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Assessment of Rule of Law and Administration of Justice for Sector-Wide Programming
Moldova

FINAL REPORT

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Expert Team:
Dovydas Vitkauskas (DV), Team Leader
Stanislav Pavlovshci (SP), Senior Expert
Eric Svanidze (ES), Senior Expert

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ABBREVIATIONS

ABA:	American Bar Association
ADR:	alternative dispute resolution
CC:	Constitutional Court
CCECC:	Centre for Combatting Economic Crimes and Corruption
CCP:	Code of Criminal Procedure
CEPEJ:	European Commission for the Efficiency of Justice
CPO:	Central Probation Office
CPT:	Committee for the Prevention of Torture
COE:	Council of Europe
EC:	European Commission
ECHR:	European Convention on Human Rights / European Court of Human Rights
ENP(I):	European Neighbourhood Policy (Instrument)
EU:	European Union
GDP:	Gross Domestic Product
GOM:	Government of Moldova
GRECO:	(COE) Group of State Against Corruption
IMF:	International Monetary Fund
IO:	Investigating Officer
JSCC:	Justice Sector Coordination Council
MOE:	Ministry of Economy
MOF:	Ministry of Finance
MOI:	Ministry of Interior
MOJ:	Ministry of Justice
MTBF:	Medium-Term Budget Framework
NIJ:	National Institute of Justice
NUB:	National Union of Bailiffs
NGO:	non-governmental organisation
NORLAM:	Norwegian Mission of Rule of Law Advisors to Moldova
OECD:	Organisation for Economic Cooperation and Development
OPCAT:	Optional Protocol to the U.N. Convention against Torture
OSCE:	Organisation for Security and Cooperation in Europe
PFM:	Public Financial Management
PGO:	Office of the Prosecutor General
SBS:	Sector Budget Support
SC:	Supreme Court
SCM:	Supreme Council of Magistrates
SCP:	Supreme Council of Prosecutors
SFM:	Soros Foundation Moldova
SIDA:	Swedish International Development Agency
SP:	Sector Programme
SPSP:	Sector Policy Support Programme
SWAP:	Sector-Wide Approach
TA:	Technical Assistance
TCP:	Threshold Country Program of the U.S. Millennium Challenge Corporation
UN:	United Nations Organisation
UNDP:	United Nations Development Programme
UNICEF:	United Nations Children's Fun
USAID:	United States Agency for International Development

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I. EXECUTIVE SUMMARY

1. On 5 July 2010 the Expert Team consisting of Dovydas Vitkauskas, Team Leader, Stanislav Pavlovschi and Eric Svanidze, Senior Experts, started its engagement under the Terms of Reference of the above Project, with a view to assessing needs of the justice sector in Moldova, identifying priority areas of intervention to increase the efficiency of the EU-funded assistance, helping intensify cooperation of the EU with the Moldovan authorities, and making recommendations as to how to fulfil the above objectives. During July-December 2010 the Expert Team conducted more than 50 meetings with some 200 representatives of various Moldovan institutions and members of the civil society, as well as representatives of the international donor community.

2. The Expert Team carried out assessment of the justice sector on the basis of various reports and opinions of outside observes and the interviews conducted in the course of the engagement. It established the following five 'umbrella' areas of problems in the Moldovan justice sector, namely a certain lack of:
    a. internal and external sector dialogue, interaction and coordination for better institutional and legislative design;
    b. performance by the courts;
    c. performance by and independence of the pre-trial investigation and prosecuting bodies;
    d. access to and execution of justice;
    e. institutional, legal and practical tools to combat corruption and impunity.

3. The Expert Team established a significant lack of performance in the following sub-sectors/thematic areas of the justice sector:
    a. courts;
    b. prosecution service;
    c. criminal investigation agencies;
    d. bailiffs;
    e. probation;
    f. Ombudsman;
    g. sector and donor coordination and reform strategy;
    h. combatting ill-treatment;
    i. combatting corruption;
    j. legal education and professional training system;
    k. direct application of the European Convention on Human Rights;
    l. ADRs.

    At the same time, despite a certain lack of performance, notable improvements in performance in regard to the following sub-sectors/thematic areas were established:
    a. Bar;
    b. legal aid;
    c. Ministry of Justice;
    d. penitentiary;
    e. Constitutional Court;

f. Parliament;
g. juvenile justice.

4. The Expert Team recommended the EU to focus on technical assistance as the main method of delivery of development aid to Moldova within the short to medium term (up to 3 years), while moving towards sector-wide approach - alongside a reasonable proportion of continuing project-based approach in general, and technical assistance in particular - in the medium to long-term (3 to 5 years). For the purpose of determining priority areas of intervention in the long-term (up to 5 years), the main sub-sectors/thematic focus were identified by the Expert Team[1]:
    a. Particular attention was suggested to be focused on support to:
        - sector and donor coordination and reform strategy;
        - prosecution and criminal investigation;
        - bailiffs;
        - probation;
        - legal education and professional training system;
        - courts;
        - combatting ill-treatment;
        - appeals system;
        - Ombudsman;
    b. Continuing attention in the assistance efforts was suggested in regard to:
        - Bar;
        - legal aid;
        - Ministry of Justice;
        - penitentiary;
        - combatting corruption;
        - direct application of the European Convention of Human Rights;
        - juvenile justice;
        - Constitutional Court;
        - Parliament;
        - ADRs.

5. The Expert Team also assessed applicability of the Sector-Wide Approach (SWAP) to the Moldovan justice sector, the eligibility of Moldova for Sector Policy Support Programme (SPSP), and, consequently, Sector Budget Support (SBS). The Expert Team found the SWAP to be applicable to the Moldovan justice sector under all 7 relevant areas of assessment, namely:
    a. Sector and Donor Coordination;
    b. Sector Policy and Strategy;
    c. Sector Budget and Medium-term Budget Framework (MTBF);
    d. Performance Monitoring System;

[1] It must be borne in mind that the level of prioritisation *does not directly imply* that a certain sub-sector is performing better or worse. The prioritisation levels are made strictly for the purposes of EU programming in order to increase the efficiency of assistance, on the basis of cumulative analysis of various criteria described in paragraph 47 below.

e. Public Financial Management.
f. Macroeconomic Context;
g. Institutional Setting and Capacity.

6. The Expert Team underlined that the possible SPSP (including sector budget support as its core modality) would leave the national authorities a maximum flexibility and authority in the allocation of funds. The advantages would be a truly holistic view and drastically reduced transaction costs. Disadvantages derived from the fact that 'justice sector' was an oxymoron - not a sector in the classic sense but rather a large cluster comprising a multitude of different authorities, activities and relationships. Many strategic and tactical conditions were not yet of sufficient quality to currently allow a well-planned and well-executed SPSP.

7. In particular, the Expert Team found that the Moldovan justice sector was not yet eligible for SPSP (and SBS), falling short of meeting the following requirement:

- itemisation, finalisation and formal approval of the Draft Justice Sector Reform Strategy with realistic and achievable multi-annual budgetary commitments and projections tied to each major item of the Strategy, and drawn against the background of MTBF projections with regard to each relevant institution/block of the justice sector.

8. At the same time, the Expert Team expressed its belief that the domestic authorities' ability to properly coordinate and drive the reform process would improve as/when the SPSP kicked in, as had been the case in Georgia and other countries. The Expert Team recommended the EU to start preparing for a justice SPSP immediately by way of identification stage. But, as long as the institutional setting, capacity and other relevant conditions of the Moldovan context showed no radical improvement, the Expert Team underlined the importance of acknowledging inherent risks of the SPSP. In this respect, the Expert Team underlined the importance of continuing provision of assistance to the Moldovan justice sector by project-based approach in general - and technical assistance in particular - while maintaining a reasonable ratio between these methods and the future SPSP well beyond the long-term perspective, in order to ensure a delicate balance between the various approaches as a core ingredient of increased performance in aid delivery. While the Expert Team considered that it was hard to foresee when the justice sector SPSP might be launched, a tentative date in this respect was set at 1 January 2013, provided the above eligibility condition was satisfied. The recommended amount of the Programme was set at EUR 40 million, at the lower end of the indicative size of the Programme currently contemplated by the EU. The Expert Team also recommended certain additional steps to increase the quality of future SPSP, to be taken by the domestic authorities and the EU in the medium to long term.

II. SECTOR REVIEW

1. Introduction

9. On 5 July 2010 the Expert Team consisting of Dovydas Vitkauskas, Team Leader, Stanislav Pavlovschi and Eric Svanidze, Senior Experts, started its engagement under the Terms of Reference of the above Project, with a view to assessing needs of the justice sector in Moldova, identifying priority areas of intervention to increase the efficiency of the EU-funded assistance, helping intensify cooperation of the EU with the Moldovan authorities, and making recommendations as to how to fulfil the above objectives. During July-December 2010 the Expert Team conducted more than 50 meetings with some 200 representatives of various Moldovan institutions and members of the civil society, as well as representatives of the international donor community. Minutes of these Meetings are attached to this Report.

2. Policy Framework

A. EU Aid Delivery Policy

i. Paris Declaration on Aid Effectiveness

10. The Paris Declaration on Aid Effectiveness[2] was developed in the context of the Organisation for Economic Cooperation and Development (OECD), and approved in March 2005 by over a hundred of countries and multilateral organisations who exercise a role as the most important actors in the field of development aid. The Paris Declaration promotes national ownership, partnership, transparency and accountability in the use of development resources. As a result of the Paris Declaration, a clear commitment has been taken towards an increased use of common arrangements at country level for planning, funding, disbursement, monitoring, evaluating and reporting to government on donor activities and aid flows. The Declaration recognises that for aid to become truly effective, stronger and more balanced, accountability mechanisms are required at different levels. At the international level, the Paris Declaration constitutes a mechanism by which donors and recipients of aid are held mutually accountable to each other, publicly monitoring compliance with their commitments. At a country level, the Paris Declaration encourages donors and partners to jointly assess mutual progress in implementing agreed commitments on aid effectiveness by making best use of local mechanisms.

ii. European Consensus on Development

11. The European Consensus on Development[3] (ECD), a Joint Statement by the Council, the European Parliament (EP) and the European Commission (EC)

[2] http://www.oecd.org/document/18/0,3343,en_2649
[3] http://www.dfid.gov.uk/eupresidency2005/eu-consensus-development.pdf

adopted in December 2005, draws its influence from the Paris Declaration, and is a key document which lays foundations of aid delivery policy of the EU by establishing the following principles:

a. national (local) ownership;
b. partnership;
c. coordination;
d. harmonisation;
e. alignment to the recipient country systems;
f. results orientation;
g. concentration (meaning that a strictly limited number of areas for action must be selected when the EU aid is being programmed, instead of spreading efforts too thinly over too many sectors or topics).

12. The ECD establishes that sustainable development includes good governance, human rights, political, economic, social and environmental aspects. The EU is committed to the promotion of respect for human rights, fundamental freedoms, peace, democracy, good governance, gender equality, the rule of law, solidarity and justice. It becomes obvious that the ECD regards good administration of justice as a key and priority in the development aid policy of the EU.

13. National (local) ownership principle is among the most important aspects of the ECD. The EU does not want to impose any policy support programmes on the developing countries without the involvement of the respective government. In addition, aid delivery methods should vary with regard to the circumstances and conditions detected in a particular country, including its socio-political, economic, legal and cultural context. Implementation of Sector Policy Support Programmes (SPSP) - and Sector Budget Support (SBS) as their primary modalities - attests an important trend in the EU aid delivery policy based on the principles established in the Paris Declaration and the ECD.

iii. Accra Agenda for Action

14. The Accra Agenda for Action (AAA) was drawn in the context of the OECD in 2008, building upon the commitments agreed in the Paris Declaration. It elaborates on the following principles and modalities:

a. predictability - donors will provide 3-5 year forward information on their planned aid to partner countries;
b. country systems - partner country systems will be used to deliver aid as the first option, rather than donor systems;
c. conditionality - donors will switch from reliance on prescriptive conditions about how and when aid money is spent to conditions based on the developing country's own development objectives;
d. untying - donors will relax restrictions that prevent developing countries from buying the goods and services they need from whomever and wherever they can get the best quality at the lowest price.

iv. European Neighbourhood Policy

15. The European Neighbourhood Policy (ENP) and its framework instrument (ENPI) serve as an umbrella legal basis for delivery of EU aid to the neighbouring countries, including Moldova. The ENP confirms the choice in favour of sector and budget support[4].

B. EU-Moldova Agreements

i. EU-Moldova Association Agreement (In Negotiation)

16. Moldova and the EU first established formal relations through a Partnership and Cooperation Agreement (PCA) in 1994. It entered into force in 1998 and continues to serve as a basis for the two-way political interaction. In 2009 Moldova and the EU adopted negotiating directives for a new EU-Moldova agreement to supersede the PCA. On 12 January 2010 the EU and Moldova started negotiations on an Association Agreement, which will go beyond the established framework of cooperation and will open a new stage in the relations, notably by enhancing political dialogue and deepening sectorial cooperation. The Association Agreement will replace the PCA. The EU and Moldova also intend to establish a Deep and Comprehensive Free Trade Area (DCFTA), when the relevant conditions are met.

ii. EU-Moldova ENP Action Plan

17. Moldova was among the first group of seven countries that were covered by Action Plans under the ENP, signed in 2005. The Action Plan is a political document that establishes strategic objectives of cooperation between the two. The temporary implementation framework of the Action Plan was 3 years. Likewise, its implementation involves approximation of the Moldovan legislation, regulatory documents and standards with those of the EU. The Plan establishes the following relevant priorities:
    a. institutional strength, sustainability and efficiency for the rule of law;
    b. stronger protection of rights guaranteed by the European Convention on Human Rights (ECHR) through enforcement of decisions by the European Court of Human Rights, acceptance of the Council of Europe (COE) and United Nations (UN) Conventions, including those on the rights of minorities, children and women;
    c. stepping up of efforts in combatting ill-treatment by the police and penitentiary authorities;
    d. enhanced fight against corruption, organised crime, human trafficking, terrorism, money laundering and illicit drugs;

[4] see *inter alia* the EC Guidelines on Sector Approaches, p. 16 , at http://ec.europa.eu/europeaid/multimedia/publications/documents/tools/guidelines_support_to_sector_prog_11_sept07_final_en.pdf

e. comprehensive and efficient border management (especially with regard to Transdnistria) and migration systems;
f. improvement of the investment climate through structural reforms (including greater protection of intellectual property rights, reform of public procurement and anti-trust laws etc.) in order to ensure non-discriminatory, transparent and predictable conditions for domestic and foreign businesses.

iii. ENPI Country Strategy Paper Moldova 2007-2013

18. As bilateral EU assistance for Moldova is principally provided under the ENPI, its overall objectives have been agreed in the Country Strategy Paper (CSP) 2007-2013, which concerns various external and internal policy areas. The latter component of the CSP includes the following relevant objectives:
    a. consolidating democracy, the protection of human rights and fundamental freedoms;
    b. consolidating the rule of law, in order to ensure the independence of the judiciary and strengthen its administrative capacity; to ensure impartial and effective prosecution;
    c. effective fight against corruption through an anti-corruption plan in the framework of GRECO (COE Group of States against Corruption);
    d. public sector reform, including the administrative and regulatory reforms necessary to improve public governance.

iv. Implementation of the ENP in 2009: EU Progress Report on Moldova

19. The EU-Moldova ENP Action Plan also included provisions on monitoring its implementation. The most recent Progress Report covers the period between 1 January and 31 December 2009. It confirms certain advancement in the fields of rule of law and judicial reform, combating corruption, ensuring respect for human rights, and some other issues linked to the justice sector (combating organised crime, trafficking in human beings, money laundering). Conversely, the report highlights some shortcomings in the implementation of the Action Plan:
    a. amendments to the composition of the Supreme Council of Magistrates (SCM) did not comply with the relevant COE recommendations, and were considered as a significant step backwards in the judiciary reform process;
    b. limited financial resources available to support the judiciary reform;
    c. implementation of the Legal Aid Act was not running smoothly, and the allocation of resources to the National Legal Aid Council was insufficient;
    d. delays in the adoption and implementation of international anti-corruption instruments, and the lack of effective enforcement of the relevant legal framework;
    e. mass protests following the elections in April 2009 April were marked by disproportionate use of force by the law enforcement bodies, ill-treatment and unlawful detention.

v. Partnership Principles on Coordination for Enhanced Effectiveness of Aid (PPCEEA) and its Implementation Plan

20. The Government of Moldova (GOM) and its Development Partners (21 international donor) signalled their intention to work more effectively by signing the PPCEEA in March 2010. The Development Partnership Principles were drawn from the Paris Declaration on Aid Effectiveness and the Accra Agenda for Action. At the same time, they have been tailored to the specific circumstances of Moldova. A supplementary Partnership Principles Implementation Plan (PPIP) was adopted in November 2010. The most important aspect of the PPIP is its focus on building systems and capacity to ensure that results are delivered, including by supporting an effective strategic planning process clearly linked to the budgeting process and MTBF. The PPIP covers four key issues:
    a. strategic planning process and Development Partner alignment with national priorities;
    b. improving national systems and increasing Development Partner use of national systems;
    c. improving coordination and harmonisation both amongst Development Partners and between Development Partners and the GOM;
    d. improving communication and information sharing.

C. Moldova's Commitments and Policy Statements

i. National Development Strategy (NDS) 2008-2011

21. The NDS 2008-2011 was approved by a special act of the Moldovan Parliament. It remains the key statutory framework document on the strategy for delivering the GOM vision of Moldova's EU integration. It is one of the basic documents that allows tracking commitments, policies and objectives. The NDS establishes as priorities the strengthening of democracy, respect for human rights, modernising and increasing the efficiency of the judiciary, and combating corruption. The NDS provides for rationale, detailed catalogues of programmes and measures, as well as pertinent indicators of their fulfilment. The relevant sets of programmes and measures under each of these objectives are as follows:

22. On strengthening democracy and respect for human rights, the NDS envisages:
    a. improving the quality of court decisions;
    b. strengthening non-judicial institutions and mechanisms for protecting and promoting human rights;
    c. modernisation of the police, aimed at rendering it more efficient, democratic and at increasing its accountability towards the community;
    d. preventing and combating family violence and trafficking of human beings;
    e. ensuring the rights of detainees and paroled convicts;
    f. securing access to justice;

23. On modernising and increasing the efficiency of the judiciary, the NDS envisages:
    a. strengthening the judiciary;
    b. strengthening the mechanisms for enforcement of court decisions;
    c. improving matters in juvenile justice.

24. The NDS provides the following blueprint for combating corruption:
    a. improving the legal framework in the area of fighting corruption in accordance with international standards and good practices;
    b. strengthening capacity to prevent and combat corruption;
    c. ensuring transparency of the activity of public institutions, access to information, promotion of ethical standards;
    d. active involvement of the civil society and private sector in the prevention of corruption, creation of an atmosphere of intolerance for corruption;
    e. enhancing international cooperation.

ii. Central Public Administration Reform Programme (CPAR)

25. The CPAR was launched by the GOM in December 2005. It aims at establishing a contemporary and efficient system of central public administration in compliance with the following principles reflected in EU best practices, namely:
    a. faithfulness;
    b. access to information;
    c. transparency;
    d. accountability;
    e. performance;
    f. observance of budget constraints;
    g. durability.

26. A broad range of fundamental principles provided by the Economic Growth and Poverty Reduction Strategy and Action Plan 2005-2009 are being applied widely in the CPAR process. These include:
    a. uniquely tailored approach to the elements of functional, structural, and organisational reform of public administration;
    b. harmonisation of public administration standards with those in the EU;
    c. clear definition of the basic role and functions of public administration authorities,
    d. reduction of their number and attributions related to entrepreneurial activity regulation;
    e. exclusion of parallelism and overlapping of functions in the activity of public administration authorities for the purpose of using the financial resources more efficiently and providing quality public services;
    f. rational use of financial resources and improvement of their management by targeting them to priority areas;
    g. reasonable delegation of powers and obligations related to provision of goods and services to local public administration authorities and private sector;

h. rationalisation of reporting and management systems aimed at avoiding dispersion of management responsibilities;
i. competitive recruitment of the staff of executive bodies;
j. establishment of a pay system enabling the strengthening of staff potential and professionalism through setting an anti-corruption threshold of servants' pay;
k. separation of policy development and promotion functions from the control and service provision functions, focusing on the main activity and avoiding any conflict of interest;
l. delimitation (separation) of political functions from administrative functions in each public authority.

iii. National Strategy for the Prevention and Combating Corruption (NSPCC)

27. The NSPCC was adopted by the GOM in 2004. Its purpose is to reduce corruption to avoid jeopardising democratisation, hinder economic and social development. It formulates the following objectives:
    a. identification of affected domains, conditions that favour corruption, and strengthening the system of measures for tracking down and counteracting the phenomenon;
    b. observing the principle of separation of powers and their collaboration within a clear and foreseeable legal framework;
    c. conformity of the legal framework to the relevant international standards;
    d. ensuring transparency in the activities by the public authorities, access to information, promotion of ethics;
    e. active involvement of the civil society and of the private sector in preventing corruption, establishing the atmosphere of intolerance towards corruption; an Oversight Board should therefore be established, also including representatives from the Ministry of Interior (MOI) and the Centre for Combating Economic Crimes and Corruption (CCECC).

28. The NSPCC makes the relevant sector stakeholders (MOI and CCECC) responsible for a series of specific actions, including:
    a. soliciting external aid in the form of technical assistance (TA), donations and grants;
    b. active participation in the activities of GRECO), other forms of bilateral and multilateral cooperation;
    c. awareness-raising and capacity-building activities, including by using the media;
    d. greater contribution to drafting legislation aimed at the corruption;
    e. impact assessment of corruptibility of regulative initiatives.

iv. Strategy and Action Plan on Strengthening the Judiciary (SAPSJ) 2007-2010

29. The SAPSJ was adopted as an act of the Moldovan Parliament in 2007. It prioritises the following objectives, while also mentioning certain steps to attain them:
    a. ensuring effective independence of the judiciary;
    b. ensuring transparency of the judicial act;
    c. improving the quality of the judicial act;
    d. increasing efficiency and responsibility of the judiciary;
    e. guaranteeing free access to justice;
    f. efficient management of the courts;
    g. increasing efficiency of juvenile justice;
    h. preventing corruption within the judiciary.

v. Strategy and Action Plan for the Enforcement System Development (SAPESD) 2007-2011

30. The SAPESD, approved by the Moldovan Parliament in 2007, mentions certain objectives, and underlines steps to achieve them, in order to create an effective system, in accordance with the ECHR requirements, whereby judgments of domestic courts are executed, and remedies are created to prevent non-enforcement.

vi. Concept and Action Plan for the Penitentiary System Reform (CAPPSR) 2004-2020

31. The CAPPSR was adopted as a supplement of the Enforcement Code 2004. It includes a rather wide-ranging set of steps aimed mainly at improving the existing prison infrastructure. It does not provide for significant or ambitious new initiatives.

vii. Concept and Action Plan for the Reform of the Ministry of Interior

32. A fresh concept of the MOI reform was approved by the GOM in December 2010. The Concept has 9 objectives. Based on the principle of segmentation, separating the public order aspect of the police work from the investigative/prosecution constituents, making them completely autonomous. Based on this approach, the Concept provides for the creation of four Departments, including two having the policing functions, one criminal investigation department. In general, the Concept places focus on goals and principles rather than functions and methods of action. It provides for the creation of an Action Plan, which is currently in its final stage of elaboration.

viii. Concept on the Financing of the Judiciary

33. The Concept was approved by Parliament on 18 March 2010. It stipulates that Moldova spent about 0.77% of its total budgetary assignations on the courts system

in 2009, while also noting that the average salary of judges is only twice the general average salary in the country, making these proportions among the lowest in Europe. By reference to these findings, the Concept undertakes to increase the financing of the courts, without, however, mentioning any monetary commitments. The Concept also mentions un-clarities in the current legislation as to the competence of the SCM and modalities of formulation of its budgetary requests, determining the need to elaborate a more appropriate statutory mechanism. Finally, the current system of budgeting is criticised as based on historical spending, rather than allowing the system to take account of planning and development of the institution on the basis of multi-annual projections. The Concept also foresees development of a more itemised action plan by the GOM, establishing the following objectives:

a. increase in the budgeting of the courts system;
b. strengthening of the regulatory framework for budgeting of courts;
c. development of criteria for operational and capital needs of the courts;
d. effective use of the E-Courts System;
e. development of performance assessment criteria and their statistical management;
f. strengthening the potential of the courts and MOJ in financial management, audit and procurement.

ix. Human Rights Action Plan

34. The HRAP was elaborated by the GOM in the second half of 2010 and later adopted by Parliament. It formulates the following objectives for the whole justice sector and its various stakeholders:

a. application of international standards in the national law and practice;
b. strengthening the independency of the judiciary;
c. greater professional competence and institutional capacity of all representatives of the justice sector and its stakeholders;
d. ensuring access to justice, fair and speedy proceedings, enforcement of court decisions and other core elements of administration of justice;
e. encouraging the institution of Ombudsman as a monitor for the protection of human rights;
f. prevention of discrimination and protection of vulnerable categories;
g. combatting ill-treatment;
h. improvement of penitentiary conditions and fostering social reintegration of former prisoners;
i. strengthening the role of civil society in the protection of human rights, including through the media;
j. increased awareness of the society of the relevant issues and protection mechanisms.

x. GOM Programme 2011-2014

35. The Programme, entitled 'European Integration: Freedom, Democracy, Welfare', is arguably the most important policy statement for the development of the justice sector. It reaffirms that Moldova regards European integration as a fundamental priority of the domestic and foreign policy. It states *inter alia* that the GOM "will ensure application of the principle of separation and independence of the legislative, executive and judicial powers; uniform and correct application of law, and equality before the law … A well-organised justice system is key to attracting investment, combating corruption and crime, and protecting human rights. For these reasons, the Government will pay special attention to building a State based on the rule of law, namely by implementing structural and procedural reforms in the judiciary." The Programme includes a novel point defined as the 'Adoption of a New Constitution'. In addition to the indicative changes in its structure and addition of new objectives compared to the previous GOM programmes, the Programme benefits from a more specific set of measures and actions to be taken to achieve the objectives sought. Some of the more relevant steps of the Programme will be summarised in further parts of this Report, while discussing the on-going reforms in some sub-sectors or with regard to some thematic areas. The Programme has the following relevant chapters:

a. protection of human rights;
b. reform of the judiciary;
c. consolidation of the interior system and combatting corruption.

3. State of the Justice Sector and Priority Areas for Reform

A. Definitions, Scope and Methodology

36. The Report is not intended to determine theoretically which institutions and which relationships are to be included under the moniker of 'justice sector' - in the Moldovan or any other constitutional context. Indeed, 'justice sector' is an oxymoron comprising authorities and relationships spanning through different branches of power. In order to retain holistic approach but also find sufficient focus and make recommendations for the purposes of this Report, the Expert Team decided to include in the definition of 'justice sector' not only the system of administration of justice - which in its strictest sense denotes the courts of ordinary jurisdiction and specialised courts - but all the authorities and institutional relationships that either *directly support* the courts in the administration of justice - whether by preceding (systems of investigation and prosecution in criminal matters, or legal aid in civil process) or deriving from court decisions (probation, penitentiary, enforcement systems etc.). Moreover, the self-regulating (Supreme Council of Magistrates etc.) and regulatory (Ministry of Justice) bodies were also included in the equation, alongside the private corporations such as the Bar and the Bailiffs, and even the law-making (Parliament) or *sui generis* judicial or investigative authorities having complex features and supporting mainly the legislative branch (Constitutional Court, Ombudsman). At the same time, keeping in mind the interest of making recommendations for viable and effective sector-wide programming, the Expert Team did not go as far as to include in the definition of the 'justice sector' all administrative authorities competent to adopt binding decisions having significant repercussions on civil rights and obligations of persons, or determining minor misdemeanours of various kinds akin to a criminal charge - even if some of those

might consequently be contested in court. Hence the reason for the exclusion from the scope of this Report of some agencies, such as those working in the fields of immigration, intellectual property, anti-trust, data and consumer protection - albeit an exclusion of those institutions from the justice sector may arguably be contested on a more theoretical constitutional-law basis.

37. More importantly, in defining the sector, we did not only focus on institutions/sub-sectors/blocks but also identified a number of cross-cutting issues *directly relevant* to the administration of justice, such as the fight against corruption, prevention of ill-treatment or juvenile justice. These cross-cutting issues span across a number of authorities and legal relationships and make a *direct impact* on the courts' work, or are a *direct result* of a more or less efficient system of administration of justice. We affirm the view of the sector as 'justice chain' comprising various bodies and relationships. The notion 'justice chain' is therefore used alongside the 'justice sector' as an interchangeable synonym. At the same time, keeping in mind the interest of making recommendations for viable and effective sector-wide programming, we excluded from the equation some important cross-cutting issues, such as discrimination, lawfulness of detention, assembly and political rights, in order to enable us to preserve focus and prevent embarking on overly ambitious quest. In any event, the Expert Team does not consider that the notion of 'justice sector' (or 'justice chain') is susceptible to an exhaustive definition, and the scope of review of this Report leaves the door open for any other inclusions or exclusions in the future, provided that the Moldovan authorities and their development partners decide so.

38. In defining the main actor of the system of administration of justice, we use the words 'courts' or the 'judiciary' as interchangeable synonyms, which must be understood in the narrowest possible sense as denoting the courts of ordinary jurisdiction and the specialised courts, excluding the Constitutional Court (also see paragraph 36 above). In some minor cases we also use the word 'judicial system' to denote the courts together with the prosecution and the legal aid system, especially for budgetary planning purposes (similarly as the European Commission for the Efficiency of Justice (CEPEJ) does in its statistical comparisons[5]). We use the words 'judiciary' and 'judicial' (as opposed to the 'judicial system') to denote a narrower notion of the community of Moldovan judges and the courts or ordinary jurisdiction together with the specialised courts. In order to avoid confusion, where the wider notion of 'judicial system' (whereby inclusion of the PGO and the legal aid system is intended) is used, inverted comas are applied throughout the text.

39. The Report uses the following temporal definitions:
    a. 'short term' to denote a period of up to 1 year;
    b. 'medium term' for up to 3 years;
    c. 'long term' for up to 5 years.

[5] *European Judicial Systems: Efficiency and Quality of Justice.* CEPEJ, Strasbourg, October 2010. https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ(2010)Evaluation&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864

40. The Report is a policy paper, which is intended to help the EU, domestic and international stakeholders, to obtain a succinct review of problems in the Moldovan justice chain, together with their causes, in turn allowing to identify priority areas of intervention and directions for further action. In this respect, by 'problem' we imply an inconsistency of the domestic situation with an international standard or comparative best practice that the Moldovan authorities have undertaken to comply with or follow by way of formalised and informal policy documents referred to above (see paragraphs 16-35 above). It is not our intention to assess or criticise the quality of the standards chosen by the Moldovan counterparts, or look for more appropriate or desirable - more stringent or lax, hard or soft - standards. Rather, our job is to evaluate what policy undertakings of the Moldovan authorities in the justice sector have (or have not) been followed by action, and what (if any) results have been achieved.

41. The Report applies various legal (such as 'independence'), socio-political ('transparency'), and practical ('capacity') criteria in its institutional and functional evaluations - at times omitting to mention the background of the adoption, scope or degree of application thereof - as long as those benchmarks may be assumed as applicable by reference to the above policy framework, or by reason of their being *a priori* standard of good system of administration of justice in the eyes of an ordinary reasonable observer.

42. We only consider necessary to describe in more detail the main criteria used by us throughout the Report - namely 'performance', which we construe very widely, not only reflecting an adequate ratio of cost-to-benefit of the justice system or its specific segment - either with regard to an individual in particular, or the society in general - but also including most other qualitative attributes of a good system of administration of justice, such as effectiveness, efficiency, fairness, reasonableness, coherence, certainty and stability.

43. The Report also avoids going into purely technical and formalistic description of the domestic situation (including Articles of most relevant statutes etc.) in order to better deserve a reader, who is assumed to have a certain degree of knowledge about the underlying socio-historical context in Moldova, and is informed of the basic legal context defining each block of the justice sector. The Expert Team assumes that the reader is either knowledgeable in Moldovan law in particular, or is at least capable, as an ordinary reasonable observer, to apply analogies from a comparable (his own country's) constitutional set-up. Such an approach has helped the Team to save a lot of space, while allowing it to focus its efforts on the analytical part. Having said that, both the domestic context and the applicable criteria/benchmarks for measuring it are at times specified, but only where no proper analogy or sufficient assumption can be applied by an informed reader without an additional explanation.

44. As to the 'standard of proof' of problems identified and solutions proposed, the Expert Team attempts to apply a comprehensive list of criteria, basing its findings and recommendations on opinions expressed by the leading international monitors (especially the Council of Europe and the U.N.), judgments of the European Court of Human Rights taken with regard to Moldova (which, to date, cover only a minor number of relevant issues and areas), various reports and assessments made by a number of other informed observers (see the full list of those reports in the Annex),

but also on more than 50 interviews involving some 200 interlocutors, representing almost each constituent of the justice chain. Moreover, the Expert Team relied on statistical data in order to compare various aspects of the functioning of the Moldovan justice system - including staffing, management, budgeting and other aspects - with regard to other European countries. While no conclusion on a 'problem', 'cause' or 'solution' warrants a total consensus, most of our findings and recommendations are based on an apparent majority view of the Team's interlocutors, taken against the background of the reports, statistics and evaluations mentioned above. A separate opinion expressed in one particular report, or by one interlocutor, was not a sufficient basis for any of the Team's conclusions. For this reason, and in order to save space, we made references and footnotes to a specific source only (mainly) to give the origin of the statistics used by us, but not to link any of our findings to any opinions made by the outside observers. In sum, as its 'standard of proof', the Expert Team chose the threshold of 'reasonable (objective) appearance', which - while not being stringent enough for a legal remedy - is more than appropriate in the context of an evaluation paper such as this one, in order to establish problems areas and tackle them by change in policy and action.

