polygraph)” in Article 11 para. (12) of Law no.132/2016. The CC recognized constitutional art. 4 clause a <sup>2)</sup> of Law no. 269/2008; art. 11 para. (10) and (11) of Law no.132/2016. The exception of unconstitutionality as regards the constitutionality control of art. 4 clause a) and clause a <sup>1)</sup> of Law no.269/2008.

## II. INSTITUTIONAL FRAMEWORK

### 1. Committees in charge of the organization of competitions for public positions

Competition for the office of director of CNA. According to art. 8 para. (3) of the Law no. 1104 of 06.06.2002 on the National Anticorruption Center, the candidate for the position of director is selected on the basis of a competition organized by the Parliamentary Legal Committee for Appointments and Immunities, with involvement of civil society representatives or representatives of the academic environment as observers.

Competition for the office of counselor for settlement of ANSC complaints. In accordance with art. 75<sup>1</sup> para. (3) of the Law no. 131 of 03.07.2015 on public procurement, the competition for selection of candidates for counseling positions for settlement of ANSC complaints is organized by Parliament's Committee for Economy, Budget and Finance.

Competition for the office of president and vice president of ANI. According to art. 11 of Law no. 132/2016, the competition for the position of president and vice president of ANI is organized by the Integrity Council (IC), it being delegated and attributed the development of competition rules. Under Art. 12 of the quoted law, the IC consists of 7 members, of which: a representative appointed by the Parliament, a representative appointed by the Government, a representative nominated by the CSM, a representative appointed by the CSP, a representative appointed by the CALM, two representatives of the civil society, selected by the Ministry of Justice, based on a regulation approved by the Government. The authorities concerned, by virtue of Art. 44 para. (2) of the Law no. 132/2016, were, within one month of the publication of the law (30.07.2016), to appoint members of the IC, including to select members representing the civil society. In fact, the institutionalization of IC lasted for 5 months, its events unfolded with an inexplicable idleness<sup>63</sup>:

|                          |   |
|--------------------------|---|
| 11.08.2016 <sup>64</sup> | CSP representative was appointed.   |
| 06.09.2016 <sup>65</sup> | CSM representative was appointed.   |
| 09.09.2016 <sup>66</sup> | Proposal to designate the CALM representative was announced.  |
| 26.09.2016 <sup>67</sup> | Regulation on the selection of civil society representatives to the Integrity Council was approved. |

63 See also: Mariana Kalughin, Viorel Parvan, Elena Prohntchi, Evolution of the Integrity System in the Republic of Moldova, Chisinau, 2017, pp. 40-41.

64 Decision of the Superior Council of Prosecutors on the request of the Minister of Justice to appoint a representative of the Superior Council of Prosecutors to the Council of Integrity, 12-221 / 16 of 11.08.2016, <http://www.procuratura.md/file/221%20desemnare%20reprezentant%20in%20ANI.pdf>.

65 Decision of the Superior Council of Magistracy on the request of the Minister of Justice to appoint a representative of the Superior Council of Magistracy to the Integrity Council, no. 559/23 of 06.09.2016, <http://csm.md/files/Hotaririle/2016/23/559-23.pdf>.

66 Announcement on the designation of a representative of the CALM to the Integrity Council of the National Integrity Authority, <http://www.calm.md/libview.php?l=ro&idc=66&id=3290&t=/SERVICIUL-PRESA/Comunicate/ANUN-PRIVIND-DESEMNAAREA-DIN-PARTEA-CALM-A-UNUI-REPREZENTANT-IN-CONSILIULUI-DE-INTEGRITATE-AL-AUTORITATII-NAIONALE-DE-INTEGRITATE-ANI>

67 Government Decision no. 1089 of 26.09.2016 for the approval of the Regulation on the selection of civil society representatives to the Integrity Council, Official Gazette of the RM, 2016, no. 337, art. 1170.

|                          |   |
|--------------------------|---|
| 22.12.2016 <sup>68</sup> | Representative of the Parliament was appointed.   |
| 27.12.2016 <sup>69</sup> | Representatives of civil society were selected.   |
| 28.12.2016 <sup>70</sup> | Government representative was appointed.  |
| 30.12.2016 <sup>71</sup> | The first IC meeting was convened.  |
| 20.02.2017 <sup>72</sup> | Regulation on the organization and conduct of the competition for the appointment of ANI president and vice president was approved <sup>73</sup> .  |
| 07.04.2017 <sup>74</sup> | In the Official Gazette of the Republic of Moldova, the Regulation on the organization and conduct of the competition for the positions of president and vice president of ANI was published. |

CSP was the only authority that complied with the prescribed deadline, the rest of the entities being considerably delayed. The procedures could have been hurried, if the Parliament and the Government were more responsible for their obligation under Art. 44 para. (3) of the Law no. 132/2016, the Integrity Council could be convened in the first meeting by the CNI president within 15 days of the appointment of at least 5 members.

The prompt reactions of the civil society to the process of selection of representatives to the Integrity Council are welcome. The Regulation on the Selection of Civil Society Representatives to the Integrity Council was approved by the Government on 26.09.2016, the representatives being selected on 27.12.2016, the results of the competition dissatisfied some members of the Selection Committee<sup>75</sup>.

Între timp, reprezentantul desemnat de Guvern este numit judecător la CC<sup>76</sup>, depunând ulterior cerere de demisie din funcția de membru al CI. La 31 mai 2017<sup>77</sup>, luând act de cererea de demisie, Guvernul constată încetarea mandatului acestui membru, însă desemnează un nou reprezentant abia la 28 iunie 2017<sup>78</sup>.

- 68 Parliament's Decision no. 306 of 22.12.2016 on the appointment of a member of the Integrity Council, Official Gazette of the RM, 2016, no. 478-490, art. 967.
- 69 Two representatives of civil society were appointed to the Integrity Council of the National Integrity Authority, <https://anticoruptie.md/ro/stiri/doi-reprezentanti-ai-societatii-civile-au-fost-desemnati-in-consiliul-de-integritate-al-ani>.
- 70 Government Decision no. 1422 of 28.12.2016 on the appointment of a member of the Integrity Council, Official Gazette of the RM, 2016, no. 478-490, art. 1506.
- 71 Extract from Minutes no. 1 of the Integrity Council meeting, no. 1 of 30.12.2016, <http://ani.md/ro/node/30>.
- 72 Minutes no. 6 of the Integrity Council meeting (Part III - ANI), no. 6 of 20.02.2017, <http://ani.md/ro/node/30>.
- 73 The regulation generated criticism from civil society. For details, see: Natalia Enache, Rules of Election of ANI Leadership - challenged by civil society, <http://www.moldovacurata.md/news/view/regulamentul-de-alegere-a-conducerii-ani-contestat-de-societatea-civila>.
- 74 Decision of the Integrity Council on the approval of the Regulation on the organization and conduct of the competition for the positions of president and vice president of the National Integrity Authority, no. 1 of 20.02.2017, Official Gazette of the Republic of Moldova, 2017, no. 109-118, art. 741.
- 75 Two members of the Commission for Selection of Civil Society Representatives to the Integrity Council of ANI are disappointed with the result of the competition, , <https://www.zdg.md/stiri/stiri-justitie/doi-membri-ai-comisiei-de-selectare-a-reprezentantilor-societatii-civile-in-consiliul-de-integritate-al-ani-se-arata-dezamagiti-de-rezultatul-concursului>;  
Members of the Commission for the Selection of Civil Society Representatives to the Integrity Council disagree with the outcome of the competition, <http://unimedia.info/stiri/membrii-comisiei-de-selectare-a-reprezentantilor-societatii-civile-in-consiliul-de-integritate--nu-sunt-de-acord-cu-rezultatul-concursului-125476.html>.
- 76 Government Decision no. 277 of 03.05.2017 on the appointment of Mrs. Victoria Iftodi, Official Gazette of the RM, 2017, no. 144-148, art. 352.
- 77 Government Decision no. 358 of 31.05.2017 on the termination of the term of office of a member of the Integrity Council, Official Gazette of the RM, 2017, no. 171-180, art. 431.
- 78 Government Decision no. 475 of 28.06.2017 on the appointment of a member of the Integrity Council, Official Gazette of the RM, 2017, no. 216-228, art. 558.

The competition for the office of director of the Administrative Board of ANRE. Under Art. 42 of the Law no.1525-XIII of 19.02.1998 on energy supply, the competition for the selection of candidates for the office of director of ANRE Administrative Board is organized by the Parliamentary Committee for Economy, Budget and Finance.

The competition for the office of judge of the CC. There are no provisions that would oblige the Government to apply competition procedures for the replacement of CC judges. However, the Government chose to organize a competition in this respect, even if this obviously does not always increase the credibility of the appointment process. Thus, by Government Ordinance no. 33-d of 14.04.2017, the Government established the committee for the selection of a candidate for the position of judge at the Constitutional Court in the following composition<sup>79</sup>:

- Cebotari Vladimir - Minister of Justice, President of the Commission;
- Palii Lilia - Secretary General of the Government;
- Priseajniuc Eremei - Principal State Counselor of the Prime Minister for Combating Corruption and Law Enforcement Activities, Secretary of the Commission;
- Zama Vitalie - Lawyers for Human Rights Public Association, member of the National Council for Participation;
- Guceac Ion - Vice President of the Academy of Sciences of Moldova.

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79 <http://gov.md/sites/default/files/document/attachments/33-d.pdf>, nominal composition of the Government Commission for the selection of the candidate for the position of judge at the Constitutional Court, approved by the Government Ordinance no. 33-d of 14.04.2017.

## 2. Committees in charge of the organization of competitions for senior positions and leading positions in public offices

Following the modification of the relevant legal framework through the Government Decision no. 654 of 16.08.2017<sup>80</sup>, pursuant to art. 8 para. (6) of the Law no.158/2008:

- Committee for organizing and conducting the competition for the employment of senior public positions of Secretary General of the Government was established and its nominal composition was approved;
- Committee for organizing and conducting the competition for the employment of senior public positions of the Deputy Secretary General of the Government, State Secretary and State Secretary of the Ministry, Deputy Head of the Administrative Authority and approved its nominal composition;
- Government Decision no. 154 of 28.02.2014 „On establishment of the Committee for organizing and conducting the competition for appointment of senior public positions”<sup>81</sup> and Government Decision no. 99 of 25.03.2015 „On Amending the Annex to the Government Decision no. 154 of 28 February 2014” were recalled<sup>82</sup>.

