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The Anticorruption Court: Does the Republic of Moldova Really Need It?

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PUBLIC POLICY PAPER

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Abbreviations

ACA – Agency for Court Administration

CCJE – Consultative Council of European Judges

NAC – National Anticorruption Center

SCJ – Supreme Court of Justice

SCM – Superior Council of the Magistracy

MoJ – Ministry of Justice

APO – Anticorruption Prosecution Office

PGO – Prosecutor General’s Office

Introduction

Corruption is one of the factors that undermine the smooth functioning of state institutions, democracy, and fair competition. It is the main obstacle to the social and economic development of the Republic of Moldova. Combatting corruption is still a huge challenge, especially in countries where state institutions are not independent or do not have enough courage. While reducing corruption to acceptable levels does require a complete revision of social norms and values, there are nevertheless many technical reforms that can help to prevent political influence and to reduce some types of corruption. These usually include packages of measures like the introduction of a transparent public administration system, the education of judges and anticorruption agencies, the implementation of adequate salaries and guarantees for public sector workers, the application of sufficiently harsh sanctions etc.

This document offers an assessment of the opportunity of establishing a specialized anticorruption court in the Republic of Moldova and anticorruption judicial panels at the Chişinău Court of Appeal and the Supreme Court of Justice (SCJ) as per the initiative proposed by some state agencies and politicians in 2020. The analysis is intended to help national authorities to decide about the need and appropriateness of an anticorruption court in the Republic of Moldova.

The document uses information obtained through documentation, analysis, and the synthesis of official data. Most of the data comes from public sources, but some was offered on the LRCM's request by the Agency for Court Administration (ACA) of the Ministry of Justice (MoJ).

The LRCM also analyzed the legal framework and national public policy papers and the information published on the web sites of public agencies (statistical reports, activity reports, press releases etc.), especially those of the MoJ, Parliament, the Superior Council of the Magistracy (SCM), the Prosecutor General's Office (PGO), the National Anticorruption Center (NAC), and the ACA. The preparatory work also included the study of international standards on the specialization of judges and reports or studies produced by public authorities and civil society about the practice of some countries that have specialized anticorruption courts.

The analysis describes the context and the national policy papers that include the initiative concerning the establishment of the anticorruption court. We also analyzed the factors that can put this initiative at risk. Additionally, the document examines the context and experience of some countries that have anticorruption courts. The analysis does not include a systemic evaluation of the performance of these courts. Its purpose is only to highlight some of the achievements and challenges of specialized courts in some European states. The document also

shows that the body specialized in investigating cases of corruption needs to have its functional capacity strengthened by changing its powers to ensure the efficiency of anticorruption efforts. The document ends with general conclusions and specific recommendations.

Executive Summary

Every country must adopt the anticorruption institutional framework that fits its national context best. Article 115 (2) of the Constitution of the Republic Moldova provides for specialized courts for certain categories of cases. Under this constitutional rule, Parliament has the discretionary power to set up specialized courts. It is not clear whether this rule also allows specialized appellate courts, but it seems that a supreme anticorruption court would be contrary to the Constitution. Any decision concerning the law system should rely exclusively on a rational analysis of the conditions and specificity of each individual country.

The initiative to set up a specialized anticorruption court does not fit in with the policy measures taken by Moldovan authorities in the past years when all specialized courts have been disbanded. The initiative is also contrary to the optimization of the judicial map started on 1 January 2017 and expected to end in 2027.

The establishment of the anticorruption court would also entail additional financial costs from the state budget (for example, to pay judges and personnel salaries, to allocate a separate building, to provide it with technical resources etc.). Decision-makers should estimate how the public budget will be impacted and whether it can bear new expenses. The judiciary's budgeting needs require annual negotiation, often in an extremely politicized context with many other competing public spending needs. So far, authorities have not presented any cost analysis for the establishment of such a specialized court.

Moldova does not have enough cases that require a specialized anticorruption court. According to official statistics, in the past five years, from 2015 through 2019, courts tried 199 criminal cases concerning corruption a year on average. At that, in the same five years, the average annual caseload of a judge included approximately 620 cases, and the average number of cases disposed with a judgment was 610. According to the concept that lies at the core the judicial map optimization, a court cannot have fewer than nine judges. If decision-makers decide to establish an anticorruption court, its nine judges will have the smallest caseload—approximately 22 cases a year each. If the anticorruption court has minimum three judges, the average annual caseload of a judge in this court will include 66 cases. This is the average monthly caseload of a judge established for district courts in the past years.

That a single trial court—which will likely be located in Chişinău—will try all corruption cases means there will be difficulties with the trial of cases brought from regions because these cases will require all participants to travel to the capital city. Over the past two years, approximately two thirds of cases of corruption were tried in the courts outside Chişinău.

Establishing a court and judicial panels specialized in corruption cases involves the need to

have a limited number of judges specialize in a narrow branch of law. There are no international standards that regulate the narrow specialization of judges. Dividing a jurisdiction into secondary branches of law or categories of cases is not very suitable for countries with small population and a low level of activity.

One of the objectives presumably pursued by this initiative is the uniformization of the case law concerning corruption. But the case law is relatively uniform when it comes to sanctions against corruption, and discrepancies exist only in strongly politicized cases.¹ The establishment of specialized courts could be justified only if this branch is so complicated that judges really needed special expertise and experience to deal with these cases. But the complexity of corruption cases lies in their investigation rather than trial in court. Courts of general jurisdiction—which occasionally adjudicate even more complicated cases—can try corruption cases easily. Moreover, in the better part of corruption cases, suspects admit their guilt or plead guilty when prosecutors produce evidence.

The initiative involves numerous related risks, which are not likely to help the fight against corruption. It is much easier to put inappropriate influence on a small and known number of judges than on a numerous body of judges who receive cases through information systems.

The available literature highlights that the most quoted argument in favor of constituting specialized anticorruption courts refers to the need for more efficiency in trying corruption cases and for showing the public within and outside the country that authorities take the fight against corruption seriously.² Most specialized anticorruption courts in other countries were established voluntarily. In some cases, the requirements of international organizations and foreign assistance programs played a decisive role. That said, the practical efficiency of anticorruption courts has not been proven beyond doubt yet.