45. As mentioned above, the Expert Team focuses not only on the 'problems' ('symptoms') but rather their 'causes'. Both 'symptoms' and 'causes' are intended mainly to denote the state of the regulatory and institutional framework in a certain area that may objectively be expected to undergo improvements by way of change in the law. In some cases, the notions of 'symptoms' and 'causes' also embrace individual ('lack of training'), socio-economic ('lack of financing') or political categories ('lack of will') categories, some of which may be much more difficult to change, in contrast to merely replacing a statutory instrument. This should not be taken to imply that the more challenging elements have been down-prioritised by the Expert Team. What we consider important is to show a certain, mutually-reinforcing, feedback relationship existing between the 'symptoms', 'causes', and 'directions for reform'. For instance, the 'symptom' of inefficiency of the Moldovan courts is conditioned by a variety of causes, such as corruption, lack of transparency and accountability, inefficiency of procedural legislation (appeals system), lack of coordination in the justice field, lack of proper legal aid system etc. These causes, on their own, are problematic to such an extent as to warrant their separate nomination as 'symptoms' with their own underlying causes. The Expert Team tries to use this 'cascade' method in order to strip down each 'symptom' until its deeper causes are shown. In fact, in many cases, it boils down to the lack of capacity: skills, competences, training, methodology and leadership capabilities. While using the 'cascade' method, we also try to avoid making the text too cumbersome or repetitive. As a result, while the lack of capacity has not been distinguished as a standalone 'symptom', its role as the deeper underling cause at various levels of the sector and sub-sector problems was taken into account in establishing prioritisation of each element in the proposed 'directions for reform'. Therefore, the numbering from (a) onwards to (z) everywhere in the text does not only represent a sequence from the more general to more specific (i.e. 'lack of accountability and transparency' always goes ahead of other 'causes' of the inefficiency of courts), but also shows suggested prioritisation of the suggested direction for reform by the Expert Team (i.e. 'building capacity' is in many cases indicated as point (a) in order to show that its priority). Hence, the Expert Team

intends to devise a picture of self-reinforcing 'circle' between the 'symptoms', 'causes' and 'directions', while avoiding repetitive conclusions.

46. Moreover, the 'directions for reform' indicated here are phrased in a way that allows identification of 'what' needs to be achieved rather than 'how' this is going to be done - the latter being a question for the domestic authorities to answer, helped *inter alia* by further support activities by various donors, including the EU. Only once a coherent strategy for the sector reform is derived in such a way as to reflect an agreed vision and mission that is known to be responsive to the needs of all the stakeholders, and once these are tied in turn to a medium-term Budget Framework and budgeting process, the structures can be modified in the way that is best geared to deliver services in line with these strategic objectives. This is why the Report does not contain an in-depth functional analysis targeted at deconstructing institutional design and its legal framework with regard to each and every stakeholder of the Moldovan justice system, nor does it seek to paint the most appropriate institutional picture or define the most efficient allocation of resources. The danger of preceding an integrated performance management system (and performance-based budgeting) with such theoretical functional reviews is that rules and structures may have to be modified again once this strategic process has been completed. Hereby lies the choice of 'what' rather than 'how' in the Expert Team's recommendations.

47. Once the problems, causes and directions for reform were established, the Expert Team further determined prioritisation by way of two levels - 'particular attention' and 'continuing attention' - in planning and structuring future EU support. In order to prioritise properly in each case, we conducted a cumulative analysis of the following five criteria:

    a. urgency of the problem from the point of view of the general interest, which, among other sources, transpires from the assessment of affairs in the whole justice chain;
    b. likelihood of finding consensus among the domestic authorities that the problem needs to be tackled - albeit not necessarily on the 'ways' of tackling it - in order to secure grater local ownership of the initiative;
    c. need to balance inputs in size and intensity to the beneficiary's capacity to lead, manage and absorb support;
    d. need to allocate EU resources to areas which have not benefited from sufficient attention by other donors, or where improvements following various donor interventions have not been significant;
    e. ability for a donor / implementing body to find sufficient focus within the problem area in order to achieve tangible results, in order to satisfy the principle of concentration.

    It must therefore be borne in mind that the Expert Team's level of prioritisation in no way means that a certain sub-sector is performing better or worse. The prioritisation levels are made strictly for the purpose of facilitating EU programming and increase the efficiency of assistance, on the basis of cumulative analysis of the criteria described above.

B. Sector and Its Institutional Blocks

i. Courts

State of Affairs

48. Even though Moldova has separate procedural codes, namely the Code of Civil Procedure and the Code of Criminal Procedure (CCP), the Moldovan courts of ordinary jurisdiction are part of a single court system, which is not divided into civil or criminal courts. Lower courts (45 District Courts), examine all types of cases, even though some informal specialisation exists among the judges. Two 'specialised' lower courts - namely a 'military' and 'economic' court - are not considered as 'courts of ordinary jurisdiction'. The competence between the Moldovan courts of ordinary jurisdiction on the one hand, and the 'specialised' courts on the other, is determined by formal status of the subject (military personnel, companies) rather than the nature of the legal relationship involved - the overlapping competence between both systems in examining cases of essentially private-law (tort, contract, property) and public-law (tax, public-sector employment, social benefits) nature is therefore not a determinant factor. Higher courts (5 Regional (Appeals) Courts and the Supreme Court) have 'Criminal Chambers' and 'Civil Chambers' to deal specifically with cases according to the type of the dispute. There is also one 'economic' Court of Appeal. While no administrative courts exist in Moldova, the Code of Administrative Offences - which does not only punish minor offences but also establishes separate procedural rules for dealing with these misdemeanours - is used in some public-law disputes decided by 'civil' or 'commercial' courts. It may also be noted that the 5 Courts of Appeal deal with administrative disputes at first instance. The analysis of the sub-sector in this part of the Report concerns all the above Moldovan courts - namely the 'courts or ordinary jurisdiction', the courts martial and the 'economic' courts - but does not include the Constitutional Court.

49. In the course of a few recent years, Moldova has carried out the following major reforms of the courts:
    a. amended the composition of the Supreme Council of Magistrates (SCM) in 2008 to include 7 representatives of the judiciary and 5 outside representatives (the Minister of Justice, the Prosecutor General and 3 members of the academic community);
    b. created the National Institute of Justice (NIJ) to be responsible for initial (vocational) and continuous training of judges and prosecutors;
    c. reviewed the system of qualification exams for judges, determining the dual role for NIJ and SCM in this respect;
    d. completed the first version of installation of the E-Courts System in the courts, consisting *inter alia* of the electronic case management software and communication tools.

50. Despite these notable efforts, many problems in the Moldovan judiciary are attested by a number of structural problems established in cases brought before the European Court of Human Rights in relation to the excessive length of proceedings,

appeals in disguise and lack of res judicata (*Rosca*[6], *Popov*[7]), unlawfulness and length of detention (*Paladi*[8], *Leva*[9]), arbitrary decisions in property matters (*Offerta Plus*[10]), lack of judicial deterrents in the field of ill-treatment (*Corsacov*[11], *Holomiov*[12]). The continuing corruption in the judiciary - albeit, admittedly, similar to that in other public sectors - may be assumed by reference to Moldova's ranking at 105th place in the World in the most recent Corruption Perceptions 2010 published by Transparency International. While Moldova needs to preserve independence of its judiciary, the protection of this interest should be counter-balanced by the need to ensure efficient, accountable and transparent administration of justice.

51. The core problem underlined by various domestic and international interlocutors during their meetings with the Expert Team is the perceived lack of accountability and transparency among the courts, alongside strong indications of the prevalent corruption among the judiciary. It has been asserted by many interlocutors that, while Moldova has been rather effective in creating structural conditions of independence of the judiciary in the Constitution and various statutes, a great number of Moldovan judges do not appear to be conscious of the inherent reasons for the immunity of the institution, and, more often than not, perceive them as personal privileges. These problems have been examined by the American Bar Association Rule of Law Initiative (ABA ROLI) in their Judicial Reform Index for Moldova[13], alongside other outside observers. Some of their relevant findings may be summarised as follows:

    a. judges may not be searched, arrested, detained, subjected to investigation, or held liable for any criminal or administrative offence (minor misdemeanour) - except where a very serious crime is concerned - without a consent by the SCM, the President or Parliament;
    b. SCM deliberations on lifting the above immunities are largely unregulated and closed even from the party (such as the Prosecutor General) who requested it;
    c. judges also have immunity against liability for opinions expressed while exercising their official duties; judges may face personal liability for errors in judgments and decisions taken by them where the standard of proof of intentional act or gross negligence has been passed; in the last two years, only three sets of proceedings for criminal (intentional) abuse by the judges have been instituted; while an action of individual redress by the

[6] http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=721741&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649
[7] http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=790770&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649
[8] http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=848218&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649
[9] http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=859871&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649
[10] http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=811796&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649
[11] http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=793903&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649
[12] http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=810068&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649
[13] http://apps.americanbar.org/rol/publications/moldova_jri_06_2009.pdf

alleged victim of the erroneous civil decision may be taken in theory, no such action has been allowed in practice;

d. SCM Disciplinary Board, which consists of 10 members - half of whom are acting judges elected by the courts while the other half are representatives of the academic circles elected by the SCM and MOJ - is in charge of examining complaints against judges; no formalised and accessible rules exist on *locus standi* and other procedural aspects of introducing and examining disciplinary complaints against judges;

e. out of more 2,016 disciplinary complaints filled against the judges by various parties to proceedings in 2009[14], only 66 cases were actually examined by the Disciplinary Board; while various disciplinary sanctions exist in theory, only warnings and other forms of minor reprimand are used as a matter of practice; there have been very few (less than 10) dismissals in the last two years.

52. According to the overwhelming majority of the Expert Team's interlocutors, the Moldovan judiciary appears to have been transformed into a closed club, which remains almost totally out of any oversight by the public. In this respect, a serious reconsideration of the issue of immunities, and the necessity of their correlation with the requirements of respect for the principle of accountability and transparency, is one of the most urgent problems for improvement of efficiency of the system of administration of justice. Discussions should be promoted on the possible restriction of the immunities of judges to the level acceptable from the point of view of structural independence of the institution, but counterbalanced by the principles of accountability, transparency and equality before the law. *Carte blanche* (structural) immunities from legal proceedings should be replaced by narrower functional immunities[15]. This would undoubtedly contribute to improving discipline and professionalism among judges, and would ultimately lead to the growth of public trust in the judiciary.

53. In addition, an influx of 'new blood' into the system would also lead to an increase of efficiency, accountability and transparency. As the matters stand, the system of access and qualification to the profession makes it hardly accessible for many younger or more experienced legal professionals from other sub-sectors, including prosecutors and practicing lawyers. Some studies showed that half of the judges were not appointed permanently after the 5 years trial period, and a chance at refreshing the human capital has not been taken. The system of appointment should be revamped, as the current two-way system (graduation through the NIJ and separate appointment by the SCM) does not manage to fill in the required vacancies. At the same time, older judges should be encouraged to retire - they can formally do so already from the age of 50, yet some of them continue to work until

[14] 2009 Annual Report of the SCM at http://www.csm.md/files/RAPOARTE/Raport%20justitia%202009.pdf
[15] see the gradual adoption of a rather stringent position of the European Court of Human Rights against any kind of structural immunities - even with regard to MPs and diplomatic representations - in *Cordova v. Italy*, http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=698791&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649,
and, more recently, in *Cudak v. Lithuania*, http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=865245&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649

they are 65 or older, in view of the lucrative combination of the possibility to both obtain pension and continue receiving salary.

54. Budgetary requests of the courts have been presented separately by the Supreme Court (with regard to its own needs) and the SCM (with regard to all the other courts) directly to Parliament since 2009. These requests are formulated and substantiated in a very poor manner. As a result, the Parliament usually approves the budgetary needs of the SC and SCM not on the basis of their applications, but by reference to parallel budgetary requests submitted on the courts' behalf by the Courts Department and the Ministry of Finance as part of the budget line of the Ministry of Justice. In 2009 the SCM asked for 150 million lei in budgetary allocations for 2010, while receiving only 105 million lei by decision of Parliament, largely on the basis of the substantiation made by the MOF. Similarly, out of 160 million lei (EUR 10 million) asked by the SCM in 2011, the MOF recommended only 114 million (about EUR 6.8 million) to be granted (also see paragraph 278 below). In both cases, the SCM representatives could not support sufficient reasons to explain why their requested budgetary allocation was some 50% higher than the allocation granted in a previous year. Moreover, the court presidents and the SCM are generally very slow to warm up to an idea proposed by the MOJ, which, by reference to the Finnish and other European best practices, has introduced so-called Judicial Administrators in each court. The powers of Judicial Administrators are expected to be enlarged to allow dealing with the procurement and court facility management matters, including audit, payments of salaries and financial planning. As the matters stand, following a certain Soviet tradition, presidents of Moldovan courts are still very closely involved in micro-management of financial and procurement issues at almost each court level, which does not result in either efficient management, nor in the ability of those senior judges to concentrate on the exercise of their judicial duties.

55. The failures in the field of the courts budgeting and management underline a more general lack of capacity of the judiciary at individual and institutional levels. This is conditioned not merely by an inefficient legal education system (which is dealt with separately, see paragraphs 215-227 below), but rather by the lack of proper leadership of the judiciary corporation in driving the reform, despite an obvious need for it. It is exemplary that a recent grant by the World Bank in the amount of USD 125,000 was not used by the SCM merely because it was destined for capacity building, instead of allowing it to increase salaries or improve facilities.

56. A separate statutory and budgetary situation of the Supreme Court - as opposed to other Moldovan courts of ordinary jurisdiction - may also be argued to contribute to the existing disconnect between the judiciary and other branches of State power, as the judicial community rarely speaks with one voice. Moreover, valid questions may be asked as to why Moldova has 49 judges in its Supreme Court - which, alongside Russia and Ukraine, makes it among the biggest supreme courts in Europe[16] - in a context where judges at the cassation level usually deal with very mundane

[16] It may be noted, for instance, that the recently-created U.K. Supreme Court has only 12 Members.

questions of law or, sometimes, even questions of fact (also see the assessment of the current appeals system in paragraphs 228-230 below).

57. The situation of the Moldovan courts should also be assessed against the background of comparative analysis with other European states and countries of the region. One of the most relevant sources in this respect is the Report on Quality and Efficiency of Justice in European Judicial Systems (2010) of the European Commission for the Efficiency of Justice (CEPEJ)[17]. The CEPEJ observes a correlation between the lack of performance of some 'judicial systems' (which, according to the CEPEJ standard, includes the courts, prosecution and legal aid), and the weakness of their financial resources - even though other elements must be considered alongside proper budgeting, such as efficient organisation of the system, relevance of the procedures, management of the human and financial resources, responsibilisation of the players, training etc.[18] Between 2006 and 2008, Moldova has increased its 'judicial system' (courts, prosecution and legal aid) budget by 57%, alongside other notable increases, such as in Hungary (198%), Slovakia (141%) Estonia (72%) and Poland (61%)[19]. At the same time, the budgeting of the 'judicial system' - and especially of its judiciary (courts) component - in absolute and relative terms in Moldova lags behind not only Western European but also its Central and Eastern European counterparts. The following comparative statistics will help illustrate this important aspect in more detail.

58. Moldova - unlike many other countries of the region - operates with a ratio of professional judges per 100,000 inhabitants of 12.9[20], which is surprisingly low compared to other countries of Central and Eastern Europe. The only countries of the region having an even fewer judges are Azerbaijan (5.7), Georgia (6.4), Armenia (6.8) and Albania (12.3). This is in contrast to many other regional examples of significantly higher proportion of judges - starting with Ukraine (15.5), Estonia (17.7), Romania (19.2), Latvia (20.8), Bosnia-Herzegovina (22.3), Lithuania (22.5), Russia (24.2). Most Western European legal systems have a lower overall average of professional judges owing to their more developed legal aid systems, more adversarial systems of burden of proof and handling of evidence, or more extensive use of jury trials and lay judges. However, lay judges and jury trials are very barely used in most of Central and Eastern European countries, with emphasis placed on professional judicial service, and it would therefore appear that a number closer or above the CEPEJ average of 20.6 would be more appropriate in the Moldovan context[21]. The current situation is hardly explainable, given in particular the level of work-load among the Moldovan judiciary - one judge usually takes more than 100 decisions on the merits per year. This underrepresentation among the judiciary also partly explains why, at 21.1%, the proportion of the courts budget as part of the total justice system budget (including the penitentiary system, MOJ, investigation bodies, constitutional courts etc.) in Moldova is significantly below the CEPEJ average of 39.9%. Other countries of the region have more judges and,

[17] See the CEPEJ Report cited above, ibid.
[18] Ibid., p. 291.
[19] Ibid., p.18.
[20] There were 460 judges in Moldova in 2008, when the CEPEJ figures were compiled.
[21] See the CEPEJ Report cited above, pp. 117-119.

accordingly spend relatively bigger proportion of the justice system budget on the courts - notably, Slovenia (64.8%), Bulgaria (59%), Lithuania (57.4%), Czech Republic (54%), Poland (49.6%), Romania (49.5%), Slovakia (49.3%)[22]. Only some developed and wealthy democracies, such Norway (7.5%), Sweden (13.2%) or Netherlands (15.3%), devote much smaller proportions of the total justice system budget to the courts than Moldova, but it must be noted that all those Western European countries have much more expensive systems of legal aid which eat up a more significant proportion of the justice system budget.

59. In absolute terms, Moldova allocates the lowest amount to the courts in Europe at EUR 2.1 per inhabitant, and even countries in similar socio-economic conditions fare slightly better (EUR 3.1 in Ukraine, EUR 3.3 in Armenia and Albania, EUR 3.4 in Georgia, EUR 3.5 in Azerbaijan). This is in start contrast not only to the countries of Western Europe, but also with regard to other countries of the region (EUR 16.8 in Bulgaria, EUR 17.7 in Romania, EUR 18.0 in Lithuania, EUR 20.9 in Latvia, EUR 21.9 in Malta, EUR 25.5 in Estonia), which are all placed below the CEPEJ average of EUR 37[23].

60. Most importantly, Moldova, at 0.18% of GDP, also falls behind the CEPEJ average of 0.24% in allocating a proportion of its national income to the courts[24]. This is notable given that other countries of the region allocate a much higher proportion of their GDP to the courts - notably Slovenia (at 0.42% of the GDP), Poland (0.40%), Bulgaria (0.38%), Romania (0.28%), Hungary (0.27%)[25]. In this respect, Ukraine (0.17%), Armenia (0.13%), Albania (0.12%), and Azerbaijan (0.10%) are the only worse performers than Moldova among the countries of the region.

61. While the number of judges per inhabitant is an important criteria in measuring performance of courts, the existence of non-judge staff at court registries clearly helps to improve the courts' efficiency, regardless of the differences intrinsic to certain legal systems. It must be noted that the number of non-judge staff in Moldova - at 3.6 per judge - is close to the CEPEJ average[26]. In regional terms, Moldova fares much better than its neighbours and others, such as Romania (2.1), Hungary (2.7), Czech Republic (3), Slovakia (3) and Poland (3.2). The Moldovan number is lower only than that in Georgia (5.3), Armenia (4.4), Estonia (4.2), Serbia and Turkey (3.9) among other countries of the region[27]. The Moldova courts cannot therefore be considered as understaffed in administrative and technical personnel. It is the lack of judges, not of court personnel, that is the main distinguishing feature of Moldova on a comparative basis.

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[22] Ibid., p. 20.
[23] Ibid., p. 21.
[24] While the Concept on the Financing of the Judiciary (see paragraph 33 above) correctly denotes the relative spending on the courts as very low by comparative European standards, the benchmark it uses - namely the proportion of the courts budget measured as a percentage of the general State budget - is a less relevant criteria, given that sizes of budgets and government expenditure in various European countries differ greatly, depending on the region, historico-political and socio-economic aspects. The Expert Team recommends using the courts budget-to-GDP ratio as a more helpful indicator of relative size of spending on the courts, allowing relevant country-to-country comparisons.
[25] See the CEPEJ Report cited above, pp. 21-22.
[26] While the CEPEJ Report does not provide for a clear average or median number in this respect, it mentions that the average ratio of non-judicial staff and judges in most European Countries is somewhere between 3 and 5.
[27] See the CEPEJ Report cited above, pp. 119 and 130.

62. In 2008 Moldova had by far the lowest annual gross salary for a judge among all European countries, at EUR 3,300, followed by Armenia (EUR 6,069), Bulgaria (EUR 7,227) and Albania (EUR 7,250) as the only countries below EUR 10,000 per year. A first-instance court judge in Moldova is paid an average monthly salary of 4,000 lei (about EUR 230), while judges of the appeals and Supreme Court receive 5,000 lei (about EUR 300) and 7000 lei (about EUR 430), respectively. A court clark receives some 900 lei (EUR 60) per month. The salaries of judges in Moldova also miss the CEPEJ average of 2.5 times the average national gross salary, as the Moldovan judges are paid on average only 1.7 times more[28]. Only a few countries of Central and Eastern Europe had a lower number - notably Albania (1.4) and Slovenia (1.6). This means that Moldova proportionately underpays its judges vis-à-vis other sectors. Therefore, even though it must be noted that - at 96.9% - the increase of salaries of all judges in Moldova between 2004 and 2008 was highest among all European states[29] and that the salaries admittedly may have risen slightly since 2008, it can be concluded that Moldovan judges are somewhat underpaid with regard to other sectors. At the same time, the ability of senior judges to receive both salary and pension - the system is currently being under review - has to be taken into account as a mitigating factor with regard to the argument of underpayment.

63. The use of IT technology in courts is another core benchmark in establishing the efficiency of management of a modern judiciary. The CEPEJ indicates three main areas of e-justice, namely:

a. existence of computer facilities and hardware at the courts and registries;
b. software with the case registration and management systems;
c. electronic communication and data exchange systems linking the courts between themselves, and with the other institutions and the society.

These three areas are eventually divided into sub-areas, and points attributed to each system based on the existence of various practical tools facilitating the courts' work. In 2008 Moldova scored a very low 21 points, which, apart from Ukraine, was the lowest score in Europe[30]. It must be noted that the E-Courts System - including a unified case management system, audio recording tools and webpages of each court - which has since been introduced and is being further developed as part of international support activities (see paragraph 69 below), is soon to attest significant improvements in Moldova in the sphere of e-justice.

64. Moldova is already among various European countries that have started conducting surveys among legal professionals - albeit not representatives of the larger part of the society - to measure the users' satisfaction with the services provided by the judiciary[31]. At the same time, Moldova has no established quality policy for the courts, nor dedicated staff or methodologies to develop and apply such policy[32]. At the same time, as many other countries of the region, Moldova has already established a system of performance targets for judges individually, or at the court

[28] Ibid., pp. 205-206.
[29] Ibid., p. 208.
[30] Ibid., pp. 93-94 and 97.
[31] Ibid., p. 80.
[32] Ibid., p. 98.

level; and a regular evaluation system of the judges' performance on the basis of the relevant performance indicators[33]. The qualitative aspect of those performance indicators - and of their feedback relationship with performance targets in other relevant sub-sectors - especially the prosecution, investigation, penitentiary and probation - is yet to be improved, however.

65. The differences in nomination, appointment, self-regulation and disciplinary responsibility procedures in the judiciary and prosecution among the European countries are so vast[34] that it appears irrelevant to analyse them for the purpose of establishing a criteria or standard for measuring a desired degree of their independence or efficiency in their performance. Suffice it to say that, on the basis of the ECHR judgments and other objectively available criteria, the efficiency and accountability of courts in Moldova should give rise to much more concern than any alleged lack of their independence.

66. All in all, the Expert Team established a rather pronounced consensus of its interlocutors and other outside observers about a significant lack of performance by the Moldovan courts. On the basis of the interviews and other sources outlined in this chapter and the Annex, the more general and specific causes of this problem may be pointed out:
    a. lack of accountability of the courts vis-à-vis the society and transparency in its functioning (also see paragraph 67 below);
    b. corruption of judges (also see paragraphs 67 and 201 below);
    c. insufficient capacity of the judiciary at individual and institutional levels, including lack of skills, competences, training, methodology and leadership capabilities;
    d. inefficiency of the procedural regulation, including distribution of competence between the courts at horizontal (by nature of legal relationships) and vertical (by level of jurisdiction, appeals system) levels;
    e. *de facto* self-isolation of the judiciary from other branches of State power, and the lack of intra-sectorial dialogue in the justice sector;
    f. insufficient strategic thinking and coordination within the justice sector; disconnect between the judiciary and other sub-sectors of the justice chain; lack of feedback relationship with Parliament;
    g. insufficient management capacity of the courts; lack of delegation of more powers to the Courts Department of MOJ, especially for procurement and facility management questions;
    h. under-use of e-justice tools; lack of random distribution of cases;
    i. insufficient strength of the legal aid system;
    j. no established quality policy for the courts, and no dedicated staff or methodologies to develop and apply such policy;
    k. lack of participation of the society in quality control over performance by the judiciary - at an individual or court level;
    l. insufficiently strong pressure from other legal professionals and the Bar;

[33] Ibid., pp. 100 and 104.
[34] Ibid., pp. 195-198 and 219-235.

m. underdeveloped ADRs;
n. poor PR capacity of the courts;
o. relatively low number of (professional and lay) judges by comparative European standards, and particularly in relation to many other countries of Central and Eastern Europe;
p. significantly lower budgetary allocation of the courts as a proportion of GDP in comparison with other Central and Eastern European countries; somewhat lower budgetary allocation of the courts with regard to other parts of the 'judicial system' (notably, the prosecution) by comparative European standards;
q. separate procedures for formulating the budgets of the Supreme Court and other courts; overlap and duplication in the procedures for formulation of budgetary requests by the SC and SCM on the one hand, and the Government (Ministries of Justice and Finance) on the other;
r. proportionate underpayment of judges vis-à-vis other sectors;
s. insufficient physical safety of courts and the equipment of the Judicial Police.

67. On the basis of the interviews and other sources outlined in this chapter and the Annex, the problem of lack of accountability and transparency of courts, as a separate impediment on the functioning of the Moldovan system of justice, may be deconstructed as being determined by the following factors:
    a. insufficient experience of the judiciary in perceiving itself as a real separate branch of power;
    b. almost unfettered application of immunities of judges from any types of liability; opaque and inaccessible nature of the underlying procedures;
    c. inefficient system of qualification and promotion of judges; the 'closed club' mentality in the accession to and promotion within the profession that works against an influx of 'new blood', as well as against an entry of more experienced professionals from other sub-sectors of the justice system;
    d. lack of regulatory oversight of the profession by the SCM; insufficient mandate and practical tools at the hands of the judicial inspection;
    e. lack of clear determination of the meaning of an ethical or disciplinary breach, its consequences; opaque and inaccessible procedures of examination of alleged disciplinary breaches;
    f. absence of performance indicators of judges or transparent system of measuring their performance; lack of surveys of the users of court services, in order to assess performance of the judiciary;
    g. opaque system of distribution of cases and hearing records; underuse of random case assignment, verbatim recording of all hearings or greater use of e-justice tools for case management;
    h. insufficient participation by the civil society and the media in covering and analysing the matters of administration of justice;
    i. lack of effective pressure on courts by a strong legal profession, and by the society in general.
    j. lack of obligation of judges to report undue influence; lack of responsibility for failure to report (also see supplementary grounds of judicial corruption listed in paragraph 201 below).

On-going Reforms and Donor Support

68. In addition to various separate initiatives undertaken by the GOM and other domestic stakeholders, the Government Programme 2011-2014 makes reform of the system of administration of justice a forefront of its planned activities. At the same time, the Concept for the Financing of the Judiciary remains a rather declarative document, lacking in a clear political commitment and itemised action plan (see paragraphs 33 and 35 above).

69. Without being a main beneficiary of any specifically-dedicated project, the Moldovan courts have received a number of donor contributions in the last few years. Some of the major recent and on-going donor activities have been given by way of:
    a. Joint Programme by the EU and COE on 'Increased Independence, Transparency and Efficiency of the Justice System' (EUR 3.3 million), which, among other things, helped create the NIJ (ended in 2010);
    b. Joint Programme by the EU and COE against 'Corruption, Money-laundering and Terrorism Financing' (MOLICO, EUR 3.5 million, ended in 2009);
    c. Joint Programme by the EU and COE on 'Democracy Support' (EUR 4 million), designed around the idea of the need to prevent issues attested by the April 2009 events, which started in 2010 and includes certain capacity-building segments for judges;
    d. 'Threshold Country Program' (TCP) of the U.S. Millennium Challenge Corporation implemented by the USAID, which had the total budget of USD 24.7 million and was carried out from 2007 to 2009, including components on anti-corruption and improvement of the court facilities and management; most notably, the TCP contributed to building the E-Courts System.

70. Other international actors, including the UNDP, UNICEF, OSCE, ABA, NORLAM, SIDA and Soros Foundation Moldova, have also been carrying out activities mostly with focus on capacity building of the Moldovan courts.

71. The EU will help the Moldovan authorities to tackle many of the above problems and their causes by way of the Project on 'Increased Efficiency, Transparency and Accountability of Courts', worth EUR 3.4 million and intended to be launched by the end of 2011. It is part of the larger Action on Support to the Justice Sector Policy Reforms 2011-2013 designed by the Expert Team (see paragraphs 240-246 below). The Project is intended to achieve the following:
    a. improved legal framework on the access to and promotion within the profession of a judge;
    b. development of self-regulating capacity of the judiciary to increase control over quality of performance by the judiciary at an individual and court level;
    c. creation of new mechanisms to evaluate the quality of the courts' performance by the society;

d. enhanced role of the NIJ in initial (vocational) training and qualification of judges, and wider role in continuous training of other legal professions;
e. improved regulatory and practical system of courts administration and management, allowing judges to concentrate on the performance of their judicial functions, while enabling the courts to receive and properly use increased budgeting;
f. improved capacity of the courts to contribute to the development and implementation of the justice sector strategy, and provide feedback and inputs for the purposes of efficient justice sector reform coordination, allowing implementation by the EU of the sector-wide programming approach;
g. improved legal framework and procedures for regulation and oversight by the SCM of ethical and disciplinary responsibility of judges;
h. creation of usable and effective, procedural and practical, tools for preventing judicial corruption (also see paragraph 206 below);
i. stronger PR capacity of the courts;
j. improved legal framework in appeals, ensuring a coherent distribution of competence between the lower and higher courts, including interlocutory matters, and an increased role of a hearing at first instance in civil and criminal matters.

Directions for Further Reform

72. The Expert Team suggests that further reforms pertaining to the courts should strive to achieve the following:
    a. increase capacity of the judiciary at individual and institutional levels, including skills, competences, training, methodology and leadership capabilities; developing capacity-assessment mechanisms within the judiciary;
    b. comprehensive support to the NIJ (also see paragraphs 221-227 below);
    c. enhance self-regulating mechanisms, particularly the oversight by the SCM in ethical and disciplinary matters, including development of formal codes of ethics and professional conduct of judges, elaborating clear and accessible procedures and strengthening the mandate and practical tools at the disposal of the judicial inspection; review of the current system characterised by an almost a blanket immunity of judges;
    d. review the qualification and promotions system, encouraging cross-recognition of prior experience in other legal and related professions for the purpose of qualifying as a judge; striking a fair balance between giving a priority to NIJ students to qualify - in order to bring ‘new blood’ into the judiciary - and the interest of maintaining a professional and experienced service;
    e. encourage other efforts in fighting corruption within the judiciary (also see paragraphs 201 and 206 below);
    f. create policy of quality control of the courts performance, based on clear, transparent and measurable performance indicators by judges and courts, and including a system of evaluation of the courts performance by the ‘end users, i.e. the society and its representatives;

g. increase efficiency of management and strategic thinking, including dialogue and coordination between the courts and other actors in the justice sector, the executive and the legislature - both in developing the procedural and substantive legislation and in budgetary matters; encouraging and developing ability of the judiciary to contribute chapters on justice sector reform, seek and provide feedback to other players in the justice chain in the continuous sector reform efforts;
h. increase the efficiency of the procedural law by reviewing the appeals system and distribution of competence between the courts at a horizontal dimension; consideration of the possibility to create administrative or other specialised courts; encouraging specialisation of judges in matters such as junior delinquency;
i. support fuller transfer of the court management functions - especially in the fields of procurement and facilities management - to the Courts Department of MOJ; encourage the strengthening of mandate of Judicial Administrators within the courts to take care of the above;
j. complete and enable fuller use of the E-Courts System, including electronic case management, random case assignment, and recording of court hearings; strengthening IT and personnel support for the improvement of the e-justice system;
k. strengthen PR capacity of the courts;
l. improve the courts budgeting as part of the national income (GDP) and the general budget, to be used mainly to employ more judges and (to a lesser extent) non-judicial assistants; increase pay of judges vis-à-vis other sectors;
m. unification of the courts budgeting process (one budget for all courts; one budgetary request instead of two parallel ones), to avoid overlap and confusion between the different actors involved; creation of a proper regulatory mechanism to allow the courts to seek budgeting in a truly independent manner;
n. consideration of use of the court fees, confiscated assets and other similar sources to support the courts budget.

Conclusion

73. The Expert Team considers that the courts warrant a particular degree of attention[35] for the EU support to the justice sector in the long term, in view *inter alia* of:

- significant lack of performance by the courts (see paragraph 42 above for our definition of 'efficiency');
- apparent willingness of the GOM to undertake profound reforms;
- ability to design relevant interventions with sufficient focus in order to satisfy the principle of concentration;

[35] A reader must be reminded, once again, that the level of prioritisation *in no way means* that a certain sub-sector is performing better or worse. The prioritisation levels are made strictly for the purposes of EU programming in order to increase the efficiency of assistance, on the basis of cumulative analysis of various criteria described in paragraph 47 above.

but counter-balanced by:

- rather isolated role of the Moldovan judiciary in the justice sector reform process and their likely opposition to some ideas for reform proposed by the GOM - these obstacles being of particular relevance in view of the structural independence of the judiciary; on the other hand, at this stage, the GOM may be said to have certain leverage in its ability to promise a pronounced increase in the courts' budgeting, in return for serious concessions of the judiciary as to the scope and extent of the reforms that it will have to absorb.

ii. Prosecution

State of Affairs

74. The prosecution service in Moldova is embodied in the Office of the Prosecutor General (PGO). The system includes territorial offices allocated to all the 42 administrative districts, and intermediary offices for the city of Chisinau and the Autonomous Entity of Gagausia. In addition, the service maintains specialised branches for anti-corruption, transport, military (3), and courts of appeals (5). Each of subordinated offices are headed, respectively, by territorial or specialised prosecutors. Thus, all the prosecutors and their offices in Moldova form a single system subordinated to the Prosecutor General.

75. The rules of criminal procedure, including duties and powers of the prosecutors in criminal process, have been subjected to an attempt to depart from the Soviet past. In particular, the Code of Criminal Procedure (CCP) of 2003 included the following core novelties:
    a. replaced the old concept of 'preliminary investigation' with a general notion of 'criminal prosecution';
    b. expanded the powers and responsibilities of prosecutors at the pre-trial stage, including a prerogative to approve initiation of formal investigation ('instituting a criminal case') and formulate charges;
    c. changed the title of officials of the MOI and other agencies vested with investigative powers to 'prosecuting officers' (IOs[36]);
    d. increased the role of judicial oversight by introducing the notion of an 'investigative judge';
    e. reduced the number of agencies carrying out criminal investigations.