The committee for organizing and conducting the competition for senior public position of Secretary General of the Government was composed of:

- Pavel Filip, Prime Minister of the Republic of Moldova, President of the Committee;
- Violeta Ivanov, President of the Foreign Policy and European Integration Committee, Parliament of the Republic of Moldova;
- Mircea Buga, Head of the Prime Minister’s Office;
- Vladimir Cebotari, Minister of Justice;
- Alic Birca, Doctor of Economics, Associate Professor, Academy of Economic Studies of Moldova;
- Valentina Bodrug-Lungu, president of the Gender-Center Public Association;
- Lilian Chisca, Head of Income and Property Control Department, National Integrity Authority.

The Committee for the organization and conduct of the competition for senior public positions of the Secretary General of the Government, Deputy Secretary General of the Government, the State Secretary and State Secretary of the Ministry, the Deputy Head of the Administrative Authority was composed of the Secretary General of the Government, the President of the Committee; Iurie Ciocan, director of the Center for the Implementation of Reforms; Andrei Groza, Doctor of History Sciences, Associate Professor, Academy of Public Administration; Alic Birca, Doctor of Economics, Associate Professor, Academy of Economic Studies of Moldova; Valentina Bodrug-Lungu, president of the Gender-Center Public Association; Lilian Chisca, Head of Income and Property Control Department, National Integrity Authority; representative of the public authority, to which position the competition is held.

Compared to the previous committees, the committees included representatives of civil society. Obviously, the inclusion of civil society representatives in competition committees does not always generate immediate impact, i.e. increasing the procedures’ credibility.

80 Government Decision no. 654 of 16.08.2017 on establishing commissions for organizing and conducting the competition for the employment of senior management public positions, Official Gazette of the RM, 2017, no. 301-315, art. 754.

81 Government Decision no. 154 of 28.02.2014 on the establishment of the Commission for organizing and conducting the competition for the employment of senior management public positions, Official Gazette of the RM, 2014, no. 53-59, art. 169.

82 Government Decision no. 99 of 25.03.2015 On Amending the Annex to the Government Decision no. 154 of 28 February 2014, Official Gazette of the RM, 2015, no.74-77, art.128

### 3. Institutional Framework for the Verification of Holders and Candidates to Public Offices

Compared to 2017, the institutional framework for the verification of holders and candidates to public offices remained unchanged, the verification body remaining the SIS, with public authorities being obliged to initiate the procedure of verification, as provided by the law<sup>83</sup>.

### 4. Institutional framework for polygraph testing

Similar to the institutional framework for the verification of holders and candidates to public offices, compared to 2017, the institutional framework for polygraph testing remained unchanged, the central role in the field referring to the state committee for the use of polygraph testing<sup>84</sup>. By virtue of art. 30 of the Law no. 269/2008, the Committee establishes (organizes) the organizational principles for conducting the testing by the authorities, responsible for initiating the test, development of unique methodological rules for conducting these tests, and training of polygraphists; the way in which the Committee is organized and operates is governed by the Regulation on the organization and functioning of the State Committee for the use of polygraph testing, approved by the Government Decision no. 475 of 19.06.2014<sup>85</sup>. We reiterate the finding made in the previous Report, The Regulation unjustifiably extends the powers of the Committee, private polygraphists not being covered by Law no. 269/2008.

With reference to polygraphists, as of January 1, 2018, 3 polygraphists were authorized (2 polygraphists employed by the CNA, 1 polygraphist employed by the Ministry of Internal Affairs and 1 assistant to polygraphist employed by the Ministry of Internal Affairs). All the three registered polygraphists received initial training in polygraph testing, which was organized by the US Embassy from January to May 2013, and involved specialists of the American Polygraphic Police Association. Certified polygraphists enrolled in professional development courses in Russia (2015) and the US (2017). As a matter of fact, at the beginning of January 2018, the Committee's Secretariat received two applications for certification and registration as polygraphists from two representatives of the SIS. In the CNA, polygraph tests are carried out at the central office in two especially designed offices, using Lafayette LX 4000-SW model polygraphs, which in addition to the Lafayette LX 4000/5000 activity sensors were donated by the US Embassy in Moldova in 2013<sup>86</sup>.

The hearing of 23.01.2018 carried out by the authorities responsible for the enforcement of Law no. 269/2008 by the National Security Committee for Defense and Public Order of the Parliament<sup>87</sup>

83 For more details, see the Monitoring Report: On the appointment / termination of appointments to public offices in 2016, Promo-Lex, Chisinau, 2017, pp. 27-28, <https://promolex.md/11142-monitorizarea-modului-de-ocupareincetare-a-functiilor-publice-in-anul-2016/?lang=ro>.

84 Monitoring Report: On the appointment / termination of appointments to public offices in 2016, Promo-Lex, Chisinau, 2017, pp. 28-29, <https://promolex.md/11142-monitorizarea-modului-de-ocupareincetare-a-functiilor-publice-in-anul-2016/?lang=ro>.

85 Government Decision no. 475 of 19.06.2014 on certain measures for the implementation of Law no. 269-XVI of December 12, 2008 on the application of simulation behavior detection test (polygraph), Official Gazette of the RM, 2014, no. 169-173, no. 521

86 CNA informative note of 22.01. 2018 on the implementation of Law no. 269-XVI of 12.12.2008, [file:///C:/Users/Contabil/Downloads/public\\_publications\\_1881147\\_md\\_nota\\_informati.pdf](file:///C:/Users/Contabil/Downloads/public_publications_1881147_md_nota_informati.pdf)

87 Agenda of the sitting of the Commission for National Security, Defense and Public Order of 23.12.2018, <http://parlament.md/LinkClick.aspx?fileticket=cHHwmBRbgJo%3d&tabid=84&mid=486&language=ro-RO>, Hearing of the authorities responsible for the implementation of the law on simulated behavior detector in the Commission for National Security, Defense and Public Order, <https://www.privesc.eu/arhiva/79745/Audierea-autoritatilor-responsabile-de-executarea-Legii-privind-aplicarea-testarii-la-detectorul-comportamentului-simulat-in-cadrul-Comisiei-securitat>.

is praiseworthy. However, it is regrettable that the Committee's decision is not placed on the website of the Parliament.

On the basis of the information provided by the authorities concerned, the SIS informed us that 2 polygraphists operate within the Authority, two other persons are completing the training and will apply for authorization as polygraphists. The SIS has two polygraph devices.

Other authorities, such as the Customs Service, do not apply the law, as they do not have any polygraph devices or employed polygraphists.

The same can be said of judges. According to the CSM 88, the procedure for acquiring the device to detect simulated behavior was initiated. No economic agent submitted offers for the tender. Thus, it was found that it is not possible to purchase the respective device in Moldova because no economic agent is specialized in the production and marketing of such devices. In view of these considerations, the opportunity to purchase a polygraph device from other countries (Romania and Ukraine) was examined. Therefore, negotiations with the Ukrainian economic agents started, aiming at purchasing a polygraph device. Representatives of the Ukrainian economic agents displayed willingness to carry out the transaction and proposed transferring financial resources to Ukraine and the polygraph device would be delivered after the transfer. In view of these issues, and because the legislation of the RM does not provide for such a procurement procedure, the acquisition was impossible to fulfill. Moreover, the financial resources provided in the Budget Law for each year are to be used in accordance with existing legal procedures. Another problem is the lack of the possibility to train polygraphists in Moldova, as training depends on the type and model of polygraph device that has been purchased. In order to solve the problem, the CSM requested the support of the CNA, which expressed its willingness to perform polygraph tests, depending on the working capacity of the polygraph. Subsequently, by Decision no. 144/7 dated 21.02.2017, the CSM ordered the initiation of the polygraph testing process with respect to the candidates for the position of judge, the CSM president being authorized to conclude a collaboration agreement with the CNA<sup>89</sup>.

In the case of prosecutors, at CSP's request, testing is carried out by CNA polygraphist (8 people were tested in 2016 and 40 in 2017).<sup>90</sup>

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88 Report on the activity of the Superior Council of Magistracy and of the Courts in 2017, Chisinau, 2018, pp. 35-36, [http://csm.md/files/RAPOARTE/2017/2017\\_RAPORT\\_CSM.pdf](http://csm.md/files/RAPOARTE/2017/2017_RAPORT_CSM.pdf).

89 Decision of the Superior Council of Magistracy no. 144/7 of 21.02.2017 on the initiation of the process of testing of candidates for the position of judge through the simulated behavior detector (polygraph), <http://csm.md/files/Hotaririle/2017/07/144-7.pdf>. Judging by the interview given by Victor Micu, is a temporary measure.

90 CNA informative note of 22.01. 2018 on the implementation of Law no. 269-XVI of 12.12.2008, [file:///C:/Users/Contabil/Downloads/public\\_publications\\_1881147\\_md\\_nota\\_informati.pdf](file:///C:/Users/Contabil/Downloads/public_publications_1881147_md_nota_informati.pdf)

### III. IMPLEMENTATION

#### 1. General considerations

Unfortunately, as far as implementation is concerned, we do not have any information that would allow us to analyze the dynamics of the main indicators used in the previous Report<sup>91</sup>. The State Chancellery refused to release the requested information, suggesting that it would be included in the *Report on the Public Office and Status of Public Servant for 2017*. According to the State Chancellery, the Report is in the process of being finalized and is to be placed on the institution's website. In connection with these, some problems can be delineated. The Annual Report on public office and status of public servant should be a useful tool in reforming processes. In the case of a delayed issuance, it loses its usefulness, since it cannot be used in the event of a public policy review. Similarly, several questions arise as to the usefulness of the Automated Information System „Registry of Public Offices and Public Servants”, which appears to be less efficient in achieving the purpose for which it was developed, namely collecting, storing, updating and analyzing data on public offices, positions and employees of central and local public authorities, providing information on the structure of the public authorities at all levels, public appointments and positions, holders of these positions, except for those established by classified documents<sup>92</sup>.