Although one cannot say that best practices recommend the establishment of anticorruption courts, the accumulated experience and existing models allow some conclusions. Setting up anticorruption courts cannot eradicate corruption all by itself. Moreover, countries with the lowest levels of corruption do not have such specialized courts. And judges who specialize in criminal matters can also specialize in corruption cases.

The LRCM considers that the Ministry of Justice and the Moldovan government should abandon the initiative concerning the establishment of an anticorruption court because it is not justified legally, comes at odds with the optimization of the judicial map, and is essentially contrary to Moldovan authorities' declared objectives concerning the fight against corruption.

An efficient solution for the fight against corruption in the Republic of Moldova would be the strengthening of the Anticorruption Prosecution Office (APO). Although, the APO has been set up to fight high-level corruption, it spends lots of effort on cases of petty corruption. Its powers should be limited exclusively to cases of high-level corruption. The reduction of the cases handled by anticorruption prosecutors will lead to a better quality of investigation during the prosecution phase and a better representation in court and will streamline anticorruption efforts.

¹ Legal Resources Centre from Moldova, policy paper *Sanționarea în cauzele de corupție – cât de uniformă este practica judecătorească* (Sanctions in Cases of Corruption: How Uniform is the Judicial Practice?), Chișinău, December 2015, available at: <https://crjm.org/wp-content/uploads/2015/12/CRJM-DA-Sanct-cazuri-coruptie-23.12.2015-1.pdf>.

² Matthew C Stephenson, Sofie Arjon Schütte, report *Specialised Anti-corruption Courts. A Comparative Mapping*, December 2016, p. 26, available at: <https://www.u4.no/publications/specialised-anti-corruption-courts-a-comparative-mapping.pdf>.

I. Is the Anticorruption Court Appropriate for the Republic of Moldova?

Article 115 (2) of the Constitution of the Republic Moldova provides for the establishment of specialized courts for certain categories of cases. Under this constitutional rule, Parliament has the discretionary power to set up specialized first-level courts and to decide on the architectural structure of the judiciary in the Republic of Moldova. The government has started public consultations on the establishment of an anticorruption court or anticorruption judicial panels. We consider that this initiative should rely on a thorough analysis that should take into account previously adopted public policies and factors that can put the proposed objectives at risk.

1. Background

The idea of anticorruption courts is not new for the Republic of Moldova. In 2015, the MoJ already came up with a similar initiative.³ The authors advocated disbanding the Military Tribunal and converting its premises into a specialized court for corruption and corruption-related cases. Back then, the LRCM did not support this initiative for several reasons, including the small number of corruption cases, increased risks of influence on judges from the specialized court or the specialized judicial panels, the incompatibility with public policies already in place, etc.⁴ The Military Tribunal was eventually disbanded, but the initiative concerning the anticorruption court never came to fruition. In 2020, authorities revisited this initiative.

National authorities decided that it was necessary to prepare a feasibility study on the establishment of a specialized anticorruption court. Paras. 5 and 6 of Pillar III of the National Integrity and Anticorruption Strategy for 2017 – 2020 (NIAS)⁵ provide for the establishment of specialized courts or specialized judicial panels, as applicable, that would try corruption and

³ Ministry of Justice, announcement concerning draft regulatory acts put out for coordination, 2015, available at: http://www.justice.gov.md/public/files/transparenta_in_procesul_decizional/coordonare/2015/septembrie/2015.09.28_L_coruptie_si_C_Apel_final.pdf.

⁴ Legal Resources Centre from Moldova, *Opinion on the Draft Law Amending and Supplementing Certain Legislative Acts (Establishment of the Anticorruption Court and the District Court of Appeal Chisinau)*, 19 October 2015, <http://crjm.org/wp-content/uploads/2015/10/2015-10-19-CRJM-opinie-InstCorrupt.pdf>.

⁵ National Anticorruption Center, *Raport de monitorizare a implementării Strategiei Naționale de Integritate și Anticorupție pentru anii 2017–2020, Perioada de raportare: semestrul I al anului 2019 (Monitoring Report on the Implementation of the National Integrity and Anticorruption Strategy for 2017 – 2020. Reference Period: Quarter I of the Year 2019)*, Chișinău, 2019, p. 82, available at: https://www.cna.md/public/files/Raport_SNIA_sem_I_2019_final.pdf.

corruption-related cases. The implementation deadline was set for quarter III of the year 2017. On 7 July 2019, NIAS Monitoring Group 3 decided to propose Parliament to change paras. 5 and 6.⁶ When the NIAS monitoring group identified multiple challenges to the implementation of the concerned actions, they proposed commissioning a study on the feasibility of the courts/judicial panels specialized in corruption and corruption-related cases. The proposal came with a new implementation deadline, namely “quarter III of 2020.”

Subsequently, by Decision No. 636 of 11 December 2019, the government approved its Government Action Plan for 2020 – 2023.⁷ Under para. 1.9 of this Action Plan, the government does not impose the mandatory establishment of a specialized anticorruption trial court and anticorruption judicial panels at the Chişinău Court of Appeal and the SCJ. The measure involved conducting a comparative study on the feasibility of establishing a specialized court for corruption cases by September 2021. However, on 10 June 2020, in the absence of such a study, the MoJ announced that it had started working on a regulatory act to establish a specialized anticorruption court.⁸ The draft law was supposed to address all aspects necessary to set up and to operate such a court.

On 19 June 2020, a group of MPs lodged a legislative initiative concerning the Anticorruption Court of the Republic of Moldova.⁹ The draft law proposes that this court be the only court specialized in corruption cases. The court would have two panels: the General panel and the Appellate panel. On 3 July 2020, the MoJ organized public consultation with national line agencies and civil society, starting the discussion on the appropriateness of establishing the specialized court.¹⁰ The consultation also addressed the establishment of specialized judicial panels in this branch.