76. Under the current CCP, cases may be formally initiated and handled by the prosecutors or IOs at the MOI, Customs Service and the Centre for Combating Economic Crimes and Corruption (CCECC). The PGO is to investigate cases against certain specific categories of State officials (prosecuting officers, members of the armed forces etc.), as well as some other categories of serious crimes. The

[36] Hereinafter, for the purpose of avoiding confusion between the 'prosecuting officers' and prosecutors, the former will be referred to as 'investigating officers', or IOs.

PGO is also left with the discretion to take over or allocate cases to the IOs of the MOI and other investigative agencies as it sees fit.

77. In spite of series of reforms within the last 20 years, the Moldovan PGO has had difficulties in getting rid of various features inherited from the old Soviet *prokuratura* - a *sui generis* 4th branch of State power which supervised all other authorities, including the courts, and carried out its own version of administration of justice. The reform has turned into a slow and, occasionally, controversial process. It has gone through the following key phases:
    a. Prosecution Act 1992 set the basis for de-politisation of the service;
    b. new Constitution, adopted in 1994, affirmed a formal classification of the PGO as a 'judicial authority', outlined the scope of its competence by a broad reference to the protection of the interests of the society, the law and order, and the rights and freedoms, while providing for appointment of the Prosecutor General by Parliament;
    c. Prosecution Act 2003 retained many features of the old Soviet *prokuratura*, but reflected the new wider concept of criminal prosecution introduced by the CCP of that same year.

78. The most recent Prosecution Act 2008 signified a more pronounced departure from the past, merging various rules on the organisation, status, disciplinary and other elements of the relevant legal framework, introducing a self-regulating system. The core elements of the PGO competence under the 2008 Act may be summarised as follows:
    a. leading and performing pre-trial investigations;
    b. acting on behalf of accusation at criminal trials;
    c. supervision over the execution of remand and conviction measures;
    d. organising witness protection;
    e. general duty to protect human rights and the law and order from crime.

79. Core deficiencies that were not remedied in the 2008 Act find reflection in the opinion of the Venice Commission[37] and other outside observers, and may be summarised as follows:
    a. maintenance of the excessively wide definition of 'general interest' as giving grounds for intervention by the PGO beyond criminal matters; albeit these grounds have been limited by a number of subsequent amendments, for instance in July 2010 - according to which the prosecutors are no longer entitled to have access to information held by private data controllers, unless criminal proceedings are involved - the PGO retains the general right to enter premises of any legal or natural person, and have access to the data held there; the latter powers are of particular concern when combined with the ability of the PGO to conduct 'pre-investigative inquiries' (see paragraph 121 below);

[37] See the Opinion on the PGO Bill by the Venice Commission, approved at its 75th Plenary Session (Venice, 13-14 June 2008) at http://www.venice.coe.int/docs/2008/CDL-AD (2008)019-e.asp

b. authority to oversee legality of actions by the Armed Forces;
c. largely unfettered discretion to initiate civil proceedings, which may now be assumed to be used even more extensively following the creation of the Juvenile and Human Rights Unit at the PGO;
d. ability to challenge constitutionality of legislation.

80. While structural independence of the PGO from the executive has been enshrined by statute, the prosecution at times remains entangled in the risk of political influence - both institutionally and at an individual prosecutor level. There is a lack of functional independence by a prosecutor from his hierarchical superiors in dealing with a particular case, given the so-called principle of 'unconditional subordination' and the rather vertical style of management of the body. Subordinated (lower ranking) prosecutors are provided with merely an illusive right to 'request written instructions' from their superiors in order to challenge them. The situation is aggravated by the opaque - and, in some cases, not even open to public - set of internal rules and orders defining the policies and conditions of service at the PGO.

81. The 2008 Act introduced the Supreme Council of Prosecutors (SCP) - together with the Qualification and Disciplinary Boards - as the managing bodies of the corporation. The self-regulating capacity of the PGO can safely be assessed as still being at a nascent stage. The SCP and its Boards held their first meetings in 2010. During the same year the system embarked upon a new competition-based appointments procedure. It will take time before the SCP and its Boards start playing a more independent and effective role from the Prosecutor General in career access and development, discipline, budget and oversight matters.

82. According to a comparative analysis with other European countries, Moldova has a relatively high number of prosecutors *per capita* - 21.6[38] per 100,000 inhabitants. This number is much higher than the CEPEJ average of 10.4. In fact, only two other countries in Europe - Lithuania (25.7) and Latvia (23) - have more prosecutors per 100,000 people than Moldova[39]. Of course, the differences between the Central/Eastern and Western European legal systems may be explained by larger responsibilities of the prosecutors in the former, which go beyond the criminal law and are not counterbalanced by the existence of effective systems of civil legal aid. The higher prevalence of crime and the use of criminal justice tools for dealing with various societal problems may also be provided as an explanation. A higher number of prosecutors thus cannot on its own be indicative of the assumed inefficiency of the system, or lack of capacity at an individual level.

83. Higher expenses devoted to the prosecution *per capita* are a better indicator to support an assumption that the service has the resources to perform the job properly. In this respect, it is notable that Moldova spends the lowest amount per inhabitant on the prosecution service in absolute terms among all European

[38] In 2008, the benchmark year for the most recent CEPEJ analysis, Moldova had 770 prosecutors. Today it has some 780, attesting that the number has not increased significantly in the last 3 years.
[39] See the CEPEJ Report cited above, pp. 181-182.

countries, namely EUR 1.5 per inhabitant. Countries in similar socio-economic situation as Moldova (Armenia in EUR 1.8, Georgia in 2.0, or Ukraine in 2.2) spend slightly more. These numbers are in stark contrast not only to the wealthier Western European states but also new Member States of the European Union, which spend many times more in absolute terms - notably, Lithuania (EUR 12.8), Hungary (EUR 12), Slovakia (EUR 10.9) or Latvia (EUR 10.4). However, Moldova already spends a much higher proportion on the prosecution *per capita* relative to the GDP, namely 0.13%, which is a higher ratio than the CEPEJ average of 0.09%. Among all countries of Europe, only Bulgaria (0.18%), Bosnia-Herzegovina (0.18%), Montenegro (0.16%) and Lithuania (0.13%) dedicate a bigger proportion of their national income to the prosecution service than Moldova. All this must also be noted against the background of a significant increase by the CEPEJ standards of the prosecution budget in Moldova - namely by 15% from 2004 to 2008[40]. According to the most recent figures (unavailable in the CEPEJ Report 2010, which compares data at the 2008 level), the budget of the PGO was further increased by 1.3% from 2009 to 2010 to amount to a total of 72.4 million lei (about EUR 4.5 million). The Expert Team does not consider that the comparative analysis warrants stretching the budgetary resources of Moldova further in favour of the PGO, even though some increase in the budgeting of the service would of course be welcome in order to raise the service's relatively low salaries (also see paragraph 81 below).

84. The existence of non-prosecutorial staff attached to the prosecution is one more indicia to prove an assumption of better facilities, in turn enabling a better service to the society. At 1.0, Moldova scores below the CEPEJ average of non-prosecutorial staff per prosecutor of 1.4. At the same time, other countries in the region score worse: notably Russia (0.4), Estonia (0.5), Lithuania (0.6), Georgia (0.7), Azerbaijan (0.7), Latvia (0.8), Armenia (0.9), Slovakia (0.9). It must be noted that Scandinavian countries also belong to the same group, with Norway at 0.1, Sweden at 0.4 and Finland at 0.5 - although those numbers may arguably be explained by the much lower level of criminality (and, accordingly, the workload). On balance, it cannot be said that the prosecution service in Moldova is understaffed by comparative standards[41].

85. According to the comparative data by CEPEJ, in 2008 Moldova had the lowest annual gross salary for a prosecutor among all European countries, at EUR 3,207[42], followed by Armenia (EUR 4,864), Russia (EUR 7,201), Bulgaria (EUR 7,227), Albania (EUR 7,250) and Georgia (EUR 8,383), as the only countries below EUR 10,000. In addition, the salaries of prosecutors in Moldova also miss the CEPEJ average of 2 times the average national gross salary, as the Moldovan prosecutors are paid on average only 1.6 times more[43]. Only a few countries of the region had a lower number - notably Albania (1.4) and Russia (1.4). Many other countries of Central and Eastern Europe were close or above the CEPEJ average of 2. It may be argued that paying proportionately bigger salaries to prosecutors is *inter alia* among the tools of preventing corruption. This means that Moldova proportionately

[40] Ibid., pp. 29-30.
[41] Ibid., pp. 181-182.

[43] Ibid., pp. 205-206.

underpays its prosecutors vis-à-vis other sectors. Therefore, even though it must be noted that - at 114.1% - the increase of salaries of all prosecutors in Moldova between 2004 and 2008 was highest among all European states[44], it can be concluded that Moldovan prosecutors are somewhat underpaid with regard to other sectors.

86. While the CEPEJ also analyses statistics on prosecution case management results[45] (how many criminal proceedings instituted, discontinued, resulting in convictions etc.), the Expert Team avoids going into these details in order to make no speculative conclusions. This choice appears justified by reason of the non-existence of unified performance indicators among the law enforcement and judiciary authorities in Moldova, and given the still prevalent emphasis on clear-up indices (i.e. 'solving cases' or 'detecting a perpetrator') for the purposes of performance assessment, which can reasonably be expected to give grounds for manipulation or self-serving nature of any such statistics. Moreover, even getting credible statistics in this respect remains a problematic issue in view of the different methodologies and interests involved at various blocks of the criminal investigation sub-sector. There have been quite a few serious disputes between the PGO and the MOI on discrepancies in regard to the 'solved cases', for instance - with the MOI reporting almost up to 90% rates in some cases (i.e. homicide), while the PGO opting for much lower percentage.

87. The PGO was one of the direct beneficiaries of the creation of the NIJ. However, together with the courts and other stakeholders, the prosecution is yet to feel a more significant impact of the NIJ on the capacity of the service at an individual or institutional level (also see paragraphs 221-227 below).

88. On the basis of the interviews and other sources outlined in this chapter and the Annex, the Expert Team determined a significant lack of performance by the Moldovan prosecution service. The list of the possible causes of the phenomena may be summarised as follows:
    a. psychological remnants of the old Soviet *prokuratura*, with its unfettered powers and custom justice;
    b. insufficient capacity of the PGO and its officers, including a lack of skills, competences, training, methodology and leadership capabilities; the very nascent stage of the self-regulating capacity (SCP, the Qualification and Disciplinary Boards);
    c. lack of capacity of the NIJ in initial and continuous training of prosecutors (also see paragraphs 221-227 below);
    d. repetitive and cumbersome three-step scheme in criminal process inherited from the old Soviet model (see paragraph 121 below); lack of a coherent and mutually-reinforcing concept of investigation of crimes in a fine-tuned institutional set-up;
    e. disparity between the formal rules of criminal procedure and the actual role of the multitude of 'ascertaining bodies' during the early investigation

[44] Ibid., p. 209.
[45] Ibid., pp. 189-194.

stage; disparity between the formal (prosecutor) and actual (investigating officer, 'ascertaining body') control over a case at the early investigation stage;

f. functional dependence of a prosecutor from his immediate hierarchical superiors at the PGO in dealing with a case, combined with a considerable *de facto* dependence of the PGO on the law-enforcement and executive authorities in general;
g. inexistence of effective safeguards against ill-treatment and other types of abuse, especially at an early ('pre-investigative inquiry') stage; improper prioritisation of procedures and evidence collected at this stage of the process;
h. excessive emphasis on retributive justice; lack of use of alternatives to criminal prosecution, including rudimentary application of abbreviated or simplified forms of criminal procedure;
i. flawed performance indicators and targets at the PGO, including an excessive weight attached to clear-up indexes and prosecuted cases; lack of a well-defined feedback relationship in performance assessment in the prosecution sub-sector in particular, and the law-enforcement and criminal justice fields in general;
j. lack of contemporary equipment, other technical and financial resources;
k. insufficient use of institutionalised 'task-force' approach or analogous methods of advanced inter-agency cooperation in performing investigations; lack of public visibility of the already existing 'task-force' efforts (prosecutors working with investigators in anti-trafficking, anti-corruption, cybercrime, transport areas); lack of knowledge of modern investigation methodology;
l. insufficient strategic thinking and coordination of the justice sector reform, including insufficient participation in the process by the PGO;
m. lack of sufficient knowledge in methods and procedures of use of international legal assistance and professional cooperation mechanisms involving foreign counterparts;
n. insufficiently strong image of the PGO in the society;
o. corruption in the prosecution sub-sector, law-enforcement, judiciary and the State administration;
p. very high proportion of prosecutors per head of population, against the background of the very low expenditure for the service in absolute terms, and the already overstretched budgetary resources of the country in paying relatively bigger proportion of national income for the prosecution than most European countries;
q. proportionate underpayment of the prosecution vis-à-vis other sectors.

On-going Reforms and Donor Support

89. The GOM has identified many of the aforementioned deficiencies in its Programme 2011-2014, which makes the PGO as one of the key target sub-sectors. The Programme intends *inter alia* to attain the following:
    a. gradual grant of the status of magistrates to the prosecutors;
    b. modification of the duties of the prosecution, with focus on criminal justice;

c. modification of the procedure of appointment and dismissal of the Prosecutor General, by reducing the possibility of political criteria; appointment of the Prosecutor General for a longer term, with no re-election;
d. introduction of the obligation of the PGO to submit an annual report to Parliament;
e. setting up of a mechanism that will exclude the possibility of giving improper instructions by the hierarchical superiors of a prosecutor;
f. creation of a mechanism of appeal to the SCP in cases of intra-agency disputes, including those on legal merits of cases;
g. re-examination of the rules of prosecutors' liability; elimination of structural immunities.

90. In 2010 the PGO updated its structure by introducing three new units, two of which deal with ill-treatment and cybercrimes. The Unit has a hierarchical power to control and review all investigations of ill-treatment, and, if necessary, can carry out its own investigations. Such investigations are currently carried out by specialised prosecutors who are under the authority of the Heads of territorial offices of the PGO. Specialised prosecutors are under duty to report on any ill-treatment complaint to the Head of Unit within 24 hours of submission of such a complaint. It remains to be seen how the operational capacity of this Unit develops in order to increase effectiveness of investigations in line with European standards. Having said that, the Expert Team considers the establishment of the Unit on Combating Ill-Treatment as a welcome step. At the same time, the Expert Team finds no sufficiently tempting rationale in expanding the PGO competence by establishing the Juvenile and Human-Rights Unit, which is competent to act beyond the bounds of criminal procedure, and will be able to act *ex officio* in applying civil law and administrative measures in the interests of vulnerable persons. The Expert Team's long-term strategic view of the PGO is towards limiting its powers exclusively to the criminal justice field.

91. The PGO has already benefitted from targeted international assistance as a core beneficiary. Components on institutional and capacity building at the PGO were carried out in the context of the TCP and the EU-financed MOLICO Project. As a result of various initiatives by the US Embassy, more than 250 prosecutors have been trained since 2009 in various areas, such as pre-trial arrest and detention, mutual legal assistance, plea bargaining, criminal liability of legal entities, investigation and prosecution of corruption and cybercrime. Some issues relating to the professional independence and career development of the prosecutors are addressed by the on-going 'Democracy Support' project (see paragraph 69 above). In addition, NORLAM, Venice Commission, OSCE and the U.S. Embassy continue to carry out separate activities with the PGO as a beneficiary. Finally, the PGO was recently included in the UNDP-run EU High Level Policy Advice Mission.

92. Further assistance to the PGO is planned by way of Comprehensive Institution-Building (CIB) funding tool of the EU. Moreover, the PGO will be one of the main beneficiaries of the Project on 'Support to the Pre-trial and Investigative Set-Up', designed by the Expert Team as part of the larger Action on Support to the Justice Sector Policy Reforms 2011-2013 (see paragraphs 240-246 below). The Project

intends to build and expand on previous activities by the EU and other donors, while reconsidering certain conceptual statutory and institutional issues. The specific objectives of the Project will be *inter alia*:

a. redefinition of institutional and procedural set-up of the pre-trial stage;
b. improved clarity, foreseeability and efficiency of legal framework on the use of special investigative techniques;
c. improved capacity of the sub-sector actors, including the PGO, to contribute to the implementation and development of the justice sector strategy, and provide feedback and inputs for the purposes of efficient justice sector reform coordination, allowing implementation of the EU sector-wide programming approach.

93. While the above Project will focus mostly on the improvements to the procedural legislation within which the PGO performs its duties, capacity-building at the prosecution service will be touched upon in the context of the Project on 'Efficiency, Transparency and Accountability of Courts', which will attempt to facilitate regulatory overhaul and capacity improvements at the NIJ as one of its main components (also see paragraphs 221-227 and 240-246 below).

Directions for Further Reform

94. The Expert Team proposes the following list of topics, to serve as focal points for further domestic and international initiatives, in order to achieve a more efficient PGO:

a. improving capacity of the PGO, including skills, competences, training, methodology and leadership capabilities *inter alia* though comprehensive support to the NIJ; developing internal capacity-assessment mechanisms at the prosecution service;
b. improving regulatory, management and training capacity of the SCP; development of clear and foreseeable ethical and disciplinary rules and procedures (in June 2011 the draft Code of Ethics for Prosecutors was already under development);
c. ensuring accessibility and openness of regulatory framework surrounding the prosecution service through enhanced capabilities of the PGO in using its intranet and internet systems;
d. reduce the institutional and procedural role of the PGO, essentially, to criminal justice; consideration of transferring of some of the functions of the newly created Juvenile and Human Rights Unit to the Ombudsman and other authorities;
e. modification of the CCP with a view to redefining the concept of pre-trial investigation, the relevant roles of a prosecutor and IO, especially at an early stage of the investigation; enabling a more efficient oversight and guidance of the investigations by the prosecution and the judiciary;
f. encouraging and developing ability of the PGO to contribute chapters on justice sector reform, seek and provide feedback to other players in the justice chain in the continuous reform efforts;
g. enhancing personal independence of a prosecutor dealing with a case from his immediate superiors; increasing institutional and functional

independence of the PGO from the law-enforcement and executive authorities in general;

h. development of modern performance assessment system within the PGO, ensuring compatibility and interoperability of performance indicators with the MOI, CCECC and other investigative and law-enforcement agencies;
i. increase in efficiency of communication between the central and local levels at the PGO, *inter alia* by way of a unified information system for case processing and IT support within the prosecution and investigation sub-sectors, and the law-enforcement and criminal justice systems in general;
j. increase in efficiency of communication between the PGO and other stakeholders in the justice sector as well as foreign counterparts, *inter alia* by the introduction of video-conferencing tools and facilities;
k. creation of regulatory conditions for greater use of materials collected by way of special investigative techniques as evidence for criminal trials; perfection of the authorisation and supervision system of intrusive measures and techniques in order to ensure clarity and foreseeability of the relevant legal framework;
l. greater use of institutionalised 'task-force approach' and other methods of advanced inter-agency cooperation in performing investigations and criminal prosecution; increasing public visibility of the already existing inter-agency cooperation efforts;
m. strengthening the participation of the society in the administration of criminal justice by encouragement of witness protection measures, as well as persuasive or repressive methods ('oath', 'duty to cooperate'), to be available as tools at the hands of the PGO;
n. strengthening the PR capacity of the PGO, with a view *inter alia* to encouraging witness collaboration in criminal justice;
o. encouraging efforts of fighting against corruption within the PGO by greater use of criminal (special investigative techniques), civil (property control measures), administrative (declaration of income and assets) and disciplinary tools;
p. financing improvements to the general facilities and equipment at the PGO;
q. review of levels of remuneration at the PGO versus other sectors of the public and private activity.

Conclusion

95. The Expert Team considers the prosecution service to warrant a particular degree of attention for the EU support to the justice sector in the long term, in view *inter alia* of:

- significant lack of performance by the prosecution service;
- apparent willingness of the national authorities to improve the performance of the service by profound reforms;
- lack of clear signs of opposition from the PGO to such reforms;
- rather insufficient amount of attention that the sub-sector has so far received from international donors;

- ability to design relevant interventions with sufficient focus in order to satisfy the principle of concentration.

iii. Bar and Legal Aid

State of Affairs

96. The new Bar Act entered into force in July 2010. Its main novelties were in carrying out the following reforms:
    a. initial training period was increased from 12 to 18 months;
    b. organisational structure of the Bar was changed and the Bar Council was created;
    c. Secretariat was created to provide technical support to the Bar Council (this provision is yet to be put in practice, however);
    d. Chambers of Lawyers were created next to each appellate court (5 in total);
    e. unlicensed ('proxy') lawyers lost the ability to offer litigation services;
    f. basis was laid for new Code of Ethics to be introduced (which is yet to be adopted);
    g. continuous training system was improved, and streamlined with other legal professions to include 80 hours to be spent on compulsory training in the course of each 2 years.

97. In parallel to the statutory reform process, the profession has been strengthened significantly over the last few years by way of increased admissions to the Bar. 1600 persons are currently on the roll of practicing lawyers, and some 120-130 new entrants are admitted each year. This growth of the corporation at 7-8% per year appears sustainable, in view of the large number of lawyers graduating from universities and other higher educational establishments (also see paragraphs 215-220 below). However, the ratio of lawyers varies considerably depending on a region, since the biggest concentration of legal professionals is found in Chisinau. A lack of lawyers in some of the regions, for example, in the South of Moldova, is particularly acute.

98. Although, according to many of the Expert Team's interlocutors, the professional competences and skills of young lawyers today are significantly better than 10 years ago - attested, for instance, by the fact that most of them know at least 2 or 3 foreign languages - various capacity-building measures are still needed. In particular, the legal corporation has to translate the 'new blood' entering the system every year into 'new leadership', and self-regulating capacity of the profession must be increased. Oversight of the lawyers' respect for their ethical responsibilities is insufficient, and may be strengthened by creation of a system of peer review, to deal with such phenomena as 'pocket lawyers' who work hand in hand with the police and prosecutors, instead of representing the client in legally-aided cases. Moreover, the practice as a lawyer is still not considered as a life-long career path for many. As a result, the ability of practicing lawyers to speak with one voice, have permanent interests as a corporation, and participate as full-fledged stakeholder in the justice chain is arguably lower than in many other European countries.

Institutional co-operation and exchange with self-regulating bodies of the judiciary and other sector actors is also insufficient. No practicing lawyer is member of the SCM, while even 3 representatives of the academic community, for some reason, are included in the self-regulating body of the judiciary.

99. One of the more important achievements of the recent reform was restriction of proxy lawyers from representing parties in court. At the same time, Moldova still has quite a number of 'legal advice' offices set up by individuals having either no legal education or licence to practice law. This shows a continuing strength in demand for legal services in the society, while also attesting a lack of availability of legal professionals. The number of licensed lawyers *per capita* is arguably an even more important measure of performance by a given justice system than the relative number of judges and prosecutors (see paragraphs 58 and 82 above). Despite the recent increase in the number of legal professionals, at 36.4[46], Moldova scored much lower than the CEPEJ average of 147.6 lawyers per 100,000 inhabitants, being ahead only of Azerbaijan (9), Armenia (24.4), Bosnia-Hercegovina (32.3) and Finland (34.4). Equally, the number of lawyers per judge in Moldova (2.8) was much lower than the CEPEJ average 14.6 or even median 8.3[47]. This may reasonably be suggested to attest a weaker legal profession with regard to the other corporations in the justice-sector, and a more limited choice for members of the society in looking for legal advice or representation.

100. The Legal Aid Act 2007 established the conditions, amounts and procedures for legal aid delivery in criminal, civil and administrative matters. The National Legal Aid Council, consisting of 7 members (2 each representing the MOJ, Bar and the MOF, and 1 representative of the SCM), has been created to manage assignments, case distribution and financing. The system is still at a very nascent stage, as there are no clear-cut criteria for affording civil legal aid, the law establishes rather vague definitions of 'interests of justice', 'means' and 'small claims'. Lacking are also development of methodology for case selection, coverage outside Chisinau, and a call-centre to streamline the assignment process.

101. Despite its nascent stage, the system of legal aid in Moldova is already complex. It includes 8 lawyers acting as 'public defenders' employed as public servants but currently paid by a technical assistance project of the Soros Foundation Moldova (SFM). The Moldovan legal-aid system also comprises 31 community-based paralegal filtering the most relevant cases for legal aid, supervised by the National Legal Aid Council. The paralegals also mobilise the community and are involved in mediation, making the system a cross of social and legal support, modelled upon the Citizen Advice Bureaus in the U.K., the so-called *lokets* in the Netherlands and paralegal advice offices in South Africa. These services can be viewed as a contribution in building the civil society.

102. On a comparative basis of statistics dating from 2008, the CEPEJ found that EUR 7,2 per inhabitant were spent on average by the public authorities to promote

[46] admittedly, according to the 2008 data.
[47] see the CEPEJ Report cited above., p. 237.

access to justice throughout the European legal aid systems. However, since most of that average is due to the very high amounts spent in only a few selected countries (notably U.K., Netherlands, Ireland and the Scandinavian countries), a more adequate measure is the median value spent on legal aid in Europe, which amounts to EUR 1,7 per inhabitant[48]. Even according to that lower number, Moldova spent a meagre EUR 0.1, albeit it must be admitted that some countries of the region spent even less - notably Ukraine (EUR 0.004), Azerbaijan (EUR 0.03), Hungary (EUR 0.03) and Albania (0.04). The proportion of national income allocated to the legal aid system in Moldova - at 0.01% of the GDP - was equal to the median value among the CEPEJ countries, albeit still shy of the CEPEJ average 0.03%[49]. The CEPEJ statistics showed that in 2008 Moldova had among the lowest number of cases of legal aid granted per year - 125.7 per 100,000 inhabitants - better only that the number in Bosnia-Herzegovina (69.5) and Armenia (66.9). It also had some of the lowest total allocations of legal aid money per case, which, at EUR 56 per case, was only better than in Russia (EUR 38), Romania (EUR 30) and Hungary (EUR 7)[50].

103. These comparative numbers should now be considered against the background of the fact that the legal aid budget in Moldova has increased enormously, from 661,958 lei (about EUR 55,000) in 2008 to more than 4.5 million lei (about EUR 280,000) in 2009[51]. The budget is expected to have increased even more in 2010. Albeit the Moldovan legal aid system was still at a very early stage of existence in 2008, in some respects it was already gaining traction on a comparative basis. The sub-sector has grown impressively in the last two years since 2008. There is still, of course, room for improvement, which would place Moldova on an even better footing in comparison with other European countries, and especially other countries of the region.

104. Most of the CEPEJ countries provide the widest possible range of legal aid, including legal advice, and not only court representation, in criminal and non-criminal cases. Yet other specific restrictions exist in the context of the functioning of the legal aid systems. Moldova is among a few European countries (alongside Azerbaijan, Bulgaria, Cyprus, Georgia, Latvia and a few others), which do not provide for the possibility of a legally-aided applicant for exoneration of court fees, or obtain legal aid with regard to non-enforcement of a court decision[52]. Finally, a private system of legal expense insurance enabling individuals to finance court proceedings does not exist in Moldova[53]. It may be expected that some of those shortcomings will be remedied once the civil legal aid system starts operating this year.

105. In sum, on the basis of the interviews and other sources outlined in this chapter and the Annex, the Expert Team determined notable improvements in performance of

[48] Ibid., pp. 31-32.
[49] Ibid., pp. 32-33.
[50] Ibid., p. 54.
[51] www.cnajgs.md/fileadmin/fisiere/...cnajgs/Hotarire_nr._1_26.02.10.doc
[52] See the CEPEJ Report cited above, p. 51.
[53] Ibid., p. 60.

the sub-sector, despite a certain lack in performance. The following factors have been indicated to the Expert Team among the causes of the current state of affairs:

a. insufficient capacity of the Bar in regulatory oversight lack of respect for ethics among lawyers, as well as in developing leadership capabilities within the profession; lack of a Secretariat to assist the bar Council;
b. lack of a new Code of Ethics for Lawyers;
c. unclarity of the law - and lack of practice - on basic definitions, conditions and methodology for affording free legal assistance; insufficient capacity of the National Legal Aid Council in administering the system;
d. limited scope of legal aid (admittedly, this will be resolved when the new legislation comes fully into effect);
e. financial constraints for the public funds to cover services by more competent private lawyers;
f. continuing prevalence of proxy lawyers in the field of legal advice, albeit no longer in matters of litigation.

On-going Reforms and Donor Support

106. Most of the current changes are currently taking place because of the contributions by a number of international assistance activities carried out, most notably, by targeted technical assistance projects by the Soros Foundation Moldova and SIDA. It is understood by the Expert Team that most of the spectacular increase in the total legal aid budget came through those activities. It remains to be seen how the sustainability of these efforts is going to be ensured by the GOM once the donor support to the sub-sector decreases.

107. Separate initiatives in capacity-building in the sub-sector have also been carried out by the EU and the COE, U.S. Embassy together with the ABA ROLI, the U.S. Millennium Challenge Corporation and USAID (through TCP), NORLAM, IRZ Germany, OSCE and others.

Directions for Further Reform

108. The following needs to be achieved by way of future reform and support activities:

a. encouragement of development of capacity among lawyers and the Bar level, with a particular emphasis on ‘leadership capacity’ for a stronger and more cohesive profession; developing capacity-assessment mechanisms inside the lawyers corporation;
b. creation of a Bar Council Secretariat;
c. expanding the continuous training role of the NIJ to accommodate the Bar members (also see paragraphs 221-227 below);
d. strengthening the regulatory and oversight role of the Bar to deal with various ethical and disciplinary matters, including the phenomena of ‘pocket lawyers’; adoption of a new Code of Ethics;
e. increasing transparency and reducing interference by the MOJ in supervising the profession, including a lesser role in licensing;
f. encouraging more lawyers to work in the regions;

g. more interaction between the Bar Council and SCM, including exchange and formalisation of qualification and disciplinary board membership;
h. encouraging and developing ability of the Bar to contribute chapters on justice sector reform, seek and provide feedback to other players in the justice chain in the continuous reform efforts;
i. comprehensive support to the capacity of the National Legal Aid Council; clearer defining the basic criteria for affording civil legal aid, including the notions of 'interests of justice', 'means' and 'small claims'; improving methodology for case selection, coverage outside Chisinau; establishing a central office/apparatus of the NLAC; establishing a call centre to assign duty lawyers and streamline the assignment process;
j. expanding the scope of legal aid to include exemption from court fees, legal aid for execution of judgment procedures; creation of a system of legal aid expense insurance;
k. more active role of the courts in the exercise of control over the quality of official legal representation in criminal and civil matters by way of additional procedural obligations of the courts enshrined in the respective procedural codes;
l. further restriction of proxy lawyers from the ability to offer legal advice;
m. mixed system of legal aid delivery, which borrows from various different systems (State-employed 'public defenders', officially-assigned private lawyers, and community paralegals) to get a clearer direction towards the dominance of one model in the longer term (albeit the Expert Team considers this not an urgent priority).

Conclusion

109. The Expert Team considers the Bar and legal aid system to warrant continuing level of attention for the EU support to the justice sector in the long term, in view *inter alia* of:

- certain lack of performance but notable improvements within the Bar and legal aid systems in comparison with the other justice sector stakeholders;
- rather sound legislative track on which the on-going reform in the legal aid system is taking place;
- well-targeted targeted work currently being carried out by other donors;

but counterbalanced by:

- need to ensure sustainability of the above international assistance efforts once they become less intensive.

iv. Ministry of Justice

State of Affairs

110. In the institutional conjuncture of Moldova, the Ministry of Justice (MOJ) is involved in the following:

a. elaboration of concepts of laws, drafting, expertise, impact assessment, legislative initiative and submission of drafts to Parliament;

b. systemisation and codification of the existing legislation;
c. maintenance of the official legal register and database;
d. representation of the State before the European Court of Human Rights (ECHR);
e. international legal protection of Moldovan citizens;
f. management and administrative support of the courts;
g. coordination of reforms in the field of justice;
h. enforcement of court judgments in criminal matters through the Central Probation Office (CPO);
i. licensing and supervision of the National Union of Bailiffs;
j. supervision of the activity of the Bar and notaries;
k. register of political parties, media, NGOs, and some other entities;
l. harmonisation of Moldovan legislation with the EU Law through the Centre for Legal Approximation (CLA).

111. The MOJ itself, as an executive structure, is only partly relevant for this assessment exercise, the primary focus of which is rather on administration of justice (see paragraphs 36-38 above). At the same time, the role of the Ministry as a driver of justice-sector reform is indispensable. The MOJ was behind some of the more notable recent changes in the sector, notably the reforms of the Bar and the Bailiffs. In their interviews with the Expert Team, some international observers expressed reservations about the somewhat hasty style of policy-making prevalent in Moldova in general, and at the MOJ in particular. Hence, expertise of international organisations would not always be taken into account, or, in some cases, would not even be genuinely sought. The occasional lack of consultation also applied to some relevant domestic stakeholders. For instance, banks and insurance companies were not consulted leading to the adoption of the Bailiffs Act.

112. The MOJ recently undertook a notable pro-active step in creating the Justice Sector Coordination Board and supporting the Justice Sector Coordination Council (JSCC), thereby reaffirming its willingness to remain an operational mainstay in driving the justice sector reform (also see paragraph 192 below).

113. On the basis of the interviews and other sources outlined in this chapter and the Annex, the Expert Team determined notable improvements in performance of the MOJ, despite a certain lack in performance. The possible causes of the current state of affairs:
    a. somewhat hasty style of policy making;
    b. short-termism instead of a longer perspective in regulatory initiatives and institutional overhauls;
    c. lack of full acknowledgement and awareness of budgetary implications of the intended reforms;
    d. lack of consultation with a wider list of stakeholders in the conduct of the reforms, including the private-sector and the civil society.

On-going Reforms and Donor Support

114. The MOJ itself is not being subjected to any significant reform processes, although some of its units were created or moved under its auspices very recently. The relevant reform processes at various relevant departments of the MOJ - such as its execution unit - are reviewed under the relevant sub-sector headings below.

115. The UNDP-run EU High Level Policy Advice Mission is the main modality of EU support to the institution. The Mission has been in place for almost a year, and has managed to create an efficient channel of communication and inputs between the Ministry and the EU Delegation in Moldova. The most significant form of future EU support to the MOJ will involve the Justice-Sector Mature Coordination Project, which has been designed by the Expert Team as part of the Action on Support to the Justice Sector Policy Reforms (also see paragraphs 240-246 below).

Directions for Further Reform

116. Any activities involving the MOJ should strive to achieve the following:
    a. strengthen its coordinating role of the justice sector reform;
    b. encourage the development of the justice sector reform strategy and itemised action plan, tied to a medium-term budgetary framework;
    c. encourage and develop ability of each sector stakeholder - including various MOJ units - to contribute chapters to the justice sector reform, seek and provide feedback to other players in the justice chain in the continuous reform efforts;
    d. foster a longer-term perspective and holistic approach of new regulatory initiatives;
    e. fuller awareness and foresight of budgetary implications of any action; modelling and taking account of alternative outcomes and impacts;
    f. design a few-step public consultation process leading to the adoption of any law;
    g. safeguarding appearances of the judiciary as an independence power in the PR activities undertaken by the MOJ;
    h. strengthen capacity at individual and institutional level, including skills, competences, training, methodology and leadership capabilities; developing capacity-assessment mechanisms within the Ministry.