Obviously, an analysis of information would be particularly important given the start of the central public administration reform, which, even at its initial stage, generated criticism, with experts identifying numerous vulnerabilities<sup>93</sup>, such as:

- Flexibility of the number of ministries could affect the stability of the governing act, the long-term strategic framework for the functioning of the Government and the implementation of the existing strategic policy framework;
- the impact of reducing the number of ministries depends on the success of the merging of ministries and the optimization of employees. In fact, the criteria for merging ministries have not been debated publicly or clearly explained;
- the depoliticization of the Government depends, to a great extent, on how the competition committees select candidates for the positions of Secretary Generals of State and Secretaries of State. Another cardinal aspect of government depoliticization is the nature of candidate's relationship with the ruling party, whether it is institutional or political;
- the economic success of the Government reform is in line with the successful implementation of the reform, in general;
- staff optimizations bear certain risks. In the case of quick discharges, several errors can occur. There is no certainty that most appropriate people will be selected to remain in office. Employees transferred to other positions will need time to meet the requirements of the new job descriptions. In this way, the moral and professional climate in the ministerial apparatus may be affected, which could lead to negative consequences of inefficiency and institutional bottlenecks in the act of governance;

91 Monitoring Report: On the appointment / termination of appointments to public offices in 2016, Promo-Lex, Chisinau, 2017, pp. 30-32, <https://promolex.md/11142-monitorizarea-modului-de-ocupareincetare-a-functiilor-publice-in-anul-2016/?lang=ro>.

92 Provisions of point 2 of the Regulation on the organization and functioning of the Automated Information System „Register of public offices and public servants”, approved by the Government Decision no. 106 of 11.02.2014, Official Gazette of the RM, 2014, no. 35-41, art. 121.

93 Ion Tabarta, Some Issues of Governmental Reform, IDIS „Viitorul”, Chisinau, 2017, pp. 15-16, [http://www.viitorul.org/files/library/Policy\\_Brief\\_RAPC-rom.pdf](http://www.viitorul.org/files/library/Policy_Brief_RAPC-rom.pdf)

- the society is insufficiently informed about the stages and implementation of the reform, about the internal processes and the decision-making processes that lead to certain decisions in the implementation of the Government reform. The public has not been introduced to the studies on the impact of the reform.
- In the same vein, assessment of the reform should be carried out as transparently as possible and the results of the assessment, including performance indicators, progress, arrears, problems, and their settlement should be made public.

The first results of the monitoring of civil society reform are not positive either<sup>94</sup>.

Information on the ministerial staff limit prior to the reorganization and after the reorganization are shown in the table below<sup>95</sup>.

| Ministry  | Domains taken over  | Ministerial staff limit prior to reorganization | Ministerial staffing limit after reorganization |
|---|---|---|---|
| Ministry of Economy and Infrastructure                        | Ministry of Economy<br>Ministry of Transport and Road Infrastructure<br>Minister of Information Technology and Communications<br>Ministry of Regional Development and Construction (construction) | 311   | 155   |
| Ministry of Finance   | Ministry of Finance   | 540   | 298   |
| Ministry of Justice   | Ministry of Justice   | 141   | 90  |
| Ministry of Internal Affairs                                  | Ministry of Internal Affairs  | 158   | 93  |
| Ministry of Foreign Affairs and European Integration          | Ministry of Foreign Affairs and European Integration  | 178   | 135   |
| Ministry of Defense   | Ministry of Defense   | 99  | 61  |
| Ministry of Education, Culture and Research                   | Ministry of Culture<br>Ministry of Education<br>Ministry of Youth and Sports<br>Academy of Sciences of Moldova (research)   | 197   | 100   |
| Ministry of Health, Labor and Social Protection               | Ministry of Labor, Social Protection and Family<br>Ministry of Health   | 210   | 105   |
| Ministry of Agriculture, Regional Development and Environment | Ministry of Regional Development and Construction (Regional Development)<br>Ministry of Agriculture and Food Industry<br>Ministry of Environment  | 219   | 121   |
| <b>Total</b>  |   | <b>2053</b>                                     | <b>1158</b>                                     |

94 For more details, see: Viorel Parvan, Monitoring Report on the Implementation of the Public Administration Reform Strategy for 2016-2020 (23.12.2016-30.11.2017), IDIS „Viitorul”, Chisinau, 2017, <http://www.viitorul.org/files/library/RAPORT%20DE%20MONITORIZARE.pdf>.

95 Ion Tabarta, Some Issues of Governmental Reform, IDIS „Viitorul”, Chisinau, 2017, pp. 11, [http://www.viitorul.org/files/library/Policy\\_Brief\\_RAPC-rom.pdf](http://www.viitorul.org/files/library/Policy_Brief_RAPC-rom.pdf).

## 2. Special considerations on the monitored positions

Competition for the position of director of CNA. The competition for the position of director of CNA was organized and carried out under the Regulations on the competition for the selection of the candidate for the office of director of the National Anticorruption Center, approved by the Decision of the Legal Parliamentary Committee for Appointments and Immunities, CJ no. 197a of 18.10.2017<sup>96</sup>. It should be noted that the Regulation contains only two points (the requirements to be met by the candidate and the procedure for the submission of files).

The competition was announced on 19.10.2017<sup>97</sup>, the deadline for submitting the files being 29.11.2017. There is no other information about the competition on the website of the Parliament (no information about the files that have been submitted and no information about the decisions taken by the Commission in the process of selecting the candidate), the competition finalized with the appointment of Bogdan Zumbreanu as director, approved by the decision of the Parliament no. 286 of 15.12.2017<sup>98</sup>.

Initially<sup>99</sup>, in addition to Bogdan Zumbreanu, the following contenders competed for the office of CNA director:

- Igor Carlasuc, head of the General Directorate for Operational Insurance, CNA;
- Sava Maimescu, university professor, law faculty, State University of Moldova;
- Veaceslav Gutan, university professor, Stefan cel Mare Police Academy;
- Valentin Dogotari, former head of the Air Transport Department, Ministry of Transport and Road Infrastructure;
- Adrian Moroi, legal professional.

The last two persons were not admitted to the competition, while the four remaining candidates passed the interview on 12 December 2017<sup>100</sup>.

At the file examination stage, applicants were exempt from presenting the development strategy for the institution they aspired to, while the written test was removed by the vote of the members of the Parliament Committee. It is also worth noting that, despite the regulations, neither civil society representatives nor representatives of the academic environment were involved as observers in organizing and conducting the competition.

Competition for the position of ANSC counselor for settlement of complaints. The competition regulations were developed based on the provisions of the Regulation on the organization and

96 Decision of the Legal Committee for Appointments and Immunities, on the announcement of the competition for the selection of the candidate for the office of director of the National Anticorruption Center, CJ no. 197a of 18.10.2017, <http://www.parlament.md/LinkClick.aspx?fileticket=0YeX3pU9UUc%3d&tabid=248&language=ro-RO>.

97 Announcement of the completion for selecting candidates for the office of director of the National Anticorruption Center, <http://www.parlament.md/Actualitate/Concursuripublice/tabid/248/ContentId/3426/Page/0/language/ro-RO/Default.aspx>

98 Parliament's Decision no. 286 of 15.12.2017 on the appointment of Director of the National Anticorruption Center, Official Gazette of the Republic of Moldova, 2017, no. 440, art. 735.

99 Victor Mosneag, About the six contenders for the office of CNA director: one is politically affiliated, one in under investigation, another - dismissed for incompetence, <https://www.zdg.md/stiri/stiri-justitie/detalii-despre-cei-sase-pretendenti-la-functia-de-director-al-cna-un-afiliat-politic-unul-vizat-intr-o-investigatie-altul-demis-pentru-incompetenta>

100 Four candidates admitted to the competition for the CNA's leadership. Who are they? <https://www.zdg.md/stiri/stiri-justitie/patru-candidati-au-fost-admisi-la-concursul-pentru-sefia-cna-cine-sunt-acestia>  
Marina Ciobanu, Head of the Legal Committee for Appointments and Immunities about the „omissions” in the competition for the CNA leadership, <https://www.zdg.md/stiri/stiri-politice/sefa-comisiei-juridice-numiri-si-imunitati-despre-omisiunile-din-concursul-pentru-sefia-cna>.

conduct of an open competition for selection of candidates for Counselor of the National Agency for Settlement of Complaints, approved by the Decision of the Parliamentary Committee for Economy, Budget and Finance, 646 of 21.12.2016<sup>101</sup>.

The announcement was published on 23.12.2016<sup>102</sup>, the files had to be submitted between 02.01.2017 - 20.01.2017. Notwithstanding the provisions of point 14 of the Regulation<sup>103</sup>, on 01.02.2017, the Committee approves the list of candidates admitted to the competition<sup>104</sup> by CEB Decision no.30. The candidates admitted for the completion are:

- for the position of counselor for complaints settlement - general director of ANSC: Munteanu Angela, Cius Alexandru, Gutniuc Irina, Mosneaga Viorel;
- for the position of counselor for complaints settlement - Deputy general director: Munteanu Angela, Gren Ghenadie, Cius Alexandru, Gutnic Irina;
- for the position of counselor for complaints settlement: Vacarenco Ion, Boscaneanu Dorel, Magla Mariana, Plamadeala Iacob, Vlasov Nicolae, Munteanu Angela, Grib Ghenadie, Oprea Petru, Eni Eugenia, Cius Alexandru, Nani Angela.

