



Norwegian Ministry
of Foreign Affairs



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TERMS OF REFERENCE

- A. Job Title:** **National consultant** to support the National Anticorruption Centre in drafting of an analytical study on the examination of active corruption cases in judicial practice and application of sentences in these cases for the period 2013-2015
- B. Duty Station:** Chisinau, Republic of Moldova
- C. Project reference:** Strengthening the corruption prevention and analysis functions of the National Anticorruption Center (NAC)
- D. Contract type:** Individual Contract (IC)
- E. Duration of assignment:** March - April 2016

F. Project description

Corruption is acknowledged as a major obstacle for the reform process in Moldova, while various international rankings testify the high levels of perceptions of corruption. The Government, acknowledging the need to fight corruption, adopted the National Anticorruption Strategy (NAS) in 2011¹, which is implemented by two-year action plans². Anticorruption measures strongly feature in other major strategic policy documents, such as Moldova 2020,³ Justice Sector Reform Strategy (2011 – 2016) and its Action Plan⁴ and the National Action Plan for the implementation of the EU-Moldova Association Agreement (AA).⁵

National Anticorruption Center (NAC) has a well-defined mandate for the prevention of corruption and is the institution responsible for the coordination of the implementation of the National Anticorruption Strategy (2011 - 2015). While corruption prevention and analysis are priorities for NAC according to its Strategic Plan, the capacities of the institution in these areas are still underdeveloped for the appropriate implementation of the function as highlighted also in the 2014 NAC Annual Report.

In this context, the UNDP Project seeks to catalyze the emergence of the strongest possible national anticorruption institution, the *National Anticorruption Centre (NAC) and to strengthen its corruption prevention and analysis functions* in order to maximize their impact and also to help NAC in the implementation of the NAS.

G. Background

¹ Parliamentary Decision 154, of 21 July 2011, to adopt the National Anti-Corruption Strategy 2011-2015.

http://cna.md/sites/default/files/snadoc/national_anti-corruption_strategy_2011-2015_republic_of_moldova.pdf

² Parliamentary Decision 76, of 16.05.2014 to approve the Action Plan for 2014–2015 to implement the National Anti-Corruption Strategy 2011–2015.

http://cna.md/sites/default/files/snadoc/plan_2014-2015_eng.doc

³ <http://cancelaria.gov.md/lib.php?l=en&idc=435&nod=1&>

⁴ <http://www.justice.gov.md/#idc=420&>

⁵ <http://www.mfa.gov.md/implementarea-aa/>

A study on corruption cases archived in the courts for the period of 1 January 2010 to 30 June 2012, developed by the NAC with the support of the Supreme Court of Justice in October 2013⁶, showed a series of abuses committed by the courts in the process of individualisation and application of punishments. In particular, courts used in excess certain provisions of the Criminal Code that allowed considerable easing of the positions of the defendants/convicts, including exemption from the criminal liability and subjection to administrative liability; applying a plea bargain agreement and reducing the maximum sentence; and applying suspended execution of the punishment.

It was also determined that the courts did not convict and sanction the acts of passive corruption, committed in other forms than receiving of undue remuneration. The same was the situation with the abuse of power, inflicting considerable damages to public interest – crimes of this kind, committed against public interest, were not considered. The courts never confiscated the results of corruption crimes, limiting themselves to granting only the amounts of money transmitted under control during the crimes of *flagrante delicto*, that is the money offered also by the state.

According to the NAC 2014-2015 (9 months of 2015) reports, in the respective period courts examined 484 cases opened by NAC and Anticorruption Prosecutor's Office, of which 258 in 2014 and 226 in 9 months of 2015.

In 82 per cent of cases trial courts decided on the conviction with penal or administrative liability. In 18 percent of cases, trial courts ruled acquittals. Condemnation with real execution was applied by the first instance courts in 13 % of cases in 2014 and 17 % - in the first 9 months of 2015. Penal fines were applied in 70% of cases ruled with conviction.

In 31 % of cases on which verdicts of convict were ruled, courts applied suspension of punishment execution. Only 66% of public officials convicted for corruption offences were deprived from the right to occupy a public function. Penal fines were applied in 70% of condemnations. However, there is an inversely proportional dependency between the value of the received bribe and the applied fine. Thus, in case of a bribe of 10,000 lei the report to the fine is 1:7, while in case of a bribe over 100,000 lei the report is 7:1.⁷

Although the aforementioned report showed some improvement in judicial practice of trial courts related to conviction in corruption cases, still there is a small number of real condemnation for corruption offenses, the deprivation of the right to occupy certain positions or to perform certain activities, while security measures (special confiscation and extended confiscation) are not applied in the national judicature. In spite of the ambitious justice sector reform started in late 2011, adopted as a precondition for signing the EU-Moldova Association Agreement, these persistent practices continue to generate an uneven jurisprudence and the lack of consistent and coherent actions to punish persons guilty of committing corruption offenses.

