



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 2016-2017
- 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:** July 2017 – January 2018; up to 32 working days

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 Parliament, acknowledging the need to fight corruption, adopted the National Integrity and Anticorruption Strategy (NIAS) 2017-2020¹. Anticorruption measures strongly feature in other major strategic policy documents, such as Moldova 2020,² Justice Sector Reform Strategy (2011 – 2016) and its Action Plan³ and the National Action Plan for the implementation of the EU-Moldova Association Agreement (AA).⁴

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

Pillar III of the NIAS *Justice and Anticorruption Authorities*, recognizes insufficient or disproportionate sanctions applied for corruption cases, such as a low proportion of sanctions with real deprivation of freedom and low proportion of deprivations of the right to hold certain positions or to perform certain activities; the lack of a deterring nature of the pecuniary sanctions in case of corruption crimes; disproportionate amount of the applied criminal fines comparing to the values of the requested or received bribe; rare application of

¹ <http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/3659/language/ro-RO/Default.aspx>

² <http://cancelaria.gov.md/lib.php?l=en&idc=435&nod=1&>

³ <http://www.justice.gov.md/#idc=420&>

⁴ <http://www.mfa.gov.md/implementarea-aa/>

confiscation and lack of practice in applying the extended confiscations. 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. These practices lead to the low level of trust for justice sector, attested by the national and international surveys, and the perception of justice sector as one of the most corrupted in the public sector.

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 2013⁵, 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.

To support the NAC Analytical Department in analysing the latest trends and practices applied by courts in corruption cases, the Project is seeking to engage the services of a *local consultant to provide a thorough analysis of the examination of corruption cases in judicial practice and application of sentences in these cases for the period 2016-2017*.

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 2016-2017 (11 months).

H. Key Responsibilities:

- 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 2016-2017 (11 months);
- 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 *Recommendation 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*;
- Describe all amendments of the Criminal Code and the Criminal Procedure Code during the period 2013-2017 that influenced judicial practice on corruption cases;
- 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;
- Present the results of the study in a public event organized by the UNDP and NAC.

⁵http://cna.md/sites/default/files/statdata/eng_studiu_privind_dosarele_de_coruptie_final_decembrie_2013.pdf

I. Deliverables:

#	Deliverable	Deadline
1.	Activity Plan for the assignment and detailed methodology for the analysis	5 July 2017 0,5 day
2.	Draft analytical study on the examination of corruption cases in judicial practice and application of sentences in these cases for 2016 and first 6 months of 2017 submitted and validated with the NAC Analytical Unit	20 August 2017 20 days
3.	Analytical study on the examination of corruption cases in judicial practice and application of sentences in these cases for 2016 and first 6 months of 2017 presented in a public event organized by the UNDP and NAC	1 day during September 2017
4.	Analytical study on the examination of corruption cases in judicial practice and application of sentences in these cases for the period 2016-2017 (11 months) submitted and validated with the NAC Analytical Unit	18 January 2018 10 days
5.	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	19 January 2018 0,5 day

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 two instalments upon the successful completion of the tasks assigned.

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 will provide the expert with the necessary information and materials for the fulfilment of tasks; NAC and UNDP Moldova and will provide support with the facilitation of meetings where necessary.

Qualifications and skillsI. 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 policies and capacity building in justice and law enforcement areas is a strong asset.

III. Competencies:

- Proven experience of work with/analysis of/criminal legislation of the Republic of Moldova;
- Proven report writing and analytical skills;
- Previous research on the analysis of judicial practice in Moldova is a strong advantage;
- Previous successful experience in development assistance or related work for a donor organization, in particular UNDP, governmental institutions, NGO/think-tank or consulting firm is a strong advantage;
- Fluency in Romanian and Russian languages, Knowledge of English is an advantage;

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.

The United Nations Country Team in the Republic of Moldova is committed to workforce diversity. Women, persons with disabilities, Roma and other ethnic or religious minorities, persons living with HIV, as well as refugees and other non-citizens legally entitled to work in the Republic of Moldova, are particularly encouraged to apply.

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;
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.