The interview with the candidates was to take place on 28.02.2017, but it did not<sup>105</sup>. As a matter of fact, the candidates were not interviewed on 14.03.2017, nor on 21.03.2017<sup>106</sup> in both cases, for lack of quorum<sup>107</sup>. Finally, on 14.06.2017<sup>108</sup>, candidates' interviewing was organized and held, the results of the competition being approved on the same day by the CEB Decision no.235<sup>109</sup>. According to the Decision, having examined 14 files submitted, interviewed and evaluated 12 candidates (out of 13 admitted), the Committee decided to propose to the Parliament the following candidates:

- Viorel Mosneaga, as candidate for counselor for complaints settlement - general director of ANSC;

101 Decision of the Committee for Economy, Budget and Finance on the open completion for selection of candidates for Counselor of the National Agency for Settlement of Complaints, CEB no 646 of 21.12.2016, <http://parlament.md/LinkClick.aspx?fileticket=PoInDbRmKdM%3d&tabid=245&language=ro-RO>.

102 Announcement on the open competition for selecting candidates for the position of Counselor for settlement of complaints filed to the ANSC, <http://parlament.md/Actualitate/Concursuripublice/tabid/248/ContentId/2791/Page/0/language/ro-RO/Default.aspx>.

103 According to the norms quoted, within 5 working days after the deadline for submission of documents, the Committee will examine the files of the admitted candidates and will approve a decision on the candidates admitted to the public competition for the position of Counsel for settlement of complaints filed to the National Agency for Complaints Settlement.

104 Decision of the Committee for Economy, Budget and Finance on candidates admitted to the public completion for the positions of Counsel for the settlement of complaints filed to the National Agency for Complaints Settlement, CEB no. 30 of 01.02.2017, <http://parlament.md/LinkClick.aspx?fileticket=PFu%2fBgBEEN4%3d&tabid=248&language=ro-RO>.

105 The Schedule of Candidates' Interviewing for Counselor of the National Agency for Complaints Settlement to be held on February 28, 2017, <http://parlament.md/LinkClick.aspx?fileticket=ROcqD70aJlc%3d&tabid=248&language=ro-RO>.

106 The Schedule of Candidates' Interviewing for Counselor of the National Agency for Complaints Settlement to be held 14 March 2017, The Schedule of Candidates' Interviewing for Counselor of the National Agency for Complaints Settlement to be held 21 March 2017, <http://parlament.md/LinkClick.aspx?fileticket=s%2fuZOqe5788%3d&tabid=248&language=ro-RO>.

107 Informative note on the Draft Parliament Decision no.198 of 16.06.2017 on the appointment of Counselor of the National Agency for Complaints Settlement, <http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/3801/language/ro-RO/Default.aspx>.

108 The Schedule of Candidates' Interviewing for Counselor of the National Agency for Complaints Settlement to be held 16 June 2017, <http://parlament.md/LinkClick.aspx?fileticket=c4JwdgtzgkM%3d&tabid=248&language=ro-RO>.

109 Decision of the Committee for Economy, Budget and Finance on the results of the competition for the selection of candidates for counselors for solving the complaints filed to the National Agency for Complaints Settlement, CEB no. 235 of 14.06.2017, <http://parlament.md/LinkClick.aspx?fileticket=firTYfGijho%3d&tabid=248&language=ro-RO>.

- Irina Gutniuc as candidate for counselor for complaints settlement - deputy general director of ANSC;
- Eugenia Eni, Angela Nani, Petru Oprea, Alexandru Cius, Iacob Plamadeala as candidates for counselors for complaints settlement within ANSC. The Committee's proposal was accepted by the Parliament on 21.07.2017<sup>110</sup>.

It is noteworthy that the candidates' CVs are attached to the draft of the respective decision of the Parliament<sup>111</sup>.

Competition for the position of president and vice president of ANI. Being disturbed by its own institutionalization, the Integrity Council did not hurry to organize and conduct the competition for the appointment of ANI president and vice president, the chronology of events being presented in the table below<sup>112</sup>.

|                           |  |
|---------------------------|--|
| 07.04.2017 <sup>113</sup> | The Announcement on the organization of the competition was published, the submission period being 10.04.2017 - 03.05.2017..   |
| 04.05.2017 <sup>114</sup> | The deadline for submission of files was extended to 15.04.2017.   |
| 31.05.2017 <sup>115</sup> | The mandate of Integrity Council member appointed by the Government - Victoria Iftodi, has expired, based on the resignation request.  |
| 28.06.2017 <sup>116</sup> | A new Representative of the Government to the IC was appointed - Oleg Efrim.   |
| 31.07.2017 <sup>117</sup> | The deadline for submission of files was extended to 14.08.2017.   |
| 04.09.2017 <sup>118</sup> | IC examined three of the four files submitted for the competition, the meeting being interrupted to request and examine additional information on one of the candidates.   |
| 12.09.2017 <sup>119</sup> | Three candidates: Victor Stratila, Teodor Carnat, Lilian Chisca were admitted for the competition for president of ANI, a candidate, Anatolie Donciu, being rejected. Subsequently, one of the candidates - Lilian Chisca withdrew from the competition. A candidate, Lilian Chisca, was admitted for the competition for vice president of ANI, another candidate, Anatolie Donciu, being rejected. |

110 Parliament Decision no.177 of 21.07.2017 on the appointment of counselors for complaints settlement within the National Agency for Complaints Settlement, Official Gazette of the RM, 2017, no.265-273, art. 442.

111 Draft Parliament Decision no.198 of 16.06.2017 on the appointment of counselors for complaints settlement within the National Agency for Complaints Settlement, <http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/3801/language/ro-RO/Default.aspx>.

112 See also: Mariana Kalughin, Viorel Parvan, Elena Prohntitchi, Evolution of Integrity System in Republic of Moldova, Chisinau, 2017, pp. 40-41. Deadlines have often been extended, and some stages have been resumed, with IC's decisions not being convincingly motivated. And in the interview, Lilian Chisca confirmed that it was not always clear why some stages were extended or resumed.

113 Announcement on the organization of the competition for the positions of president and vice-president of the National Integrity Authority, <http://ani.md/ro/node/26>.

114 Extract from the minutes of the meeting of the Integrity Council, no. 13 of 04.05.2017, <http://ani.md/ro/node/30>.

115 Government Decision no. 358 of 31.05.2017 on the termination of the term of office of a member of the Integrity Council, Official Gazette of the RM, 2017, no. 171-180, art. 431.

116 Government Decision no. 475 of 28.06.2017 on the appointment of a member of the Integrity Council, Official Gazette of the RM, 2017, no. 216-228, art. 558.

117 Decision of the Integrity Council on the extension of the deadline for the submission of the files for the competition for the positions of president and vice president of the National Integrity Authority, no. 4 of 31.07.2017, <http://ani.md/sites/default/files/documente/Hot.%20Cl%20nr.%204.pdf>.

118 Extract from the minutes of the meeting of the Integrity Council, no.25 of 04.09.2017, <http://ani.md/ro/node/30>

119 Decision of the Integrity Council on the admission of the candidates for the competition for the position of president of the National Integrity Authority and the extension of the period of submission of the candidates' files to the competition for the position of vice president of the National Integrity Authority, no. 5 of 12.09.2017, <http://ani.md/sites/default/files/documente/Hotararea%20nr%205%20-%201.pdf>

|                           |   |
|---------------------------|---|
| 21.09.2017 <sup>120</sup> | A written test was conducted for the candidates for the position of ANI President (Victor Stratila, Teodor Carnat).   |
| 26.09.2017 <sup>121</sup> | An interview was held for candidates for the position of ANI President (Victor Stratila, Teodor Carnat).  |
| 09.10.2017 <sup>122</sup> | Since the candidates Victor Stratila and Teodor Carnat failed the polygraph test, the Integrity Council decided not to include the candidates in the procedure for the validation of the competition and to announce a new competition for the position of ANI president. |
| 10.10.2017 <sup>123</sup> | The announcement of the repeated competition for the position of ANI president was published, the deadline for submitting the files was 16.10.2017 - 06.11.2017.  |
| 23.10.2017 <sup>124</sup> | The candidates Lilian Chisca and Francisco Talmaci were admitted for the competition for the position of vice president of ANI.   |
| 30.10.2017 <sup>125</sup> | A written test was held for candidates for the position of ANI vice president (Lilian Chisca, Francisco Talmaci).   |
| 06.11.2017 <sup>126</sup> | An interview was held with candidates for the position of ANI vice president (Lilian Chisca, Francisco Talmaci), Francisco Talmaci, was later withdrawn from the competition, submitting the file for the competition for ANI president.                                  |
| 27.11.2017 <sup>127</sup> | Candidates Rodica Antoci, Francisco Talmaci, Lidia Chireoglo for the position of ANI president were admitted to the competition.  |
| 06.12.2017 <sup>128</sup> | The results of the competition for the position of vice president of ANI were validated (the President of the Republic of Moldova was proposed the candidature of Lilian Chisca for appointment).   |
| 11.12.2017 <sup>129</sup> | The results of the written test and the interview held for the candidates for the position of ANI president were validated.   |
| 22.12.2017 <sup>130</sup> | The results of the competition for the position of ANI president were validated (the President of the Republic of Moldova was proposed the candidature of Rodica Antoci for appointment).   |
| 21.12.2017 <sup>131</sup> | Appointing Lilian Chisca as ANI vice president.   |
| 29.12.2017 <sup>132</sup> | Appointment of Rodica Antoci as ANI President.  |

120 Extract from the minutes of the meeting of the Integrity Council, no. 28 of 21.09.2017, <http://ani.md/ro/node/30>.

121 Competitions <http://ani.md/ro/node/26>

122 Decision of the Integrity Council on the simulated behavior test results (polygraph), no. 6 of 09.10.2017, <http://ani.md/sites/default/files/documente/Hotarire.pdf>.

123 Announcement on the repeated organization of the competition for the position of President of the National Integrity Authority, the filing period is October 16 - November 6, 2017, <http://ani.md/ro/node/26>.

124 Decision of the Integrity Council on admission of the candidates for the competition for the position of Vice President of the National Integrity Authority, no. 8 of 23.10.2017, <http://ani.md/sites/default/files/documente/Hotararea%208%20din%2023.10.2017.pdf>.