On 30 September 2020, the Prosecutor General addressed the SCM and the MoJ requesting the establishment of judicial panels specialized in “The Billion Theft” cases and related cases.¹¹ The initiative proposed setting up judicial panels at the Chişinău Court (offices of Ciocana and Buiucani) and the Panel for Criminal Cases of the Chişinău Court of Appeal and appointing judges specialized in these categories of cases. On 13 October 2020, in response to this request, the SCM decided to recommend the chief judges of the Chişinău Court and the Chişinău Court of Appeal to ensure the specialization of judges from their courts in economic, corruption, and related crimes.¹² The SCM also warned the chief judges of these

⁶ *Ibid.*

⁷ Government of the Republic of Moldova, Government Action Plan for 2020 – 2023, p. 7, available at: https://gov.md/sites/default/files/document/attachments/pag_2020-2023_ro.pdf.

⁸ Ministry of Justice, announcement concerning the start of the work on the draft law to establish the anticorruption court, 10 June, 2020, available at <http://www.justice.gov.md/libview.php?l=ro&idc=184&id=4916>.

⁹ Parliament of the Republic of Moldova, Draft Law No. 264 on the Anticorruption Court of the Republic of Moldova, 2020, available at <http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/5119/language/ro-RO/Default.aspx>. *The draft law proposes that this court be the only specialized anticorruption court empowered to try criminal cases concerning corruption and related to corruption. According to the draft law, the court will have two panels: the General panel and the Appellate panel. The draft law proposes a series of additional requirements to candidates for judge at the Anticorruption Court and several guarantees concerning their independence and security etc.*

¹⁰ Ministry of Justice, press-release, *Consultări publice privind crearea instanțelor sau a completelor de judecată anticorupție (Public Consultations on the Establishment of Anticorruption Courts or Anticorruption Judicial Panels)*, 2020, available at: <http://justice.gov.md/libview.php?l=ro&idc=4&id=4942>.

¹¹ Prosecutor General's Office, press-release, *Procuratura pledează pentru accelerarea examinării dosarelor privind „furtul miliardului” de către complete de judecătorești specializați în acest sens (The Prosecution Authorities Advocate Fast-tracking the Examination of “The Billion Theft Cases” by Specialized Judicial Panels)*, 2020, available at: <http://procuratura.md/md/newslst/1211/1/8432/>.

¹² Superior Council of the Magistracy, *Sinteza ședinței CSM nr. 25 din 13 octombrie 2020 (SCM Meeting Summary No. 25 of 13 October 2020)*, available at: https://www.csm.md/files/Ordinea_de_zi_CSM/2020/25/Sinteza25.pdf.

courts about diligence in complying with the legal provisions concerning the randomized assignment of these cases.

2. The Justification of the Initiative

The initiative to set up a specialized anticorruption court does not fit in with the policy measures taken in the past years. In 2016, just four years ago, the Republic of Moldova adopted a law that abolished all specialized courts and started the reorganization of the judicial system.¹³ The law came into effect on 1 January 2017. Following the legislature's decision, specialized courts—the District Commercial Court and the Military Tribunal—were disbanded. The specialized courts were disbanded because they either were a hotbed of corruption (economic courts) or had very few cases (the Military Tribunal). The reform was also aimed at strengthening first-level courts (so that every court has minimum nine judges) to ensure a better quality of justice and a genuinely randomized assignment of cases in small courts. Therefore, the initiative to set up specialized anticorruption courts comes at odds with the important structural reform that has been under way since 1 January 2017¹⁴ and provided for a gradual merger of existing courthouses over the course of ten years until 31 December 2027.

This initiative does not correspond to the government's pledges laid out in its Action Plan for 2020 – 2023 and should be preceded by a study. Para. 1.9 of the Government Action Plan does not mention the mandatory establishment of an anticorruption court. It only mentions the conduct of a study on the feasibility of establishing an anticorruption court and anticorruption judicial panels at the Chișinău Court of Appeal and the SCJ. The deadline for this action indicated in the Action Plan is September 2021. Therefore, the government undertook to carry out a feasibility study concerning the implementation of this action. Moreover, this draft is not urgent because authorities still had at least one year to carry out the feasibility study. Under Article 25 of Law No. 100 of 22 December 2017 on Regulatory Acts, the development of any regulation that impacts the budget and/or provides for structural or institutional reorganization and reforms must be preceded by research. Therefore, a feasibility study concerning the establishment of a specialized anticorruption court was a must.

Authorities did not present any information concerning the cost of setting up a specialized anticorruption court, its impact on the public budget, and the public budget's capacity to bear new expenses. The establishment of a new specialized court entails additional financial costs from the state budget, such as payroll expenses on judges and court personnel, the allocation of a separate building, expenses on technical resources etc. The feasibility study planned in the Government Action Plan for 2020 – 2023 should include a chapter dedicated to this aspect. The judiciary's budgeting needs require annual negotiation, often in an extremely politicized context with many other competing public spending needs. Considering already assumed expenses on courts reorganization and the current COVID-19 pandemic, these expenses will be rather difficult to justify.

¹³ Article 1 (3) of Law No. 76 of 21 April 2016 on the Reorganization of Courts of Law, available at: https://www.legis.md/cautare/getResults?doc_id=97419&lang=ro.

¹⁴ This process started in line with the Law on the Reorganization of Courts of Law.

3. Insufficient Workload

One of the considerations weighing heavily in the decision concerning the establishment of the anticorruption court is workload, which should be sufficiently large to justify the establishment of this new entity. In the Republic of Moldova, the number of corruption cases is rather small and will not cover the minimal workload for the judges of a court specialized in corruption cases.

To analyze this aspect, we studied statistics about eight crime components generically called corruption crimes, namely Article 324 of the Criminal Code (passive corruption), Article 325 of the Criminal Code (active corruption), Article 327 of the Criminal Code (abuse of power or malfeasance), Article 328 of the Criminal Code (excess of power or actions going beyond job duties), Article 330 of the Criminal Code (acceptance of illicit reward by a civil servant), Article 333 of the Criminal Code (acceptance of bribes), Article 334 of the Criminal Code (offering of bribes), and Article 335 of the Criminal Code (abuse of official position).

