CORRUPTION PROOFING OF LEGISLATION

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In 2019, a total of 7 teachers from a Turkish school in Chisinau were detained by the special services of Moldova and expelled to Turkey, generating a big scandal. It was subsequently qualified as a human rights violation.

**Journalist:** Was there a violation of human right and of the national legislation of Moldova?

**Speaker of the Parliament:** You know, the provisions in laws have commas and exceptions...
SHORTEST DEFINITION OF CORRUPTION:

Misuse of **office** for private gain

(*Klitgaard, Maclean-Abaroa, and Parris, 2000:2*)

Abuse of **entrusted power** for private gain

(*Transparency International*)
THE SOURCE OF CORRUPTION IS...

Office
Position
Powers
Duties
Responsibilities

used for private gain

How do all of these appear?
...while instituting public functions, defining official powers, duties and responsibilities LAWS, BY-LAWS are also creating opportunities for interpreting their intended meaning and therefore generating more or less obvious opportunities for future corruption
To get a passport, one should present:

**A:**
- Application
- Picture 3x4cm
- Birth certificate
- Payment confirmation
- As well as other documents

**B:**
- Application
- Picture 3x4cm
- Birth certificate
- Payment confirmation
- Residence/domicile confirmation
ANOTHER SIMPLE EXAMPLE

A: After all the documents are submitted, the decision to issue the passport is issued within a term of up to one year.

B: After all the documents are submitted, the passport is issued within 5 days.
AND ONE MORE EASY EXAMPLE

A: In case of establishing the breach of no drunk-driving rule by a car driver, the police may stop him/her from further driving and apply a fine

B: In case of establishing the breach of no drunk-driving rule by a car driver, the police must stop him/her from further driving and apply a fine
WHEN DID THE NEED FOR CORRUPTION PROOFING FIRST APPEARED?

• 2500 years ago
• 250 years ago
• 10-15 years ago
Socrates: But, Hippias, do you say that law is an injury to the state, or a benefit?

Hippias: It is made, I think, with benefit in view, but sometimes, if the law is badly made, it is injurious.

(Plato, Hippias Major, 284d, iv century B.C.)
“Let all laws be clear, uniform and precise: to interpret laws is almost always to corrupt them.”

(Dictionnaire philosophique, 1764, citations de Voltaire)
When he can choose an interpretation of the legal provisions which he prefers

When he can choose a preferred interpretation over the expected by the citizen

When such interpretations can be used for private gain
Corruption proofing (anti-corruption expertise of draft legislation) - a process of review of the draft laws and by-laws, aimed at detecting the provisions favouring or legalizing corruption and other abuses upon application
GOALS OF CORRUPTION PROOFING

➢ Corruption prevention by eliminating the corruption risk factors from draft laws

➢ Making the authors of draft laws and the general public aware of the risk factors and the corruption risks identified in the drafts

➢ Providing additional safeguards to ensure that the legislative process advances the interests of the citizens and the public interest.
HOW DO CORRUPTION RISKS APPEAR IN DRAFT LAWS?

**Unintentionally**, most of the times, as a result of poor drafting skills of the author

**Intentionally**, sometimes, but these cases are severe (i.e. in Moldova – attempted draft law on the liberalization of capital and fiscal amnesty, aimed at helping the corrupt officials legalized their criminal assets, while in Romania – attempted draft law to alter criminal liability for crimes at the same time as to when high-level subjects were investigated for that type of crimes).
CORRUPTION PROOFING SPECIFICS

Scope – all draft laws and draft regulatory acts

In charge of mandatory corruption proofing – National Anticorruption Center (NAC)

Timing – once the draft is final in the Government, or when submitted by a member of the Parliament before it is sent out to the Ministry of Justice for legal expertise

Deadline – 10 days, extendable to 1 month

Methodology – written and software, last updated in October 2017
CORRUPTION PROOFING OPINION:

I. Corruption risks in the legislative process
II. Risk factors and corruption risks in the draft
III. Conclusions
# DETAILED ANALYSIS OF DRAFT’S PROVISIONS

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<th>Article___ paragraph.___ letter__)</th>
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## Objection:

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## Risk factors:

- ...  