Conclusion

117. The Expert Team considers that the MOJ should be designated as warranting continuing level of attention for the EU support to the justice sector in the long term, in view *inter alia* of:
    - certain lack of performance but notable improvements within the Ministry in comparison with the other sector stakeholders;

- given that the support to the MOJ efforts in the justice sector reform and donor coordination efforts will be channelled as part of a separate sub-sector/cross-cutting topic (see paragraphs 187-196 below).

v. Criminal Investigation Agencies (MOI, Customs Service, CCECC)

State of Affairs

118. Some novelties were introduced in the criminal investigation system by the CCP 2003 (see paragraph 75 above), signifying a departure from the old Soviet model. Under the new system, criminal cases may formally be initiated and handled by the prosecutors at the PGO, or investigating officers (IOs) of the MOI (628 investigating officers), Customs Service (24 IOs) and the CCECC (65 IOs). The PGO carries out certain investigations falling within its competence (see paragraph 76 above). The MOI is borne with the main burden of processing all cases that do not fall within the competence of other investigative agencies. However, in practice it handles investigations of all the alleged offences ascertained by the police, including those formally falling under the thematic jurisdiction of the two specialised agencies (Customs Service and CCECC). The overall workload and share of relevant agencies in handling pre-trial criminal procedures in Moldova can be illustrated by the following statistical data on numbers of criminal cases processed by them in the recent years[54]:

	2007	*2008*	*2009*	*2010*
MOI	44812	39816	37195	43368
PGO	6920	6676	6501	6415
CCECC	1417	1839	2427	2800
Customs	212	190	197	215

119. The Status of Investigating Officers Act 2006 reiterates the postulate of their formal independence. However, the actual conditions of service of IOs are mingled in the mandatory and immediate character of written orders and indications by the management of the agencies to which the officers are attached. In spite of a certain departmental autonomy, the investigative subdivisions of the MOI, hierarchically and institutionally, depend on ministerial structures and centralised executive power. There is no actual distinction between a *hierarchical subordination* of IOs to their administrative superiors for the purposes of career development and disciplinary matters on the one hand, and a *functional subordination* of IOs to the same persons in the context of a particular investigation on the other. The problem is intensified by a trend contrary to the intention of the CCP reform - namely, an increasing number of law-enforcement and governmental structures involved in and carrying out the inquiries and special investigative activities, or entitled to process bring various types of 'administrative' (minor misdemeanour) proceedings.

[54] According to data provided to the Expert Team by the PGO.

120. At the management level, the MOI structures are excessively centralised. At the same time, this does not prevent significant overlap and uncertainties as to the competent body or person for the performance of various specific investigative functions.

121. The criminal procedure in Moldova has retained a repetitive and cumbersome three-step scheme inherited from the Soviet model, commencing with the largely unregulated 'pre-investigative inquiry', followed by formal criminal investigation and trial. 'Pre-investigative inquiries' may be carried out by a large number of law-enforcement, administrative and security intelligence authorities by reference to their customary status as 'ascertaining bodies'. A formal criminal investigation merely follows the 'pre-investigative inquiry' and, to a large extent, depends on its results. This approach deviates from the statutory principle of strict delimitation of bodies vested with the investigative and prosecuting powers, in turn undermining the independence and efficiency of investigations, pre-trial process and criminal justice. The system is not counter-balanced by the subsequent court procedures which persistently prioritise evidence collected pre-trial rather than that presented in open court.

122. The actual role of the PGO in handling criminal investigations is in huge disparity with its statutory position. Formally, the PGO has been entrusted to lead investigations carried out by the investigating agencies of the executive. However, an exercise of such powers by the PGO is undeveloped and unsupported with necessary regulatory, institutional arrangements, infrastructure, human and technical capabilities. Although the CCP and other normative acts make a prosecutor's decision binding on IOs, few tools exist to ensure application of that role in practice. Prosecutors remain detached from the investigative activities, and their role is predominantly formal. Interaction between the prosecution and IOs is limited to formal written communication, remittal of cases for further investigation, and (occasionally) disciplinary complaints against IOs. As a result, criminal prosecution remains, to a large extent, under the direct influence of hierarchical superiors of OIs, notably police commissioners.

123. Furthermore, the Moldovan law-enforcement and prosecuting authorities, as well as the criminal justice system in general, encounter difficulties in applying 'special investigative' ('operative') techniques, which are used to counter organised, latent or other sophisticated forms of crime, including corruption. This is mainly because of the outdated legal framework - namely the Special Investigative Techniques Act 1994 (SITA, also known as 'Operational Activities Act') - and an opaque practice of its application. In spite of some amendments, the SITA and the underlying institutional arrangements remain fundamentally disassociated from the criminal procedure and prosecution.

124. The special investigative ('operative') personnel and resources are managed by the so-called 'operative' and security intelligence authorities, which share no responsibility for the outcome of criminal procedures initiated by them. Nor are the 'operatives' encouraged to cooperate with the investigative and prosecuting authorities. Due to the prevailing institutional barriers, an interaction between the prosecution, IOs and 'operative' services is reduced to formal written communication. The 'operatives', IOs and prosecutors also lack capacity in using

more advanced and efficient special investigative techniques. Consequently, the special investigative activities in Moldova undermine the criminal justice system by decreasing its efficiency, while also failing to respect the relevant human rights standards, such as the requirement of clarity and foreseeability of the regulatory framework (see the *Iordachi and Others* case decided by the European Court of Human Rights).

125. The overall situation is exacerbated by the accusatorial perceptions, lack of inter-agency cooperation ('task-force approach'), and the outdated system of performance indicators in law enforcement. As a result, various principles comprising the notion of a fair criminal trial remain mostly declarative.

126. Retributive and unbalanced character of criminal policies pursued in Moldova curbs openings for more rational use of discretionary powers, summary procedures, plea-bargaining or other alternatives to fully-fledged criminal prosecutions, which are much more time-consuming and resource-demanding. As the matters stand, possibilities are very limited to discontinue criminal procedures for minor or medium offences, or replace them with administrative reprimand. Even suspension of investigation is not used as a matter of practice. The legislation allows for mediation and discontinuation of pre-trial procedures in case of reconciliation, including in cases of serious offences committed by juveniles. However, the use of these alternatives is discouraged due to their perceived corruptibility and punitive investigative and prosecutorial targets, as the current system of investigative indexes disapproves of termination of cases, resulting in an eventual prosecution being sought in most situations.

127. In addition, efficiency of criminal investigations is impaired by the structural and technical deficiencies of forensic services - a fragmented system which comprises the Centre and Department for Forensic Expertise (CFE) attached to the MOJ and MOI, respectively, as well as the Centre of Forensic Medicine under the Ministry of Health. The latter was criticised for failing to meet the procedural standards on adequate investigation of ill-treatment in a number of ECHR judgments, and in a CPT Report published in the aftermath of the events of April 2009[55].

128. It follows that the reforms undertaken so far have led to no substantive increase in efficiency, nor did they lead to procedural fairness in or sufficient independence of the criminal investigation sub-sector. Moreover, its current state is one of the main reasons for a major cross-cutting problem in the Moldovan justice system - namely, the continuing inability to prevent and effectively combat ill-treatment, counter police violence and impunity (see paragraphs 208-214 below).

129. On the basis of the interviews and other sources outlined in this chapter and the Annex, the Expert Team determined a significant lack of performance within this sub-sector. The list of the possible causes of the current state of affairs may be summarised as follows:

[55] *Colibaba v. Moldova*, ECHR judgment of 23 October 2007; CPT Report on the visit to Moldova carried out from 27 to 31 July 2009; CPT/Inf (2009) 37.

a. repetitive and cumbersome three-step scheme of criminal process inherited from the old Soviet model; lack of a coherent and mutually-reinforcing concept of investigation of crimes in a fine-tuned institutional set-up;
b. insufficient capacity of IOs, prosecutors and criminal investigation institutions, including a lack of skills, competences, training, methodology and leadership capabilities;
c. disparity between the formal rules of criminal procedure and the actual role of the multitude of 'ascertaining bodies' during the early investigation stage; disparity between the formal (prosecutor) and actual (investigating officer, 'ascertaining body') control over a case at the early investigation stage;
d. insufficient functional independence of IOs from their administrative superiors, combined with a considerable functional *de facto* dependence of the criminal investigation sub-sector on the law-enforcement and executive authorities in general;
e. inexistence of effective safeguards against ill-treatment and other types of abuse, especially at an early ('pre-investigative inquiry') stage; improper prioritisation of procedures and evidence collected at this stage of the process;
f. excessive emphasis on retributive justice; lack of use of alternatives to criminal prosecution, including rudimentary application of abbreviated or simplified forms of criminal procedure;
g. flawed law-enforcement and investigative performance indicators and targets, including an excessive weight attached to clear-up indexes and prosecuted cases; lack of a well-defined feedback relationship in performance assessment in the criminal investigation sub-sector in particular, and the law-enforcement and criminal justice fields in general;
h. overlap of preventive (regulatory), analytical, executive (law enforcement), and investigative duties and powers of the CCECC;
i. lack of contemporary investigative equipment, other technical and financial resources;
j. insufficient use of institutionalised 'task-force' approach or analogous methods of advanced inter-agency cooperation in performing investigations; lack of public visibility of the already existing 'task-force' efforts (prosecutors working with investigators in anti-trafficking, anti-corruption, cybercrime, transport areas); lack of knowledge of modern investigation methodology;
k. insufficient strategic thinking and coordination of the justice sector reform, including insufficient participation in the process by the relevant sector stakeholders;
l. existence of separate legal regulation and institutional framework on special investigative techniques that is not streamlined from the point of view of the Code of Criminal Procedure in particular, and criminal justice in general;
m. lack of a coherent inclusive inter-disciplinary strategy of advancement of domestic forensic services, weighted against the accessibility of relevant foreign facilities; lack of capacity of forensic services at institutional and individual levels;

n. inability of the State to match the level of performance of its undertakings in some fields, such as forensic expertise, that can be more efficiently outsourced to the private sector;
o. inadequate and formalistic character of judicial supervision over the criminal investigation in general, and with regard to the application of special investigative techniques in particular;
p. lack of sufficient knowledge in methods and procedures of use of international legal assistance and professional cooperation mechanisms involving foreign counterparts;
q. poor image of the criminal investigation sub-sector in the society, including its perceived unwillingness to assist and protect the people;
r. corruption in the criminal investigation sub-sector, law-enforcement, prosecution, judiciary and the State administration;
s. insufficient financial motivators to carry out the work properly among IOs and those assisting in the investigations.

On-going Reforms and Donor Support

130. While many relevant domestic counterparts have expressed to the Expert Team their readiness to deal with the factors listed above, the GOM Programme for 2011-2014, similarly as its previous versions, has omitted to undertake any commitments to solve the conceptual deficiencies and flaws in this sub-sector, dealing mainly with the 'symptoms' rather than addressing the deeper causes of the existing problems. At the same time, some positive, albeit fragmented, developments may already be observed, such as the adoption of the concept of the MOI reform (see paragraph 32 above). Although the criminal investigation services of the MOI have already gained some degree of departmental autonomy, the Concept rightly envisages that the ordinary policing (preventive, public order, civic protection) functions should further be distinguished from the criminal investigation function of the MOI. Since the summer of 2010 the MOI have also started modifying targets and performance indicators, including those for 'operative' and investigative services.

131. These developments have been facilitated by international assistance, such as the MOI component of the UNDP-run EU High Level Policy Advice Mission, which has helped the MOI develop a donor inputs and outputs coordination matrix - a rather isolated example of a successful attempt at coordination in the Moldovan context. The UNDP has also started implementation of the EU-funded Project on 'Strengthening the Forensic Examination of Torture and Other Forms of Ill-treatment'. In addition, the EU funds another relevant project implemented by the UNDP, 'Support to Strengthening the National Preventive Mechanism as per OPCAT Provisions'. The U.S. Embassy continues to commit more than USD 1 million per year for various activities at the MOI, including institution-building (in the field of human-trafficking, anti-terrorism), internal control, and capacity-building (notably, in the forensics field). The investigative sub-sector also continues to benefit from technical assistance by other international donors, including OSCE, BKA-Germany and NORLAM, who are contributing to the gradual improvement of matters, especially in the capacity-building segment. At the same time, it may be stated that no external assistance has yet been given for the purpose of seeking a more wide-ranging regulatory and institutional change in the sub-sector.

132. The Expert Team is therefore hopeful that the EU will finally make a much-needed contribution to the regulatory and institutional environment in the sub-sector. A rather wide-ranging action is planned by way of the Project dealing with the structural reform of the MOI, the police and the CCECC, which is valued at EUR 2.5 million and is supposed to start in July 2011. It will aim *inter alia* to:
    a. increase the institutional capacity of the MOI to implement the requirements of the chapter 'Justice, Freedom and Security' of the future EU-Moldova Association Agreement, also contributing to the on-going visa liberalisation dialogue;
    b. reorganise the MOI and the police system;
    c. help the CCECC in the implementation of the National Anti-Corruption Strategy.

133. Finally, another EU-financed Project on 'Support to the Pre-trial and Investigative Set-Up' was designed by the Expert Team, and is supposed to be launched by the end of 2011 as part of the Action on Support to the Justice Sector Policy Reforms (also see paragraphs 240-246 below). The Project intends to build and expand on previous activities, while reconsidering certain conceptual statutory and institutional issues, which have not yet been tackled by targeted donor support. The specific objectives of the Project will be *inter alia*:
    a. redefinition of institutional and procedural set-up of the pre-trial stage;
    b. improved clarity, foreseeability and efficiency of legal framework on the use of special investigative techniques;
    c. improved capacity of the sub-sector actors to contribute to the implementation and development of the justice sector strategy, and provide feedback and inputs for the purposes of efficient justice sector reform coordination, allowing implementation of the EU sector-programming approach.

Directions for Further Reform

134. The Expert Team considers that intensive involvement by the domestic and international bodies will be required to remedy the above shortcomings and achieve the objectives of the aforementioned support activities. The following outline includes priority topics that the Expert Team would suggest as focal points for the domestic and international actors, in order to expect a more sound improvement of the situation in the criminal investigation sub-sector in Moldova:
    a. developing capacity of the criminal investigation sector actors, including skills, competences, training, methodology and leadership capabilities; improving intra-agency capacity-assessment mechanisms;
    b. modification of the CCP with a view to redefining the concept of pre-trial investigation, the relevant roles of a prosecutor and IO, especially at an early stage of the investigation; enabling a more efficient oversight and guidance of the investigations by the prosecution and the judiciary;
    c. improved ability of the sub-sector stakeholders to contribute chapters on justice sector reform, seek and provide feedback to the JSCC and other players in the justice chain in the continuous reform efforts;

d. enhancing institutional and functional independence of IOs from other law-enforcement bodies, and the executive authorities in general;
e. promotion of alternatives to criminal prosecution; application of abbreviated and simplified criminal process;
f. further development of the performance assessment system within the MOI, ensuring compatibility and interoperability of performance indicators between the MOI, PGO, CCECC and other investigative and law-enforcement agencies;
g. decentralisation of the MOI management and decision-making structures, for greater use of zonal/local resources, while avoiding overlap in functions;
h. increase in efficiency of communication between the central and local levels*, inter alia* by way of a unified information system for case processing and IT support within the prosecution and investigation sub-sectors, and the law-enforcement and criminal justice systems in general;
i. clarifying the criteria that would specify the cases when these should be investigated at central as opposed to local level;
j. clarifying and streamlining the mandate of the CCECC within the sub-sector;
k. removing any *de facto* role in criminal investigation - at any stage thereof - by the authorities having no statutory mandate as an investigating body as established by the CCP;
l. reducing the number of authorities having practical or formal roles in the investigation of 'administrative' offences;
m. streamlining and removing overlap between elements and features of 'criminal' and 'administrative' offences, if need be - by clarification of dispositions of some 'administrative' offences (State border violations etc.);
n. creation of regulatory conditions for greater use of materials collected by way of special investigative techniques as evidence in criminal trials; perfection of the authorisation and supervision system of intrusive measures and techniques in order to ensure clarity and foreseeability of the relevant legal framework;
o. greater use of institutionalised 'task-force approach' and other methods of advanced inter-agency cooperation in performing investigations; increasing public visibility of the already existing inter-agency cooperation efforts;
p. transfer of the judicial police to the auspices of the MOJ;
q. review of the plea bargaining system for its more effective use;
r. use of private and alternative forensics experts in more areas, while reducing the role of the State-run forensics in fields that can be fully covered by the private sector (i.e. accounting expertise);
s. strengthening the regulatory role of the State in licensing private forensic experts;
t. re-examination of feasibility of the purchase of equipment and development of domestic forensic capacity (e.g. advanced photo-video expertise and DNA labs) against the current practice of use of the relevant foreign facilities;

u. strengthening the participation of the society in the administration of criminal justice by encouragement of witness protection measures, as well as persuasive or repressive methods ('oath', 'duty to cooperate');
v. strengthening the PR capacity of the MOI and other investigative agencies, with a view *inter alia* to encouraging witness collaboration in criminal justice;
w. encouraging efforts of fighting against corruption within the MOI and other investigating agencies by greater use of criminal (special investigative techniques), civil (property control measures), administrative (declaration of income and assets) and disciplinary tools;
x. financing improvements to the general facilities and equipment at the MOI and other investigating bodies.

Conclusion

135. The Expert Team considers the criminal investigation sub-sector to warrant a particular degree of attention for the EU support to the justice sector in the long term, in view *inter alia* of:

- significant lack of performance within the sub-sector;
- no apparent internal or external obstacles to prevent achievement of tangible improvements in the sub-sector by changing a number of regulatory instruments, backed up by targeted capacity building;
- likelihood that improvements in the sub-sector along the lines indicated above would have a marked impact on the criminal justice system and beyond, contributing to solving many relevant cross-cutting issues.

vi. Bailiffs

State of Affairs

136. A radical change in the system of enforcement of court judgments was envisaged in order to eliminate a structural problem of non-enforcement of courts decisions, established by the ECHR (see among, many other authorities, *Olaru and Others*[56]). In 2010, some 119,942 execution documents were submitted for enforcement, out of which 23,868 documents related to child support. The level of real enforcement in 2010 was a mere 24.4 %, and some 19.3% less than in 2009[57].

[56] http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=853081&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649
[57] See the Relevant Information Note of the GOM at http://www.justice.gov.md/ro/departamentul-executare/

137. With the entry into force of the new Bailiffs Act on 15 September 2010 and the new Enforcement Code on 7 September 2010, Moldova radically remodelled its system of enforcement, creating the profession of a private bailiff. The core statutory conditions to become a private bailiff are:
    a. obtaining a licence, which can be requested by anyone having a university diploma in law, and having undergone 1 year of traineeship;
    b. setting up a physical office, such as by way of rent agreement;
    c. obtaining insurance.

138. More than 180 persons have already obtained a licence from the MOJ to become private bailiffs. At the same time, less than a half of these persons have already set up working offices. On 18 October 2010 the National Union of Bailiffs (NUB) and its management board were inaugurated to regulate and supervise the profession. The NUB will consist of 3 regional units. At the same time, a separate Enforcement Department was created under the MOJ to oversee the profession. It is expected that this reform shall enhance competition as bailiffs will generally be entitled to fees only where enforcement was successful. While the new system has already started functioning, it faces a considerable number of problems of structural, theoretical and practical difficulties.

139. On the basis of the interviews and other sources outlined in this chapter and the Annex, the Expert Team determined a significant lack of efficiency in the bailiffs sub-sector. The following factors may be mentioned among the causes of the current state of affairs:
    a. nascent stage of the private corporation of bailiffs, and the resultant lack of capacity at individual and institutional levels, with regard to skills, competences, training, methodology and leadership capabilities;
    b. insufficient self-regulating capacity of the NUB;
    c. lack of experience by the MOJ in the oversight of the profession;
    d. insufficiency of the law in giving powers to the bailiffs to reach debtors assets, and to effectively claim injunctions in courts, where necessary;
    e. lack of support from the relevant private sector actors (insurance companies, banks), who were not consulted properly in the course of the reform process;
    f. lack of basic facilities.

On-going Reforms and Donor Support

140. The reform of the enforcement system received a contribution from the EU-financed Project on ‘Independence, Transparency and Efficiency of the Justice System’ (see paragraph 69 above). Some support was received by the probation and rehabilitation services from UNICEF, German, Dutch, Norwegian, Swedish and other donors. At the same time, neither the civil nor criminal execution systems have been the object of any larger assistance project.

141. Future EU support will be marked by a Project on ‘Enforcement, Probation and Rehabilitation Systems’, which makes part of the Action on Support to the Justice

Sector Policy Reforms designed by the Expert Team (see paragraphs 240-246 below). The Project should launch by the end of 2011. Out of the total value of EUR 2 million, 40% will destined for the support to the bailiffs service. The Project will aim to achieve *inter alia*:

a. increased self-regulating capacity of the NUB and the oversight capacity of the profession by the authorities; developing capacity-assessment mechanisms within the profession;
b. increased capacity of bailiffs to run an office and perform their work by applying the most efficient methodologies;
c. expanded role of the NIJ to provide continuous training facilities to the NUB;
d. reformed legal framework to facilitate the exercise by the bailiffs of their primary duties, including new mechanisms and procedural tools to deal more efficiently with the debtor's assets;
e. improved capacity of the NUB to contribute to the development and implementation of the justice sector reform strategy, and provide feedback and inputs for the purpose of efficient justice sector reform coordination, allowing implementation of the EU sector-wide programming approach.

Directions for Further Reform

142. Future support activities in the bailiffs sub-sector should strive to achieve the following:

a. development of capacity of the profession at individual and institutional levels, with regard to skills, competences, training, methodology and leadership, including assistance in drafting commentary to the new Enforcement Code and support to the continuous training system;
b. supporting the self-regulating capacity of the NUB, *inter alia* through elaboration of ethical and disciplinary rules and procedures;
c. reform of the statutory framework to give more powers to the bailiffs to reach debtors assets, and to effectively claim injunctions in courts;
d. improve the data management and communication system ('Access 1') inherited from the old state-bailiffs office, and other basic facilities;
e. improved ability of the stakeholder to contribute chapters on the justice sector reform, seek and provide feedback to other players in the justice chain in the continuous reform efforts.

Conclusion

143. The Expert Team considers the newly reformed bailiffs sub-sector as warranting a particular degree of attention for the EU support to the justice sector in the long term, given *inter alia*:

- significant lack of performance within the sub-sector;
- nascent state of the new private profession of a bailiff;
- insufficient donor attention in the field so far;
- ability to focus on a few narrow areas (mostly, in institutional capacity-building) in order to achieve early tangible results.

vii. Probation

State of Affairs

144. The Expert Team denotes, first and foremost, that it construes 'probation' as a wide notion including all alternatives to imprisonment. The system of probation was first introduced in Moldova only in 2007 with the creation of the Central Probation Office (CPO). Until then, the country had no relevant line agency, although some instruments on supervision, guidance, rehabilitation and re-socialisation had existed since the adoption of the Social Adaptation of Released Prisoners Act 1999. The Probation Act 2008 defined the concept of probation as embracing:
    a. pre-sentence assessment and advice (pre-sentence probation);
    b. rehabilitation and social inclusion assistance of imprisoned offenders (penitentiary probation);
    c. execution of non-custodial criminal punishments, community sanctions (community probation);
    d. parole and support to corresponding categories of offenders (post-penitentiary probation).

145. On 1 January 2011 the Moldovan probation system was dealing with 7,063 adult and 183 juvenile beneficiaries. Out of the 250 available salaried positions in the service, 34 have been doled out to the CPO and 179 to probation officers (councillors), who are allocated to 42 field bureaus acting within the relevant second-level administrative entities. Some interviewees suggested to the Expert Team that, in reality, there were only 80 working councillors, since some of them formally occupied two or three positions in order to compensate for a rather low base salary. In essence, therefore, while the actual salaries of probation officers (councillors) attain up to 2 or 3 times the civil-service average, the officers are severely overloaded with work. In addition to the understaffing, the quality of probation services rendered is negatively affected by a high turnover of staff and the general lack of qualifications and experience. This is in stark contrast with best practices of many EU countries, some of which have more probation officers than prison guards. In Moldova this ratio is about 1 (probation officer) to 13 (prison guards).

146. While, on paper, Moldova opted for an inclusive model of probation covering the key areas of the non-custodial penal strategies, many of its constituents are optional, remain underdeveloped and have not been adequately implemented. In particular:
    a. pre-sentence assessment and advice are mandatory for juveniles only; it is optional and almost impracticable with regard to adults, mainly because the prosecutors and judges neglect this option;
    b. the concept does not spell out aftercare services that could be offered to ex-offenders once all the post-release obligations have been discharged (albeit some of these measures are nominally vested in the National Employment Agency);
    c. nor does the concept fully deploy the whole scope of probationary techniques, ranging from highly intrusive forms of probation generally

intended for the most serious types of crime, through standard supervision to unsupervised probation.

147. Of concern is also the almost non-existent cooperation between the probation and penitentiary institutions, despite of their conceptual belonging to the same offender management and rehabilitation system. The relevant state of play in Moldova was characterised to the Expert Team by one of the interviewees in the following manner: 'no probation officer has entered a prison for years'. Moreover, the probation service appears to enjoy no institutional or functional independence. Finally, NGOs, such as religious and other charitable organisations, are underused by the service to facilitate reintegration and social work.

148. On the basis of the interviews and other sources outlined in this chapter and the Annex, the Expert Team determined a significant lack of performance by the probation service. The following causes of the current situation may be indicated:

a. lack of capacity of probation officers and the CPO, including skills, competences, training, methodology and leadership capabilities, conditioned mainly by the nascent stage of the probation system in Moldova,
b. inefficiency of the continuous training mechanism;
c. severe under-staffing at the service;
d. merely nominal institutional autonomy of the service;
e. lack of cooperation and interaction between the probation and penitentiary sub-sectors;
f. limited application of pre-sentence assessment and advice;
g. no regulatory provisions for aftercare services;
h. lack of regulation on wider range of more or less intrusive probation techniques;
i. insufficient application of alternatives to detention in the sentencing policy, conditioned to a large extent by performance indicators and punitive perceptions of the law enforcement authorities, prosecutors and judges, which encourage incarceration rather than the use of alternatives or the exercise of a mediating role;
j. lack of meaningful individualised rehabilitation and social integration policies.

On-going Reforms and Donor Support

149. A recent reform of the civil enforcement system also directly affected the CPO, which was moved under the auspices of the Penitentiary Department of MOJ in late 2010. A few recent government initiatives were passed in order to support the probation service, most recently in the form of a GOM Decree of 10 November 2010.

150. While the sub-sector has not benefited from any targeted support, technical assistance has been given by a component of the SIDA/UNICEF Project on 'Support to the Juvenile Justice Reform' 2008-2011, worth some EUR 1.8 million. Partly as a result of the Project interventions, a marked change has been achieved

in the juvenile sentencing policies. Up to 25% of child offenders are currently sentenced to community services, while many others receive suspended sentences. Specialised probation officers for children have also been created. Some capacity-building and regulatory advice have also been provided by NORLAM and the Dutch Probation Service, which implemented a component of the twinning activity in the penitentiary sector (see paragraph 164 below). Some methodological materials on probation were developed by the Institute for Penal Reform (IPR), a Moldovan NGO actively involved with various donors in developing mechanisms for greater use of mediation and other ADRs.

151. Future EU support will be marked by a TA Project on 'Support to the Enforcement, Probation and Rehabilitation Systems', which makes part of the larger Action on Support to the Justice Sector Policy Reforms (see paragraphs 240-246 below). The Project should launch by the end of 2011. Out of the total value of EUR 2 million, 60% will destined for the support to the probation service. The specific objectives of the Project will be *inter alia*:
    a. Increased capacity of the CPO to manage and oversee performance of the profession by probation officers; increased capacity of probation officers;
    b. increased continuous training capacity of the NIJ for probation officers;
    c. reformed legal framework to facilitate the work by probation officers, including a review of the punitive and rehabilitation policies and the relevant statutory basis;
    d. feasibility studies on the introduction of bracelets, tags and other means of electronic monitoring; introduction of tax and other incentives to involve the NGOs more actively in the rehabilitation and reintegration work;
    e. improved capacity of the CPO to contribute to the development and implementation of the justice sector strategy, and provide feedback and inputs for the purposes of efficient justice sector reform coordination, allowing implementation of the EU sector-programming approach.

Directions for Further Reform

152. In order to help the probation service to carve out a more significant role within the justice sector, the following interventions in this area should concern and ensure:
    a. building capacity of probation officers and the CPO, including skills, competences, training, methodology and leadership capabilities; support for the continuous training capacity of the NIJ; developing capacity-assessment mechanisms within the sub-sector;
    b. increased staffing of the probation service, in order to come closer to the number of prison guards in the country;
    c. elaboration and introduction of itemised punitive policy and strategy; increased use of scientific research to guide probation policies and practices; improved ability of the stakeholder to contribute chapters to the justice sector reform strategy, seek and provide feedback to other players in the justice chain in the continuous reform efforts;
    d. introduction of modern fully-fledged probation concepts, reconciling the community safety considerations with the aims of rehabilitation and social inclusion of offenders;

e. advancement and increased reliability of alternatives to imprisonment; introduction of electronic monitoring methods as part of the probation supervision and, most importantly, their combination with other interventions designed to bring about rehabilitation and support desistance;
f. continuity of the individualised probation process from the pre-sentence stage to aftercare, including early and coherent interaction with the penitentiary component of the offender management and rehabilitation system;
g. institutional autonomy and functional independence of the probation system following its merger with the Penitentiary Department, while ensuring cooperation and interaction between the services;
h. enhancing partnerships between the probation service and other public or private organisations, members of the civil society, families and communities to promote rehabilitation and social inclusion; introduction of tax and other incentives to involve the NGOs more actively in the rehabilitation and reintegration work;
i. accessible, impartial and effective complaint procedures regarding the practice of probation services;
j. regular government inspection and independent monitoring of performance by the probation sub-sector;
k. further liberalisation of criminal policies by use of non-custodial sanctions and other alternatives to detention, use of mediation in criminal matters (especially with regard to juvenile delinquency), reinforced use of probation and early release through parole; review of the performance assessment system, including targets and indicators, within the law enforcement and criminal justice systems.

Conclusion

153. The Expert Team considers the probation sub-sector to warrant a particular degree of attention in the context of the EU support to the justice sector in the long term, given *inter alia*:

- significant lack of performance within the sub-sector;
- insufficient donor attention in the field so far;
- far-reaching effect of an enhanced use of probation on the more effective exercise of the rehabilitation function of the criminal justice system, while tackling a number of cross-cutting sector issues (such as overpopulation in prisons) in the process.

viii. Penitentiary

State of Affairs

154. The Moldovan penitentiary system consists of the MOJ Penitentiary Department, 17 prison establishments (12 ‘colonies’, including one prison hospital, and 5 remand prisons/sections) with the total capacity of 8,580 places. It employs 2,880 persons out of the allocated 3,368 salaried positions. Since the transfer of the system under

the auspices of the MOJ, the sector has seen a vigorous progression of the legal framework by way of the Penitentiary Act 1996, the Social Adaptation of Released Prisoners Act 1999, the Criminal Code 2002, the Code of Criminal Procedure 2003, the Enforcement Code 2004, the Civil Oversight of Detention Places Act 2008 etc. Despite the rather bulky statutory framework, its implementation is complicated by inconsistency and even contradictory character of some provisions.

155. Like other countries of the region, Moldova encounters significant difficulties in overcoming the Soviet legacy in penitentiary policies, prison estate and infrastructure. Some sets of problems have admittedly been affected considerably by objective economic and financial constraints. However, this does not justify the persistent and serious under-financing of the sub-sector for more than 20 years. Thus, while the Penitentiary Department asked for a total budget line of 416.6 million lei in 2009 (including MDL 143.1 million for capital construction purposes), its budget was set at MDL 237.6 (about EUR 14.85 million), the capital reconstruction line making a meagre MDL 0.5 million. For 2010, out of the MLD 456.2 / 156.7 million asked, only MDL 215.4 / 3.7 million were granted, thus making the total budget of about EUR 13.5 million. The resources allocated to the penitentiary suffice for the preservation of the existing, predominantly decayed, prison estate, while allowing for very limited improvements.

156. One of the most significant deficiencies of the Moldovan penitentiary system is in a lack of suitable structure of pre-trial detention facilities. It results in the situation when untried prisoners continue to spend considerable periods of time at the hands of the police, enduring an increased risk of ill-treatment and inadequate conditions of detention. The plan to introduce a system of 'arrest houses' has been awaiting its realisation for many years now. Although the plan was gradually cut in terms of the number of planned establishments and other facilities, the problem has gained an inveterate character.

157. The features of the current state of affairs are characterised by the following core symptoms identified by a variety of outside observers[58]:

a. overcrowding in the remand establishments;
b. poor general conditions (sanitary, hygiene, food) of detention;
c. hardly accessible work, educational, social activities;
d. sub-par medical care and psychological support;
e. insecure environment and poor discipline, persistent criminal sub-culture, facilitated by multi-occupancy and dormitory-type accommodation;
f. inappropriate scheme of remand facilities, escort and logistics arrangements.

158. While salaries of prison officers are very satisfactory - up to 3 times more than the civil sector average - the service lacks experienced people, partly because most

[58] See the CPT Report on the visit to Moldova carried out from 20 to 30 September 2004, CPT/Inf (2006) 7; CPT Report on the visit to Moldova carried out from 14 to 24 September 2007, CPT/Inf (2008) 39. See also a series of relevant ECHR judgments against Moldova, some of which have been mentioned above (*Ostrovar*, *Paladi, Rotaru* etc.).

prison officers retire only after some 15 years of service, on average at the age of 40. Recruitment of prison staff is usually very one-sided, as most of the prison guards are sourced from the police, keeping their military ranks. Prison officers do not fully identify with the job, even though their intellectual level can be assessed as very good, partly because of the social privileges attached to the profession (in the old Soviet tradition). This over-privileged environment tends to make the system forego any change in the interests of rehabilitation and reintegration; instead the system appears to be inclined to preserve the *status quo* and oppose any reform. Moreover, the prison management and staff usually do not see their respective institution, or the prisons system, as belonging to a larger justice chain. Management system of every prison is very vertical. As a result, prison personnel are not used to expressing their opinions or getting involved in discussions with the superiors, while the leadership is not used to accepting criticism. There is thus no sufficient feedback linkage at the bottom and the middle of the system to drive change.