Over the past five years, from 2015 through 2019, the average annual number of criminal cases concerning corruption tried in courts was 199. The number of disposed corruption cases was even smaller, reaching an average of 162 per year.¹⁵

Table 1. The number of corruption cases in district courts from 2015 through 2019

	2015	2016	2017	2018	2019	Average for the years 2015 through 2019
Examined cases	192	166	247	202	187	199
Cases disposed of with a judgment	152	146	182	170	159	162

Source: Agency for Court Administration, reports on the trials related to the fight against corruption for the years 2015 through 2019, processing by the LRCM

In comparison, the courts' average general workload included 304,440 cases and materials in the past five years.¹⁶ The average number of corruption cases in the past five years (199) makes up only approximately 0.06% of all cases and materials tried in courts over the same period (304,440). It is rather difficult to find arguments supporting the need for a separate court to handle approximately 0.06% of courts' general workload.

¹⁵ The data is from the Agency for Court Administration's reports on the trial of cases related to the fight against corruption, available at: <http://aaij.justice.md/ro/reports>.

¹⁶ The data is from the Agency for Court Administration's reports on the trial of cases from 2015 through 2019, available at: <http://aaij.justice.md/ro/reports>.

Table 2. *The general workload of courts from 2015 through 2019*

	2015	2016	2017	2018	2019	Average for the years 2015 through 2019
The general workload of courts (cases and materials)	295,714	302,460	310,971	303,750	309,307	304,440

Source: Agency for Court Administration, reports on the trial of cases from 2015 through 2019, processing by the LRCM

If decision-makers decide to establish an anticorruption court, the judges that will work at this court will have the smallest annual caseload of all courts of law. In the past five years, the average annual caseload of a judge included approximately 620 cases, and the average number of cases disposed with a judgment was 610¹⁷ (see Table 3). In 2016, on the start of the courts reorganization process, it was decided that a court should have at least nine judges. A simple mathematical calculation of dividing the average number of corruption cases tried annually over the past five years—that is, 199 cases (Table 1)—by the minimally required number of judges—nine—shows that the specialized court's average annual caseload per judge will include only 22 cases—approximately 30 times fewer than for judges from other courts. Even if it is decided that the court have minimum three judges, their average annual caseload will still include only 66 cases, which is nine times fewer than for judges from other courts. Moreover, this workload will be similar to the monthly workload of a judge from a district court, which is approximately 68.2 cases (Table 3).

Given the extremely small number of corruption cases tried in trial courts, the problem of insufficient workload also applies to the potential specialized anticorruption judicial panels of the Chişinău Court of Appeal and the SCJ.

Table 3. *The workload of a judge from 2015 through 2019*

	2015	2016	2017	2018	2019	Average for the years 2015 through 2019
The average annual number of examined cases per judge	603	607	648	603	637	620

¹⁷ The data is from the Agency for Court Administration's reports on the trial of cases from 2015 through 2019, available at: <http://aaij.justice.md/ro/reports>.

	2015	2016	2017	2018	2019	Average for the years 2015 through 2019
The average annual number of disposed cases per judge	603	595	627	600	621	610
The average monthly workload of a judge from a trial court	-	66.8	71.9	65.57	68.54	68.2

Source: Agency for Court Administration, reports on the trial of cases from 2015 through 2019, processing by the LRCM

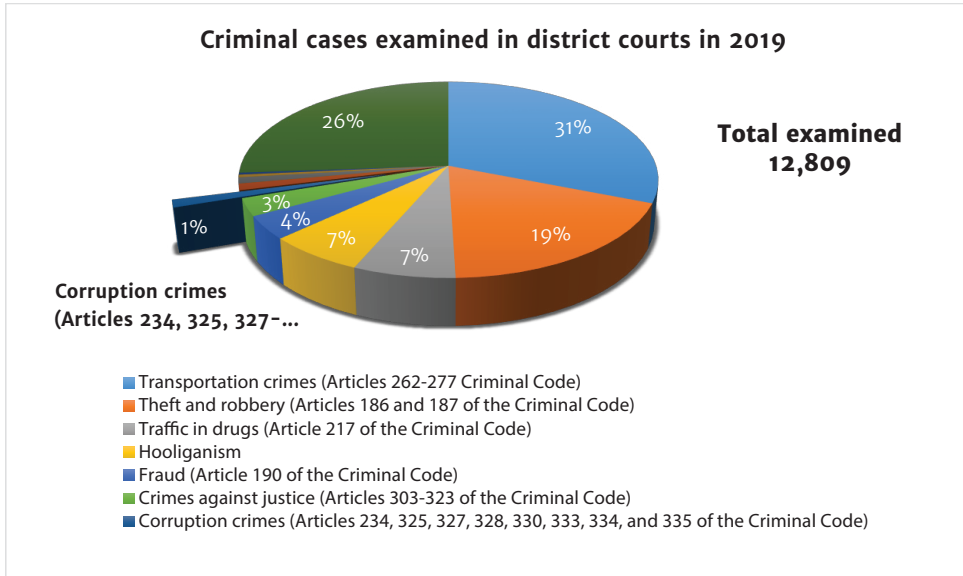
Comparison with other categories of criminal cases

Let us compare the number of corruption cases with other categories of criminal cases. The number of corruption cases examined in courts is much smaller than that of criminal cases from other categories examined in court, and yet, authorities never proceeded to setting up specialized courts for those categories of cases.

In 2019, the most frequent types of crimes tried and punished by courts of law were:

- transportation crimes (Articles 262 – 277 of the Criminal Code) – 3,976 cases;
- theft (Article 186 of the Criminal Code) – 2,012 cases;
- traffic in drugs, psychotropic substances, and precursors (Article 217 of the Criminal Code) – 885 cases;
- hooliganism (Article 287 of the Criminal Code) – 844 cases; and
- fraud (Article 190 of the Criminal Code) – 494 cases.