125 Competitions, <http://ani.md/ro/node/26>.

126 Chisca and Talmaci held the interview for the ANI Integrity Council (video), [http://www.realitatea.md/chi-ca-i-talmaci-au-sus-inut-proba-interviului-in-fa-a-consiliul-de-integritate-al-ani\\_66704.html](http://www.realitatea.md/chi-ca-i-talmaci-au-sus-inut-proba-interviului-in-fa-a-consiliul-de-integritate-al-ani_66704.html).

127 Minutes of the Integrity Council sitting, no.35 of 27.11.2017, <http://ani.md/sites/default/files/documente/Proces-verbal%20nr.%2035%20%C8%99edin%C8%9B%C4%83%20Consiliu%2027.11.2017.pdf>.

128 Lilian Chisca passed the polygraph test and will be proposed to the president of the country to be appointed vice president of ANI, [http://www.realitatea.md/ultima-ora--lilian-chisca-a-trecut-testul-la-poligraf-si-va-fi-propus-presedintelui-tarii--pentru-a-fi-numit-in-functia-de-vicepresedinte-al-ani\\_68398.html](http://www.realitatea.md/ultima-ora--lilian-chisca-a-trecut-testul-la-poligraf-si-va-fi-propus-presedintelui-tarii--pentru-a-fi-numit-in-functia-de-vicepresedinte-al-ani_68398.html)

129 Minutes of the Integrity Council sitting, no. 37 of 11.12.2017, <http://ani.md/ro/node/30>.

130 Minutes of the Integrity Council sitting, no. 38 of 22.12.2017, <http://ani.md/ro/node/30>.

131 Presidential Decree no. 507 of 21.12.2017 on the appointment of Mr. Lilian Chisca Vice President of the National Integrity Authority, Official Gazette of the RM, 2017, no. 451-463, art. 784.

132 Presidential Decree no. 543 of 29.12.2017 on the appointment of Ms. Rodica Antoci President of the National

Competition for the position of director of the Administrative Board of ANRE. On 23.12.2016, the announcement on the opening of the competition to select candidates for the positions of director of Administrative Board of ANRE<sup>133</sup>, which has to be carried out under the conditions of the Regulation on the organization and conduct of the open competition to select candidates for the positions of director of the Administrative Board of the National Energy Regulatory Agency, approved by the Decision of the Committee for Economy, Budget and Finance, CEB no. 647 of 21.12.2016<sup>134</sup>. We would like to reiterate that the procedures have been criticized by several experts, the main reproach having regard to the need to regulate them by law<sup>135</sup>. The files were to be submitted in the period between 02.01.2017 - 20.01.2017. By the CEB Decision no. 36 of 01.02.2017<sup>136</sup>, of the 11 files received, the following 10 candidates were admitted:

- Ion Matei;
- Mihail Cernei;
- Alexandru Lupan;
- Vasile Daud;
- Tudor Copaci;
- Sergiu Ungureanu;
- Iurie Ursu;
- Victor Parlicov;
- Anatolie Cainareanu;
- Dorin Duscaci.

Candidates' CVs were attached to the decision and placed on the website of the Parliament, the interview being scheduled for 14.02.2017<sup>137</sup> when, by the CEB Decision no. 54 of 14.02.2017<sup>138</sup>, the candidature of Tudor Copaci was proposed to the Parliament, appointed director by the Parliament Decision no. 52 of 30.03.2017<sup>139</sup>, respectively, general director, by Parliament Decision no. 57 of 06.04.2017<sup>140</sup>.

Competition for the position of judge of the CC. By Government Ordinance no. 33-d of 14.04.2017, in addition to the nominal composition of the Selection Committee, the Regulation on the

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Integrity Authority, Official Gazette of the RM, 2017, no. 471-472, art. 821.

- 133 Announcement on the opening of the competition for the selection of candidates for the positions of director of Administrative Board of the National Energy Regulatory Agency,
- 134 Decision of the Committee for Economy, Budget and Finance on the public competition for the selection of candidates for the position of director of the Administrative Board of the National Energy Regulatory Agency, no. 647 of 21.12.2016, <http://parlament.md/LinkClick.aspx?fileticket=mDiNjx7cNIA%3d&tabid=246&language=ro-RO>.
- 135 (video) Expert Opinion: The competition for the selection of the ANRE Director was carried out without a legal basis, <https://www.zdg.md/stiri/selectarea-directorului-anre-s-a-facut-fara-o-baza-legala/comment-page-1>
- 136 Decision of the Committee for Economy, Budget and Finance on candidates admitted to the public competition for the position of Director of the Administrative Board of the National Energy Regulatory Agency, CEB, no. 36 of 01.02.2017, <http://www.parlament.md/LinkClick.aspx?fileticket=mWjB4oi0olQ%3d&tabid=248&language=ro-RO>
- 137 The schedule of candidates' interviewing for the position of Director of the Administrative Board of the National Energy Regulatory Agency to be held on February 14, 2017, <http://www.parlament.md/LinkClick.aspx?fileticket=MrN%2foMGDRjc%3d&tabid=248&language=ro-RO>.
- 138 Decision of the Committee for Economy, Budget and Finance on the results of the competition for the selection of the candidate for Director of the Administrative Board of the National Energy Regulatory Agency, CEB no. 54 of 14.02.2017, <http://www.parlament.md/LinkClick.aspx?fileticket=0eF9kEk1Kn4%3d&tabid=248&language=ro-RO>.
- 139 Parliament Decision no. 52 of 30.03.2017 on the appointment of a director of the Administrative Board of the National Energy Regulatory Agency, Official Gazette of the RM, 2017, no. 119-126, art. 200.
- 140 Parliament Decision no. 57 of 06.04.2017 on the appointment of the general director of the Administrative Board of the National Energy Regulatory Agency, Official Gazette of the RM, 2017, no. 119-126, art. 202.

organization and conduct of the competition for the position of judge of the Constitutional Court of a representative of the Government<sup>141</sup> was approved. On April 20, 2017, the announcement on the organization of the competition was published on the Government website<sup>142</sup>, the deadline for submission of files being 20-28 April 2017. On 28.04.2017, the Committee decided to select two candidates<sup>143</sup>: Victoria Iftodi; Mihai Corj. Subsequently, by Decision no. 2 of 02.05.2017<sup>144</sup>, the candidacy of Victoria Iftodi was proposed to the Government for appointment, which approved the proposed nomination<sup>145</sup>.

Competition for the position of Secretary-General and Deputy Secretary-General of the Government, Secretary-General of State and State Secretary of the Ministry. There is less available information with reference to these offices and the limitations of the portal [www.cariere.goc.md](http://www.cariere.goc.md) are also a problem. Thus, often:

- web information is unavailable immediately after the procedures are finalized<sup>146</sup>;
- advertisements that can be accessed on the web page are either undefined and / or contain only general references to (unnecessary) links<sup>147</sup>, or operate with the notion of a senior public office, making it unclear which position is being considered, or for which date the interview is scheduled<sup>148</sup>;
- the information placed on the web page does not reveal the number of participants in the competition (the persons who submitted the files), which may be different from the number of persons who passed the CV competition;
- announcement on the results of the competition, if placed, contains only the name of the winner.

Obviously, under such circumstances, we cannot make reliable findings/ conclusions about compliance with the competition procedures<sup>149</sup>. Furthermore, unlike last year, when the State Chancellery provided us with all the required information, including the final score of the job holder, this year, we were denied access to information without explaining the reasons for such uneven practices.

Competitions for positions of judges. Compared to 2017<sup>150</sup>, the CSM reports the following basic indicators:

- 141 Regulation on the organization and conduct of the competition for the judge's position at the Constitutional Court of a representative of the Government, approved by the Government Provision, no. 33-d of 14.04.2017, <http://gov.md/sites/default/files/document/attachments/33-d.pdf>.
- 142 Announcement on the organization of the competition for the position of judge at the Constitutional Court of the representative of the Government, [http://gov.md/sites/default/files/document/attachments/anunt\\_0.pdf](http://gov.md/sites/default/files/document/attachments/anunt_0.pdf).
- 143 Decision no. 1 of 28.04.2017 of the Committee to select the candidate for the position of judge at the Constitutional Court from the Government, <http://gov.md/sites/default/files/document/attachments/comisia.jpg>.
- 144 Decision no. 2 of 02.05.2017 of the Committee to select the candidate for the position of judge at the Constitutional Court from the Government, [http://gov.md/sites/default/files/document/attachments/scan\\_may\\_3\\_2017\\_14.18.pdf](http://gov.md/sites/default/files/document/attachments/scan_may_3_2017_14.18.pdf).
- 145 Government Decision no. 277 of 03.05.2017 on the appointment of Mrs. Victoria Iftodi, Official Gazette of the RM, 2017, no. 144-148, art. 352.
- 146 By way of example, see <http://careers.gov.md/display-job/6758>
- 147 By way of example, see [http://www.cancelaria.gov.md/sites/default/files/concurs\\_sg.pdf](http://www.cancelaria.gov.md/sites/default/files/concurs_sg.pdf)
- 148 By way of example, see <http://www.cancelaria.gov.md/ro/apc/lista-candidatilor-admisi - the list of candidates admitted to the interview for the senior public offices>
- 149 In the interviews, both Lilia Palii and Lilian Chisca insisted on the observance of the legal provisions, which is proven by lack of complaints / appeal. Lilian Chisca also mentioned, referring to the competitions for the positions of state secretaries of some ministries, who are in charge of really specific areas, that the qualifications of the candidates do not always correspond to the expectations.
- 150 Report on the activity of the Superior Council of Magistracy and of the Courts in 2017, Chisinau, 2018, p. 5, <http://csm.md/files/RAPOARTE/2017/2017 RAPORT CSM.pdf>. In the interview, Victor Micu also complained of problems arising from the judicial reorganization, which, implicitly, makes the judge's position less attractive (e.g., the excessive amount of unequal burden per judge); the unattractiveness of the field for court officials, who may not be able to benefit from the appointment as judge; issues related to members of civil society in the CSM and its subordinate entities.