159. At the same time, some improvements to the situation have been observed in the course of the last few years, in particular, involving:
    a. transfer from the police to the penitentiary establishments of the function of accommodating 'administrative' (detention as punishment for minor misdemeanours) prisoners;
    b. introduction of judicial review of disciplinary punishments on prisoners;
    c. contained drug-use, by reason of various harm reduction measures;
    d. continuing trend in the reduction of the overall prison population, attested by the following numbers of inmates accommodated by 1 January of each respective year: [59]

	2009	*2010*	*2011*
Sentenced Prisoners	5470	5285	4985
Remand Prisoners	1360	1250	1339
TOTAL	6830	6535	6324

160. On the basis of cumulative analysis of the interviews and other sources outlined in this chapter and the Annex, the Expert Team considers the penitentiary sub-sector to be notably improving in performance, despite a certain lack in performance. The current state of affairs may be considered to derive from the following causes:
    a. lack of capacity of prison officers - albeit not as much in skills and competences but rather in the motivation, training and leadership areas - conditioned *inter alia* by the early age of retirement and the resultant lack of experienced people in the system, as well as the inefficiency of a continuous training mechanism;
    b. unsuitable structure of pre-trial detention facilities; lack of separate facilities for arrested juveniles;
    c. overly centralised and militarised system of prison management;

[59] According to data provided to the Expert Team by the MOJ Penitetiary Department.

d. lack of psychological assessment of prisoners, classification and distribution schemes, the latter being substituted by formalised judicial sentencing prerogatives;
e. limited application of progressive imprisonment schemes;
f. insufficient application of alternatives to detention in the sentencing policy, conditioned to a large extent by performance indicators and punitive perceptions of the law enforcement, prosecutors and judges which encourage incarceration rather than the use of alternatives or the exercise of a mediating role, resulting in the insufficient use of mediation in criminal matters;
g. insufficient practical accessibility of court remedies to complain about detention conditions, in view *inter alia* of the nascent system of free legal aid;
h. lack of meaningful individualised rehabilitation and social integration policies; over-emphasis on security mandate rather than social or psychological work by the staff;
i. lack of perception by members of the system as belonging to a larger justice chain; insufficient sense of initiative for reform coming from the bottom and the middle of the system;
j. shortage of contemporary equipment for ensuring security, supervising, preventing and counteracting smuggling of illicit objects;
k. insufficiency of resources devoted to the maintenance of prisoners, the prison infrastructure and capacity-building activities (total lack of basic equipment at the training centre for prison staff), against the background of relatively generous resources devoted to the salaries and other social guarantees of prison officers.

On-going Reforms and Donor Support

161. In the GOM Programme for 2011-2014, the general commitment to the modernisation of the prison system has been reiterated - albeit, in a similar fashion to many previous initiatives, it lacks a sufficiently itemised action plan. Although the Enforcement Code 2004 has been supplemented by the Concept and Action Plan for the Reform of Penitentiary System for 2004-2020, the document may be criticised as lacking in ambitiousness, being based on the rationale of making best use of the existing prison infrastructure, despite the fact that it is hopelessly out-dated. In any event, the majority of objectives foreseen in the plan have not been translated into action.

162. The plan to introduce a system of ‘arrest houses’ is awaiting its realisation for many years, despite being cut in terms of the number of establishments and total costs. The most recent commitment in this respect was expressed in the Human Rights Action Plan of 2010, with more than EUR 6 million committed by the GOM. The GOM are currently conducting negotiations with the Council of Europe Development Bank (CEDB) on the possible assistance in its implementation. In January 2011 the CEDB carried out an assessment mission, which suggested certain conditions for continuing preliminary preparations for its involvement.

163. The Moldovan penitentiary has benefitted from various assistance programmes by a variety of international donors. Some of them, including SIDA together with the UNICEF ('Support to the Juvenile Justice Reform' 2008-2011) and NORLAM, continue to provide technical assistance in the regulatory as well as capacity-building components. The sub-sector also indirectly benefits from various activities - including those financed by the EU - relating to the issue issue of the prevention of ill-treatment and police violence (also see paragraph 69 above).

164. The penitentiary was the main beneficiary of a twinning activity 'Support to Moldova in Prisons System Upgrading and Penal Reform', worth almost EUR 1 million, financed by the EU and implemented by IRZ Germany together with the Dutch Probation Service. This was the first-ever twinning modality in the justice field in Moldova. While struggling when launched in late 2009, the Project eventually gained traction once the prison authorities started cooperating with the German counterparts in working towards regulatory change[60].

165. Future EU support will involve a few components for the Penitentiary Department in the context of the planned Project on 'Support to the Enforcement, Probation and Rehabilitation Systems' (see paragraph 151 above and 240-246 below). While this Project is intended primarily to support the probation service of the criminal execution limb, a few feasibility studies in the penitentiary sub-sector will be carried out - including on building 'arrest houses', appropriate educational arrangements for juvenile prisoners, and more extensive drug prevention measures. The Project will also seek to involve the penitentiary authorities more actively in the justice chain, improving their capacity to contribute to the development and implementation of the justice sector reform strategy.

Directions for Further Reform

166. The state of play in the Moldovan penitentiary system suggests that further interventions in this sub-sector should involve:
    a. development of the relevant prison estate and physical infrastructure in accordance with a cell-type accommodation model;
    b. creation of appropriate structure of facilities for detention on remand, including separate facilities for juveniles;
    c. review of the employment policy and recruitment system in prisons; encouragement of employment of educators, social workers, medics and psychologists as prison staff; review of the early retirement age in order to encourage more experienced prison officers to stay;
    d. comprehensive 'demilitarisation' of the system;
    e. encouragement of more horizontal and less vertical system of management at the prison and sub-sector level;
    f. capacity building among prison officers, especially in motivation, training and leadership areas; improving capacity-assessment capabilities of the sub-sector actors;

[60] http://unimedia.md/?mod=news&id=31920

g. comprehensive support to the continuous training mechanism and facilities for the prison staff;
h. elaboration and introduction of itemised punitive policy and strategy; increased use of scientific research to guide probation policies and practices; improved ability of the stakeholder to contribute chapters on justice sector reform, seek and provide feedback to other players in the justice chain in the continuous reform efforts;
i. introduction of effective court remedies, accessible in theory and in practice, to complain about any aspect of detention conditions;
j. amendment of the judicial sentencing prerogatives with the prisoners' psychological assessment, classification and distribution rules that would entrust the penitentiary authorities with greater role and powers in the matter;
k. development and implementation of rehabilitation and social integration policies, including individual sentence-planning and advanced progressive imprisonment schemes, support to cognitive (behavioural) programs;
l. providing prisoners with education, work and other purposeful activities;
m. more extensive use and standardisation of statistics in prisons for the prevention of abuse, disciplinary, as well as rehabilitation purposes;
n. provision of contemporary security and supervising equipment;
o. further liberalisation of criminal policies by use of non-custodial sanctions and other alternatives to detention, use of mediation in criminal matters (especially with regard to juvenile delinquency), reinforced use of probation and early release through parole; review of the performance assessment system, including targets and indicators, within the law enforcement and criminal justice systems.

Conclusion

167. The Expert Team considers that the current state of the penitentiary system warrant continuing attention of the EU in its support to the justice sector in the long term, in view *inter alia* of:

- certain lack of performance, but an increasing stability of the sub-sector;
- recent and on-going initiatives by various donors;
- large number of specific objectives and commitments already undertaken by the GOM in the area, some of which are on track of being translating into action.

ix. Ombudsman

168. The Ombudsman (Centre for the Protection of Human Rights) currently consists of 4 Ombudsmen having the competence in the fields of social assistance and vulnerable persons, health, human rights, justice and prevention of ill-treatment. The current structure is likely to be changed to create divisions on political and social rights, social and economic and cultural rights, as well as preventive mechanisms and reform divisions. A working group has already prepared the text of a new bill to be submitted to the Parliament. The financial situation of the Ombudsman is dire. Regional offices are in a deplorable state. Salaries are among

the lowest in the public sector - average salaries at the Office amount to 800-1,000 lei (EU 50-62) per month. Until early 2011 the service had no official cars, and the staff had to be sent by bus in order to investigate complaints. Funds are lacking to conduct research or analytical activities.

169. The Expert Team established a significant lack of performance by the Ombudsman, owing largely to the dire financial state of the institution, and despite the relatively decent level of capacity at individual and the overall institutional levels. The following causes of the current under-performance of the service may be suggested:
    a. dire financial state of the institution, attested by substantively lower financing than that of other public bodies; improper facilities and insufficient staffing;
    b. certain overlap and fragmentation in view of the current structure, which consists of 4 Ombudsmen;
    c. insufficient regional presence;
    d. no power of legislative initiative.

170. The EU is currently financing two technical assistance projects, which include components for the support to the Ombudsman - namely the UNDP-implemented Project of the Preventive Mechanism under the OPCAT Provisions and the COE-implemented Democracy Support Programme. Following the functional analysis of the office as part of the above activities, the EU procured two vehicles for the Office in January 2011.

171. In further supporting the institution, the Expert Team proposes to focus on the following:
    a. encourage proper financing of the Ombudsman to enable renovation of the facilities, employment of more people and better staff remuneration conditions;
    b. support to the institutional reform, including the assessment of feasibility of an eventual merger and a creation of more regional offices;
    c. encouragement of introduction of the right to legislative initiative;
    d. capacity building, including skills, competences, training, methodology and leadership capabilities; developing capacity-assessment mechanisms within the organisation;
    e. support to the research and analysis function of the institution.

172. The Expert Team considers this sub-sector to warrant a particular degree of attention in the context of the EU support in the justice sector in the long term, given *inter alia*:
    - dire financial state of the institution;
    - important role of the Ombudsman both as an investigative authority and preventive mechanism in dealing with many relevant sectorial and cross-cutting issues;
    - ability of the Ombudsman to act as an important player in driving the sector-wide reform and coordination, given that it is one of a few Moldovan

institutions able to see a large picture of the justice chain and its role within it, owing to its comprehensive scope of competence.

x. Parliament

173. The Expert Team considers this stakeholder to be only tenuously relevant to the field of administration of justice, in view of its role at the pinnacle of the legislative branch of power.

174. The Parliament generally has a difficulty in drafting laws of good quality as very few MPs have assistants. Some MPs started employing private assistants by using their own financial resources - with good results, which include increased productivity and quality of the proposed bills. Impact assessment of laws is insufficient - the work carried out by the CCECC and other authorities is usually ignored when it comes to passing laws. Stress is wrongly made on the adoption of a law as soon as possible, without inquiring into its future effects. This situation is not helped by line Ministries, which carry out their respective legislative initiatives from the concept stage to consideration in Parliament in a very hasty manner. MPs have indicated to the Expert Team that, on some occasions, draft laws come from the sponsoring institution without being supported by an explanatory note, with a request to be put for first reading in 10 days. The work of Parliament is also obstructed by an insufficient number of Committees (3). Only 5 consultants work in a Committee made up of 11 MPs.

175. On the basis of cumulative analysis of the interviews and other sources outlined in this chapter and the Annex, the Expert Team established notable improvements in performance of the institution, despite a certain lack in performance. The current state of affairs may be considered to derive from the following factors:

a. disconnect and lack of dialogue between the legislature and other sectors or sub-sectors;
b. lack of consultation by the executive and other authorities with the civil society in introducing and carrying out legislative initiatives;
c. fragmented political system with many parties but few clear-cut ideologies to distinguish them; party system with focus on personalities rather than ideas;
d. insufficient role of impact assessment;
e. insufficient awareness or concern for financial implication of new laws;
f. lack of staffing in Parliament, or a separate structure focused on drafting; insufficient number of Parliamentary Committees;
g. lack of sectorial capacity at line agencies to draft bills of greater quality.

176. Parliament has benefitted from a twinning activity involving the French and Hungarian counterparts, a component in the context of the COE-implemented Democracy Support Programme, some *ad hoc* assistance involving the Venice Commission, and a specially-targeted UNDP Project on Support to Parliamentary Development.

177. For further support activities involving this stakeholder, the following thematic areas may be suggested:

a. encouraging a more active dialogue between actors in various sectors and the legislature - both in the conceptual fields (impact assessment of draft legislation) as well as in more technical ones (budgeting of respective institutions);
b. creating mechanisms for more active use of impact assessment by the Parliament;
c. increased staffing and structural overhaul, in order to improve its legislation-drafting capabilities;
d. building capacity of staff, including skills, competences, training, methodology and leadership capabilities; developing capacity-assessment mechanisms within the institution;
e. support to line Ministries and other agencies in developing their law-drafting capabilities.

178. The Expert Team considers this area to warrant continuing attention for the EU support to the justice sector in the long term, given *inter alia*:

- only tenuous connection of the sub-sector to the administration of justice;
- certain lack of performance but notable improvements within the sub-sector;

counterbalanced by:

- ability of Parliament to act as an important player in driving the sector-wide reform and coordination, given that it is one of a few Moldovan institutions able to see a large picture of the justice chain and its role within it, owing to its legislative functions.

xi. Constitutional Court

179. The Expert Team considers the Constitutional Court (CC) to be only tenuously relevant to the justice sector, in view of its role as a supporting element of the legislative branch of power, rather than a body administering justice (see paragraph 36 above).

180. Only 11 bodies are capable of applying to the CC, and its job consists merely of reviewing constitutionality of legislation. An individual has no *locus standi* to apply to the Constitutional Court, and the institution, therefore, does not take part in the administration of justice. Since the CC consists of 6 judges, and a majority of 4 against 2 is needed for finding a law unconstitutional, the system creates a 'pro-constitutionality' bias in regard to every application. Discussions are currently on-going on increasing the number of CC judges to 9, in order to decide cases by way of simple majority voting. The CC has recently renovated facilities and is generally well provided for in financial and staffing terms. Its budgetary request last year was accepted in full by the Parliament. At the same time, the relevance of the CC is decreasing in view of the very low number of cases that reach the court. In 2009, only 37 applications were lodged, 24 of which were examined on the merits. The CC tries to ensure the interest of transparency by publishing annual reports of its activities to the Parliament and President. However, the annual report is not

submitted to the general public, leading to an uncertainty and wide-ranging interpretations about the work of the CC in the society and the media.

181. On the basis of cumulative analysis of the interviews and other sources outlined in this chapter and the Annex, the Expert Team established notable improvements in performance of the institution, despite a certain lack in performance. The current state of affairs may be considered to be conditioned by the following factors:
    a. very limited list of potential applicants at the Constitutional Court;
    b. pro-constitutionality bias in view of the voting system at the Constitutional Court;
    c. lack of public dissemination of the annual reports by the CC.

182. The CC has not benefited from targeted international assistance, apart from *ad hoc* exchanges and capacity building activities involving international counterparts, organised by the Venice Commission, among a few other donors.

183. For further support activities involving this stakeholder, the following topics may be suggested:
    a. support to the initiatives to expand *locus standi* of all courts of ordinary jurisdiction and, possibly, individual applicants to apply to the CC; otherwise increase its competence for more active use of constitutional review proceedings[61];
    b. reconsider the number of judges and the voting system at the CC, to remove the 'pro-constitutionality' bias;
    c. support to the PR role of the CC;
    d. building capacity of staff, including skills, competences, training, methodology and leadership capabilities; developing capacity-assessment mechanisms within the institution.

184. The Expert Team considers this area to warrant continuing attention for the EU support to the justice sector in the long term, given *inter alia*:
    - only tenuous connection of the sub-sector to the administration of justice;
    - certain lack of performance but notable improvements within the sub-sector with regard to the other sector stakeholders;

    counterbalanced by:
    - ability of the Constitutional Court to act as an important player in driving the sector-wide reform and coordination, given that it is one of a few Moldovan institutions able to see a large picture of the justice chain and its role within it, owing to its legislative support functions.

[61] While there is definitely no European consensus on individual accessibility of the Constitutional Court, some EU countries, such as Hungary or Germany, grant such access.

xii. Other Relevant Bodies

185. The Expert Team also identifies the following institutions as having a more or less tenuous connection to the justice chain:
    a. notaries;
    b. Personal Data Protection Agency;
    c. Intellectual Property Agency;
    d. Consumer Protection Agency;
    e. Anti-Trust Agency;
    f. Security Intelligence Service;
    g. Court of Auditors;
    h. Ministry of Finance;
    i. State Chancellery (Aid Coordination Unit);
    j. Centre for Legal Approximation of the MOJ.

186. The Expert Team is not called upon to decide hypothetically what should be the attributes of a body to be properly labelled as belonging to the 'justice sector' (see paragraphs 36-38 above). Suffice it to say that separate functions of the above authorities may directly or indirectly affect the functioning of the system of administration of justice - be it in their capacity as a party in court, administrative decision-maker subject to judicial review, regulator, budgetary, auditing or legislative support body - or by way of the nature of legal relationships underpinning their institutional duties and powers. In any event, in view of the already dispersed number of justice sector stakeholders across a variety of branches of State power, the Expert Team considers that any of the bodies mentioned above may solely be secondary or indirect beneficiaries in EU support activities targeted at the justice sector, in order to comply with the principle of concentration. The state of these institutions will not therefore be reviewed on its own merits, albeit some of their functions and activities have been used in some parts of the assessment, including, most notably, the important role of the Ministry of Finance in the justice sector budgeting process, or the role of the Court of Auditors in developing a proper system of public financial management (see paragraphs 277-293 below).

C. Major Cross-Cutting Issues in the Sector

i. Sector and Donor Coordination and Reform Strategy

State of Affairs

187. While the MOJ is formally empowered to coordinate the justice sector reform efforts, its activities in this respect have so far been limited by objective obstacles inherent in the constitutional structure of the country - the judiciary being managed independently by the SCM, the prosecution being regulated by the SCP, while other notable actors in the justice chain being dispersed throughout the variety of government departments in equivalent status to the MOJ (such as the MOI, CCECC), or managed by private self-regulating corporations (Bar Council, NUB).

188. Various difficulties in finding a common language among the sector stakeholders may be shown by the following:
    a. at times strained relations between the MOJ and the judiciary;
    b. peculiar system of double submission of the courts' budgetary request by the SCM on the one hand, and the MOJ via the MOF on the other (see paragraphs 277-278 below);
    c. passive reaction of the judicial community to the reshuffling of the statutory composition of the SCM in 2008, which somewhat shifted the balance of control over the institution towards the executive, while preserving its structural independence;
    d. insufficiency of proactive inputs by the Bar in the course of the recent reform of the Bar Act or other recent reforms.

189. The specifics of justice sector are such that it is impossible to develop a coherent reform policy and strategy without coordination. There is no single authority (i.e. the Government) that may, completely on its own, develop such a policy and strategy in the justice field, in that various other actors - some of them constitutionally separate from the executive - have, at least to a certain degree, to be involved in the process. As a result, various policy statements by the GOM (see paragraphs 16-35 above) have not yet been translated into action.

190. On the basis of cumulative analysis of the interviews and other sources outlined in this chapter and the Annex, the Expert Team established significant shortcomings in the domestic coordination efforts for the purposes of sector-wide reform. This significant under-performance may be considered to be caused by the following factors:
    a. somewhat hasty style of policy making;
    b. short-termism instead of a longer perspective in regulatory initiatives and institutional overhauls;
    c. lack of full acknowledgement and awareness of budgetary implications of the intended reforms;
    d. lack of consultation with a wider list of stakeholders in the conduct of the reforms, including the private-sector and the civil society;
    e. occasional excess of tone of the MOJ in dealing with the judiciary;
    f. reactive rather than proactive donor coordination efforts by the State Chancellery Aid Coordination Unit ;
    g. relatively ambivalent attitude of the judiciary, the community of lawyers, or other sectorial corporations towards a possibly more active role and greater influence in policy making;
    h. lack of capacity of sector stakeholders to contribute to a common sector reform strategy by drafting its sub-sector chapters.

On-going Reforms and Donor Support

191. Having said that, the rather fragmented nature of relationships between the various blocks of the justice sector seems to start abating. An important proactive step on the part of the Parliament was the adoption of the Concept on the Financing of the Judiciary (see paragraph 33 above), even though the GOM is yet to put that

Concept into a more itemised Action Plan. The GOM Programme 2011-2014 also intends to focus on the reform of the system of administration of justice as its main priority. While it is yet to be seen whether an agreement can be reached between the different sector participants on various dividing issues, any efforts at a concerted solution are worth encouragement.

192. The most significant steps were taken by the Ministry of Justice in February 2011 whereby the Justice Sector Coordination Board was set up, headed by the Minister of Justice and including high-level representatives of the SC, CC, SCM, SCP, PGO, NIJ, Bar Council and a number of NGOs and educational establishments. 9 Working Groups under the Board were set up, 4 of them focusing on wide-ranging issues - namely the courts organisation, civil process, criminal process, and reform of the PGO - while 5 others focusing on narrower topics, such as salaries of judges, court experts, arbitration and mediation, legal aid, and bankruptcy administration. In May 2011 a new coordination body, the Justice Sector Coordination Council (JSCC), was set up under the auspices of the President of Moldova. At the same time, the essential composition of the body and the Working Groups founded under the previous coordination mechanism were essentially left intact, apart from the notable addition of representatives of the MOI and Parliament. In July 2011 a draft Justice Sector Reform Strategy 2011-2015[62] was produced by the MOJ, drawing mainly from inputs by the Working Groups. The Draft Strategy was adopted by the GOM on 6 September 2011; it is yet to be discussed by the JSCC and adopted by Parliament (also see paragraphs 265-276 below).

193. As part of the Action on Support to the Justice Sector Policy Reforms (see paragraphs 240-246 below), the EU will propose a Project on 'Justice Sector Reform Coordination', worth EUR 2 million, which is to start by the end of 2011. The Project in its current proposed design assumes that, by late 2011, a coordination body, sector reform policy and strategy, and a multi-annual budgeting plan are in place. The expected results of the Project will be:
    a. sustained leadership capacity of the JSCC to drive the reform process while preserving the operational role of the MOJ, with a view *inter alia* to developing and implementing the justice sector reform strategy;
    b. continuous flow of feedback from all the relevant stakeholders concerning the original justice sector strategy;
    c. development of new chapters of the justice sector strategy by each stakeholder;
    d. implementation of the chapters already committed;
    e. increased capacity by each stakeholder to provide a sustained contribution for the sector reform purposes.

194. It is very early to say whether - and at which stage - an itemised sector-wide reform policy and strategy will be developed, backed up by a multi-annual expenditure plan - given that no representative of the Ministry or Finance or the State Chancellery Aid Coordination Unit has been included in the JSCC. Nonetheless, it is more likely

[62] http://www.justice.gov.md/file/proiectul_strategiei/SJSR_Gov_Version_En_DemSp_Translation_05%2009_.pdf

than not that, with some support, the assumptions made in the design of the above Project will be translated into reality by the end of this year, amounting to a proper 'Sector Programme' by Moldova. This would allow replacing the current single project technical-assistance approach by a sector-wide programming approach (SWAP), which would in turn enable EU budget support in the justice field (for more elaborate analysis on the relevant issues, see paragraphs 240-312 below).

Directions for Further Reform

195. Interventions in this area should strive to achieve:
    a. greater leadership (strategic) capacity of the JSCC to drive the reform process by developing the sector reform strategy, backed up by a multi-annual budgetary commitment;
    b. greater operational (administrative) capacity of the MOJ to provide support to the JSCC;
    c. supervision and advise to the JSCC and sector stakeholders in thematic areas of the proposed reform, based on international standards and best European practices;
    d. continuous flow of feedback from all the relevant stakeholders concerning the original justice sector reform strategy;
    e. development of new chapters of the justice sector reform strategy by each stakeholder;
    f. implementation of the chapters already committed;
    g. increased capacity by each stakeholder to provide a sustained contribution to the JSCC by developing sub-sector chapters of the strategy.

Conclusion

196. The Expert Team considers the sector coordination and reform strategy efforts by the Moldovan authorities as warranting a particular degree of attention for the EU support in the justice field in the long term, in view *inter alia*:
    - significant lack of performance in the domestic efforts in the area;
    - high importance of coordination efforts in a very complex sector such as justice, as a precondition of a smooth sector reform process;
    - positive impact of proper strategic thinking and coordination on the overall legislative design and the state of the administration of justice;
    - chance to enable the EU to apply sector-wide approach in its support activities to the justice sector.

ii. Combatting Corruption

State of Affairs

197. The first step towards a consolidated and systemic fight against corruption dates back to the adoption of the Combating Corruption and Protectionism Act 1996. The process was advanced institutionally with the creation of the Centre for Combating Economic Crimes and Corruption (CCECC) in June 2002, a specialised agency entrusted with preventive (regulatory) and analytical functions, as well as the

powers of a law-enforcement and investigative body. Specific anti-corruption provisions have also been incorporated into the Criminal Code, the Codes of Criminal Procedure and Administrative Procedure. Since December 2004 the process has been guided politically through the National Strategy for the Prevention and Combating Corruption (NSPCC). This document is based on a three-fold policy of criminalisation, prevention and public-support considerations. The NSPCC is regularly updated through Action Plans adopted by the Parliament of Moldova, on the most recent occasion in May 2010. The legal framework has been further improved with the new Prevention and Combating Corruption Act 2008, and the establishment in April 2010 of a joint ministerial Working Group to develop the Conflict of Interest Bill.

198. In parallel, Moldova has joined key international treaties on combating corruption, including the UN Convention against Corruption, and a set of Council of Europe instruments - notably the Civil Law and Criminal Law Conventions on Corruption (including the Additional Protocol), and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime. As a member of the Group of States against Corruption (GRECO), Moldova maintains a dialogue with this COE mechanism. It participated in the second evaluation round, was provided with a number of recommendations, and subjected to the GRECO monitoring process.

199. However, these attempts have had no pronounced impact on the very high level of corruption in the justice sector in particular, and the State administration in general. A poll conducted in 2009 suggests that 70% of the Moldovan population believes that corruption is widespread[63]. Moldova's ranking at 105th place in the World in the Corruption Perceptions Index 2010 of Transparency International is one more illustration of the generally dire state of affairs. The anti-corruption system shows weaknesses at the regulatory, institutional and capacity levels - and is marked by under-use of numerous criminal, civil and administrative tools. In addition to the problems related to its rather overlapping and excessively-wide mandate, the CCECC lacks objective safeguards to give it an appearance of independence. Nor does it have a functioning civilian oversight system, despite the setting up of the Civilian Monitoring Board. The overall number of corruption-related prosecutions remains very low. Thus, in 2009 only 39 indictments were submitted to courts for trial. Even where convictions were obtained, they were usually characterised by mild sentencing. It is also not uncommon for the Moldovan courts to downgrade corruption offences found to administrative responsibility.

200. On the basis of cumulative analysis of the interviews and other sources outlined in this chapter and the Annex, the Expert Team established significant shortcomings in the process of combating corruption in Moldova. The following factors may be mentioned as the relevant causes of the current under-performance:

a. overall weakness of the investigative and judicial limbs of the anti-corruption framework, resulting in insufficient deterrent effects (also see paragraphs 66-67 and 129 above);

[63] 'Evolution of the Perception regarding Corruption Phenomenon in the Republic of Moldova 2005-2009', Research carried out under the MOLICO project mentioned above.

b. lack of use of the systems of income (universal) and assets declaration for public servants;
c. lack of transposition of criminal and non-criminal assets-oriented methods of the fight against corruption;
d. inconsistency of the existing substantive criminal legislation, including omissions with regard to the liability of legal persons for trading in influence, active corruption and money laundering offences;
e. difficulties in inter-agency cooperation and applying 'special investigative' ('operative') techniques against the allegedly rogue officials, especially members of the judiciary;
f. insufficient capacity of the CCECC, PGO and MOI and their relevant units competent to investigate corruption, including lack of skills, competences, training, methodology and leadership capabilities;
g. insufficient independence of the CCECC from the executive;
h. excessively wide mandate of the CCECC, featuring an overlap of regulatory, executive, investigative and analytical functions;
i. inadequate coherence and effectiveness of the system of assessment of potential corruptibility of legislative and executive initiatives;
j. insufficient oversight of the anti-corruption efforts by the civil society;
k. low level of pay of many categories of public officials compared to the private sector.

201. It must also be noted that, in the course of the interviews conducted by the Expert Team, an astounding majority of the domestic and international interlocutors pointed out to the Moldovan judges as the most corrupt segment in the justice sector. The following causes of the judicial corruption may be pointed out, alongside the general factors indicated in the paragraph above (also see paragraphs 66-67 above):
    a. insufficient exercise of regulatory and oversight role by the SCM;
    b. lack of clarity and foreseeability of the requirements of the codes of professional conduct and ethics among the justice sector and other public bodies;
    c. opaque system of distribution of cases and hearing records in court; lack of random case assignment and verbatim recording of all court hearings;
    d. lack of obligation of judges to report undue influence; lack of responsibility for failure to report;
    e. lack of provisions against suspected illicit enrichment, as a ground for mistrust and eventual impeachment;
    f. lack of statutory and practical tools for the CCECC and other authorities to investigate judicial corruption by way of criminal process; excessive statutory powers of - and their unfettered application in practice by - the SCM in blocking any investigative activities or use of special investigative techniques against judges, preventing collection of evidence of sufficient probative value to obtain indictments.

On-going Reforms and Donor Support

202. The GOM continues to tackle the deficiencies in the anti-corruption legal framework. In April 2010 it established a joint ministerial Working Group to develop the Conflict of Interest Bill. The GOM Programme 2011-2014 includes a separate chapter on combatting corruption, albeit without elaborating on the scale of the problem and the effectiveness of tools in fighting it. The Programme includes an important provision, however, envisaging transfer of the CCECC oversight to the Parliament.

203. The process of reforming the regulatory and institutional framework in the anti-corruption field has been the object of extensive donor support. Anti-corruption was an important component of the TCP of the Millennium Challenge Corporation, worth a total of USD 24.7 million and completed in 2009. Almost at the same time, the area benefitted from the MOLICO Project mentioned, worth some EUR 3.5 million and implemented in 2007-2009 (see paragraph 69 above). In addition, recommendations with regard to the status and mandate of the CCECC were done in the context of the EU-financed Project on Support to the Implementation of Moldova-EU Agreements, completed at the end of 2010. At the same time, despite many regulatory and institutional amendments recommended as a result of the above activities, very few tangible results have been achieved so far.

204. The EU will tackle the question of the mandate of the CCECC and the general anti-corruption efforts in the forthcoming Project on the reform of the MOI, the police and the CCECC (see paragraph 132 above). In particular, a detailed functional analysis of the CCECC will take place as part of the Project.

205. In addition, specific regulatory and institutional tools will be proposed to fight judicial corruption by way of a few separate components of the Project on 'Increased Efficiency, Transparency and Accountability of Courts', as part of the larger Action on Support to the Justice Sector Policy Reforms designed by the Expert Team (see paragraphs 240-246 below). The Project is expected to analyse international standards and European best practices with a view to making recommendations to:

    a. improve the quality control of the courts' work by stronger self-regulating capacity of the SCM, clearer ethical rules than those established in the current Code of Judicial Ethics, streamlined links between ethical breaches and disciplinary responsibility, and accessible and transparent disciplinary procedures against judges;
    b. enhance the oversight by the society and the legal community of the quality of the courts' work by way of surveys and other external performance assessment tools;
    c. improve the educational role of the NIJ, including on matters of professional conduct and ethics of judges;
    d. create usable and effective, procedural and practical tools for preventing and fighting judicial corruption, including an inquiry into a wider use of criminal (special investigating techniques, assets recovery and seizure), civil (property-based sanctions), administrative (tax and assets declarations) and disciplinary (duty to report undue influence etc.) measures;

e. increase effectiveness of the procedural law as a factor in reducing corruption, *inter alia* by reviewing the system of appeals and reducing the ability of the highest courts to interfere in fact-finding matters and all aspects of application of law.

Directions for Further Reform

206. The Expert Team considers that any interventions in the field of anti-corruption should focus on the following priority topics:

a. fuller transposition into domestic law and practice of international criminal and civil conventions on combating corruption; adoption of a code of conduct for public officials, whistle-blower law; consistent implementation of the existing statutory framework (on conflict of interest and transparency in the decision-making process) and the 'yellow card regulations' for the public service already adopted by the Government;
b. encouragement of greater use of administrative (a more wide-ranging and efficient system of income and assets declaration), criminal and civil asset-oriented sanctions (asset recovery and seizure), disciplinary (duty to report undue influence) tools, alongside the traditional criminal tools such as prosecutions for bribery;
c. greater responsibilisation of players within each sub-sector by creation of a clear and foreseeable framework of ethical and disciplinary rules, and accessible and transparent application of those rules by the regulating bodies, such as the SCM, SCP etc.;
d. strengthen the mandate of the judicial inspection to act as effective internal police among the judiciary;
e. reform of the access to service and performance assessment systems within the judiciary, prosecution and criminal investigation sub-sectors;
f. encouragement of various external forms of monitoring over the performance of a public sub-sector – i.e. surveys by the users of the courts services about the quality of the courts' work, to be used as an evaluation criteria at an individual (judge) or court level;
g. improvements to the substantive criminal legislation*, inter alia* to correct omissions with regard to the liability of legal persons for trading in influence, active corruption and money laundering offences;
h. more stringent sentencing policy for corruption-related offences (criminal or administrative) for increased effectiveness of the judicial deterrent;
i. building capacity across the justice sector; development of capacity-assessment mechanisms;
j. special emphasis in building capacity in the leadership area in combatting corruption, increased role of the professional educational system in this respect (in the justice field, denoting an increased role of the NIJ);
k. wider use by the criminal investigation organs of contemporary tactics and techniques of investigation of corruption-related crimes; wider use of special investigative techniques for anti-corruption purposes;
l. further development of mechanisms for assessment of potential corruptibility of bills and government decrees; redefining the mandate of the CCECC to focus on impact assessment, in particular;

m. encouragement of witness protection measures, as well as persuasive or repressive methods to encourage greater collaboration with law enforcement;
n. fostering the role of civil society to attain a higher degree of feedback and collaboration in bringing corruptive practices to daylight, enabling more effective functioning of the Civilian Monitoring Board;
o. support to the legislative and practical efforts for the protection of secrecy of journalistic sources, with a view to encouraging more investigative journalism;
p. greater effectiveness of procedural law as a deterrent against judicial corruption, including the creation of a properly streamlined appeals system in courts, more active use of random case assignment, mandatory recording of court hearings, etc.