Compare this with the eight crime components generically called corruption crimes (Articles 324, 325, 327, 328, 330, 333, 334, and 335 of the Criminal Code), whose average annual number in the past five years was 199 for tried cases and 162 for cases disposed of with a judgment (Table 1), which is fewer than for any other of the above categories of criminal cases.

Graph 1. Criminal cases examined in district courts in 2019

Source: Agency for Court Administration, Report on the trial of criminal cases for the period of 12 months of 2019, processing by the LRCM

4. Low Access to Courts of Law

If it is decided to establish an anticorruption court, it will most likely be located in Chişinău. That a single trial court will try all corruption cases in the country means there will be difficulties with the trial of cases brought from regions because these cases will require all participants to travel to the capital city. In practice, the trial of the better part of cases concerning corruption takes place in regional courts (Table 4). Over the past five years, the Chişinău Court disposed of less than half of all cases concerning corruption: 41% in 2015 (59 out of 145), 48% in 2016 (58 out of 121), 48% in 2017 (87 out of 182), 31% in 2018 (53 out of 170), and 37% in 2019 (59 out of 158). Moreover, in the past two years, 2018 and 2019, the Chişinău Court disposed of even a smaller percentage of corruption cases than during the years 2015 through 2017.

Thus, considering the trend over the past two years, in approximately two thirds of corruption cases, participants will have to travel to Chişinău, which will pose obstacles in accessing this court, will slow down trials, and will increase court costs.

Table 4. The number of corruption cases tried in courts from 2015 through 2019 by the category of competent courts

No.	Court of law	2015		2016		2017		2018		2019	
		Examined cases	Disposed of with a judgment	Examined cases	Disposed of with a judgment	Examined cases	Disposed of with a judgment	Examined cases	Disposed of with a judgment	Examined cases	Disposed of with a judgment
1	Botanica Office, Chişinău Court	2	2	5	4	8	20				
	Buiucani	23	23	29	27	50	49	62	53	62	59
	Centru	21	17	19	15	6	5				
	Ciocana	6	6	3	3	4	3				
	Rîşcani	11	11	13	9	19	10				
	Total cases in Chişinău	63	59	69	58	87	87	62	53	62	59
2	Bălţi Court	10	10	9	9	7	7	12	11	10	10
	Făleşti	1	1	0	0	0	0	5	5	1	1
	Sîngerei	1	0			3	3	4	4	5	5
3	Anenii Noi Court	0	0	4	4	5	5	5	5	1	1
	Bender	0	0	1	1	0	0	1	1	0	0
4	Cimişlia Court	1	1	1	1	6	5	3	1	7	7
	Basarabeasca	2	2	0	0	0	0	-	-	-	-
	Leova	2	2	5	3	2	1	8	0	1	1
5	Edineţ Court	2	2	4	4	2	1	0	0	3	3
	Briceni	3	3	1	1	9	9	2	2	0	0
	Donduşeni	2	2	7	6	4	3	2	2	1	0
	Ocniţa	2	2	1	1	2	2	7	7	8	7

6	Cahul Court	6	6	8	8	11	8	5	5	5	5
	Taraclia	5	5	6	5	4	2	4	4	0	0
	Cantemir	1	1	0	0	1	1	4	4	0	0
7	Strășeni Court	3	3	3	3	5	6	1	1	3	3
	Călărași	1	1	3	3	0	0	1	1	1	1
8	Caușeni Court	4	4	3	3	1	1	4	3	3	3
	Ștefan Vodă	1	1	1	0	0	0	5	5	2	2
9	Comrat Court	1	1	3	1	2	2	14	12	7	7
	Ceadâr-Lunga	3	3	3	2	4	4	6	5	3	1
	Vulcănești	0	0	3	3	2	0	0	0	0	0
10	Criuleni Court	1	1	1	1	2	2	2	2	3	3
	Dubăsari	1	1	4	3	0	0	2	0	2	2
11	Drochia Court	4	4	2	1	0	0	2	2		
	Rîșcani	2	2	4	4	4	4	3	3	5	5
	Glodeni	0	0	1	1	0	0	0	0	4	4
12	Soroca Court	5	4	3	3	5	5	2	2	2	2
	Florești	5	3	3	3	4	4	2	2	0	0
13	Hincești Court	3	3	2	2	7	7	8	8	3	3
	Ialoveni	4	4	4	3	2	1	3	2	6	5
14	Ungheni Court	3	3	4	4	2	2	7	7	11	11
	Nisporeni	3	3	0	0	3	3	-	-	-	-
15	Orhei Court	4	2	4	4	3	2	4	4	5	5
	Șoldănești	6	4	1	1	3	3	5	5	2	2
	Rezina	2	2	0	0	0	0	3	2	0	0
	Telenești	0	0	1	1	2	2	0	0	0	0
	Total dosare	158	145	177	121	194	182	198	170	166	158

Source: Agency for Court Administration, reports on the trial of cases from 2015 through 2019, processing by the LRCM

The informative note accompanying the draft of the Law on the Reorganization of the Court System mentioned that, according to statistics, almost half of businesses were located outside Chişinău, which caused certain difficulties due to long distances and travel times required to ensure the presence of parties at court trials.¹⁸

Likewise, corruption cases—two thirds of which have been tried in regional courts over the past two years—can also involve many participants (including witnesses) whose presence can be difficult to ensure if they have to travel to Chişinău. Moreover, participants' absence from trials is widespread phenomenon in our country, as noted by the OSCE Mission to Moldova in its monitoring reports concerning court trials back in 2008.¹⁹ This can lead to prolonged trials of corruption cases in the specialized court.

5. Challenges to the Narrow Specialization of Judges

The establishment of an anticorruption court will require the narrow specialization of a limited number of judges who will work at this court. The specialization of judges is a subject that can be interpreted from different perspectives and agreed on in accordance with the opportunities and specificities of the national context.

The specialization of judges was determined by the need to adapt to the development of the law, the case law, and the legal doctrine as legal sciences became ever more extensive and complex. As a result, while society and court users expected ever more professionalism and efficiency from judges, the latter found it increasingly more difficult to improve their performance. The specialization of judges guarantees that they will have the expertise and experience required to issue judgments of better quality in their field of competence.