- newly appointed judges - 61;
- judges appointed to administrative positions - 34;
- promoted judges - 24;
- judges released / resigned - 20.

Several issues related to judges' selection and career may be claimed, such as the way the judges, vice presidents and the CSJ president are nominated by the Parliament, violating the principle of separation of powers. To correct these deficiencies, the Government registered with the Parliament a draft law amending and supplementing the Constitution of the Republic of Moldova (No. 10 (h.951 2017-11-07) of 18.01.2018)<sup>151</sup>. The draft law has not been examined yet.

### 3. Implementation of the provisions on the verification of holders and candidates to public offices

With reference to the previous report<sup>152</sup>, in this section, we would like to present the information that was made available by the SIS, albeit with delay<sup>153</sup>, as we believe that this information is relevant.

|                  |  |  |
|------------------|--|--|
| Talmazan Igor    | Deputy Minister of Environment               | Subject to verification in 2015.   |
| Harunjen Eduard  | Prosecutor General                           | Subject to verification in 2016.   |
| Munteanu Andrei  | Member of the Court of Accounts              | Subject to verification in 2017 under Law no. 245 of 27.11.2008 on the State Secret (Law no.245/2008). |
| Baluța Alexandru | Deputy Chief, Causeni Territorial Office, CS | The SIS did not receive any request from the competent public authority to initiate the verification.  |
| Golea Anatolie   | Acting Director, SPPS                        | The SIS did not receive any request from the competent public authority to initiate the verification.  |
| Flocea Ruslan    | Secretary General of the President's Office  | Subject to verification in 2017 under Law no. 245/2008.  |

Regarding this data, we would like to draw attention to a few issues. First, there is an overlap between the procedures applied under Law no. 271/2008 and the procedures applied under Law no. 245/2008, these deficiencies are to be examined and removed. Second, the information submitted by the authorities is contradictory. Thus, with regard to Baluta Alexandru, the State Chancellery informs that he was subject to verification, which makes us doubt the information provided by the authorities.

In this respect, the CSM remains the only authority presenting information, which is included in the chart below<sup>155</sup>.

151 The draft law amending and supplementing the Constitution of the Republic of Moldova (articles 116, 121, 121/1, 122, 123), <http://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/4057/language/ro-RO/Default.aspx>.

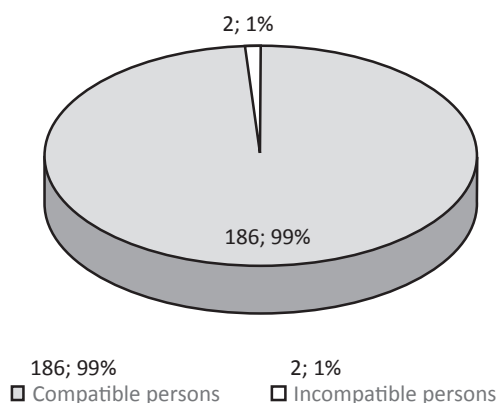
152 Monitoring Report: On the appointment / termination of appointments to public offices in 2016, Promo-Lex, Chisinau, 2017, pp. 36-38, <https://promolex.md/11142-monitorizarea-modului-de-ocupareincetare-a-functiilor-publice-in-anul-2016/?lang=ro>.

153 There was no response from the SIS, when the previous Report was drafted.

154 Legea nr. 245 din 27.11.2008 cu privire la secretul de stat, Monitorul Oficial al RM, 2009, nr. 45-46, art. 123.

155 Raport cu privire la activitatea Consiliului Superior al Magistraturii și a instanțelor judecătorești în anul 2017, Chișinău, 2018, pp. 33-34, [http://csm.md/files/RAPOARTE/2017/2017\\_RAPORT\\_CSM.pdf](http://csm.md/files/RAPOARTE/2017/2017_RAPORT_CSM.pdf).

Chart no. 1. Compatibility/ incompatibility of candidates/ holders of position of judges, 2017

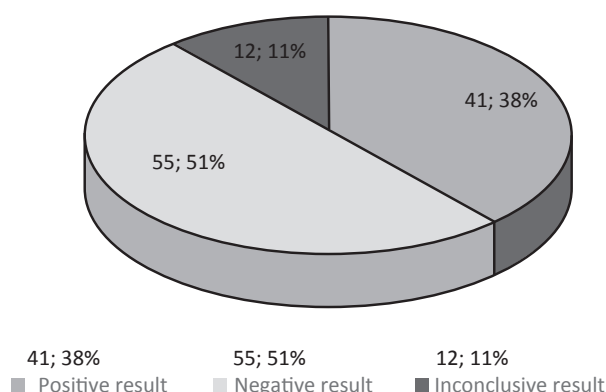


#### 4. Implementation of Provisions for Polygraph Testing

According to the CNA<sup>156</sup>, in 2017, 136 candidates for employment in the CNA were subject to tests of simulated behavior detector (polygraph) within service inquiries, as well as at the request of other institutions.

From other sources provided by CNA<sup>157</sup>, in 2017, 148 persons (CNA - 108, PA - 14, PCCOCS - 3, ANI - 3, PG - 20) were subject to simulated behavior detector tests. For CNA employees, the results of the polygraph test are shown in the following chart. According to the CNA, 26 persons were not employed because of the failed polygraph test and one person was dismissed. It should be mentioned that 1 person was tested as part of a criminal case.

Chart no. 2. Polygraph test results of CNA employees, 2017



As far as SIS is concerned, within the hearing of the Commission for National Security, Defense and Public Order of 23.01.2018, the authority stated that it annually performs 150-200 tests<sup>158</sup>.

156 CNA activity report for 2017, p. 20, <https://www.cna.md/lib.php?l=ro&idc=143&t=/Studii-si-analize/Rapoarte-de-activitate&>.

157 CNA informative note of 22.01.2018 on the implementation of Law no. 269-XVI of 12.12.2008, [file:///C:/Users/Contabil/Downloads/public\\_publications\\_1881147\\_md\\_nota\\_informati.pdf](file:///C:/Users/Contabil/Downloads/public_publications_1881147_md_nota_informati.pdf).

158 Hearing of law enforcement authorities on the application of simulated behavior detector testing with the Commission for National Security, Defense and Public Order, [https://www.privesc.eu/arhiva/79745/Audierea-autoritatilor-responsabile-de-executarea-Legii-privind-aplicarea-testarii-la-detectorul-comportamentului-simulat-in-cadrul-Comisiei-securitat\\_](https://www.privesc.eu/arhiva/79745/Audierea-autoritatilor-responsabile-de-executarea-Legii-privind-aplicarea-testarii-la-detectorul-comportamentului-simulat-in-cadrul-Comisiei-securitat_).

## IV. OUTCOME

### 1. Legality

Keeping in mind the findings of the previous Report<sup>159</sup>, it should be reiterated that in assessing the level of guarantee of the principle of legality in the appointment / termination of appointments to offices, the statistics on labor disputes would be most relevant. In the absence of such generalized information, as this indicator is not being pursued by the State Chancellery, case studies reveal deficiencies in this respect.

One of the problems previously identified was the late start and delay of the competition. The issue was maintained in 2017, eloquent examples of this being competitions for the positions of CNA director, ANRE director, president and vice president of ANI.

Another problem previously identified and maintained in 2017 is the interim nature of the positions that was challenged. In this regard, we would like to recall the case of members and leaders of the CNI, which resulted in genuine media scandals<sup>160</sup>.

Another aspect of the same problem is the prolonged maintenance of interim offices. It is the case of Anatolie Golea, acting director of SPPC, who since 2016, continues to exercise the job duties, being acting director<sup>161</sup>.

### 2. Independence

Reiterating the findings of the previous Report<sup>162</sup>, we recall that the principle of independence is linked to the principle of legality. From the above mentioned, the deficiencies in guaranteeing it will persist, as long as the national legal framework does not make a clear distinction between the official representatives of a political interest and the official representatives of a special public

159 Monitoring Report: On the appointment / termination of appointments to public offices in 2016, Promo-Lex, Chisinau, 2017, pp. 39-40, <https://promolex.md/11142-monitorizarea-modului-de-ocupareincetare-a-functiilor-publice-in-anul-2016/?lang=ro>

160 Viorica Manole, ANI's formation is delayed. Former members are in office and receive salaries. What did they do in almost one year of inactivity? <http://www.moldovacurata.md/news/view/formarea-ani-intarzie-fostii-membri-sunt-in-functii-si-ridica-salarii-cu-ce-s-au-ocupat-in-aproape-un-an-de-inactivitate>, Victor Mosneag, Conflict at ANI: Donciu self-proclaimed interim president, Parliament says he is not entitled to, <https://www.zdg.md/stiri/stiri-politice/confuzie-la-cni-donciu-s-a-autoproclamat-presedinte-interimar-parlamentul-spune-ca-nu-ar-avea-dreptul>,

Anatolie Donciu forced by police to withdraw from ANI leadership, <https://anticoruptie.md/ro/stiri/anatolie-donciu-fortat-de-politie-sa-plece-de-la-sefia-ani>, Lilia Zaharia, Natalia Enache, Conflict at ANI. Police summoned to decide who is the boss, <http://www.moldovacurata.md/news/view/conflict-la-ani-politia-chemata-pentru-a-decide-cine-e-seful>,

Viorica Manole, Conflict at ANI, Anatolie Donciu's version: „Stratila took over the power at ANI and captured the president's office”, Victor Stratila, „Rule of law has been restored,” <http://www.moldovacurata.md/news/view/conflictul-de-la-ani-versiunea-lui-anatolie-donciu-stratila-a-uzurpat-puterea-la-ani-si-a-capturat-functia-de-presedinte-victor-stratila-a-fost-restabilita-ordinea-de-drept>, Lilia Zaharia, Former CNI members sued ANI and requests the institution to pay salaries, <http://www.moldovacurata.md/news/view/fostii-membri-ai-cni-au-actionat-in-judecata-ani-si-cer-ca-institutia-sa-le-plateasca-salarii>.