Conclusion

207. The Expert Team considers combating corruption as warranting continuing attention in the context of the EU interventions in the justice sector in the long term, given *inter alia*:

- significant lack of performance in the domestic efforts in the area;

counterbalanced by the following considerations:

- inability to satisfy the principle of concentration - no standalone anti-corruption intervention is capable of having a sufficient focus in order to produce tangible results, owing partly to the root-causes of the problem residing much deeper within the society and spread among all the sectors of private and public life;
- intensive donor efforts so far having borne almost no results, tackling separate minor symptoms rather than the underlying root-causes of the phenomena;
- ability to effectively target root-causes of various corruptive practices, for instance, by focusing on increasing the self-regulating capacity of the various sector stakeholders, rather than designing overly ambitions general anti-corruption actions (as is the case in the newly proposed interventions described in paragraph 205 above).

All in all, the Expert Team considers that combating corruption should be an underlying 'theme', albeit not necessarily the main 'topic', of most justice-sector related interventions.

iii. Combatting Ill-treatment

State of Affairs

208. Excessive use of force and ill-treatment by members of law-enforcement agencies, especially during initial stages of criminal proceedings and deprivation of liberty, is one of the most serious cross-cutting issues, undermining proper administration of justice and the rule of law. Moreover, in the particular context of the post-electoral events of April 2009, the scale and character of police violence could even be considered as endangering the essentials of democracy in the country. The

systemic character of ill-treatment - which, until recently, could be considered as amounting to an officially tolerated or sanctioned practice - has been observed by the CPT, ECHR, the UN Committee Against Torture, other international organisations and domestic bodies[64].

209. The Moldovan authorities undertook the following recent steps to tackle the problem:
    a. launching of the National Preventive Mechanism under the OPCAT in 2008;
    b. introduction of substantive and procedural limitations on 'administrative detention' in order to eliminate the practice of its abusive application by the police (it is indicative that on 1 January 2011 there were only 12 such inmates in Moldova);
    c. practice guide on direct application of Article 3 of the European Convention on Human Rights by the Supreme Court in 2009;
    d. establishment of a special unit at the PGO, which, by early 2011, supervised or handled 95 torture-related criminal cases;
    e. introduction of first novelties to the old Soviet performance indicator system at the MOI.

210. These improvements, however, have failed to tackle the problem with sufficient consistency and comprehensiveness. On the basis of cumulative analysis of the interviews and other sources outlined in this chapter and the Annex, the Expert Team established significant shortcomings in the process of combating ill-treatment in Moldova. The following causes of the current under-performance may be mentioned:
    a. lack of truly independent body to deal with police violence and abuse;
    b. inconsistent legislative framework, including substantive criminal legislation, to ensure effective prevention of ill-treatment;
    c. out-dated performance indicator system in the police, law enforcement, investigative, prosecution and judicial sub-sectors;
    d. lack of advanced techniques and methods of detection and investigation of crimes;
    e. over-reliance on confessions as key evidence; formalistic approach of the courts in admitting forced or doubtful confessions as inculpating evidence;
    f. insufficient capacity of the authorities in dealing with the relevant complaints (PGO, MOI, among others), including lack of skills, competences, training, methodology and leadership capabilities at institutional and individual levels;
    g. shortcomings in judicial deterrence of ill-treatment; leniency of the judiciary in applying punishments for offences relating to police violence;
    h. lack of encouragement of reporting of ill-treatment and police violence;

[64] See the *Corsacov, Rosca, Colibaba* and other ECHR judgments mentioned above; also see CPT Report on the visit to Moldova carried out from 27 to 31 July 2009, CPT/Inf (2009) 37.

i. structural barriers to higher probative value of complainant evidence (i.e. lack of access to a doctor and forensic expertise);
j. unrecorded arrest and detention; lack of standardised registration and documentation concerning arrest and detention;
k. lack of clear regulation and oversight of ethical and disciplinary responsibility by the police management;
l. lack of balance between the activities of the civil society component of the National Preventive Mechanism and the Ombudsman institution it is attached to.

On-going Reforms and Donor Support

211. The determination of the Moldovan authorities to tackle the issue of ill-treatment has been reinforced by the GOM Programme 2011-2014, which details a number of relevant steps to be undertaken. The area has also benefited from a wide-ranging set of measures by international donors, *inter alia* by way of specifically-targeted Projects financed by the EU:
    a. 'Combating Ill-treatment and Impunity in Armenia, Azerbaijan, Georgia, Moldova and Ukraine' (2009-2011) worth EUR 1.9 million and implemented by the COE; a follow-up joint programme between the EU and the COE entitled 'Reinforcing the Fight against Ill-treatment and Impunity" is to start in July 2011 and is going to last until 31 December 2013;
    b. ill-treatment related components of 'Democracy Support' Programme (EUR 4 million in total), which started in 2010 and will last until the end of 2011 under the implementation of the COE;
    c. 'Strengthening the National Preventive Mechanism as per OPCAT', implemented by the UNDP.

    Other international actors, including the US Embassy, NORLAM, OSCE are also contributing to gradual improvement of the situation.

212. Another significant contribution of the EU will be made through the Project on 'Support to the Pre-Trial and Investigative Set-Up', to be launched by the end of 2011, which will include a specific component targeted at the creation of an independent police complaints body (also see paragraphs 240-246 below). Once established, the body would arguably benefit from further EU assistance by way of a twinning project.

Directions for Further Reform

213. Against this background, further interventions should aim at:
    a. creation of an independent police complaints body;
    b. synchronisation of the legislative framework, including substantive criminal law, to incorporate explicit provisions covering all serious forms of ill-treatment administered by law-enforcement or other State agents, classifying them as serious offences; development of a coherent practice on the matter;

c. creation of standardised registration and documentation of arrest and detention;
d. removing structural barriers to higher probative value of complainant evidence, *inter alia* by granting ready access to a doctor and forensic expert;
e. improving capacity of the authorities dealing with the relevant complaints, including skills, competences, training, methodology and leadership capabilities at institutional and individual levels; putting particular emphasis on trainings of the police, investigators, prosecutors and judges on the overlapping requirements of prevention of ill-treatment, fair trial and defence rights in criminal process, use of specific contemporary tactics and techniques of investigation of ill-treatment;
f. effective adjudication of ill-treatment by the courts to serve as judicial deterrence, including changes in the courts' practice in punishing the established instances of police violence;
g. unification of the system of performance indicators in the police, law enforcement, investigative, prosecution and judicial sub-sectors;
h. encouraging obligations of reporting ill-treatment and police violence; clearer regulation and oversight of ethical and disciplinary responsibilities by the police management;
i. introducing a coherent inter-agency system of evaluation of efficiency of combating ill-treatment based on accurate disaggregated statistical data;
j. ensuring more effective functioning of all the constituents of the National Preventive Mechanism.

Conclusion

214. The Expert Team considers combatting ill-treatment to warrant a particular degree of attention for the EU assistance in the long term, given *inter alia*:
- significant lack of performance in the domestic efforts in the area;

counterbalanced by:
- intensive donor efforts continuously being given to tackle the issue, giving first visible signs of improvements in the field.

iv. Legal Education and Professional Training System

Academic Legal Education: State of Affairs and Directions for Further Reform

215. Moldova is not yet part of the 'two-cycle' academic education model promoted by the so-called Bologna process. Currently all law students undergo a 'one-cycle' training, receiving the diploma of a certified lawyer. The country will soon change the system, under which law students will have to undergo a total of 6 years of studies in order to get a Masters Degree. The present academic system of education in Moldova is marked by a huge number of higher educational establishments (HEI) licenced to issue diplomas in law, although the current number of licensed law schools - 12 – has, admittedly, dropped from almost 40 not so long ago. Some 3,000 law students graduate each year from these 12 schools. The Ministry of Education issues licences for HEIs on the basis of a number of

criteria, including capital, facilities, number and credentials of teachers (part-time and full-time), curricula and teaching methodology.

216. The Chisinau State University (CSU) is among a few schools having sufficient capacity to develop its own curriculum and methodology of teaching law. Moreover, the CSU law curriculum is partly borrowed by the NIJ in their professional training courses. But the academic establishments themselves do not coordinate curricula and teaching methodology. A serious revamping of the existing system is needed. For instance, certain mandatory courses on the basics of legal education may be necessary, amounting to significant proportion of topics at the undergraduate stage. As the matters stand, the Ministry of Education plays no sufficient role in unifying the curricula and methodology between the different schools, giving each of them excessive autonomy on the matter.

217. Many outside observers assess the general level of knowledge by Moldovan students as satisfactory[65]. However, in view of the economic and social situation in the country, students are under pressure to look for jobs - and think about a more specific career path - at a very early stage of their university studies. This may be considered as an element obstructing their commitment to academic development.

218. On the basis of cumulative analysis of the interviews and other sources outlined in this chapter and the Annex, the Expert Team established that the system of academic education significantly lacked in performance. The following reasons for the existing problems may be underlined:
    a. excessive number of academic establishments licensed to issue law diplomas; certain laxity of the Ministry of Education in the licencing process;
    b. lack of capacity of the majority of law schools in developing their own curricula and teaching methodology;
    c. lack of coordination of curricula and training methodology among law schools;
    d. professors are overloaded, with some clocking more than 1,000 academic hours per year, while also splitting their time between teaching in several HEIs and (usually) practicing law;
    e. very early focus on a future career path and work by law students;
    f. lack of financial power and facilities by higher educational establishments.

219. Academic training system receives *ad hoc* support from various international and domestic sources. However, the assistance remains largely fragmented.

220. The following priority areas of intervention may be suggested with regard to the academic education system:

[65] See, for instance, conclusions of the European Public Law Organisation (EPLO) following its visit to Moldova to assess curricula development needs of the Moldovan HEIs.

a. more rigorous application of the licensing criteria by the Ministry of Education in certifying new law schools or upholding certificates for the current ones;
b. support for developing of curricula and teaching methodology by all law schools, training needs and capacity-assessment mechanisms within the schools;
c. encouraging the Ministry of Education in a more active coordinating role with regard to curricula and teaching methodology, in order to determine mandatory and optional courses applicable to all law schools;
d. helping the Moldovan academic education system to smoothen transition in applying the Bologna process;
e. improving the facilities and equipment at HEIs.

Professional Legal Education: State of Affairs and Directions for Further Reform

221. The National Institute of Justice (NIJ) was created in 2007 as part of the Project on 'Increased, Independence, Transparency and Efficiency of the Justice System' (see paragraph 65 above). Its main duties are initial and continuous training of prospective and qualified judges and prosecutors, and continuous training of bailiffs, court registrars and mediators.

222. Students at the initial training level are split into two separate flows of prospective judges and prosecutors. Each NIJ student receives a monthly stipendium of 2,100 lei (about EUR 130), which is roughly a half of a judge's salary. Entry exams into the school are rather stringent, owing to stringent competition (10 applicants to qualify as a prosecutor, and 7 applicants for the qualification as a judge). The total length of training is 18 months, split as two semesters of basic teaching, and a third semester of traineeship in the courts, prosecution, investigation authorities and the Bar. Diplomas obtained after graduation exams entitle each NIJ graduate to apply for job vacancies at the courts or the PGO. However, graduation does not guarantee that employment will eventually be found. For instance, 10 students graduate as future judges every year. However, merely 3 NIJ graduates have been employed as judges out of more than 30 total graduates in the last 3 years. It must be noted that an alternative path to qualify as a judge remains by way of a separate procedure and exam before the Qualification Board of the SCM. All successful applicants choosing that path eventually were employed as judges. Having said that, the problem of obtaining eventual employment by the NIJ graduates does not appear so acute with regard to those qualifying as prosecutors. At the same time, the number of prosecutor graduates was reduced form 30 in 2009 to only 10 in 2010.

223. The NIJ role with respect to continuous training is expanding to embrace many legal professionals. This is helped by a unified statutory obligation to undergo approximately 40 hours of continuous training per year (80 hours per 2 years) for most professions in the public and private sub-sectors of the justice chain. At the same time, the NIJ appears to lack capacity to develop its own curricula and training methodology. While the school tries to put an emphasis on avoiding overlap with university education, it ends up borrowing curricula from academic

establishments. Admittedly, most of the subjects are taught primarily by way of seminars and tutorials to encourage feedback relationship with the students.

224. Some basic facilities, including microphones and interpretation equipment, are lacking at the NIJ. Video-conferencing tools could also be used to take advantage of some court facilities in the regions for continuous training purposes, thereby saving expense of bringing judges to Chisinau. The NIJ has no financial resources to complete renovation of the 'second wing' of its building, which would requiring an investment of at least 8 million lei (EUR 0.5 million) to almost double the usable space. The Expert Team would suggest affording more resources to the NIJ to improve facilities and equipment, but only on condition that the school agrees to expand its continuous training role to include all legal professionals, including practising lawyers. Of course, such an expansion would not mean 'one-size fits all' continuous training curricula and methodology, but at least a certain degree of harmonisation thereof. It is too much of a privilege for a country in Moldova's socio-economic situation to have separate continuous training facilities for different legal professions. Moreover, on the basis of comparative examples in many new EU member States, especially post-communist countries, it may also be stated that considerable synergies may be gained from the very simple fact of having judges and practising lawyers at a same professional training event. The proposals to expand the continuous training role of the NIJ will also be formulated as part of the 'Increased Efficiency, Accountability and Transparency of Courts' Project, as part of the larger action designed by the Expert Team to commence by the end of 2011 (also see paragraphs 240-246 below).

225. On the basis of cumulative analysis of the interviews and other sources outlined in this chapter and the Annex, the Expert Team established a significant lack of performance in the professional training system. The following factors may be suggested as the relevant causes:
    a. lack of capacity in curricula development and training methodology a the NIJ; lack of training needs and capacity-assessment mechanisms;
    b. lack of full-time and part-time tutors;
    c. insufficient number of graduates, especially as future judges (it may be noted that the current system of quota of judges is set by the SCM);
    d. lack of streamlining between the graduation at the NIJ and eventual employment; the ambiguity of the dual system of qualification as judges through the NIJ and an alternative SCM Qualification Board procedure;
    e. lack of financial resources and basic equipment.

226. Suggested areas of intervention:
    a. capacity-building for curricula development and training methodology a the NIJ, with a particular emphasis on training-of-trainers (TOT) approach; training needs and capacity-assessment mechanisms;
    b. specifically targeted technical assistance activities to prepare the NIJ for twining; as the matters stand, the NIJ lacks absorbing capacity for twinning modalities;
    c. reviewing the statutory role of the NIJ in continuous training to include all legal professions, including practicing lawyers; at the same time, it would be important to ensure that this happens along with a substantial increase

of state budget allocations for the NIJ, and not purely subject to external donor funding, in order to allow for the sustainability of the NIJ's greater mandate once the support from the international community is no longer available;

d. harmonisation, albeit not unification, of continuous training curricula and methodology at the NIJ of different legal professions;
e. allow graduation of more students - especially prospective judges - at the initial training level;
f. review of the qualification system to the judiciary; streamlining graduation at the NIJ with the eventual employment;
g. support to the NIJ to expand its library, access to various paid online legal resources, purchase of IT, interpretation, audio and video-conferencing equipment, and the renovation of the 'second wing' of the NIJ building, provided the continuous role of the school is enlarged to accommodate all legal professions, including practising lawyers;
h. support to the NIJ magazine and other specialised legal media to become a proper source on law and practice of courts in Moldova.

227. The Expert Team considers this area to warrant a particular degree of attention for the EU support in the justice field in the long term, given *inter alia*:

- significant lack of performance within the sub-sector;
- critical role of the academic and professional training systems on the capacity component of the Moldovan justice sector as a whole, any visible improvement in the education sub-sector being capable of having an immediate effect on all the remaining sub-sectors and areas.

v. Appeals System

228. On the basis of cumulative analysis of the interviews and other sources outlined in the Annex, the Expert Team established a significant lack of performance within the appeals system in civil and criminal process. The relevant factors may be summarised as follows:

a. prevailing conceptual understanding of appeals as essentially giving a new chance to win the case, rather than remedy a serious injustice;
b. lack of trust by the Supreme Court in the competence of the lower courts; excessive competence (on facts and law) of the Supreme Court to take upon and re-examine almost any case it wishes;
c. lack of respect for the principle of *res judicata* by excessive application of 'revision' (extraordinary review) procedures;
d. excessive number of hearings in one case;
e. abuse of process by the parties, especially in civil cases; lack of statutory tools by the judges to take a stronger procedural hold and discipline the parties for the purposes of good administration of justice;
f. excessive interlocutory litigation and interim appeals;
g. lack of use of written procedures at higher levels of jurisdiction.

229. The following areas of intervention may be suggested to support:

a. conceptual rethinking of the role of appeals, creation of a proper hierarchy between the lower and higher courts;
b. restriction of the Supreme Court's powers - by statute and in practice - to rehear any case;
c. restriction of use of extraordinary remedies;
d. clearer distinction between scope of hearings, relating to either facts and law or law only (at the appeals stage), or serious points of law only (at the cassation level);
e. streamlining of the use of hearings and increasing the weight of witness evidence;
f. allowing judges to be more active in civil process, while putting more emphasis on the need for cooperation between the parties in a civil case;
g. enabling judges to discipline participants of the proceedings for the purpose of good administration of justice (contempt of court etc.);
h. curtailing excessive interlocutory litigation and appeals, especially in civil process;
i. encouraging use of written procedures at higher stages of jurisdiction.

230. The Expert Team considers this area to warrant a particular degree of attention for the EU support in the justice field in the long term, given *inter alia*:

- significant lack of performance in the domestic efforts in the area;
- tremendous role that a finely-tuned appeals system would have on the whole system of administration of justice, including various cross-cutting issues - for instance, by reducing amplitude for judicial corruption, especially by the higher courts.

vi. Direct Application of the European Convention on Human Rights

231. On the basis of cumulative analysis of the interviews and other sources outlined in the Annex, the Expert Team found no effective, foreseeable and accessible system of direct application of the European Convention on Human Rights in Moldova, albeit some aspects of the ECHR case-law - especially on Article 3 of the Convention - are taken into account more and more frequently as a matter of practice of the Moldovan courts. The possible causes of the current under-performance may be suggested:

a. general lack of reasoning-oriented, case-law based system of application of law;
b. insufficient teaching of methods of interpretation, general principles of law, burden and standards of proof, comparative law at the academic and professional education levels; domination of formalistic approach and literal methods of interpretation;
c. lack of focus on the need to reason court decisions at the academic and professional education level;
d. lack of knowledge of foreign languages;
e. insufficient capacity and resources of the office of the Government Agent before the European Court of Human Rights.

232. Suggested areas of intervention in order to deal with the problem:

a. support to the efforts to train the Moldovan legal community on various aspects of the ECHR case-law, assist the Moldovan judges, prosecutors and practising lawyers in fully incorporating the ECHR case-law into their respective curricula for initial and continuous training, developing methodology and tools for training, elaborating training materials and setting up bilateral mechanisms for exchange of best practices in the field of direct application of the ECHR in various European countries; such efforts are currently being made by the COE by way of an activity entitled 'Strengthening Professional Training on the ECHR – European Programme for Human Rights Education for Legal Professionals' (the so-called 'HELP Programme');
b. support to the conceptual rethinking of teaching of law, encouraging an emphasis on methods of interpretation, principles of law, burden and standards of proof, comparative law at the academic and professional education levels;
c. at the academic education level - teaching of the ECHR case-law within the disciplines of domestic law (including civil and criminal substantive law and procedure), and not as a separate subject of international public law;
d. improvement of foreign language skills among judges and other members of the legal community;
e. encouraging the Supreme Court to develop its role as a unifying force of domestic jurisprudence, while narrowing its competence with regard to the number of cases examined; a practice guide on direct application of Article 3 of the ECHR issued by the Supreme Court in 2009 is a highly first step; similar practice guides may be developed by the Supreme Court with regard to other areas of the ECHR case-law;
f. encouraging the Supreme Court and the lower courts to publish their judgments online and release compendiums of their practice;
g. comprehensive support to the Agent of the Government before the European Court of Human Rights, including its education role and watchdog functions in overseeing compliance by Moldova with the specific and general measures indicated by the Strasbourg Court.

233. The Expert Team considers the ECHR-related problems to warrant continuing attention in the context of the EU support in the long term, given *inter alia*:

- significant lack of performance in the domestic efforts in the area;
- ease of including topics on the ECHR as part of most capacity-building measures;

counterbalanced by:

- need to target rather the root-causes of the problem, including the inefficiency of the academic and professional legal education system.

vii. Juvenile Justice

234. The juvenile justice field has benefited from targeted support by way of the SIDA-UNICEF Project on 'Support to the Juvenile Justice Reform' 2008-2011, worth EUR 1.8 million. Partly as a result of these interventions, a marked change has been

achieved in juvenile sentencing policies. Up to 25% of child offenders are currently sentenced to community services, while many others receive suspended sentences. Specialised probation officers for children have also been created. Some capacity-building and regulatory advice are being provided by the NORLAM and the Dutch Probation Service, as a component of the twinning activity in the penitentiary sector (see paragraph 164 above). At the same time, it must be accepted that significant problems still exist, the general conditions of the juvenile detention facility in Lipcani being arguably the most problematic issue in the area.

235. On the basis of cumulative analysis of the interviews and other sources outlined in this chapter and the Annex, the Expert Team considers the juvenile justice to warrant continuing attention in the context of the EU support in the long term, given *inter alia*:

- certain lack of performance, but an increasing stability of the area;
- well-targeted initiatives by other donors which appear to produce tangible results;

counterbalanced by:

- need to ensure sustainability of the above international assistance efforts once they become less intensive.

viii. ADRs

236. Solid statutory basis for most ADRs, including arbitration and mediation, already exists in Moldova. However, the ADRs are usually not applied in view of the conviction-encouraging performance indictors system in criminal justice (among the investigators, prosecutors, judges and penitentiary officers), and given the prevalent litigation (rather than a more pragmatic accommodation, or settlement) mentality in civil disputes. Marked improvements in the general culture involving complex institutional, professional and societal relationships will be needed before ADRs are applied more extensively.

237. On the basis of cumulative analysis of the interviews and other sources outlined in the Annex, the Expert Team considers the use of ADRs to warrant continuing attention for the EU interventions in the long term, given *inter alia*:

- significant lack of performance in the domestic efforts in the field;

counterbalanced by:

- lack of likelihood that targeted assistance in the field would offer a reasonable prospect of results, in the medium term, at least, in view of the prevalent societal realities;
- ability to focus rather on root-causes of the phenomena of under-use of ADRs, such as the performance indicators in the criminal justice field, or the capacity of the legal education and legal aid systems.

This prioritisation is to be reconsidered in about 2-3 years, on assumption of the underlying improvements along lines indicated in paragraph 236 above.

III. TOWARDS GREATER PERFORMANCE IN DELIVERY OF DEVELOPMENT AID

1. Steps Committed in the Short to Medium Term

A. International Donor Ecosystem in the Moldovan Justice Sector

238. The relevant environment and the prevalent aid delivery policies in Moldova may be summarised as follows:

a. EU is the biggest international donor in Moldova, focusing on various sectors and different aid delivery methods, including technical assistance and twinning (in many sectors), as well as sector budget support in health, energy and utilities sectors; on the basis of the activities carried out in 2010, its current share of justice-sector related support can be stated to amount to at least EUR 7 million per year; in most cases of technical assistance, the EU does not directly implement projects in Moldova and is merely a financing organisation; it is, however, a direct implementing authority of twinning and sector budget support activities;

b. Council of Europe (COE) is currently the most important implementing partner of the EU in technical assistance activities, managing the so-called 'Joint Programmes' (90% of which are financed by the EU); at present, 2 Joint Programmes are related to the justice sector, albeit with significant value in monetary terms (the 'Democracy Support' is worth EUR 4 million over 2 years; also see paragraph 69 above); COE is intent on maintaining its presence in Moldova, although its significant reliance on other donor (EU) resources should also be noted;

c. UNDP is both a donor and implementing agent of a number of justice-sector related activities in Moldova, spreading from managing the EU High Level Advisory Mission to specific thematic projects in the justice field; the specifics of this donor is in 'complimentary' nature in its policy - it is more likely to support another donor activity rather than design its own;

d. U.S. Embassy uses TA method to allocate slightly more than USD 2 million per year to the Moldovan justice sector though its Resident Legal Advisor programme and financing of the ABA ROLI activities, with half of the allocation going to support capacity-building at the MOI, and the rest being targeted at the PGO and other sub-sectors; at this point, there is no appearance of a clear-cut intension of this donor to expand the justice sector assistance beyond the financial commitments and areas indicated above;

e. USAID, which is considered part of the U.S. Embassy, implemented one of the biggest justice-sector support actions in Moldova - the TCP of the Millennium Challenge Corporation (see paragraph 69 above); this donor is now again returning to the justice sector with the 'Rapid Assistance Program for Good Governance', which includes a component on strengthening the judiciary; all in all, the USAID is planning to spend some USD 5-10 million on rule-of-law and justice-sector related programming in the nearest future;

f. Soros Foundation Moldova (SFM) is both a financing organisation and implementing body which uses funds of more than EUR 8 million per year

to deliver technical assistance, a mere 10% of which is allocated to the justice sector, however; a notable difference of the SFM among other donors is in its use of almost exclusively local teams; it is currently involved in three major activities on Access to Justice (together with SIDA), Juvenile Justice (together with UNICEF), and support to the criminal justice system;

g. SIDA is among the biggest bilateral donors in Moldova, with some EUR 11 million allocated in 2010; however, only a small proportion of that sum goes to the justice sector - notably through the UNICEF-implemented Juvenile Justice Project and the Access to Justice action carried out by the Soros Foundation Moldova; SIDA does not implement projects in Moldova and, as the EU, is a financing organisation; as the matters stand, there is no appearance of a clear-cut intention of this donor to expand its support to the justice sector;
h. UNICEF is an implementing agent of the Juvenile Justice Project financed by SIDA (see paragraph 234 above);
i. NORLAM is strictly focused on criminal justice; it is an advisory mission rather than a donor, as its ability to fund activities outside advice and expertise by its pool of resident experts is limited;
j. OSCE, while not a donor or implementing organisation, does support some justice-sector related activities by assigning its field staff, as part of its general mandate to ensure security and stability; nonetheless, the OSCE also organises bi-annual Rule of Law roundtables, which serve as a discussion forum, albeit not a proper coordination mechanism, for international donors and various domestic stakeholders;
k. other public and quasi-governmental as well as private donors representing various European countries are also active in Moldova, albeit with relatively minor contributions in the justice sector.

239. It is very difficult to assess the value of annual support to the justice field in Moldova, given in particular that many international donors think in terms of ‘projects’ spread over a variety of sectors and number of years, rather than in terms of yearly disbursements. Identifying a specific annual number is however, useful, in order to evaluate the potential of the international donor community to change things in the justice sector, especially when that number is juxtaposed against the domestic sectorial or institutional annual budgets. According to an estimate by the Expert Team based on the activities conducted in 2010, the whole international donor community allocated at least EUR 14 million in support to the Moldovan justice sector. This means that the overall annual sector contribution by the international donors is larger than the total annual budget of the Moldovan courts. The overwhelming principle and method of aid delivery was project-based approach through technical assistance (EU, COE, UNDP, SFM, SIDA, UNICEF, USAID). At the same time, representative advisory missions were also used in some cases (EU/UNDP, U.S. Embassy/ABA ROLI, NORLAM), mixing on-demand advice with some more readily made TA activities. Twinning has so far only been used once in the justice sector (see paragraph 164 above). There is a slight, albeit not very pronounced, overall intention of the international donors in Moldova to increase support to the justice field. However, such a general will is hard to express, or, even more so, translate into action in the absence of an effective donor coordination mechanism. As mentioned above, the Rule of Law Round-tables offered by the

OSCE are more akin to brainstorming sessions, while the internal coordination by the State Chancellery Aid Coordination Unit is essentially reactive and procedure-based, rather than proactive and results-oriented.

B. EU Support to the Sector in the Medium-Term

240. In order to move from the project-based approach towards sector-wide programming, the EU is in the process of approving the Action on Support to the Justice Sector Policy Reforms 2011-2013, designed by the Expert Team. The Action uses project-based TA modality, and is worth a total of almost EUR 10 million for the next three years. It provides a glimpse into the strategy of aid delivery by the EU in the Moldovan justice sector in the medium term. The Action consists of two main components:
    a. support to the efforts at justice sector reform coordination ('procedural' component);
    b. support in order to increase the efficiency of the justice system by regulatory change and capacity building in a number of thematic areas, *inter alia* in order to help the stakeholders identify and elaborate modalities of reform, which may eventually become chapters or sub-chapters of the 'Sector Programme' ('substantive component').

241. The 'procedural' component of the Action will consist of one TA Project entitled 'Justice Sector Reform Coordination'. The Project is valued at EUR 2.8 million, and will commence by the end of 2011 to last 36 months. Its expected results will be:
    a. fully operational Justice Sector Coordination Council (JSCC), supported in its activities by the MOJ and other stakeholders;
    b. sector-wide reform policy and strategy, donor coordination mechanism and a multi-year budgeting plan of the activities foreseen in the strategy ('Sector Programme');
    c. sustained leadership capacity of the JSCC to drive the reform process, while preserving the operational role of the MOJ, with a view to implementing and developing the justice sector strategy (as mentioned in the paragraph above, it is assumed such a strategy will be developed by the by the end of 2011 - either with or without the outside help);
    d. continuous flow of feedback from all the relevant stakeholders concerning the sector strategy;
    e. development of new chapters of the sector strategy by each stakeholder;
    f. implementation of the chapters already committed;
    g. increased capacity by each stakeholder to provide a sustained contribution to the coordination mechanism for a smooth sector reform.

242. The 'substantive' component of the Action will consist of 3 technical assistance projects, to be launched by the end of 2011 or early in 2012, and lasting 36 months:
    a. 'Support to the Pre-Trial and Investigative Set-up', worth EUR 2 million;
    b. 'Increased Efficiency, Accountability and Transparency of Courts', valued at 3 million;
    c. 'Support to the Enforcement, Probation and Rehabilitation Systems', worth EUR 2 million.

243. The expected results of the 'substantive component' will include:
    a. redefinition of the institutional and procedural set-up of the pre-trial stage for more efficient evidence collection, detection and prosecution of crime, while respecting human rights and fundamental freedoms;
    b. setting up of a body specialising in investigation of ill-treatment and other abuses committed by law enforcement officials;
    c. improved legal framework ensuring a number and competence of judges corresponding to the social and economic exigencies of the society; creation of quality control policy and its implementation, and a system of evaluation of the courts performance by the 'end users';
    d. improved regulatory and practical system of courts administration and management;
    e. creation of usable and effective, procedural and practical, tools for preventing judicial corruption;
    f. improved legal framework in appeals and horizontal jurisdiction between various courts, with emphasis on efficiency and speed while guaranteeing fairness and better access to justice;
    g. enhanced role of the NIJ in initial (vocational) training and qualification of judges; expanded role of NIJ in continuous training of legal professions across the board, including practising lawyers;
    h. increased capacity (including, but not limited to, skills and competences) of judges, prosecutors, investigators, bailiffs and probation officers to perform their work by applying the most modern and efficient methodologies;
    i. improved legal framework and procedures for regulation and oversight by the regulatory bodies of the judiciary, bailiffs and probation officers in ethical and disciplinary matters; overall enhanced capacity of these regulating bodies;
    j. reformed legal framework to facilitate the work by probation officers, including a review of the punitive and rehabilitation policies and the relevant statutory basis.

244. Various topics will be proposed by the 'substantive' component of the Action with a view to building capacity and fostering regulatory change, by reference to international standards and European best practices *inter alia* in the following fields:
    a. roles of an investigating and prosecuting bodies at the pre-trial stage;
    b. investigation of minor criminal (administrative) infractions, inter-agency cooperation (task-force approach) in specific cases;
    c. unified performance indicators and appraisal methodologies in law enforcement;
    d. providing sufficient safeguards to protect private life, and the rights to a fair trial and defence rights of potential targets of special investigative techniques;
    e. increasing the interoperability between the legal frameworks on special investigative techniques and criminal procedure;
    f. independent and effective investigation of law enforcement abuse, including the comparative experience in institutional design, and means

used to increase the civil society participation and encourage collaboration of witnesses in reporting police violence and abuse;

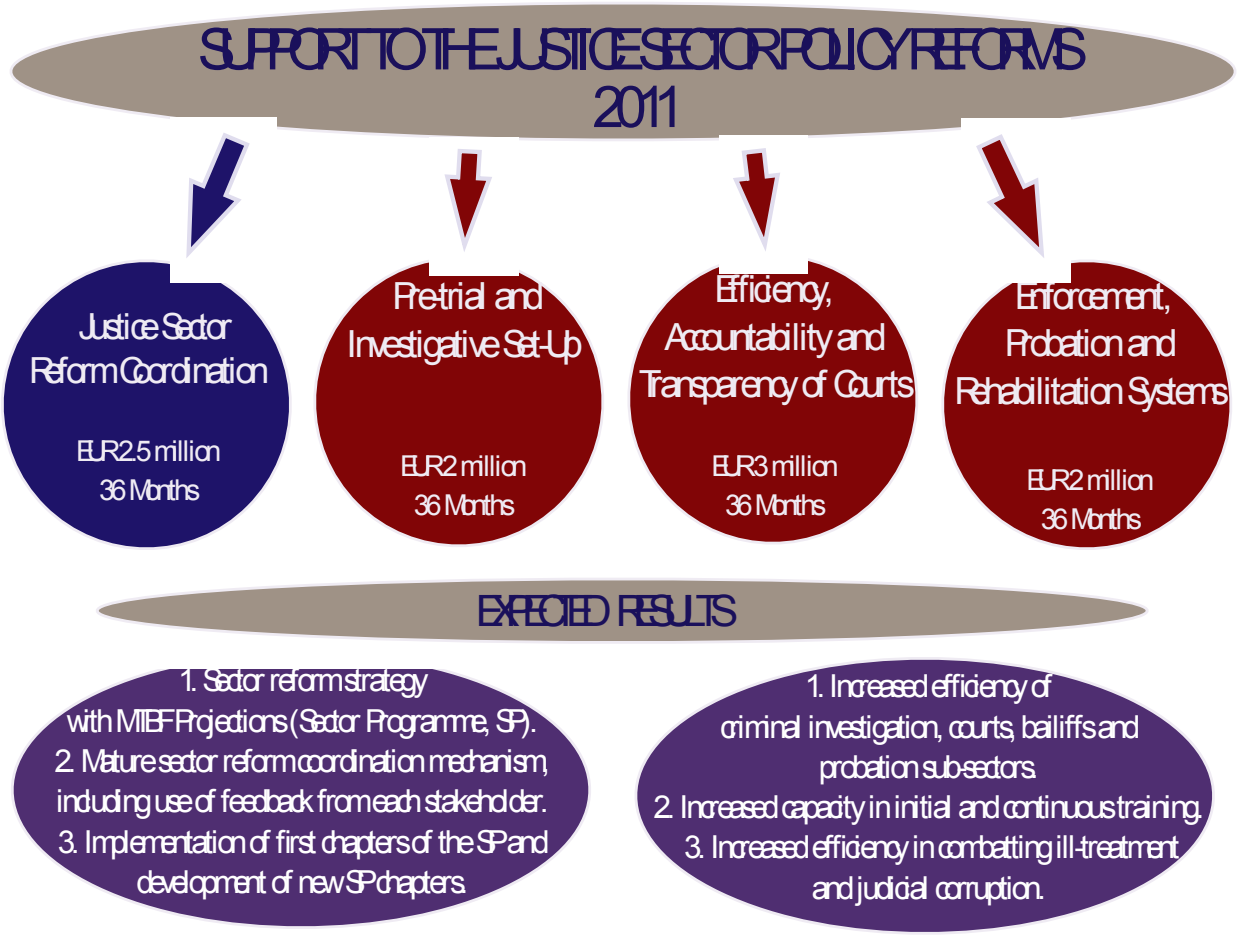
g. qualification and promotion of judges, including performance indicators and procedures for filling vacant posts;
h. courts' quality control policy and its implementation, including systems of surveys of 'user-evaluation' of the administration of justice;
i. role of a unified centre for continuous training of all legal professionals, its curricula and methodologies, choice of trainers and training needs assessment;
j. business processes needed to manage e-justice systems, the use of various automatic tools for greater efficiency and transparency of case management and hearings;
k. budget formation and facilities management (procurement) of courts;
l. ethical and disciplinary breaches by judges, bailiffs, probation officers, their consequences, procedures to be followed in examining them, and special bodies to be created for investigation purposes;
m. more efficient ways of ensuring self-regulating capacity of courts and bailiffs, and regulation of probation services;
n. prevention of judicial corruption by civil, administrative and criminal tools, including the questions relating to immunities;
o. courts' obligation to inform the public and the media about their activities;
p. better vertical (appeals) and horizontal (criminal, civil, administrative) distribution of procedural competence between the courts, in order to endure sufficient specialisation of judges and courts;
q. increased role of a hearing at first instance in civil and criminal matters;
r. regulatory regimes, licensing, functioning and oversight of the profession of a private bailiff;
s. more efficient tools of dealing with debtor assets to ensure enforcement;
t. modern probation, rehabilitation and reintegration policies and their implementation.