## Corruption risks:

- ...
CATEGORIES OF CORRUPTION RISK FACTORS:

I. Legal wordings
II. Legal coherence
III. Transparency & access to information
IV. Individual rights & obligations
V. Competences of the public authorities
VI. Control and oversight mechanisms
VII. Liability & sanctioning

arising due to
AMBIGUITY

arising due to
LACK OF
PREVENTION
MECHANISMS
CORRUPTION RISKS FOUND IN DRAFTS

Facilitating the committing of the crimes of:

- Bribe taking
- Bribe giving
- Abuse of duties
- Excess of duties
- Illicit enrichment
- Money laundering
- Tax evasion etc.

Legalizing the crimes of:

- Abuse of duties
- Excess of duties
- Illicit enrichment
- Money laundering
- Tax evasion etc.
Article 5. Duties of participants of the capital liberalization and fiscal stimulation

(1) The State Tax Service, Customs Service, National Health Insurance House, cadaster bodies, Ministry of Information Technology and Communications, National Integrity Agency, other institutions and organizations shall be recognized as persons indirectly related to the process of liberalization.

(2) Besides the subjects of capital liberalization and their representatives, the participants of capital liberalization shall be the Ministry of Internal Affairs, National Anticorruption Center, General Prosecutor’s Office, other public authorities from abroad, which perform their activity and exercise their duties in the process of capital liberalization according to the provisions of the present law.
Objections:

The provision sets improper roles, contrary to the statute of the public authorities and contradict the legal framework in force. These public authorities cannot participate in capital liberalization process, as they should guarantee fighting against criminal activity, especially in the part related to corruption and money laundering. As the draft sets no verifications of the capital origins, these authorities will be forced to observe helplessly the legalization of criminal assets, without having the possibility to prosecute.

Regarding the “other public authorities form abroad” concerned, the only valid reason why the authorities of other states seem to be included is of hampering potential trans-border investigations from other jurisdictions in which illegal proceeds originate and were liberalized in the Republic of Moldova. In this case, other national authorities mentioned as participants of liberalization (NAC, MIA, GPO) should refuse the collaboration with similar authorities from abroad, because the draft has assigned them the status of participant in capital liberalization.
Recommendations: To exclude art.5

Risk factors:
- Ambiguous wordings allowing for abusive interpretations
- Conflicting legal provisions
- Excessive and improper duties to the status of public authority

Corruption risks:

Legalization of the crimes of:
- illicit enrichment
- money laundering
- embezzlement

Facilitation of the crimes of:
- abuse / excess of duties
- negligence
Who was to be corrupted first: the man by a law or the law by a man?
RETURNING THE LICENSE MONEY FOR FAILURE TO EXTRACT GRAVEL AND GRANITE...
EXCLUDING 1.5 HECTARES OF LAND FROM THE EXCLUSIVE STATE’S PROPERTY
TYPOLOGY OF PROMOTED PRIVATE INTERESTS IDENTIFIED IN DRAFTS

- Exemptions from taxes and custom duties
- Changing land destination
- Public-private partnerships
- Changing rules of retail selling
- Creation of industrial parks
- Financial favouring of certain institutions
- Other.
HOW DID WE COME TO DO CORRUPTION PROOFING?

2005 – Concept Paper of the Parliament on Cooperation with the CSOs
2006 – CSO’ corruption proofing methodology launched
2006 – NAC was obliged through a by-law to carry out corruption proofing
2007 – NAC did the first corruption proofing reports
2009 – first software supporting corruption proofing of the CSO adapted for the NAC
2017 – NAC upgraded its methodology and its software
Drafts subjected to corruption proofing by NAC between 2006-2017
Pages of drafts subjects to anti-corruption expertise by NAC between 2009-2017

Total: 53.178 pages
In NAC:
13 employees in the **General Directorate of Legislation and Corruption Proofing**

3 sections:
- Constitutional, Justice, Administrative law
- Economy, Budget and Finance
- Education, Healthcare, Labour, Culture, Media

Use of a software **e-expertiza** to maintain a standard quality of corruption proofing opinions and measure effectiveness
WHAT MAKES CORRUPTION PROOFING EFFECTIVE?

- Effective communication
- Public pressure
- Media
- High quality opinions
- Simple language, accessible from the Kitchen to the Parliament