

Recommendations to Reform the Prosecutor's Office of the Republic of Moldova in 2014

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Despite the stated interest to undertake a multidimensional reform of the Prosecutor's Office, few of the defined priority activities were carried out, while the initiated ones are at an early stage. Both the foreign monitoring and the domestic observers found deficiencies in respect of the promotion of initiatives aimed at reforming the Prosecutor's Office. Thus, the reform of the Prosecutor's Office has at present arrears as regards most of the chapters. However, certain actions, related to the overall reform effort, were implemented during the reporting period.

The strategic framework and the first actions

The Strategic Development Program for 2012-2014 (PDS) was drawn as part of a general development program of the public administration authorities in the Republic of Moldova. This is the "main document of the management and strategic planning of the Public Prosecutor's work, which provides analysis of the current needs, the combination of the priority targets, linked to the other national and international policy documents, directions of activity and medium-term priorities and the way to implement them, assessment of the performance and ways of the institutional capacity building, as well as the procedures used to monitor, evaluate and report on the Program implementation results".

The PDS is drawn for a three-year period (2012-2014), but taking into account the fact that it was actually approved at the end of the first year of implementation (December 2012), an impression of a formal approach may be created. Additionally, on the date the PDS was approved, some implementation deadlines have either expired or exceeded the period for which the document was approved. In this context, in the process of drawing the PDS, it was recommended to consider adjusting the program implementation period for 2013-2015 and review the time frames to implement specific objectives. In the end, this recommendation was not taken into account.

An important aspect of the PDS is that the concerned institution must have full control over the implementation of the objectives set in the Strategic Development Programme. This requirement is not fully achieved in the context of the Prosecutor's Office. PDS lists valuables without being, certainly, in full control of the Prosecutor's Office. Another alarming aspect is the lack of clearly defined financial framework for the implementation of the Strategic Development Programme.

The Prosecutor's Code of Ethics is a set of rules of conduct incumbent to the prosecutors in the performance of their duties and in their private life. The Rules of Conduct are binding on all the prosecutors. Any violation of the Code of Ethics may be regarded as disciplinary misconduct in accordance with the Law on the Prosecutor's Office.

The Codes of Ethics are a valuable tool in the efforts to combat corruption, ensuring independence, impartiality and transparency. In this regard, it is more appropriate to accept and

apply the rules of conduct by the concerned professional group itself, instead of only imposing them by the force of law. Although there are both an overlapping and an interaction, the principles of conduct must remain independent from the disciplinary rules applied to the prosecutors, meaning that the failure to comply with some of these principles should not in itself constitute a disciplinary offence or a civil or criminal violation. Otherwise, the prosecutors (especially the hierarchically inferior ones) would operate under the permanent threat of the possibility of being held disciplinary accountable.

In 2012, the Criminal Procedure Code and the Civil Procedure Code have undergone a process of substantial change. Some of these *procedural reforms* aimed the prosecutor's role in the process. Thus, the amendments to the Criminal Procedure Code have established conditions to ensure the independence of the prosecutor's decision within the process: the obligation to countersign the indictment by the hierarchically superior prosecutor was excluded, were limited the powers of the hierarchically superior prosecutor during the criminal proceedings were limited, particularly as regards the authorization of some criminal proceedings actions or acts. These amendments will contribute to enhancing the individual responsibility of the prosecutor for the undertaken criminal proceedings. Additionally, the prosecutor's role in undertaking special investigative activity was regulated, both by assigning power to authorize some special investigative measures and by assigning the responsibility to abide the legal framework in undertaking them.

The amendments to the Code of Civil Procedure involved the exclusion of two situations in which the prosecutor is entitled to file a civil case to the court to defend the rights and interests of the state and the society. However, a substantial revision of the prosecutor's role and status outside the criminal justice has not occurred.

The General Prosecutor's Office and the Ministry of Justice have joined their efforts to accelerate the Prosecutor's Office reform, by issuing *Joint Order of 11/07/2013 on Setting up the Working Group for drafting laws in order to achieve and promote the prosecutor's office reform*. This initiative is welcomed and should have the potential to generate the desired results, especially when the arrears in this segment are obvious. However, the very limited declared time frames, especially in the context of the lack of a clear vision and perspective on the Prosecutor's Office and the inconsistency of the political will in this regard may lead to unforeseen side effects or, on the contrary, may generate the same results as before - a declarative interest for reform and changes without any essential value.

Obstacles to the reform

The process of the Prosecutor's Office reform encounters a number of obstacles and hazards, the approach of which will determine the result obtained within this process: the expected change *or* camouflage and persistence of the problems.