161 Government Decision no. 1423 of 28.12.2016 on the provision of the interim office, Official Gazette of the Republic of Moldova, 2016, no. 478-490, art. 1507.

162 Monitoring Report: On the appointment / termination of appointments to public offices in 2016, Promo-Lex, Chisinau, 2017, pp. 40-41, <https://promolex.md/11142-monitorizarea-modului-de-ocupareincetare-a-functiilor-publice-in-anul-2016/?lang=ro>

interest. In 2016, the subject was resumed by Decision no. 22 of 22.07.2016 on the exception of unconstitutionality of certain provisions of the Annex to the Law on administrative litigation no. 793 of 10.02.2000 (Access to Justice of the Head and Deputy Head of the Territorial Office of the State Chancellery)<sup>163</sup>. In 2017, the list of state officials, exponents of a special political or public interest, which have been exempted from addressing administrative litigation, annexed to the Law on administrative litigations, no. 793 of 10.02.2000<sup>164</sup>, has been modified as follows:

|   |  |
|---|--|
| Law no. 20 of 03.03.2017 for the abolition of point 15 of the Annex to the Law on administrative litigation no. 793/2000 <sup>165</sup> | Positions of Head of the Territorial Office of the SC and its Deputy Head were excluded. |
| Law no. 153 of 14.07.2017 amending and supplementing some legislative acts <sup>166</sup>   | Position of Deputy minister was excluded.  |
| Law no. 318 of 22.12.2017 amending and supplementing some legislative acts <sup>167</sup>   | Positions of director, deputy director of ARM were excluded.                             |

In our opinion, the list is to be thoroughly revised so that it will not contain only state officials, exhibiting a special political interest.

Referring to the position of deputy head of the territorial office of State Chancellery, we would like to mention the re-establishment of Nicolae Uncuta, deputy head of the Balti Territorial Office, by a judicial decision. By Government Decision no. 46 of 01.02.2017<sup>168</sup>, to ensure the enforcement of the judgment, issued by the Buiucani District Court of Chisinau on 09.02.2016 (file no.2-827/ 2016), Conclusion of the Civil, Commercial and Administrative Litigation Board of the CSJ of 07.12.2016 (file no. 2rh-245/16) and pursuant to art. 256 para. (2) of the Civil Procedure Code of the Republic of Moldova, no. 225 of 30.05.2003<sup>169</sup>, on 06.05.2016, the official was reinstated.

The importance of the process initiated by the reform of the public administration is indisputable. One of the expectations was the depoliticization of the public office (not only de jure but also de facto), by modifying the status and procedures of appointment to certain positions, such as the positions of Secretary General of State and State Secretary of the Ministry. In spite of expectations, in many cases, these positions are occupied by ex-deputy ministers. Unfortunately, in the absence of additional information about the results of the competition, the explanations offered by Lilia Palii in the interview, namely that these people have experience that is relevant to the position and demonstrated extensive knowledge in the field, are irrelevant.

Citizens' insights into the process of appointment to public offices are also relevant. Thus,

163 Constitutional Court Decision no. 22 of 22.07.2016 on the exception of unconstitutionality of certain provisions of the Annex to the Law on Administrative Contentious no. 793 of February 10, 2000 (Access to Justice of the head and Deputy Head of the Territorial Office of the State Chancellery) (Report No. 69g / 2015), Official Gazette of the RM, 2016, no. 256-264, art. 64.

164 Law on administrative litigation, no. 793 of 10.02.2000, Official Gazette of the RM, 2006, special edition.

165 LLaw no. 20 of 03.03.2017 for the abrogation of point 15 of the Annex to the Law on administrative litigation no. 793/2000, the Official Gazette of the RM, no. 92-102, art. 133.

166 Law no. 153 of 14.07.2017 amending and supplementing some legislative acts, Official Gazette of the RM, 2017, no. 301-315, art. 523.

167 Law no. 318 of 22.12.2017 amending and supplementing some legislative acts, Official Gazette of the RM, 2018, no. 7-17, art. 74.

168 Government Decision no. 46 of 01.02.2017 on the re-establishment of Mr. Nicolae Uncuta, Official Gazette of the RM, 2017, no. 30-39, art. 85.

169 The Civil Procedure Code of the Republic of Moldova, no. 225 of 30.05.2003, Official Gazette of the RM, 2013, no. 130-134, art. 415.

according to a poll conducted by Magenta Consulting at the order<sup>170</sup> of Promo-LEX Association, 68% of respondents believe that the appointment of public servants in state institutions is not based on merit.

### 3. Integrity

Similar to the year 2016<sup>171</sup>, in 2017, the issue of public servants' integrity remained in the public eye.

Maria Caraus, Deputy Minister of Finance. By Government Decision no. 800 of 11.10.2017<sup>172</sup>, under Art. 200 of the Code of Criminal Procedure of the Republic of Moldova, no. 122 of 14.03.2003<sup>173</sup> and the Application filed by the prosecutor of the Prosecutor's Office no.10743 of 10.10.2017, the activity of the person concerned was suspended for the duration of criminal prosecution. Subsequently, by Government Decision no. 989 of 21.11.2017<sup>174</sup>, the person concerned was released from office.

Vsevolod Stamati, Deputy General Director for Sanitary Veterinary Issues, ANSA. By Government Decision no. 1118 of 20.12.2017<sup>175</sup>, under to Art. 200 of the Code of Criminal Procedure of RM, no.122-XV of 14.03.2003, art. 21 para. (2) of the Law no. 199/2010 and following the application of the Anticorruption Prosecutor's Office no. 12908 of 13.12.2017, the activity of Mr. Vsevolod Stamati was suspended for the duration of criminal prosecution.

Adela Andronic, Judge, Central Court. By the Presidential Decree no. 11 of 29.12.2016<sup>176</sup>, she was released from office in connection with disciplinary offenses.

Marian Matcovschi, Judge, Cimislia Court. By the Presidential Decree no. 62 of 20.02.2017<sup>177</sup>, he was dismissed following the decision on his incompatibility with the interests of the public service, under art. 15 para. (5) of the Law no.271/2008.

Andrei Balan, Judge, Orhei Court. By the Presidential Decree no. 59 of 08.02.2017<sup>178</sup>, he was discharged from office following a final conviction, on the basis of Art. 25 para. (1) lit. g) of Law no. 544 of 20.07.1995 on the status of judge<sup>179</sup>.

170 National representative survey (right bank). Sample collected: 1326 citizens, aged 18+. Error margin: + 2.7% at a 95% confidence interval. Data Collecting: CAPI - Personalized (Face-to-Face) interviews assisted by computer (tablet). Collection period: March 2018 - April 2018.

171 Monitoring Report: On the appointment / termination of appointments to public offices in 2016, Promo-Lex, Chisinau, 2017, pp. 41-43, <https://promolex.md/11142-monitorizarea-modului-de-ocupareincetare-a-functiilor-publice-in-anul-2016/?lang=ro>.

172 Government Decision no. 800 of 11.10.2017 on the suspension from office of Mrs. Maria Caraus, Official Gazette of the RM, 2017, no. 360-363, art. 901.

173 Code of Criminal Procedure of the Republic of Moldova, no. 122 of 14.03.2013, Official Gazette of the Republic of the RM, 2013, no. 248-251, art. 699.

174 Government Decision no. 989 of 21.11.2017 on the dismissal of Mrs. Maria Caraus, Official Gazette of the RM, 2017, no. 411-420, art. 1100.

175 Government Decision no. 1118 of 20.12.2017 on the suspension of Mr. Vsevolod Stamati, Official Gazette of the RM, 2017, no. 441-450, art. 1237.

176 Presidential Decree no. 11 of 29.12.2016 on the release of Ms Adela Andronic from the position of judge at the Center District Court, Chisinau municipality, Official Gazette of the RM, 2017, no. 9-18, art. 49.

177 Presidential Decree no. 62 of 20.02.2017 on the release of Mr. Marian Matcovschi from the position of judge at the Cimislia Court, Official Gazette of the Republic of Moldova, 2017, no. 60-66, art. 90.

178 Presidential Decree no. 59 of 08.02.2017 on the release of Mr. Andrei Balan from the position of judge at the Orhei Court, Official Gazette of the RM, 2017, no. 50-59, art. 87.

179 Law no. 544 of 20.07.1995 on the statute of the judge, Official Gazette of the RM, 2013, no. 15-17, art. 63.

Victor Orindas, Judge, Commercial District Court. By the Presidential Decree no. 27 of 05.01.2017<sup>180</sup>, he was dismissed following the decision on his incompatibility with the interests of the public service, under to art. 15 para. (5) of the Law no.271/2008.

Bogdan Zumbreanu, director of CNA, is on the list of persons responsible for Moldova's conviction by the ECtHR in at least three cases (Musuc v Moldova, Oferta Plus v Moldova, Cebotari v Moldova). He claims that in the period of 2009 - 2010, he presented the necessary explanations. According to Zumbreanu, the cases in question were handled when he was head of the department and had a small number of subordinates<sup>181</sup>. He was also targeted in a journalistic investigation into his impressive wealth<sup>182</sup>.

Igor Carlasuc, candidate for the office of CNA director, was targeted in several journalistic investigations<sup>183</sup>. In early 2017, Tuleibici LLC, a company with the legal address in the building built by his family, founded by his sister, managed by his wedding godson, and previously by his wife, won auctions worth more than 1.2 million MDL for distribution of foodstuffs to kindergartens. This happened shortly after the CNA found that several economic agents had delivered non-qualitative products to preschool institutions. Shortly after, Carlasuc was suspended from office, but a month and a half later, an order was issued to refuse initiation of criminal prosecution against him. Prosecutors failed to prove that Igor Carlasuc influenced the activity of the trader. At the same time, Carlasuc returned to office. Since then, the company has not won any auctions and since September 2017, Igor Carlasuc's sister is no longer found on the list of founders, and the company has changed its legal address. Carlasuc was targeted in journalistic inquiries related to the luxury assets owed by CNA employees.