245. In designing the extent and scope of the above interventions, the Expert Team made a cumulative analysis of 5 core criteria:

a. urgency of a given problem from the point of view of the general interest, which, transpires from this assessment of affairs in the whole justice chain, among other sources;
b. likelihood of finding consensus among the domestic authorities that the problem needs to be tackled - albeit not necessarily on the 'ways' of resolving it - in order to secure local ownership of the initiative;
c. need to balance inputs in size and intensity to the beneficiary's capacity to lead, manage and absorb support;
d. need to allocate more EU resources to areas which have not benefited from sufficient attention by other donors, or where improvements following various donor interventions have not been significant;
e. ability for a donor / implementing body to find sufficient focus within the problem area in order to achieve tangible results, in order to satisfy the principle of concentration.

246. This Action defines the EU strategy of aid delivery to the Moldovan justice sector in the medium-term, that is, starting from 2011 and approximately until 2014. It is possible that in 2012 or thereafter some additional TA or twinning interventions in the justice sector may be suggested, especially taking into account the priority areas determined above. It is also likely that, at some point in the course of the implementation of this Action, the EU will decide to start implementing the sector-wide programing approach in Moldova, depending on the political and technical eligibility of the country, conditions for which are reviewed in the following chapter of this Report.

247. It is also to be noted that in 2012 - once the Moldovan authorities elaborate medium-term (3 years) Strategic Development Programmes (SDPs), which should become a common exercise for all ministries and departments in 2011 according to the general policy established by the GOM Chancellery - the EU may support Moldova by providing an additional mechanism of funding reforms through the so-called CIB funding tool. The CIB funds will be committed in accordance with the Development Strategy Programmes, and may benefit some of the justice sector stakeholders alongside the sector support Action outlined above. It is foreseen, for instance, that the PGO and the CCECC may be among the authorities to benefit from the CIB funding tool.



2. Steps to be Undertaken in the Medium to Long Term

A. Definitions, Scope and Methodology

i. Overview of Relevant Concepts

248. One of the tasks of the Expert Team is to make an evaluation of the Moldovan justice sector in order to determine more efficient ways for delivery of EU aid. It may be noted that Indicator 9 of the Paris Declaration measures the desired percentage of aid provided as programme-based/sector-wide approaches (PBAs/SWAPs). The target was to increase the proportion of aid delivered as PBAs to 66% by 2010. While this target has not yet been achieved in any of the ENPI countries, the EU is determined on coming closer to the goal. The EU has committed to taking a leading role in implementing the Paris Declaration. It has in this context made four additional commitments that are supportive of the established good practices in the area of sector approaches to[66]:

a. provide all capacity-building assistance through coordinated programmes with an increasing use of multi-donor arrangements;
b. channel 50% of government-to-government assistance through country systems, including 50% of assistance to be provided through budget support or other modalities of sector-wide approaches;
c. avoid the establishment of any new project implementation units;
d. reduce the number of uncoordinated missions by 50%.

249. These objectives are behind the rationale of assessing applicability of sector-wide approach in the Moldovan justice sector. Most of the relevant concepts and notions are explained at length in the aforementioned Guidelines of the European Commission and other documents, which the Expert Team seems no reason to repeat. At the same time, the core relevant notions may be summarised as follows:

a. 'Sector-Wide Approach' (SWAP) is a principle of aid delivery by the European Union, in order, first and foremost, to ensure local ownership of support initiatives;
b. 'Sector Programme' consists of a sector-wide policy and strategy by the domestic authorities, including a medium-term Budget Framework and clear understanding of budgetary implications, supported by an internal (intra-sector) and external (donor) coordination mechanism and performance monitoring mechanism;
c. 'Sector Policy Support Programme' (SPSP) is an aid delivery method by the EU in support of the 'Sector Programme' of the beneficiary authorities; the six ordinary phases of SPSP are Programming, Identification, Formulation, Financing, Implementation, and Evaluation;
d. 'Sector Budget Support' (SBS) is one of the three modalities of implementation of the SPSP, by way of which money is transferred to the

[66] See the EC Guidelines on SPSP, p. 16, at http://ec.europa.eu/europeaid/multimedia/publications/documents/tools/guidelines_support_to_sector_prog_11_sept07_final_en.pdf

national treasury of the beneficiary country; once received, the money is used in accordance with the beneficiary country's public financial management system requirements.

250. This Assessment is intended to lay foundations[67] for a policy decision by the EU as to whether to apply the principle of SWAP to the Moldovan justice sector. The decision may ultimately lead to the EU-funded SPSP that may be carried out through Sector Budget Support, in case the conditions for such a modality are met. Therefore, the overall objective of this Assessment is to identify:
    a. applicability of the SWAP principle to the Moldovan justice sector;
    b. eligibility of the justice sector of Moldova for SPSP; and, eventually
    c. eligibility to SBS as one of its modalities.

251. According to the aforementioned EC Guidelines, the traditional seven areas of SWAP/SPSP assessment are (in the following sequence):
    a. Sector Policy and Strategy;
    b. Sector Budget and Medium Term Budget Framework (MTBF)[68];
    c. Sector and Donor Coordination;
    d. Institutional Setting and Capacity;
    e. Performance Monitoring System;
    f. Macroeconomic Context;
    g. Public Financial Management.

252. In order to determine criteria for this assessment, the Expert Team will rely not only on the aforementioned EC Guidelines but also on practice of its application. Since SPSP (including SBS as its core modality) has already been implemented in Moldova in the health, energy and utilities (water supply) sectors, the Expert Team does not deem it necessary to examine the general applicability of SWAP/eligibility for General Budget Support of Moldova, which may be assumed. The task of the Expert Team is establishing applicability of SWAP and eligibility for SPSP in regard to the justice sector. The examples of SPSPs which are currently being carried out in the health, energy and utilities sectors in Moldova are less relevant to the justice sector, in view of the very different fabric of the latter, and particularly given the very different nature (essentially, 'soft') of the results to be achieved by a justice Sector Programme and its accompanying SPSP. In its methodology, the Expert Team will take into account comparative best practices of implementation of the SPSP in the criminal justice sector in Georgia - the most relevant sectorial example among the countries in a similar socio-economic and geopolitical situation as Moldova.

[67] The Assessment will later have to be supplemented by a formal SPSP Identification Fiche.
[68] In some sources, the term Medium-Term Expenditure Framework (MTEF) is frequently used. For the sake of clarity and avoidance of confusion, the term MTBF will be used throughout this text, as it has been defined this way in the Moldovan legislation.

ii. SPSP in the Criminal Justice Sector in Georgia

253. The relevant Sector Policy Support Programme in Georgia was launched in December 2008, initially designed for 3 years, but then extended for 5 years. It must be noted that the construction of a 'sector' applied there was significantly narrower than the one suggested in Moldova's case in this Report. Reform of the courts system, procedural regulation of investigation and trial in civil and criminal matters - or cross-cutting issues such as corruption and professional education problems - were basically left intact in the relevant Sector Programme devised by the Georgian Authorities, which was designed for 'criminal justice sector', consisting (in the context of this particular SP) of 4 narrow sub-sectors/issues:
    a. juvenile justice;
    b. prison reform;
    c. probation;
    d. legal aid (including the creation of public defender).

254. The total budget of this Sector Programme was EUR 16 million for a period of 5 years, including allocations by the EU, the Georgian Government and other donors. The EU SPSP budget of this Sector Programme took up a lion share of EUR 15 million, with the only modality of Sector Budget Support, which was concluded in 3 payments over 3 years, on the last occasion in 2010. The SPSP was also complemented by a EUR 1 million support in technical assistance. In addition to the Sector Programme, traditional project-based approach was (and is being) continued by way of a number of medium-term duration TA projects in the field of capacity-building and regulatory reform for a total amount of some EUR 5 million. These numbers take no account of some continuing EU-financed cross-border projects, nor of the activities of other donors in the criminal justice field and the wider justice sector in Georgia, which continue to take the form of project-based approach via technical assistance or twinning. The status and development of seven areas of SPSP in Georgia was as follows[69]:

255. Sector and Donor Coordination:
    a. by late 2007, the Commission for the Support of the Legal Reforms Coordination had been established but was not operational;
    b. in December 2008, at the time the SPSP was launched, the Criminal Justice Reform Coordinating Council (CJRCC) was established, consisting of 6 working groups;
    c. by late 2009, one year into the functioning of the SPSP, the sector management and consultative mechanism was deemed to be fully operational.

[69] See *EC ID Fiche for SPSP* (ENPI/2010/022-562), 1.7.2010; also see, *SPSP: Support to Criminal Justice Reform in Georgia, 2009 Second Installment Final Review* (ENP AAP2008); October 2009

256. Sector Policy and Strategy:
    a. by late 2007, one year before the launch of the SPSP, the Strategy and Implementation Plan had already been in place; albeit not sufficiently itemised, the Strategy was elaborated in a consultative process led and owned by the Government;
    b. in 2009, a few months into the SPSP, the Criminal Justice Reform Strategy and Action Plan were significantly revamped by the newly-created CJRCC; at the same time, the Strategy and Action and Plan was produced for 2010 together with MTBF projections (also see the paragraph below);
    c. in early 2010, all institutions covered by the SPSP had begun elaborating separate chapters of the Strategy for their relevant sub-sectors.

257. Sector Budget and MTBF:
    a. in late 2007, the Sector Budget Implementation Plan was included in the Basic Data and Directions 2008-2011; the MTBF process, albeit generally launched by the Government as far back as 2005, had not been deployed in line ministries by that time;
    b. in 2009, one year into the implementation of the SPSP, the revised Criminal Justice Sector Strategy and Action Plan was developed by the CJRCC and reflected in the Government policy statements; moreover, budgetary allocations were proposed for 2010 and for the MTBF period of 2010-2013.

258. Performance Monitoring System:
    a. by late 2007, a monitoring scheme had not been developed;
    b. by late 2009, monitoring mechanisms and statistical tools for policy analysis were under development; namely, each institution covered by the Strategy and Action Plan had designated a focal point responsible for providing details of progress against the Action Plan every two months, these reports being amalgamated by the CJRCC Secretariat into a bi-annual ‘activity’ or progress report, and subsequently an Annual Report, to be discussed at an annual round table meeting of broadly defined stakeholder interests, including donors and NGOs.

259. Institutional Setting and Capacity:
    a. in late 2007, certain positive developments had taken place, but high turnover of senior officials and key technical staff was held to have impeded strengthening institutional capacities;
    b. in early 2010, all institutions covered by the SPSP were deemed to have been strengthened, having also begun elaboration of separate strategy chapters for their respective sub-sectors.

260. Macroeconomic Context:
    a. by late 2007, Georgia's economic performance continued to be strong, although signs of overheating were beginning to emerge;
    b. by early 2010, Georgia’s economy was showing tentative signs of turning around in the aftermath of the Financial Crisis.

261. Public Financial Management:
    a. in 2007, the European Union launched SPSP in support of the PFM reform in Georgia, the Ministry of Justice being one of its pilots; it must be noted that the Georgian Government had dealt with the PFM reform process since 2004, building it around modernisation of the budgeting procedures and the introduction of MTBF;
    b. in early 2010, the PFM reform was still under way, supported by the relevant SPSP; while not qualified as completed, the status of the PFM reform was deemed to be supportive of the criminal justice reform.

262. In early 2010, slightly more than one year into the implementation of the SPSP, the following results of the Programme had been achieved:
    a. 3 expected results had been achieved, albeit not entirely:
        - creation of the sector coordination body (score B by a monitoring mission on three evaluation criteria, namely 'relevance and quality of design', 'efficiency', 'effectiveness'); at the same time, the stability (sustainability) of the structure was deemed as average;
        - adoption of the reform strategy and action plan, supported by enhanced monitoring capability (score B on three evaluation criteria);
        - detention conditions improved and programmes for rehabilitation and reintegration were being put in place;
    b. four other expected results had more negative status:
        - establishment of a comprehensive juvenile justice system was underway, owing inter alia to a separate TA project implemented by UNICEF (score B on five evaluation criteria);
        - reduction in the number of prison population was not achieved, but the growth of the number of prisoners slowed; at the same time, this expected result was re-classified as unlikely to be achieved during the implementation of the SPSP;
        - access to justice through legal aid was not improved;
        - protection of human rights through the office of public defender was not strong, and a certain revision of the reform Strategy and Action Plan in that respect was envisaged.

263. In interviews with the Expert Team, the EU Delegation in Georgia and various domestic interlocutors largely confirmed an increasing perception that the overall results in the middle of the implementation of the Sector Programme (to run until 2013) were encouraging, that the application of the SPSP had not only made delivery of the EU aid in Georgia more locally owned and appreciated, but had also facilitated more effective implementation of the technical assistance activities carried out alongside the SPSP, mainly in view of the improved domestic institutional environment and capacity across the sector. Discussions are currently on-going on expanding the Sector Programme in Georgia to be eventually covered by a new SPSP beyond the 4 narrow areas mentioned in paragraph 253 above.

iii. Conclusion

264. In view of the relevant EC guidelines interpreted in the context of the Georgian example, the Expert Team considers that an approach to 'applicability' of SWAP and 'eligibility' for SPSP should not be decided in a formalistic or overly technical manner. Namely, the Expert Team's approach is purposive - that is, not merely whether the country is 'ready' or not, but rather whether application of SWAP and implementation of SPSP has a reasonable prospect of success in increasing likelihood of achieving the objectives specified in the Policy Framework outlined above, and in particular, to respect the principles of the Paris Declaration and the European Consensus on Development. In other words, the Expert Team considers that SPSP assessment is a process, which - even where the action has been approved - advances as it is implemented, involving constant monitoring and improvements by both parties (the EU and the beneficiary country) in itemising the relevant criteria, determining new conditions for their gradual fulfilment, and setting further indicators for advanced monitoring. The question is of degree of success, and not of its nature, and it is therefore not so important to answer hypothetically whether the justice sector SPSP in Moldova would work or not. Rather, the Expert Team will seek to establish - as far as it is possible at this early stage and without prematurely anticipating the subsequent identification and formulation stages - *how* SPSP would work *best* in the Moldovan context. Against this background, the Expert Team considers that the following criteria should be used for this assessment:

a. **applicability of** the **SWAP** principle will be considered as demonstrated in regard to each of the 7 assessment areas by an express **policy statement** of the sector owner or other competent domestic authority to undertake sector-wide profound reform efforts;
b. **eligibility for SPSP** will be considered as shown with regard to the **3 core areas of assessment** - namely Coordination, Sector Strategy and Budget/MTBF - by a reasonable indication of **substantive positive trends (**from the moment the reform policy statement was made) in the above areas over a recent period of time;
c. **eligibility for SBS** as a modality with regard to the above 3 core areas of assessment will be **assumed** given the SPSP eligibility, as long as there are no manifest indications to the contrary;
d. eligibility for SPSP and SBS with regard to the **remaining 4 areas of assessment** - namely Performance Monitoring Mechanism, Institutional Setting and Capacity, Macroeconomic Context and PFM – will be assumed, but the level of '**supportiveness**' of the domestic context for a more smooth SPSP will be evaluated, also on the basis of the existence of '**substantive positive trends**' over a recent period of time.

B. Seven Areas of Assessment

i. Sector and Donor Coordination

265. The Expert Team considers that the usual sequence of SWAP/SPSP assessment in the justice field should be somewhat reshuffled in view of the specifics of this

sector. In particular, the first key area should be the sector (and donor) coordination because no coherent reform policy and strategy can be produced by the Government or any single body within the sector, given that they are dispersed over a number of branches of power - notably the judiciary and the executive, but also, to a certain extent, the legislative bodies. The Government does not wholly 'own' the justice sector - the latter is essentially an oxymoron defining a complex set of institutional relationships, which escape a very precise definition. Therefore, coordination is a precondition for any justice-sector reform policy and strategy. These considerations are well illustrated by a practical example from Georgia where the sector reform policy and strategy was radically changed once the ownership of that strategy was taken from the Government by the sector coordination body (see paragraphs 255-256 above).

266. A coordination body for justice sector reform was established in February 2011, and a political upgrade of the JSCC was made in May 2011, since when it has now functioned under the auspices of the President. The JSCC is made up of very high-ranking decision makers, and has a structure in the form of 9 Working Groups focusing on essential areas of reform of the sector (also see paragraph 192 above). In July 2011 a draft Justice Sector Reform Strategy 2011-2015[70] was produced by the MOJ, drawing mainly from inputs by the Working Groups. The draft Strategy is to be finalised and approved by the JSCC later this year. Admittedly, questions may be asked about the capacity of this body to drive the reform, especially at the very early stages of its existence, or about its ability to coordinate donor activities or foresee budgetary implications of the reform, given that it includes no representatives of the Ministry of Finance or the GOM Chancery Donor Coordination Unit. At the same time, these developments constitute both a clear 'policy statement' of the sector owner as well as a 'substantive positive trend' over the situation existing not so long ago. It can be concluded that the applicability of SWAP and eligibility for SPSP (SBS) in this area has been shown.

267. It would be premature for the Expert Team to establish, at this stage, specific conditions for the development of the coordination mechanism, or determine indicators to monitor them, in order to substantiate further SPSP design. The Georgian example shows clearly that the need for the relevant conditions and criteria will evolve over time. Moreover, this should more appropriately be done at later stages of programming (Identification and Formulation), once a political decision to start designing SPSP is taken by the EU. At the same time, the Expert Team may already indicate at this stage what the coordination mechanism will have to achieve for the eventual Sector Programme to be driven successfully:
    a. sustained leadership capacity of the JSCC in driving the reform process, while preserving the operational role of the MOJ; in this respect, the JSCC could clearly be helped out by a permanent Secretariat, possibly to be provided by the MOJ;
    b. stability of the coordination mechanism should be ensured despite the possible political changes, or changes in management of key stakeholders

[70] see the English version of the Strategy as it stood in September 2011; after being approved by the GOM and while before Parliament:
http://www.justice.gov.md/file/proiectul_strategiei/SJSR_Gov_Version_En_DemSp_Translation_05%2009_.pdf

such as the SCM, SCP, GOM, MOJ, MOI etc.; this condition is particularly relevant in a rather turbulent political context such as Moldova's;

c. ability of the coordination mechanism to give each stakeholder a sufficient say in the sector reform process, without, at the same time, giving a right of veto to any of the sub-sector actors over the nature, scope and extent of the proposed reforms; the Moldovan authorities will have to develop a sufficient consultative-forum capacity because the reform process may in some cases appear painful and unnecessary at the 'higher' or 'lower' levels within a stakeholder; this could be ensured by the highest representation level at the JSCC on behalf of every sector stakeholder, together with a formal memorandum of understanding to be signed among the stakeholders, defining their duties and powers, principles of cooperation and certain other modalities of operation of the coordination mechanism;
d. sufficient level of decentralisation in the coordination mechanism needs to be achieved in order not only to give policy guidance to the relevant stakeholders as to the directions of reform to be included in the strategy, but also allow the stakeholders to accommodate those directions to their specific context and translate into more specific plans for action; stakeholders should also be given a platform to discuss any reform proposal and defend their position as to opposite or alternative solutions - if need be, by an inclusive consultation mechanism which may, at times, go beyond the JSCC (also see point c) above);
e. Donor Coordination Matrix already existing at the MOI may serve as an example in developing a similar matrix by the JSCC, MOJ and GOM at the central level, and by individual stakeholders locally, which should in turn develop into proper software allowing easy inputs and monitoring at all levels;
f. 'pro-active' and not merely 'reactive' coordination of donor efforts must take place, with most of the initiatives for reform to be flowing eventually from the Moldovan authorities, and not donors; the Rule of Law Round-tables already existing under the auspices of the OSCE may serve as an example of a valuable brainstorming forum, where ideas on future activity designs are exchanged;
g. focus in evaluating and planning new donor inputs should be on results (regulatory change, increased capacity) rather than procedures (number of activities carried out, etc.); the latter aspect is tied closely to the performance monitoring aspect (see paragraphs 288-291 below).

268. It is expected that the Justice Sector Reform Coordination Project (see paragraphs 240-241 above) - together with some interim support measures which should be granted by the EU to the JSCC, MOJ and GOM in the immediate perspective (in the course of 2011) - would contribute towards the achievement of the above results.

269. Against the above background, the conclusion of the Expert Team as to the applicability of SWAP and eligibility for SPSP (SBS) with regard to the sector coordination area is positive.

ii. Sector Policy and Strategy

270. Most of the policy documents and expression of intentions by the executive are less relevant in the justice sector than in others. Setting up a coordination mechanism amounts to establishing a fully-fledged justice sector 'owner', who is then capable of developing an itemised reform policy and strategy, and tying it to a proper budgetary commitment, in turn creating a Sector Programme (also see paragraph 265 above).

271. Up until 2011, the GOM had not pursued a sufficiently itemised and consistent medium or long-term set of goals for the justice sector as a whole. Nor had there been a sufficient feedback with reform initiatives from the respective stakeholders of the sector, especially the judiciary. Even when such initiatives were brought forward from time to time, they merely appeared to cater for the immediate interest of the respective corporation, rather than the sector as a whole. The GOM Programme 2011-2014 - especially its chapters on the judiciary reform - were a welcome first step towards an ambitious sector-wide reform. Shortly after the JSCC and its Working Groups were set up in the beginning of 2011, the Draft Justice Sector Reform Strategy 2011-2015 was produced in July 2011, and formally approved by GOM on 6 September[71]. Its formal approval before Parliament is still pending.

272. The Draft Strategy complies, to a significant degree, with the conclusions and directions for reform suggested by the Expert Team in the first (consultation) version of this Assessment Report, which was disseminated to the Moldovan authorities in May 2011. The Draft Strategy foresees long-term justice sector reform by way of 7 chapters ('pillars'), including: a) courts, b) criminal justice, c) access to and execution of justice, d) combatting corruption in the justice sector, e) contribution of the justice system to economic growth, f) observance of human rights, and g) coordination of reforms and increased accountability. In the Expert Team's opinion, the Draft Strategy can be characterised as being:
    a. *comprehensive* as it concerns a wide list of areas of the justice sector which are intended to be reformed;
    b. *ambitious* as it attests a political commitment of the GOM to introduce profound changes in the sector;
    c. reasonably and clearly *structured* in terms of its definition of overall goals, specific objectives, expected results (but see the paragraph below), indicators of achievement and their temporal dimension (short-term, medium-term, long-term);
    d. divided in sufficiently *autonomous chapters* ('pillars') that should enable support by the EU of the whole Strategy, or only of a particular part thereof; the 'pillars' are further structured into rather coherent components (regulatory reform, capacity building etc.);

[71] see the English version of the Strategy as it stood in September 2011, after being approved by the GOM and while pending before Parliament:
http://www.justice.gov.md/file/proiectul_strategiei/SJSR_Gov_Version_En_DemSp_Translation_05%2009_.pdf

e. sufficiently *results-oriented* by reason of the inclusion of a wide array of quantitative and qualitative indicators of achievement, which will allow to measure effectiveness of the Strategy and improve it in the course of its implementation;

f. *cohesive* and *systemic* as it underlines various cross-cutting and self-reinforcing relationships in the sector; it attests the domestic authorities' understanding that a certain change in one block of/relationship in the justice sector will give a reasonable prospect of success in reforming another;

g. acknowledging the need of developing and strengthening the sector reform *coordination* (including consultation) mechanism;

h. establishing the basic framework for the Strategy's implementation, *monitoring and evaluation*.

273. In view of the very fresh developments described above - which owed at least in part to, and took place in concert with, the present justice sector assessment mission - the Expert Team considers that sufficient evidence of proper 'policy statements' in the area of sector-wide policy and strategy already exists. The SWAP principle is thus applicable to the Moldovan justice sector. At the same time, the country is not yet 'eligible' for SPSP pending the following (also see paragraph 285 below):

- itemisation, finalisation and formal approval of the Draft Justice Sector Reform Strategy with realistic and achievable multi-annual budgetary commitments and projections tied to each major item of the Strategy, and drawn against the background of MTBF projections with regard to each relevant institution/block of the justice sector.

274. At the same time, in order to ensure greater quality of the eventual Sector Programme, the Draft Strategy could benefit from further improvements in order to increase supportiveness of the context for the eventual SPSP:

a. the Strategy is yet to be properly itemised to include a list of activities and a road-map of their implementation, together with an activity timeline, detailing the modalities suggested for achieving the specific objectives, expected results and measurable indicators of achievement;

b. each constituent item of the Strategy - including, preferably, also its suggested activities - needs to be evaluated in terms of its projected financial cost, and presented against the background of MTBF projections of each respective sector block/institution (also see paragraphs 277-282 below);

c. the Strategy in its final completed form is yet to be formalised - that is, finalised and approved by the JSCC and Parliament;

d. continuous flow of feedback needs to be ensured from all the relevant stakeholders concerning the sector reform Strategy/Programme; each decision and reform plan is to be subject to consultation and discussion with the key stakeholders in order to draw up the most effective, efficient, relevant and realistic organisational structures with appropriate mandates;

e. sufficient capacity reached by each stakeholder to contribute to the development of new chapters of the Strategy/Programme and oversee their implementation.

275. It is expected that the Justice Sector Reform Coordination Project and other possible interim efforts to support the Moldovan authorities together with the 'substantive component' of the Action for Justice Sector Policy Support (see paragraphs 240-246 above), will provide valuable inputs to the JSCC, MOJ, GOM and other stakeholders to help achieve the objectives indicated in the paragraph above.

276. In sum, the evaluation of the Expert Team in this area as to the applicability of SWAP is positive, and as to the eligibility for SPSP (SBS) - negative.

iii. Sector Budget and Medium-Term Budget Framework (MTBF)

277. The budgeting system in the justice sector is very complex, because some of the sector stakeholders derive their budgets directly from Parliament, while others have separate budget lines as part of the Government allocation, whereas others still (private corporations such as the Bar and Bailiffs) depend on contributions by their members. The basic description of the budgeting cycle of the most important sector actors is as follows:

a. early each year the Ministry of Economy (MOE) assesses macroeconomic and monetary performance indicators and the projected growth numbers of the country for the on-going year, based on statistics for the previous year;
b. these indicators serve as a basis for the Ministry of Finance (MOF) - in coordination with other Government agencies - to formulate specific budget methodology for next year, around the month of April of the on-going year;
c. MOF prepares a Draft Budget for next year, indicating a benchmark ('control number') suggested with regard to each budget line; each budgetary line consists of operational and investment needs of an institution;
d. Draft Budget is sent to each respective Ministry or autonomous government department for comments in May or June; each authority may request an increase with regard to their operational or investment needs, while providing reasons for departure from the 'control numbers';
e. following the receipt of comments from each department, the Draft Budget is submitted 'as is' (the original 'control numbers' suggested by the MOF together with the comments from each department) to the GOM in September;
f. GOM sends the Draft Budget to Parliament in October;
g. Parliament usually approves the budget in November; since the Parliament was in recess during most of the second half of 2010, the budget for 2011 will have to be approved retroactively at some point in 2011;

h. MOF Prepares a Draft Budget for next year based strictly on the macroeconomic indicators and growth projections submitted by the MOE.

278. Up until 2009, the budgeting of courts was subject to the same rules as those applicable to the executive authorities. Now the SCM applies directly to Parliament with its budgetary request on behalf of the courts, excluding the Supreme Court, which makes its own separate request to Parliament. Nonetheless, a separate line on the proposed courts' budget is also included in the Draft Budget formulated by the MOF under the heading of the Ministry of Justice budget. This 'alternative' budgetary request on behalf of the courts is coordinated by the MOF with the Courts Department of the Ministry of Justice. According to the MOF and some other interlocutors interviewed by the Expert Team, this 'alternative' budgetary request is needed for various reasons, including the lack of capacity by the SCM to properly substantiate its independent budgetary request to Parliament. With regard to the proposed budget for 2011, a discrepancy between the budgetary request of the SCM (160 million lei; about EUR 10 million) and the proposed budget for the courts in the 'alternative' line of the Budget Draft of MOF (110 million lei; less than EUR 6.8 million) was almost 50%. While no separate line concerning the Supreme Court is included in the Draft Budget formulated by the MOF, the SC's attempts to justify its budgetary needs directly before the Parliament are also largely unsuccessful. Last year the Parliament rejected the SC request to increase its budget allocation by 50%. In sum, the Moldovan courts have a formal ability to request independent budgeting from Parliament, but their actual ability to exercise that power is limited, owing *inter alia* to the overlapping regulatory framework and the lack of capacity in substantiating their budgetary needs. The Concept on the Financing of the Judiciary also attests the need to create a viable and efficient mechanism to empower the courts to obtain their budgeting independently (see paragraph 33 above).

279. The PGO is subject to the same budgeting procedure as the executive departments of the GOM. In particular, the PGO budget is formulated by the MOF and sent for comments in May or June of each year. On 15 July 2010 the PGO sent their comments on the proposed Draft Budget, requesting 90 million lei, while MOF proposed allocating them 60 million lei (or EUR 3.75 million), namely a zero increase from 2009 and a discrepancy of 50% from the requested allocation. The Draft Budget for 2011 was sent by the MOF to the GOM 'as is', together with the PGO comments. According to the usual - but largely unregulated - convention, the Prosecutor General lobbies the Government directly for an increase before the Draft Budget is sent to Parliament. All in all, the PGO's ability to request budget independently from the Government is very limited.

280. The same procedure described in the paragraph above applies to the CCECC, which has the right to submit its comments to the MOF regarding the proposed Draft Budget. By contrast, Separate justice-related departments of the MOJ (Penitentiary, Probation) or MOI (Investigation) have no separate budget sub-lines in the Draft Budget, and no autonomous capacity to communicate with the MOF. They deal regarding their budgetary needs with the line Ministers directly, and the Ministries in turn represent their interests in commenting on the Draft Budget formulated by the MOF.

281. The system described above shows that budgets are allocated in Moldova, as a matter of practice, based primarily on historic spending. A medium-term Budget Framework (MTBF) consists of a top-down estimate of aggregate resources available for public expenditure consistent with macro-economic stability, bottom-up estimates of the cost of carrying out policies - both existing and new - and a framework that reconciles these costs with aggregate resources. The MTBF process was introduced in 2002 and is now an integral part of the budgeting process. However, its application remains very formalistic. Even where medium-term budgeting has been introduced, it does not appear to be wholly tied to a medium-term, results-oriented, planning framework. One result of this is that budgets are often readjusted during the year. Concomitant with the structural changes and re-alignment of the functions proposed, there should also be a recognition that such restructuring provides the opportunity for greater alignment of multi-annual planning and budgeting processes moving towards a credible, predictable and stable medium-term Budget Framework.

282. Starting from 2012, a new budget classification system should be introduced. There will be more use of non-financial performance information, so that the new system ensures that priorities in national policy are reflected in the budget. Successful implementation of the budgeting process will require further improvements in the MTBF. The Sector Expenditure Plans (SEPs), covering 85% of the State budget, will need to be developed as an effective tool for strategic sector prioritisation and *ex-ante* approval for TA and other aid delivery actions. The SEPs will be formally submitted to the GOM together with the 2012 Sector Programme budget (currently under preparation), which includes all the core sector stakeholders with the exception of the Penitentiary Department - the latter will retain a separate budget provision. In addition, the MTBF for 2012-2014 has also been prepared and forwarded to the GOM for approval. These developments provide the opportunity for greater alignment of multi-annual planning and budgeting processes moving towards a credible, predictable and stable Medium-Term Budgetary Framework. It is also expected that these developments will be anticipated by expenditure projections tied to the sector reform Strategy in the second half of 2011.

283. While the Concept on the Financing of the Judiciary (see paragraph 33 above) includes a general political commitment of Parliament to strengthen the budgeting of the courts, it lacks either any specific commitments or an outline of the ways of achieving them.

284. By reference *inter alia* to the structural (albeit, not, at this stage, fully operational) capability of the main stakeholder in the sector - namely the courts - to draft and obtain their budget independently, and in view of the comparative practices (the MTBF process was not yet in place in Georgia by the time the relevant SPSP was designed, and in fact is still only at a nascent stage at the material time), the Expert Team can detect evidence of express ‘policy statements’ by the domestic authorities to allow applicability of SWAP in the Moldovan justice sector.

285. However, in view of the Expert Team, the above circumstances show no 'substantive positive trends' to allow eligibility of the Moldovan justice sector for SPSP. The Expert Team considers that the following condition for the eligibility for SPSP should be set:

- itemisation, finalisation and formal approval of the Draft Justice Sector Reform Strategy (also see paragraphs 271-276 above) with realistic and achievable multi-annual budgetary commitments and projections tied to each major item of the Strategy, and drawn against the background of MTBF projections with regard to each relevant institution/block of the justice sector.