Declaratively, the Prosecutor's Office reform is on the political agenda of the government, the need for the complex changes being declaimed from different stands. However, it is unclear whether there is a real political will to implement the conceptual reforms. The SWOT analysis,

carried out in the context of drawing the Strategic Development Programme, does not identify a real political will to promote the institutional reforms as a "strength", but finds it only as an "opportunity". At the same time, the "inconsistency of the political will in achieving efficient and sustainable reforms" and "the incorrect perception by the legislative and the executive powers of the Prosecutor's Office duties in relation to those incumbent upon some other state institutions in the process of ensuring public order, protection of the rights and freedoms of the citizens, representation of the state interests and fighting against crime" are recognized as "threats".

On the other hand, the continuous political tensions between the ruling parties have affected the progress of reform in the Prosecutor's Office. The Prosecutor's Office continues to be vulnerable to the political influence. This was especially visible in the appointment of the new Prosecutor General. Thus, the removal of the Prosecutor's Office from under the political influence should be an absolute priority. An indirect step in this direction was taken by the Constitutional Court, which, in the process of finding the constitutionality of the appointment of the Prosecutor General, mentioned that *"once consumed, the vote cannot be revised. A procedure to review the voting is not and cannot be provided for because it would upset the entire legislative process and would compromise the legislative authority of the state, it would affect the security of the legal reports and even the national security, if the possibility of returning after a period time, to the votes cast for passing some decisions or laws would be admitted, based on the personal or political interests of the moment"*.

The new leadership of the Prosecutor General comes with a clear message that the changes are necessary and the will in this regard is firm. However, some institutional/internal resistance to these processes cannot be excluded, as problems caused by the resistance of the Prosecutor's Office bodies to the reform initiatives and the insistence of the institution upon being "self-reformed" have been previously noted.

So far, the efforts to reform the Prosecutor's Office were not accompanied by financial benefits commensurable to the set objectives. Even if the budget of the Prosecutor's Office increased over the past three years, this increase is mainly due to the staff costs. At the same time, the capital investments have been neglected in the budget of the Prosecutor's Office. Carrying out some strategic initiatives based only on the operating budget of the institution cannot demonstrate a genuine interest in the change. Thus, major investments, including the ones into the infrastructure and the personnel, are necessary to achieve the anticipated results.

The lack of the constitutional reform on the Prosecutor's Office segment is a clear obstacle for advancing the proposed changes. The need to amend the constitutional norms to provide a framework for future changes in the system of the Prosecutor's Office has been repeatedly noted. Otherwise, the efforts that are currently undertaken might be useless.

The confidence of the population in the Prosecutor's Office is affected by several reasons, including the mismanagement of some cases with increased resonance, corruption cases and conflicts of interest. The reduced capacity to communicate with the public under difficult situations has also created a poor image for the Prosecutor's Office, which cannot be neglected in the context of the reform initiatives. At the same time, attention was drawn towards the

complicated structure of the Prosecutor's Office bodies, which does not contribute to the work efficiency.

Recommendations

Even after more than 20 years of independence of the Republic of Moldova and after three Laws on the Prosecutor's Office were passed, the Prosecutor's Office system has not escaped the "Soviet label" as regards its duties, operation and organization. The vulnerability to the political influence, the mismanagement of the crisis situations, the prosecutor's improper status and powers, including the Prosecutor General, in relation to the requirements of a modern and democratic society, the contradiction between the autonomy and the hierarchy of the prosecutors, the insufficient allocated financial resources, the obsolete constitutional norms and the lack of the will and interest in the institutional reform are some of the problems currently faced by the Moldovan Prosecutor's Office and which require an immediate and responsible approach by the decision makers and support on the part of the civil society and development partners.

The reforms that are proposed and those that are necessary to be undertaken within the Prosecutor's Office can be grouped into several conventional blocks:

- *The Status of the Prosecutor's Office in the system of the law enforcement bodies* - is it natural to preserve and strengthen the Prosecutor's Office within the judiciary authority or would it be more appropriate to position it within the executive branch, or grant it an autonomous status?;
- *De-politicization of the Prosecutor's Office*;
- *The Status of the Prosecutor General* - improve the appointment/dismissal procedure, hold accountable, procedural powers, limit the political factor in these processes;
- *The prosecutor's status and powers* - focus the role of the prosecutor in the criminal matters, diminish the role of the prosecutor in the non-criminal matters, the correlation between the autonomy and hierarchy, strengthen the independence of the prosecutors, introduce the express prohibition to give individual instructions on a particular case, the demilitarization of the Prosecutor's Office;
- *Prosecutor's career* - access to the profession, promotion, disciplinary accountability, immunity;
- *Institutional capacity building* regarding the criminal investigations of the categories of crimes within the competence of the Prosecutor's Office; communication with the public, authorities and other partners; strategic planning, including the budget planning;
- *Institutional Strengthening of the Prosecutor's Office* - review the internal structure; streamline the number of the prosecutors and non-prosecutors within the system of the Prosecutor's Office; create appropriate work conditions; ensure adequate remuneration; strengthen the anti-corruption and integrity measures;
- *Strengthen the representative and self-management bodies of the Prosecutor's Office* in terms of their functionality and independence;
- *Constitutional reform of the Prosecutor's Office* is an intersectoral topic;
- The systemic implementation of each of these conventional reform blocks requires involvement and responsibility on the part of many decision-makers and implementing partners. In this regard, it is recommended:

A. To the General Prosecutor's Office:

- Mobilize internal human resources necessary for the activities provided within the Justice Sector Reform Strategy for 2011-2016;
- Make public the results of its work as regards the implementation of the Prosecutor's Office reform, including conducted studies and researches, organize timely public debates, with a multidisciplinary participation, upon the considered legislative, administrative and institutional initiatives;
- Review and consider, while developing or identifying appropriate legislative, administrative and institutional measures, the comments and recommendations of the experts of the Council of Europe, the Venice Commission, OSCE and other development partners regarding various aspects of the organization and functioning of the Prosecutor's Office;
- Enhance the transparency in the work of the Prosecutor's Office, including the communication capacity building in crisis situations, publish the departmental normative acts of the General Prosecutor's Office, review the website of the Prosecutor General's Office to ensure accessible, interactive and meaningful content to the user;
- Review the institutional structure of the Prosecutor's Office and ensure the maximum utilization of the prosecutors to perform the tasks specific to the prosecutor's position;
- Promote and make use of the modern tools within the investigations, including the use of the analytical software solutions;
- Strengthen the implementation of the anti-corruption measures within the Prosecutor's Office, especially in the context of the fourth round of evaluation by GRECO, launched in 2012, involving the analysis of the corruption prevention measures concerning the members of the Parliament, judges and prosecutors;
- Review the Prosecutor's Strategic Development Program for 2012-2014 to ensure the maximum convergence with the experts' recommendations and the provisions of other competing strategic documents.

B. To the Government:

- Initiate, through the Ministry of Justice, together with the General Prosecutor's Office, the procedure to review the Constitution to provide the modern constitutional framework regarding the operation of the Prosecutor's Office;
- Allocate sufficient and necessary financial resources for the efficient implementation of the planned reforms, including for the capital investments in the Prosecutor's Office infrastructure;
- Implement a salary reform for the Prosecutor's Office employees to ensure an appropriate salary level;
- Acknowledge the Prosecutor's office as a priority beneficiary institution in the process of negotiating the foreign support for the justice sector reform, as well as for other institutional development tools;
- Lead a constructive dialogue with the General Prosecutor's Office regarding the legislative, administrative and financial solutions for the issues identified during the reform process.

C. To the Parliament:

- Stop any direct and indirect attempts at political influence or subordination of the Prosecutor General and the General Prosecutor's Office;
- Consider the Prosecutor's Office reform, including the constitutional one, as a priority;
- Show unequivocal political will in reforming the Prosecutor's Office and support in a constructive way the legislative and institutional solutions proposed within this context;
- Refrain in the process of reforming the Prosecutor's Office from the decisions based on political or group ambitions and interests group.

D. To the Civil Society:

- Continuously and impartially monitor the process of reforming the Prosecutor's Office;
- Support the efforts to reform the Prosecutor's Office by expertise, technical assistance, alternative proposals and become an equal partner in the implementation of the proposed reforms.

E. To the Development Partners:

- Support, as much as they can, the efforts to reform the Prosecutor's Office by expertise, technical assistance programs and budget support, specifically directed to this institution;
- Insist upon the fact that the reform process requires commitment, will and consistency on the part of all stakeholders, while the rush in this process can be counter-productive;
- Take into account the independent opinions and assessments in the process of assessing the *de facto* situation and performance of the reforms in the justice sector, in general, and as concerns the Prosecutor's Office segment, in particular;
- To not encourage the promotion of half-measures by the national authorities. A more tolerant attitude can occur when there are objective circumstances which delay the implementation of some proposed activities.

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