Viorel Mosneaga, General Director of ANSC, was targeted in a journalistic investigation<sup>184</sup>. According to the journalists, during the period when he headed the Public Procurement Agency, a company founded by his sister, Aldos Grup LLC, won million-worth contracts with the state<sup>185</sup>.

It is noteworthy that many of the names mentioned in the journalistic investigations in 2016 are no longer found in the previously held positions (e.g. Vasile Batca, Minister of Regional Development and Construction, Vladimir Cebotari, Minister of Justice, Ruxanda Glavan, Minister of Health, Stela Grigoras, Minister of Labor, Social Protection and Family). However, many people, whose integrity was challenged by investigative journalists, not only continue to hold public offices, they are even promoted<sup>186</sup>.

180 Presidential Decree no. 27 of 05.01.2017 on the release of Mr. Victor Orindas from the position of judge at the Commercial District Court, Official Gazette of the RM, 2017, no. 9-18, art.50.

181 Victor Mosneag, CVs of applicants to the position of director of CNA, <https://www.zdg.md/editia-print/cv-urile-pretendentilor-la-functia-de-director-al-cna>.

182 Victor Mosneag, CNA - luxury factory of millionaires on relatives' money, <https://www.zdg.md/editia-print/investigatii/cna-fabrica-de-lux-si-milionari-pe-banii-rudelor>.

183 Victor Mosneag, CVs of applicants to the position of director of CNA, <https://www.zdg.md/editia-print/cv-urile-pretendentilor-la-functia-de-director-al-cna>. Victor Mosneag, CNA - luxury factory of millionaires on relatives' money (II), <https://www.zdg.md/editia-print/investigatii/cna-fabrica-de-lux-si-milionari-pe-banii-rudelor-ii>; Victor Mosneag, (doc) Hidden company of a CNA chief „took over” kindergarten auctions, <https://www.zdg.md/editia-print/investigatii/firma-ascunsa-a-familiei-unui-sef-de-la-cna-a-descins-in-licitatiile-de-la-gradinite>; CNA suspended its head targeted in the ZdG investigation and started an internal investigation, <https://www.zdg.md/stiri/stiri-justitie/ultima-ora-cna-l-a-suspendat-pe-seful-de-directie-vizat-in-ancheta-zdg-si-a-demarat-o-ancheta-interna>; Victor Mosneag, Head of the CNA holding a „hidden” company returned to office, <https://www.zdg.md/importante-2/seful-de-directie-de-la-cna-cu-firma-ascunsa-a-revenit-la-serviciu>.

184 Victor Mosneag, Anatolie Esanu, Ziarul de Garda; Mariana Colun, Center for Journalistic Investigations, Auctions for the Head of Procurement and his Family, <https://anticoruptie.md/ro/investigatii/achizitii-publice/licitatie-pentru-familia-sefului-de-la-achizitii>, <https://www.zdg.md/editia-print/investigatii/licitatie-pentru-familia-sefului-de-la-achizitii>.

185 Natalia Enache, Public Procurement: New institution with „old” people, <http://www.moldovacurata.md/news/view/achizitii-publice-institutie-noua-cu-oameni-vechi>.

186 For more details, see: Viorica Zaharia, Victor Mosneag, Numerous actions, few results. A study of documenting the response of public authorities to journalists' investigation into public servants' integrity in the period of January 2014 - June 2017, Chisinau, 2017.

## 4. Transparency

Similar to 2016<sup>187</sup>, in 2017, we notice on the Parliament website, that information on the competition is dispersed in different headings. Moreover, Parliament website does not contain information on the competition for the office of director of the CNA (no information on the files submitted, nor information on the decisions taken by the Committee in the process of candidate selection).

The Government website does not provide additional information on the competition for the position of CC judge, candidates' CVs being missing. We also reiterate the problems found with regard to the [www.cariere.gov.md](http://www.cariere.gov.md) portal.





Moreover, with regard to transparency, we note the authorities' refusal to provide us with information, although we requested the same categories of information that had been provided for the previous Report.

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187 Monitoring Report: On the appointment / termination of appointments to public offices in 2016, Promo-Lex, Chisinau, 2017, pp. 44, <https://promolex.md/11142-monitorizarea-modului-de-ocupareincetare-a-functiilor-publice-in-anul-2016/?lang=ro>.

## FINAL CONSIDERATIONS: CONCLUSIONS AND RECOMMENDATIONS

Taking account of the findings of this Report and based on the Assessment Grid used in the previous Report<sup>188</sup>, the dimensions monitored are evaluated and the results are presented in the table below:

| Dimension   | 2016    | 2017    | Notes   |
|---|---------|---------|---|
| <b>Legal framework</b><br>         | average | average | There are provisions, but they do not cover all the situations / aspects / procedures and are not clear enough and applicable.<br>In the regulatory process, we noticed the authorities' tendency to give up some stages (the written test) of the competition for public and senior public positions.  |
| <b>Institutional framework</b><br> | average | average | Entities (competition committees) have been set up, or full powers have been delegated to the existing entities, but they are limited or inefficient.<br>In the competition for the position of CNA director, worries are raised by the lack of observers, representing the civil society and academic environment, as well as exemption of pretenders from presenting their vision on the institution's development strategy at the file submission stage. |
| <b>Implementation</b><br>        | average | minimum | The provisions are implemented but to a limited extent. This rating is given due to the unavailability of information, the authorities' refusal to provide information, or the information provided is incomplete and confusing.  |
| <b>Outcome</b><br>               | average | minimum | The principles of legality, independence, integrity, transparency are limited.<br>The rating is given, in particular, due to the failure to guarantee the principle of transparency.  |

Starting from the premise that the recommendations made in the previous Report<sup>189</sup> remain topical and in the light of developments of 2017, it is recommended:

- Complementing the Law no. 199/2010 with general provisions on the requirements for public position and the grounds for its early termination;
- exclusion of the word „may” from art. 23 para. (3) of the Law no. 199/2010, and give the text the following wording: „Non-execution or inappropriate execution of duties, prerogatives and powers, by the person holding a public position, entails revocation from office or dismissal, regardless of the presence of fault”;
- defining the concepts of didactic, scientific and creative activity in the legislation (Law 133/2016), as well as the notions of activity / remunerated / paid position;

188 Monitoring Report: On the appointment / termination of appointments to public offices in 2016, Promo-Lex, Chisinau, 2017, p.6, <https://promolex.md/11142-monitorizarea-modului-de-ocupareincetare-a-functiilor-publice-in-anul-2016/?lang=ro>.

189 Monitoring Report: On the appointment / termination of appointments to public offices in 2016, Promo-Lex, Chisinau, 2017, p.8, <https://promolex.md/11142-monitorizarea-modului-de-ocupareincetare-a-functiilor-publice-in-anul-2016/?lang=ro>.

- giving art. 11 para. (12) of the Law no. 132/2016 the following wording: „The candidate with the highest score obtained in the competition tests and that has passed the polygraph test shall be the winner”;
- giving art. 12 para. (1) clause f) of Law no. 132/2016 the following wording: „four representatives of civil society”;
- drafting of a single legislative act that would provide for the Parliament’s organization and implementation of the competition for public offices (the draft law pending the examination of the Legislature can serve as a support for public debate in this sense);
- improving Law no. 271/2016, including by avoiding any overlapping with Law no. 245/2008;
- improving Law no. 269/2008;
- providing the infrastructure necessary for the implementation of the provisions of Law no. 269/2008;
- revision of the annex to Law no. 793/2000, only the official representatives of a special political interest will be exempted from addressing to the administrative litigation court;
- examining the draft Law on the modification and completion of the Constitution of the Republic of Moldova (art. 11, 121, 121/1, 122, 123);
- compliance with legal provisions on organizing and conducting competitions, including avoidance of extended mandates and long-term interims;
- effectively informing the public about competitions that are organized and conducted, including by presentation of information on the application of verification procedures and the use of polygraph tests with respect to the candidates in the institutional activity reports, as well as presenting extensive information on the results of competitions;
- Enhance transparency of competitions by improving web resources.

# ABREVIERI

|                |   |
|----------------|---|
| <b>AGRM</b>    | Agency for Geology and Mineral Resources  |
| <b>ANI</b>     | National Integrity Authority  |
| <b>ANSA</b>    | National Agency for Food Safety   |
| <b>ANSC</b>    | National Agency for Settlement of Complaints  |
| <b>ANRCETI</b> | National Regulatory Agency for Electronic Communications and Information Technology |
| <b>ANRE</b>    | National Energy Regulatory Agency   |
| <b>ARFC</b>    | Agency for Land Relations and Cadaster  |
| <b>ARM</b>     | Material Reserves Agency  |
| <b>BNM</b>     | National Bank of Moldova  |
| <b>BNS</b>     | National Bureau of Statistics   |
| <b>BRI</b>     | Bureau of Interethnic Relations   |
| <b>CALM</b>    | Congress of Local Authorities of Moldova  |
| <b>CC</b>      | Constitutional Court  |
| <b>CI</b>      | Integrity Council   |
| <b>CNA</b>     | National Anticorruption Center  |
| <b>CNAA</b>    | National Council for Accreditation and Attestation                                  |
| <b>CNI</b>     | National Integrity Commission   |
| <b>CNPF</b>    | National Commission of the Financial Market   |
| <b>CS</b>      | State Chancellery   |
| <b>CSJ</b>     | Supreme Court of Justice  |
| <b>CSM</b>     | Superior Council of Magistracy  |
| <b>CSP</b>     | Superior Council of Prosecutors   |
| <b>GRECO</b>   | Group of States Against Corruption  |
| <b>PA</b>      | Anticorruption Prosecutor's Office  |
| <b>PCCOCS</b>  | Prosecutor's Office for Combating Organized Crime and Special Causes                |
| <b>PG</b>      | General Prosecutor's Office   |
| <b>SHS</b>     | State Hydro-meteorological Service  |
| <b>SIS</b>     | Security and Intelligence Service of the Republic of Moldova                        |
| <b>SPPS</b>    | State Protection and Guard Service  |

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