International recommendations neither discourage nor approve the specialization of judges. Nevertheless, in its Opinion 15 (2012), the Consultative Council of European Judges²⁰ (CCJE) lists the risks of narrow specialization and does not recommend constituting specialized courts unless a thorough analysis of the context has been carried out and all measures to prevent the establishment of a special group of judges have been taken.

The CCJE identified possible limitations and dangers of the specialization of judges:

- The establishment of a specialized court for a very narrow branch of the law can lead to the concentration of this specialization within a single court for the entire country or region as a result of the need to ensure adequate workload. This can hinder access to court or alienate judges from litigants.

- The establishment of a highly specialized court may have the purpose or the effect of separating judges from the rest of the judiciary and exposing them to pressure from case parties, interest groups, or other branches of the state power.

- Specialization may negatively impact public confidence in the courts that are not perceived as sufficiently specialized because specialized judges may get the impression that

¹⁸ Ministry of Justice, Informative Note Accompanying the Draft of the Law on the Reorganization of the Court System, 2016, p. 9, available at: http://www.justice.gov.md/public/files/transparenta_in_procesul_decizional/proiecte_spre_examinare/2016/februarie/4.1_Nota_L_reorganizare_sistem_ro.pdf.

¹⁹ For more information, see OSCE Mission to Moldova, final report, OSCE Trial Monitoring Programme for the Republic of Moldova, p. 33, available at: <https://www.osce.org/files/f/documents/9/c/70945.pdf>.

²⁰ *Opinion 15 (2012) of the Consultative Council of European Judges (CCJE) on the Specialization of Judges*, adopted at the 13th plenary meeting of the CCJE (Paris, 5 – 6 November 2012), available at: <https://rm.coe.int/16807477d9>.

they are part of an elite group of judges or the public may get the impression that some judges are “super judges” or that a court is a purely technical body separated from the judiciary.

– The specialization of judges in a narrow branch of the law may expose them to the real risk of hidden influence and orientation of their judgments, particularly because of excessive proximity between judges, lawyers, and prosecutors.

– The establishment of specialized courts in response to public concerns—for example, courts that try cases of terrorism—may determine public authorities to offer them material and human resources that other courts do not receive, etc.

Most Moldovan judges do not support narrow specialization. In a survey conducted as part of a study on the specialization of judges and the feasibility of administrative courts in the Republic of Moldova, 68% of the respondent judges said that judges should specialize in the two primary branches—criminal and civil—20% were against specialization, and 8% were neutral.²¹ Asked about a narrower specialization, only 37% of the respondent judges said that they supported this idea, whereas 49% were against it (24% were absolutely against, and 24% were rather against), 10% were neutral, and only 4% could not answer (“I have difficulty answering / I do not have an answer”).

Dividing a jurisdiction into secondary branches of the law or categories of cases is not very suitable for countries with small population and a low level of activity. To ensure quality and efficiency, in such countries, it is advisable to limit the specialization of courts to general jurisdiction (civil and criminal) and administrative jurisdiction.

Given the above, we can conclude that international practice and standards do not oblige the Republic of Moldova to constitute specialized anticorruption courts. Every country has the discretion to adopt the anticorruption institutional framework that fits its national context best. Such a decision should rely exclusively on a rational analysis of the circumstances and possibilities of each individual country. What is certain is that authorities should bear responsibility and avoid unfounded and unnecessary reforms.

6. The Case Law concerning Sanctions against Corruption

Presumably, one of the goals pursued by the establishment of anticorruption courts is the unification of the case law concerning corruption. One of the LRCM’s previous analyses confirmed that the case law was relatively uniform when it came to sanctions against corruption, and discrepancies existed only in strongly politicized cases.²² The SCJ can unify its own case law efficiently and quickly. To achieve that, sincere will is much more useful than any legal amendments or additional mechanisms.²³ Keeping a uniform practice at the SCJ will inevitably lead to change in the practice of district and appellate courts. In their turn, prosecutors could contribute to increasing the uniformity of the case law concerning corruption by challenging all judgments that impose sanctions contrary to the spirit of the law.

²¹ The survey was conducted by CBS-Axa, using the questionnaire prepared by the LRCM. The questionnaire was administered from 24 June through 10 July 2013. More information is available in the *Study on Specialization of Judges and Feasibility of Creating Administrative Courts in the Republic of Moldova*, Chişinău, February 2014, available at: http://crjm.org/wp-content/uploads/2014/06/2014-Studiu-Specializ-Jud-MD_ro.pdf.

²² Legal Resources Centre from Moldova, policy paper *Sanctionarea în cauzele de corupție – cât de uniformă este practica judecătorească (Sanctions in Cases of Corruption: How Uniform is the Judicial Practice?)*, Chişinău, December 2015, available at: <https://crjm.org/wp-content/uploads/2015/12/CRJM-DA-Sanct-cazuri-coruptie-23.12.2015-1.pdf>.

²³ *Ibid.*

The NAC's analysis concerning sentences issued by courts in 2019²⁴ also shows that judges started to pay more attention to the trial of corruption cases following amendments to the criminal procedure law and the intensification of the work of specialized law enforcement agencies. In most cases, trial courts kept the legal categorization of defendants' actions as they were brought to court, thus increasing the number of corruption cases tried in summary proceedings that relied on evidence produced at the phase of prosecution and involved plea bargains (Articles 364¹ of the Criminal Procedure Code and 80 of the Criminal Code).²⁵

Overall, the establishment of specialized courts is justified only if this branch is so complicated that judges really need special expertise and experience to deal with cases. We think that courts of general jurisdiction—which occasionally adjudicate much more complicated cases—can try cases of corruption easily.