To analyse the latest trends and practices applied by courts in corruption cases the project is seeking to engage the services of a *local anti-corruption expert to provide a thorough analysis of the examination of corruption cases in judicial practice and application of sentences in these cases for the period 2013-2015.*

G. Objective:

Main objective of the assignment is to draft an analytical study on the examination of corruption cases in judicial practice and application of sentences in these cases for the period 2013-2015.

H. Key Responsibilities:

⁶http://cna.md/sites/default/files/statdata/eng_studiu_privind_dosarele_de_coruptie_final_decembrie_2013.pdf

⁷ http://cna.md/sites/default/files/statdata/raport_de_activitate_2014-2015_11_luni.pdf

- In close collaboration with the National Anticorruption Centre's Corruption Analysis Unit to analyse the examination of corruption cases in judicial practice and application of sentences in these cases for the period 2013-2015;
- The analysis will include examination of criminal cases relating to Articles 191 (1) letter d) and paragraph (4), 256, 324, 325, 326, 327, 330, 333 and 334 of the Criminal Code of the Republic of Moldova;
- Analyse practices and trends in observing the *Reccomendation 61/2013 of the Supreme Court of Justice (SCJ) on some Issues regarding Individualization of Penal Punishment for Corruption Cases* and the *Decision 11/2014 of the SCJ Plenary on applying legislation on criminal liability for corruption offences*;
- The research will include the analysis of the court judgements on corruption cases delivered during the referred period of time; a desk review of the legal background documents and the most relevant strategic documents in the field of anticorruption;
- Elaborate recommendations for improving the practice and the relevant legal framework;
- Throughout the assignment transfer specific analytical skills to the staff of the Corruption Analysis Unit through on-job training methods;
- Validate findings of the report and recommendations with NAC and main stakeholders.

I. Deliverables:

#	Deliverable	Deadline
1.	Activity Plan for the assignment and detailed methodology for the analysis	7 March 2016
2.	Draft analytical study on the examination of corruption cases in judicial practice and application of sentences in these cases for the period 2013-2015	4 April 2016
3.	Final analytical study on the examination of corruption cases in judicial practice and application of sentences in these cases for the period 2013-2015 validated with the main stakeholders	18 April 2016
4.	Final report on the assignment describing how the work was done, including the list of people met, capacity development assistance provided to NAC, public discussions and presentations, etc., submitted	22 April 2016

Deliverables and timeline can be amended or specified for the purpose of the assignment, depending on the contract signing date.

Payment will be made in one or two instalments upon the successful completion of the tasks assigned.

NOTE: the consultant will estimate required amount of working days and will present a lump sum budget in financial offer.

J. Organizational Setting:

This is a part-time consultancy. The expert will work in close collaboration with the management and staff of the National Anticorruption Centre. The expert will work under direct supervision of UNDP Project manager for administrative issues.

K. Inputs:

The National Anticorruption Centre and UNDP Moldova will provide the expert with the necessary information and materials for the fulfilment of tasks and will provide support with the facilitation of meetings and translation/interpretation services where necessary.

Qualifications and skills

I. Academic Qualifications:

- A Masters' Degree in Public and/or Criminal Law or similar. A Bachelor's Degree in the same areas combined with 9 years of experience in the sector will serve in lieu of a Master's Degree.

II. Years of experience:

- At least 7 years of proven experience of working with judiciary and the law-enforcement authorities in the Republic of Moldova;
- Proven professional experience linked to anti-corruption policy and/or capacity building in justice and/or law enforcement areas is a strong asset.

III. Competencies:

- Proven knowledge of criminal legislation of the Republic of Moldova and international anti-corruption standards;
- Proven report writing and analytical skills;
- Fluency in Romanian and Russian languages; Knowledge of English is a strong asset; Knowledge of one or more additional languages relevant for Moldova, including Bulgarian, Gagauzian, Romani, Ukrainian or sign language is an asset.

IV. Personal qualities:

- Proven commitment to the core values of the United Nations; in particular, is respectful of differences of culture, gender, religion, ethnicity, nationality, language, age, HIV status, disability, and sexual orientation, or other status;
- Responsibility;
- Flexibility;
- Punctuality.

Documents to be included when submitting the proposals:

Interested individual consultants must submit the following documents/information to demonstrate their qualifications:

1. Proposal: explaining why they are the most suitable for the work and providing a list of relevant publications and a brief methodology on how they will approach and conduct the work;
2. Financial proposal in lump sum, USD;
3. Personal CV including past experience in similar assignments, the duly filled Personal History Form (P11) and at least 3 names for a reference check.