286. The above considerations mean that, while it would be premature to launch SPSP already at this stage, the necessary preparations (identification, formulation) may start pending the achievement of the results indicated above. In addition, the following goals may be set for the sector budget and planning process in order to improve the quality of the eventual SPSP:

a. formalised involvement of the Ministry of Finance and the State Chancellery Aid Coordination Unit representatives in the justice sector coordination mechanism for the purpose of finalising the Strategy and overseeing its implementation; this would help ensure that any strategic planning exercise by the JSCC, MOJ and other justice-sector stakeholders is not eventually undermined by the MOF or other competent bodies (also see recommendations for increasing supportiveness of the context with regard to the donor coordination mechanism in paragraph 267 above);
b. formal approval of the 2012 Sector Expenditure Plans (SEPs) together with the 2012 Sector Programme budget;
c. formal approval of the MTBF 2012-2014;
d. substantive increase in proportion of national income spent on the courts of ordinary jurisdiction, the tentative number to be achieved in this respect being some 0.25 - 0.30% of the country's annual GDP (also see paragraph 60 above);
e. consideration of the question of transferring court fees, court fines and other court-imposed contributions to cover at least part of the courts budget;
f. strengthening the mandate of Judicial Administrators at courts - and the general outsourcing by the court presidents of facility and budget management matters to the Courts Department - which may eventually contribute positively to the courts' capacity to seek and obtain higher budgetary allocations from Parliament;
g. budgetary projections, budgetary requests and related programmes (activites) at each block of the justice sector will need to be better defined, while performance information will have to be better streamlined; in order to achieve this, capacity-building across all the sector stakeholders and line ministries will be needed.

287. Against the above background, the conclusion of the Expert Team as to the application of SWAP in this area is positive, and its conclusion on the current eligibility for SPSP (SBS) is negative.

iv. Performance Monitoring Mechanism

288. Proper performance monitoring should be more than simply the examination of progress against the sector strategy and action plan, and should include the monitoring of the impact of the reforms on the justice system, therefore including not merely quantitative but also qualitative criteria. Progress in the implementation of the reforms needs to be assessed against these broader outcomes every one or two years, and the strategy adjusted or modified where these are not being achieved, or where reforms appear to work in a counter direction. The monitoring condition also refers to the establishment of a sound statistical base to support evidence-based policy decisions, and to enable effective monitoring of the impact of implementation of the strategy on the various indicators of the justice system performance, allowing modifications to the strategy, where needed. The existence of a performance monitoring system is closely interlinked with the state of the domestic coordination system, a proper domestic performance measurement of which should be its constituent element. Since the justice sector has no single 'owner' for performance monitoring purposes, the coordination mechanism should include establishing an interlinked and comparable set of criteria, to be recommended to and subsequently applied by all the stakeholders.

289. While some of the Moldovan authorities (MOI) have already started revamping their performance measurement systems, these are merely the first steps. Quality control systems of courts in various European countries used for measuring performance of judges at individual and court levels - which include user-satisfaction surveys by the members of the legal community and the larger society - are not yet applied in Moldova. Furthermore, unification of some of the criteria of performance indicators (at least, in criminal justice) is necessary for a proper performance monitoring system to work. The system may still be considered to be at a very nascent stage. It is commendable that the newly-drafted Strategy (Part 7)[72] itself lays grounds for a monitoring and evaluation mechanism. It must be noted, however, that more than a year into the implementation of the Sector Programme in Georgia, performance monitoring system was not yet properly developed (see paragraph 258 above). Even though these concerns are considered by the Expert Team to be among the more serious impediments for future SPSP, there are already signs of 'policy statements' that make SWAP applicable to the Moldovan justice sector in this area of assessment.

290. At the same time, 'substantive positive trends' will have to take place along the lines indicated above to make an eventual SPSP more successful under this heading:

    a. various quantitative (increase in budgeting and staffing of each sub-sector, number of seminars attended, reduction of case-load, existence of ADRs) and qualitative (increase in speed, positive evaluations of the performance by the justice sector by the system users in various surveys and polls, improvement of standing of Moldova in various international ratings conducted by reputed NGOs, reduction of ECHR violations, positive conclusions in CPT, GRECO and other reports) criteria have to be used,

[72] http://www.justice.gov.md/file/proiectul_strategiei/SJSR_Gov_Version_En_DemSp_Translation_05%2009_.pdf

and set against the background of comparative statistics from other countries of the region in particular, and Europe in general, to be found in the CEPEJ reports and other similar sources;

b. monitoring needs to be oriented towards a block of projects rather than a particular project - and capable of making assessment of performance over a certain period of time;
c. it must be results-oriented rather than procedure-based;
d. unified performance indicators have to be developed at various sub-sectors (for instance, investigators, prosecutor, judges, probation and penitentiary officers in the field of criminal justice), and inter-linked to allow comparative analysis;
e. each stakeholder may be obliged to submit annual reports evaluating its performance and setting targets for improvement for next year, these reports are to be disseminated publicly, in order to be given sufficient media attention;
f. in addition to internal performance assessment by the justice sector stakeholders themselves, external performance audits may be commissioned by the EU as part of conditions for SBS disbursement, or by the JSCC, MOJ or GOM from the Moldovan Court of Auditors.

291. In sum, the conclusion of the Expert Team as to the application of SWAP in this area of assessment is positive. At the same time, the situation should evolve along the lines indicated in the paragraph above in order to make the relevant domestic context more supportive of an eventual SPSP.

v. Public Financial Management

292. The system of public financial management in Moldova has been assessed in detail by an Operational Assessment Report, commissioned by the European Commission and carried out by independent consultants in August 2010[73]. The Report took account of various aspects of the system, including budget preparation, execution, debt management, public procurement, public internal financial control and external audit, coming to a general conclusion of progress achieved within the last few years in all these areas. The MOF currently cooperates actively with the World Bank on a Public Finance Management (PFM) project, and with the EU on Public Internal Financial Control (PIFC) and Public Procurement projects. The latest ECFIN country operational assessment, undertaken in May 2010, takes a positive view of the PFM system transparency and effectiveness. A recent World Bank monitoring visit in November 2010 also showed positive PFM developments, indicating the reform being on track to achieve its objectives. Even more recently, it was found by independent consultants[74] that a new draft Public Finance and Fiscal Responsibility Law had already been forwarded for the GOM approval, likely to take place in the second half of 2011. Broadly the draft was assessed as in good shape, standing comparison with similar legislation in other countries. Areas that could be strengthened or reviewed included: a) the types of fiscal rules being envisaged, and

[73] *Moldova Operational Assessment*: Final Report. PricewaterhouseCoopers, August 2010.
[74] See *Aide Memoire on PFM in Moldova*, Brian Olden, Ljubljana, January 2011.

in particular the type of expenditure rule; b) the need to re-examine the escape clauses associated with the fiscal rule; and c) the format of fiscal institutions being considered to advise on fiscal policy formulation. The remaining relevant areas in need of continuous monitoring were determined as follows: a) strengthening of capital investment project monitoring, including rationalisation of the existing public investment portfolio; b) introduction of harmonised budget classification (also see section 2.3. above); c) introduction of the FMIS (IT) system in time for the 2012 budget year, including a possible development of a contingency plan in case of delays; d) improvement of quality of cash forecasts; e) further development, review and impact assessment of fiscal decentralisation strategy.

293. The Expert Team sees no reason to depart from these findings. While the status of the PFM reform in Moldova is far from completed, the Expert Team's conclusion on the application of SWAP is positive in view of the obvious 'policy statements' in the field. Moreover, 'substantive positive trends' have been identified over a recent time period, showing the relevant domestic context to be relatively supportive of an eventual SPSP in the justice sector.

vi. Macro-Economic Context

294. A strong feedback relationship may be asserted to exist between a good system of administration of justice on the one hand, and favourable economic development on the other, especially with regard to natural resources-poor country such as Moldova. On the other hand, more significant macroeconomic phenomena - such as the recent Financial Crisis - inevitably have a direct impact on each aspect of private and public life. Economic policy pursued by the GOM, and its interrelation with the current macroeconomic context, should thus be reviewed to the extent that they have an impact on the Moldovan justice sector.

295. Like many CIS countries, Moldova has lagged other countries of Central and Eastern Europe with regard to market-oriented reforms, as successive governments often focused more on preventing structural change than facilitating it. Hence, there is much to be done in order to make strong growth more sustainable. Barriers to entry, exit and reallocation are the product of excessive and often ill-administered regulation, such as excessive application of licensing and permit regimes, or rules and regulations governing issues like property registration and the conclusion of contracts. These serve little purpose except to raise transaction costs, in terms of both time and money. Moreover, regulatory process is in some respects as much of a problem as the substance of regulation. Moldova scores rather poorly on indicators concerned with such issues as the formulation of regulatory policy and effective communication with the business community. This reflects in part a failure to define with clarity the various roles that the State is to play in the economy, or to differentiate between those roles in ways that avoid undesirable conflicts of interest.

296. Moldova has the lowest GDP in Europe, ranking 131st in the IMF World list at USD 2,839 per capita in 2009. The country grew rapidly in 2007 (3%) and 2008 (7.8%) as foreign remittances and inward investment fuelled the economy, but in 2009 GDP fell by 6.5% due to the global downturn. The GOM developed an anti-crisis plan for 2009-2011 aimed at stabilising public finances, economic recovery and

adequate social protection system. Strong fiscal adjustment focused on restraining spending. The 2009 and 2010 deficits were below forecast as a result of increased tax revenue and expenditure cuts. The level of fiscal adjustment has been maintained to this date. Moldova 's economy strongly recovered from the recession, with GDP growing by almost 7 percent in 2010, and 8.4% (on an annual basis) in the first quarter of 2011. Revenue increase and expenditure savings contained the budget deficit to 6.3% of GDP in 2009, which was further reduced to merely 2.5% in 2010[75]. The IMF projects that growth should settle around 5% per year in 2011-2012. The current account deficit will widen to a rather significant 11.25% of GDP in 2011, before easing back somewhat within the next few years. Inflation is another concern, standing currently at an annual rate of 8%, above the target of 5% set by the National Bank of Moldova. High energy prices are among the main contributors to the current inflation level. The IMF is optimistic of Moldova's relatively low risk of debt distress, given that the public debt in Moldova was merely 30% of GDP at the end of 2010, and was not expected to rise. This optimism was further supported by the fact that public external debt consisted mainly of low interest loans serviced by various development partner programmes (also see the paragraph below). At the same time, the IMF underlined a rather high level of private external debt (45% of GDP) and its main source - liabilities by a Russian-owned Moldovan gas-trading company - to be among moderate causes of concern[76].

297. In the context of the IMF-conducted consultation process with Moldova, it was agreed that the GOM efforts to restore fiscal, external, and financial sustainability and stimulate growth were to be supported by two arrangements - the Extended Credit Facility and the Extended Fund Facility, amounting in total to SDR 369.6 million (USD 546 million). The IMF evaluation of Moldova continued in 2011, as a result of which a number of assessments of the macro-economic situation were made[77]. The IMF held that all quantitative performance criteria and applicable structural benchmarks of the IMF-supported loan programme were met, even though the Moldovan authorities had requested modification of two performance criteria for end-September 2011 and end-March 2012. The most recent policy discussions between the IMF and Moldova focused on: a) the 2011 budget and the strategy to complete the fiscal adjustment, whereby measures were agreed to support the next phase of budget consolidation while safeguarding investment and priority social spending; 2011 budget, as agreed in the context of the second program review, remained appropriate and measures were agreed to complete the targeted fiscal adjustment by the end of the IMF programme; b) pace of momentary policy tightening, while addressing inflation (especially energy-related) concerns but preserving a broadly accommodative stance; it was agreed that a rise in the mandatory reserve requirement ratio from 11 percent to 14 percent adequately addressed current inflation concerns; c) critical structural reforms, aiming to support fiscal adjustment, strengthen financial stability and promote private enterprise.

[75] See, most recently, IMF Country Report No. 11/89: Moldova, 28 June 2011. http://www.imf.md/press/SR_Jul2011_cr11200.pdf
[76] *Ibid.,* pages 3-5.
[77] *Ibid.*

298. The GOM is showing a strong determination to improving the business climate and promoting investment. Refunding of VAT for investment goods, reducing red tape, reducing agricultural land for industrial use and generally lowering the cost of doing business should all contribute to maintaining the current growth momentum. The budget deficit should be eliminated within the next 4 years mainly by cutting spending, tackling tax policy anomalies and improving tax collection. The GOM is using the improved economic recovery as an opportunity to reduce poverty. The budget for 2010 allocates more funds for social assistance. In 2010 the guaranteed minimum monthly revenue of a family was increased from 430 million lei (in 2009) to 530 million lei (EUR 33 million). While in 2009 social aid went to 17,000 families, in 2010 it benefited already 31,000 families. Expenditures for social aid have increased from MDL114 million in 2009 to MDL 270 million (EUR 16.8 million) in 2010. Social aid has also been extended and increased to a wide range of vulnerable groups, such as pensioners, the disabled, orphans. There have been significant improvements in the quality and efficiency of social services. The key objectives for the GOM in 2011 and 2012 are to advance fiscal consolidation, keep inflation under control despite adverse shocks, support balanced growth, consolidate macroeconomic stability and accelerate structural reforms[78].

299. The Expert Team considers that the above overview is sufficient to conclude that the recent positive economic developments in Moldova are supportive of the justice sector and its reform prospects, given in particular that there is no substantive disagreement between any of the political parties on the need to foster marker-oriented reforms. The Team's conclusion on the applicability of SWAP is positive, while the relevant domestic context is also relatively supportive of an eventual SPSP.

vii. Institutional Setting and Capacity Assessment

300. The level of success of any Sector Programme will boil down to the nature of the people involved, their degree of motivation and interest and their inherent skills and capabilities. Understanding the underlying human and institutional factors is perhaps the most important aspect of the assessment process. This will determine the inherent feasibility of a Sector Programme, while also providing a good basis for assessing the appropriate pace of implementation. A Sector Programme should also be dynamic - by promoting change and on-going development of capabilities. If this aspect of a programme is to be well-designed, profound understanding of the institutional and capacity issues is needed.

301. In the opinion of the Expert Team, 'capacity' is about "skills, performance and governance. The concept of capacity has evolved significantly from a narrow pre-occupation with training and technical assistance to dealing with the capacity of individuals, organisations and the broader institutional framework within which they operate to deliver specific tasks and mandates"[79]. While more training, better equipment, more staff and organisational restructuring can improve organisational

[78] *Ibid.*
[79] Building Effective States - Forging Engaged Societies: World Bank, August 2005, p. 12

capacity, without broader institutional reform, it is unlikely that sustainable improvements will be made. It may be possible and desirable to nurture isolated 'islands of excellence', but wholesale improvements in the institutional quality of the State are difficult to bring about through organisational change alone. While capacity initiatives can be designed for specific organisations, each organisation is only as good as the wider institutional environment in which it operates. The capacity to absorb major change and disruption whilst continuing to deliver vital services to the public - the so-called 'absorptive capacity' - is vital.

302. The justice sector stakeholders should understand the need for capacity assessment at systemic (sector), institutional, organisational, and individual levels. Even at the individual level, it is not simply a matter of competence (and thus of training or retraining), but also of willingness, motivation and application. At the State level, building capacity is fundamentally a good governance challenge, which must be coordinated through a comprehensive development framework and plan.

303. A requisite degree of leadership will have to be shown by the sector coordination mechanism with regard to each sector institution - and by each stakeholder within the institution itself - to effectively communicate the vision of the required reform in such as way that it is not perceived as threatening to people in the organisations concerned, who will inevitably tend to resist it, given that some of them may feel that it is being imposed upon them without sufficient justification, consultation or rationale. So far, the lack of consultation by the GOM with a wider array of the Moldovan authorities - and within the authorities themselves - has been established as one of the unfortunate features of many reform processes undertaken so far.

304. In general, the management and regulation functions in Moldova still appear rather prescriptive and inspection-oriented rather than supportive and development-oriented. A certain change in style will be needed to promote more effective management, coordination and regulation.

305. Any competences and accountabilities, if they are new and resulting from restructuring, may require to be enshrined in new legislative or other regulatory acts. Furthermore, the institutional or organisational competences and accountabilities must be replicated and appropriately cascaded through the job descriptions, contracts of employment, terms of reference (where appropriate) and responsibilities of individual senior managers of the sector bodies to reflect their roles and responsibilities for delivery of component elements of the sector, body, division, and institutional medium-term strategic and annual operating plans. In particular, it is desirable to link the performance of duties by a senior manager within the stakeholder to a service he renders to the sector as a whole.

306. Policy-making in regard to the justice sector reform should become the responsibility of each stakeholder. At the institutional level, this should entail, at least, the creation of a separate position or structure dealing in particular with providing feedback and new inputs for the sector coordination mechanism, thereby contributing to the development of new chapters in the sector programme.

307. The sector coordination mechanism will have to ensure leadership if an eventual Sector Programme is to be successful. This may be achieved through team-work over the joint sector reform strategy, which should create horizontal 'peer-support' mechanisms among the stakeholders. This will guarantee reciprocal controls, assists to fend off outside influences, and also add up a spirit of competition to the stakeholders' joint undertaking. The reliance of the Programme on the national expertise and also on the stakeholders' own capacities should eventually serve as a guarantee of its sustainability and financial efficiency.

308. According to the new methodology elaborated by the GOM Chancellery, the Moldovan executive authorities should elaborate medium-term (3 years) Strategic Development Programmes (SDPs), which should become a common exercise for all ministries and departments in 2011. The Expert Team considers that positive developments in this area will have a marked effect on the capacity of some of the justice sector stakeholders - notably the MOJ and MOI - to develop their own institutional strategies, while also contributing to the sector-wide strategy and reform efforts. The Expert Team encourages other, non-executive, authorities of the justice sector to transpose the whole or some of the elements akin to SDPs for their own respective institution or sub-sector.

309. The civil society in Moldova is increasingly active. Its representatives need to be more frequently included in the policy-making and coordination processes, to be consulted alongside the 'official' sector stakeholders. This would help the authorities to work more constructively in designing and implementing the Sector Programme, achieving a better institutional balance within such a complex sector as justice.

310. The role of Parliament should also be strengthened in managing performance of the sector stakeholders as well as improving quality of the legislative initiatives - by way of greater use of conventional and performance audit, surveys from citizens and the resultant development of self-assessment benchmarking results on an annual or semi-annual basis.

311. There seems to be a somewhat uncomfortable balance between the local and central government with no clear rationale at present for a policy of devolution or decentralisation in Moldova. At the same time, it must be mentioned that the local authorities play only a minor role in the justice field, with a few exceptions relating to the legal aid clinics at the local level, or given the possibility of the upcoming reform of the MOI which may outsource some policing functions to the local authorities (albeit, the latter possibility at this stage remains purely theoretical, given the large costs involved in maintaining local police forces). At the same time, possible strengthening of the role of local government as a mediating body, may take some pressure off the justice system in various minor disputes. The possible reform of local government in Moldova will also have an effect - albeit, admittedly, tenuous - on the functioning of the justice chain.

312. In view of the evidence of 'policy statements' on various aspects of the improvement of the institutional design and capacity (see paragraphs 16-35 above, in particular), the Expert Team concludes that SWAP is applicable under this area of assessment of the justice sector. At the same time, the situation should evolve

along the lines indicated in the paragraphs above in order to make the relevant domestic context more supportive of an eventual SPSP.

IV. CONCLUSIONS

313. The Expert Team considers that the core problems in the Moldovan justice sector could be grouped under the umbrella of 5 general areas, attesting a certain lack in:
    a. internal and external sector dialogue, interaction and coordination for better institutional and legislative design;
    b. performance by the courts;
    c. performance by and independence of the pre-trial investigation and prosecuting bodies;
    d. access to and execution of justice;
    e. institutional, legal and practical tools to combat corruption and impunity.

314. The Expert Team established a significant lack of performance in the following sub-sectors/thematic areas of the justice sector:
    a. courts;
    b. prosecution service;
    c. criminal investigation agencies;
    d. bailiffs;
    e. probation;
    f. Ombudsman;
    g. sector and donor coordination and reform strategy;
    h. combatting ill-treatment;
    i. combatting corruption;
    j. legal education and professional training system;
    k. direct application of the European Convention on Human Rights;
    l. ADRs.

    At the same time, despite a certain lack of performance, notable improvements in performance in regard to the following sub-sectors/thematic areas were established:
    a. Bar;
    b. legal aid;
    c. Ministry of Justice;
    d. penitentiary;
    e. Constitutional Court;
    f. Parliament;
    g. juvenile justice.

315. For the purpose of planning future EU support in the long term (up to 5 years), the Expert Team defines the priority areas of intervention as follows[80]:
    a. Particular attention was suggested to be focused on support to:

[80] A reader must be reminded, once again, that the level of prioritisation in no way means that a certain sub-sector is performing better or worse. The prioritisation levels are made strictly for the purposes of EU programming in order to increase the efficiency of assistance, on the basis of cumulative analysis of various criteria described in paragraph 47 above.

- sector and donor coordination and reform strategy;
- prosecution and criminal investigation;
- bailiffs;
- probation;
- Ombudsman;
- legal education and professional training system;
- courts;
- combatting ill-treatment;
- appeals system.

b. Continuing attention in the assistance efforts was suggested in regard to:
   - Bar
   - legal aid;
   - Ministry of Justice;
   - penitentiary;
   - combating corruption;
   - direct application of the ECHR;
   - juvenile justice;
   - Constitutional Court;
   - Parliament;
   - ADRs.

316. In the short to medium-term perspective (up to 3 years), the Expert Team recommends the EU to continue technical assistance based on the Action on Support to the Justice Sector Policy Reforms, in accordance with the Action Fiche 2011 (see paragraphs 240-246 above). Depending on availability of funding, a complementary new action may be designed in late 2011 or 2012. No twining in the justice field is proposed at this stage, given that full replication of only a certain aspect of institutional or regulatory design in one country has lower likelihood of finding effective application in another, given that all justice-sector institutions function within the context of very complex and diverse inter-institutional and regulatory relationships. In other words, something works in one sub-sector of the justice system only because other aspects of the sector are fine-tuned according to the customs, legal tradition and socio-economic context of the country concerned. Twining as a modality is limited in proposing a more systemic method - and holistic approach - of sharing best practices. Offering it may however be reconsidered once the local institutional design becomes more stable and the absorbing capacity increases. As the matters stand, technical assistance ensures a more delicate balance of taking account of various best practices, in order to propose a model for change that is conscious of the complexity of inter-institutional and regulatory relationships of the beneficiary country, as well as its customs and socio-economic context.

317. At the same time, justice-sector TA has to be improved to better ensure local ownership of any initiative, contributing to the preparation for an eventual SPSP. In other words, recommendations issued as a result of TA projects from now on should focus on ‘what’ needs to be achieved - the question ‘how’ to be decided by the JSCC, MOJ, GOM and the relevant stakeholders on the basis of the

recommendations elaborated by way of a particular TA project. The Action Fiche 2011 follows precisely this logic, aiming to ensure constant feedback relationships between the outputs of every justice-sector TA Project on the one hand, and their translation by the domestic authorities into a strategic recommendation and itemised action plan on the other. It is also proposed that, in the context of designing the next Project Action Fiche in a year or so, the relevant design and modalities should be based, as much as possible, on inputs provided by the JSCC, MOJ, GOM and other domestic counterparts themselves, assuming that by that time the Moldovan authorities will have elaborated an itemised sector-wide reform Strategy and Action Plan. Of course, TA should also be improved in other areas than local ownership, such as:

a. sustainability of donor efforts;
b. concentration, with focus on narrower topics in Project design, or clearer deconstruction of specific objectives, expected results and activities;
c. clearer, more measurable and realistic indicators of achievement.

318. In the medium to long-term perspective (3 to 5 years) and beyond, the Expert Team recommends the EU to gradually move towards sector-based approach in programming, while continuing provision of assistance by project based-approach in general - and technical assistance in particular - and maintaining a reasonable ratio between these methods and the SPSP. We found that sector-wide approach (SWAP) was applicable in the context of the Moldovan justice sector. Preparations for SPSP may start immediately by way of formal identification. While eligibility for SPSP has not been confirmed at this stage, this decision may be reconsidered once the following core condition of eligibility is satisfied:

> - itemisation, finalisation and formal approval of the Draft Justice Sector Reform Strategy with realistic and achievable multi-annual budgetary commitments and projections tied to each major item of the Strategy, and drawn against the background of MTBF projections with regard to each relevant institution/block of the justice sector.

319. While achievement of the above condition for eligibility is important to ensure as soon as possible, the Expert Team further draws the EU's attention to a number of recommendations made in order to increase supportiveness of the domestic context for a future SPSP (see, most importantly, paragraphs 267, 274, 286, 290, 300-312 above). The Expert Team considers SPSP assessment as a process, which - even where the action has been approved - advances as it is implemented, involving constant monitoring and improvements by both parties (the EU and the beneficiary country) in itemising the relevant criteria, determining new conditions for their gradual fulfilment, and setting further indicators for advanced monitoring. The question is of degree of success of a Sector Programme, and not of its nature, and it is therefore not so important to answer hypothetically whether the justice sector SPSP in Moldova would work or not. Rather, the Expert Team has sought to establish *how* SPSP would *work best* in the Moldovan context by making the above recommendations.

320. It may be reasonably assumed that the possible SPSP (including sector budget support as its core modality) would leave the national authorities a maximum flexibility and authority in the allocation of funds. The advantages are a truly holistic

view and drastically reduced transaction costs. Disadvantages derive from the fact that 'justice sector' is an oxymoron - not a sector in the classic sense but rather a large cluster that comprises a multitude of different authorities, activities and relationships. Moreover, many strategic and tactical conditions are not yet of sufficient quality to currently allow a well-planned and well-executed SPSP, albeit it is the Expert Team's belief that the domestic authorities' ability to properly coordinate and drive the reform process will improve as/when the SPSP kick in, as has been the case in Georgia and other countries. It is hard to foresee at his stage, with sufficient certainty, when the justice sector SPSP may be launched. In the opinion of the Expert Team, a tentative date in this respect may reasonably be set at 1 January 2013. This would allow enough time for the domestic authorities not only to comply with the eligibility condition set out above, but, even more importantly, make additional steps to increase the supportiveness of the domestic context for greater quality of the eventual Sector Programme - and an increased chance of a successful SPSP.

321. As to the preparations to be made by the EU, in addition to establishing a clear and verifiable set of criteria to measure achievement of objectives and expected results, proper phasing of the SPSP will be essential. Short-term, medium-term and long-term benchmarks should be set, accompanied by 'quick wins'. Based on the Georgian comparative practice, the Expert Team would suggest adding a 'Completion Stage' to the Implementation Stage, in order to measure soundness/degree of the Programme's effects, and lay foundations for a subsequent Programme. The EU Delegation in Moldova, as a direct implementing body of the justice-sector SPSP, may use a number of instruments at various stages of the Programme, including:
    a. policy dialogue between the JSCC, MOJ, GOM and other stakeholders for the Programme design purposes;
    b. Steering Committee for overseeing the management of the Programme by the Moldovan authorities;
    c. employing review missions and audits (internal or external/independent) for monitoring and evaluation purposes, to be held at various stages of the Programme implementation, in order to establish progress in the level of compliance with the general SPSP areas of assessment, and the specific conditions (sector-wide and relating to a particular sub-sector, including sub-conditions, criteria and indicators).

322. But even once the SPSP is launched, the proportion of other aid delivery methods should not decrease drastically. As long as the institutional setting, capacity and other relevant conditions (*inter alia* those mentioned in paragraphs 267, 274, 286, 290, 300-312 above) have shown no radical improvement, the SPSP will remain a venture with serious inherent risks. In the Expert Team's opinion, it is of paramount importance for the EU not to be lured into the likely assurances by the domestic authorities and other beneficiaries that the eventual SPSP (and, especially, sector budget support) is 'working perfectly', or tricked into the very superficial advantage of SPSP of showing higher disbursement rates than other methods of aid delivery. The Expert Team advises the EU to exercise a proper dose of restraint and serious analysis in overseeing the SPSP implementation by way of various internal and external tools, some of which have been recommended in this Report. This is why, based on an in-depth knowledge and a realistic analysis of the current Moldovan

context, the Expert Team considers that a reasonable proportion of the EU assistance to Moldovan justice sector in monetary terms will have to continue to be provided by project-based approach in general - and technical assistance in particular - well beyond the long-term perspective, in order to ensure a delicate balance between the various approaches. The Expert Team considers this balance as a core ingredient of increased performance in aid delivery. Moreover, the Expert Team recommends the SPSP 2013-2015 in the amount of EUR 40 million - that is, at a lower band of the indicative size of the Programme currently contemplated by the EU.

323. Any process of change has risks and strengths. One of the major risks in a reform process in Moldova is the speed of change. Policy changes (or adoption) may seem to require that new structures and organisations should be introduced overnight, or at a rapid pace, whereas complete implementation (with due reference to best practices for change leadership and change management strategies) is inevitably a long process. Moreover, implementation of new changes if often hampered by new changes being perceived as 'imposed' from above and 'not invented here'. Understanding of the inevitable need to manage and overcome natural resistance is often weak or ignored with the result that plans can be derailed. In addition, changes may be announced without any clarity concerning the consequences for people's jobs, the role of other institutions or the basis of the methodological analysis and international practices on which recommendations have been offered. Unfortunately, examples already exist of agencies that have been reformed or new structures that have been summarily created - because this seemed logically correct in theory and from a methodologically theoretical point of view - and although general mandates (responsibilities) for these agencies were correctly described, it may be unclear to the management and staff of such institutions why the proposed structure will offer better services than the existing one. Sometimes, however, the pace of the reforms can also be seen as strength, and the sense of urgency created can be valuable to generate momentum and recognition that the Government is really serious about reform[81].

324. The reality is, however, that it will be impossible to attempt to implement all of the recommendations immediately and at the same time. The JSCC, MOJ, GOM and other stakeholders will have to decide on their priorities regarding sectors and what they consider to be key bodies, or indeed key recommendations within those sub-sectors, blocks or thematic areas. Implementation must then be planned based on a phased system of 'platforms' of achievement, milestones, or steps, with each platform consisting of a manageable number of strategic initiatives (to be commenced), and a number of 'quick wins' to be achieved within the time frame of each platform. The complete achievement of a 'quick win', or the commencement of a much larger strategic initiative could both be seen as 'key' milestones for reform. Achievement of each platform should enable progression to the next stage or phase of activity. All this, in view of the Expert Team, should make part of a well-itemised and structured reform strategy. Final decisions must be made by the JSCC, MOJ GOM and other domestic actors based on the political and fiscal realities, and not

[81] *Sector Report: Justice and Home Affairs* (Sector 1): DAI Europe Ltd., London, 2006; p. 96

simply because the aspiration to follow best European practices would advocate change.

325. Additional danger of preceding an integrated performance monitoring system (and, accordingly, performance-based budgeting) with any assessments and functional reviews is that structures may have to be modified again once this strategic process has been completed. The Georgian SPSP example attests that good performance monitoring system - both at individual, institutional as well as process (reform) levels - may prove to be the most elusive goal to be achieved despite a relative success of the SPSP. And even performance monitoring, on its own, is only one of the core ingredients necessary to be in place for greater efficiency of aid, irrespective of its delivery method or modality. This attests a never-ending process of improvement involving both the donors and the beneficiaries. “Traveller, there are no roads. Roads are made by walking” - according to an old Spanish proverb. Having said that, the Expert Team expects that this Report could serve at least as ‘food for thought’ in helping the Moldovan authorities, the EU and other donors to stay on firm track of achieving better institutional and regulatory design for a more efficient system of administration of justice, despite the obvious inexistence of an ideal and all-fitting solution.

V. ANNEXES

1. Additional Sources used by the Expert Team in the Assessment:

- *Assessment of Juvenile Justice Reform Achievements in Moldova*, UNICEF, Chisinau, 2010.
- *Assessment Report on On-going Training Needs of Judges and Prosecutors within the NIJ*, C. Cojocaru, Chisinau, 2010.
- *Building Effective States - Forging Engaged Societies*, World Bank, 2005.
- *Criminal Justice Performance from a Human Rights Perspective*, Soros Foundation Moldova, Chisinau, 2010.
- *CPT Report on the visit to Moldova carried out from 20 to 30 September 2004*, CPT/Inf (2006) 7, Strasbourg, 2006.
- *CPT Report on the visit to Moldova carried out from 27 to 31 July 2009*, CPT/Inf (2009) 37, Strasbourg, 2009.
- *Decisions on Arrest by Investigative Judges in Moldova*, Soros Foundation Moldova, Chisinau, 2010.
- *EC ID Fiche for SPSP* (ENPI/2010/022-562), Tbilisi, 1.7.2010.
- *Entrenching Impunity. Moldova's Response to Police Violence During the April 2009 Post-Election Demonstrations*, Soros Foundation Moldova, Chisinau, 2010.
- *European Judicial Systems: Efficiency and Quality of Justice*, CEPEJ, Strasbourg, 2010.
- *Evolution of the Perception regarding Corruption Phenomenon in the Republic of Moldova 2005-2009*, MOLICO, Strasbourg, 2009.
- *Judicial Reform Index for Moldova*, ABA, Washington, 2009.
- *Judicial Reform in the Framework of the EU-Moldova Action Plan Implementation*, A. Cocirta, ADEPT, Chisinau, 2009.
- *Moldova Operational Assessment: Final Report*, PricewaterhouseCoopers, Chisinau, 2010.
- *Minutes of 2nd, 3rd and 4th Rule of Law Roundtables*, OSCE, Chisinau, 2010.
- *MOLICO Project Evaluation Report*, Strasbourg, 2009.
- *Opinion on the Draft Law on the Prosecution*, Venice Commission, Venice, 2008.
- *Quaterly Reports 1, 2, 3 and 4 of the Twining Project 'Support to Moldova in Prisons System Upgrading and Penal Reform'*, IRZ, Chisinau, 2010.
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- *Sector Report: Justice and Home Affairs (Sector 1)*, DAI Europe Ltd., London, 2006.
- *SPSP: Support to Criminal Justice Reform in Georgia, 2009 Second Instalment Final Review* (ENP AAP2008), Tbilisi, 2009.

- *Strengthening Civil Society in Moldova. Marginalized Groups, Social Reintegration of Ex-Detainees*, SIDA-Soros Foundation Moldova Project Evaluation Report, Chisinau, 2009.
- *Support to Sector Programmes*, (EC) Guidelines no. 2, Brussels, 2007.
- *The Legal Profession in Moldova*, OSCE, Chisinau, 2008
- *Trial Monitoring Report Moldova*, OSCE, Chisinau, 2009.
- *Victimisation and Public Confidence Survey*, Soros Foundation Moldova, Chisinau, 2011.

2. Minutes of Meetings carried out by the Expert Team in July-December 2010 could be obtained on demand from the EU Delegation in Moldova.