7. Risks Related to the Fight against Corruption

The initiative entails numerous related risks, which does not help the fight against corruption. One of them consists in the establishment of preconditions that will make it easier for the executive and the legislature to exert influences. It is much easier to put inappropriate influence on a small and known number of judges than on a numerous body of judges who receive cases in a randomized way through information systems. The initiative could also compromise the benefits of the randomized assignment of corruption cases, which is an important measure to prevent corruption in the judiciary. The fewer judges have the power to try cases of a certain category, the more predictable are the outcomes of the randomized case assignment, which makes it easier to put pressure on them. And it was exactly the high risk of corruption that prompted authorities to disband economic courts in the past.²⁶

The establishment of a specialized anticorruption court will require dangerous amendments to the national legal framework, particularly the Criminal Procedure Code, to change the powers of the NAC's and APO's prosecution bodies and to liquidate some of their territorial offices because, regardless of the place where corruption crimes happen, they will be tried at the specialized court in Chișinău.

The establishment of a specialized anticorruption court and specialized anticorruption judicial panels will inevitably lead to the formation of a special "caste" of judges. The Republic of Moldova has already had a negative experience in this regard when, in 2003, it instituted the position of investigating judge in courts of law. Then, the courts were assigned one or two specialized judges who would deal with the same categories of cases for tens of years, namely the examination of complaints against prosecution authorities, pretrial arrests, the warranting of searches and wiretapping, etc. The purpose of this institution was to ensure a

²⁴ National Anticorruption Center, study *Analiza strategică privind sentințele adoptate de către instanțele judecătorești în anul 2019 pe cauzele penale pentru faptele de corupție și cele conexe corupției și profilul subiectului infracțiunilor de corupție* (Strategic Analysis on Court Sentences Issued in Criminal Cases concerning Acts of Corruption and Related to Corruption in 2019 and the Profile of Perpetrators), Chișinău, 2019, p. 36, available at: https://cna.md/public/files/Studiu_sentințe2019.pdf.

²⁵ *Ibid.*

²⁶ Transparency International—Moldova, press-release, *Opinie la proiectul de Lege cu privire la Curtea Anticorupție a Republicii Moldova* (Opinion on the Draft Law on the Anticorruption Court of the Republic of Moldova), 2020, available at: http://www.transparency.md/2020/07/07/transparency-international-moldova-opinie-la-proiectul-de-lege-cu-privire-la-curtea-anticorupție-a-republicii-moldova/?fbclid=IwAR2kYkfu_F6apnScfDwlNmmu2ujP6-wmGl_hjpyYH91wuE8QGM2wqtBLV44.

better observance of human rights during prosecution. Right from the outset, the institution of investigating judge was conceived as a separate category of judges with specific appointment criteria and an unlimited tenure. The practice showed that these judges always acted in ways that pleased the prosecution.²⁷ In 2012, the legislature decided that this institution needed reform. One of the reasons was the narrow specialization and small chances of professional growth and advancement of investigating judges as well as their unlimited tenure, which lead to a low quality of their work. On 5 July 2012, the legislature enacted Law No. 153, which changed the appointment mechanism for investigating judges.²⁸ Under the new legal provisions, the investigating judges that were sitting at the time became part of the general cadre of judges and new investigating judges were appointed from among judges of general jurisdiction. The proposals concerning the establishment of a specialized anticorruption court reproduce, in fact, the model used for investigating judges and abandoned in 2012—that is, the extremely narrow specialization of judges with unlimited tenure and with big chances of exposure to inappropriate influences.

One of the purposes of the specialized anticorruption court is to increase public confidence that the legal system is capable to fight corruption more efficiently and to reduce the perception of impunity for high-level officials. The sustainability of a court may depend exactly on unabated public confidence that this institution is necessary because a specialized court may require a considerable amount of public resource and its judges may be perceived as enjoying preferential recruitment conditions in comparison with other judges.

Finally, any reform requires the full involvement and support of all stakeholders, including judges, who are the main stakeholders who will administer justice in the specialized court. And, as the 2014 survey has shown, most judges do not support the idea of constituting specialized courts: 41% of the respondent judges were against specialization through specialized courts, 29% supported this idea, 20% were neutral, and 10% said that they had difficulty answering or did not have an opinion about this subject²⁹.

8. Comparative Analysis

Worldwide, there are not many studies on anticorruption courts, their necessity, and their impact. The available literature highlights that the most quoted argument in favor of constituting special judicial bodies to fight corruption refers to the need for more efficiency in trying corruption cases and for showing the public within and outside the country that authorities take the fight against corruption seriously. In some countries, concerns about ordinary courts' capacity to deal with cases of corruption impartially has also played an important role in deciding to set up specialized anticorruption courts. Most courts in those countries were established voluntarily. In some cases, the requirements of international organizations and foreign assistance programs played a decisive role.

²⁷ Soros Foundation—Moldova, *Criminal Justice Performance from a Human Rights Perspective. Assessing the Transformation of the Criminal Justice System in Moldova*, 2009, pp. 121, 127, and 142, available at: <http://soros.md/files/publications/documents/CRIMINAL%20JUSTICE%20PERFORMANCE%20FROM%20A%20HUMAN%20RIGHTS%20PERSPECTIVE.pdf>.

²⁸ Law No. 153 of 5 July 2012, available at: https://www.legis.md/cautare/getResults?doc_id=15383&lang=ro.

²⁹ Legal Resources Centre from Moldova, *Study on Specialization of Judges and Feasibility of Creating Administrative Courts in the Republic of Moldova*, Chişinău, February 2014, p. 61, available at: http://crjm.org/wp-content/uploads/2014/06/2014-Studiu-Specializ-Jud-MD_ro.pdf.

Specialized anticorruption courts are a relatively novel phenomenon. Apart from the oldest of such courts in the Philippines, founded in 1979, all other identified specialized anticorruption courts started working only in the past 10 – 15 years (often along with, or after, the establishment of a specialized anticorruption agency).

The collected data³⁰ and relevant international studies³¹ showed that functioning specialized anticorruption courts had existed or still existed in 26 jurisdictions.

Table 5. *The Distribution of Specialized Anticorruption Courts Across the World*

No.	Europe	Asia	Africa	North America
1.	Croatia (2008)	Philippines (1979)	Kenya (2003)	Mexic (2015)
2.	Slovakia (2009)	Pakistan (1999)	Burundi (2006)	
3.	Bulgaria (2012)	Indonesia (2002)	Uganda (2008)	
4.	Serbia (2016)	Nepal (2002)	Cameroon (2011)	
5.	Ukraine (2018)	Bangladesh (2004)	Senegal (2012)	
6.	Albania (2019)	Afganistan (2010)	Botswana (2013)	
7.		Palestine (2010)	Tanzania (2016)	
8.		Malaysia (2011)	Madagascar (2016)	
9.		Thailand (2016)	Sierra Leone (2019)	
10.		Sri Lanka (2018)		

Most countries that decided to set up anticorruption courts are from Asia and Africa. Notably, many of these courts are not specialized in cases of corruption in a strict sense of this concept, but rather act as criminal courts with special jurisdiction (in addition to corruption cases, they try serious and especially serious crimes).

The identified models of anticorruption courts:

- **Solo judges**—Judges who are designated or appointed as special anticorruption judges to courts of general jurisdiction; their judgments are appealable under the general rules (Bangladesh, Kenya).
- **Trial courts**—Specialized anticorruption courts with the first-level jurisdiction over anticorruption cases, but whose judgments are directly appealable at the supreme court (Burundi, Cameroon, Nepal, Pakistan, Senegal, etc.).
- **Hybrid courts**—Anticorruption courts that act as a trial court for some important cases of corruption and as an intermediary appellate court for other cases of corruption

³⁰ U4 Anti-Corruption Resource Centre, Anti-corruption court legislation for 26 countries, 2020, available at: <https://www.u4.no/anti-corruption-court-legislation-for-23-countries/>.

³¹ Matthew C Stephenson, Sofie Arjon Schütte, report *Specialised anti-corruption courts. A comparative mapping*, December 2016, p. 8, available at: <https://www.u4.no/publications/specialised-anti-corruption-courts-a-comparative-mapping.pdf>.

that were adjudicated by trial courts of general jurisdiction (Botswana, the Philippines, Uganda).

- *Full court systems*—Systems of anticorruption courts that include trial and appellate courts (Afghanistan, Indonesia, Malaysia).

Anticorruption courts may also vary by the scope of jurisdiction. The jurisdiction of specialized anticorruption courts may vary across three main dimensions:

- by the type of specific crimes;
- by the size of crimes (usually measured in monetary terms or in the size of damage); and
- by the level/importance of the clerk allegedly involved in corruption.

Existing specialized anticorruption courts also vary by their place in the court hierarchy, judge recruitment mechanisms, relation to anticorruption agencies, and legal procedures. For example, in Indonesia, the anticorruption court of the first tier must adjudicate cases within 90 days of their filing at the registry, whereas the higher courts (the Appellate Anticorruption Court and the Supreme Court, the latter having general jurisdiction) must adjudicate cases within 60 and, respectively, 90 days.³² Indonesia also requires that all proceedings that take place at anticorruption courts be recorded in audio and video formats. This enables the Supreme Court and the public to evaluate judges' reasoning and behavior.

In Malaysia, the law requires anticorruption courts to try cases within one year (this requirement does not apply to judges from courts of general jurisdiction).³³ In Nepal, the special court adjudicates cases within six months, and any appeal must be examined within three months. In Botswana, all cases of corruption go first to trial courts of general jurisdiction, and only appeals go to the Anticorruption Court, which acts exclusively as an appellate court.³⁴ Its decisions are appealable at the Supreme Court as any other decision.

Given the immediate vicinity of European countries, the following analysis will focus on the work of the anticorruption courts from these countries. Although this paper is not intended to provide a systemic evaluation of their performance, it seems fair to highlight that their performance varies. In some countries, special courts have played a positive role, whereas in other countries, the results were underwhelming, and a few special courts that initially looked like success stories encountered significant challenges and issues later.

Croatia – Croatia established four specialized anticorruption courts in four distinct regions (Osijek, Rijeka, Split, and Zagreb). These courts have territorial and subject-matter jurisdiction over criminal cases that fall within the competence of the Office for the Suppression of Corruption and Organized Crime (USKOK). These special courts try only medium-sized and high-level corruption and organized crime cases.³⁵

The four courts have 61 judges. On appointment (from 2008 through 2010), these judges underwent security vetting by the intelligence service “to prove that the judiciary is ready

³² Sofie Arjon Schütte, report *Specialised anti-corruption courts: Indonesia*, July 2016, p. 3, available at: <https://www.u4.no/publications/specialised-anti-corruption-courts-indonesia.pdf>.

³³ *Idem*, para. 31, p. 11.

³⁴ *Idem*, p. 31.

³⁵ Transparency International, report *Anti-Corruption Specialisation: Law Enforcement and Courts*, January 2014, p. 5, available at: <https://bit.ly/3jpb6No>.

to fight corruption.” Currently, judges for these courts are recruited annually based on the opinion of the Council of Judges. Specialized judges receive higher salaries and are recruited from among the most experienced judges of the criminal law.

Croatia is an example of the fight against corruption by bringing high-ranking officials to court. According to Transparency International³⁶, this is due to the Office for the Suppression of Corruption and Organized Crime founded in 2001 with a broad mandate to investigate and prevent corruption and organized crime. Therefore, the fight against corruption depends greatly on the efficiency of the investigation body.

Slovakia – In 2003, the Parliament of Slovakia established a specialized court with jurisdiction over cases of corruption and organized crime. The court started working in July 2005. In 2009, the Constitutional Court of Slovakia declared the legal framework governing the establishment of this court unconstitutional. The Parliament of Slovakia reacted quickly by adopting a new law, fixing constitutionality issues, and introducing additional amendments that vested the current court with exclusive powers over other crimes as well, such as economic crimes, terrorism, crimes committed by organized crime groups etc. Since 2009, however, the court seems to have acted as a specialized criminal court rather than a court specialized exclusively in corruption cases.

Some Slovak MPs and judges have raised constitutionality issues.³⁷ The 2003 law offered the judges of the Specialized Criminal Court much higher salaries than those for judges from ordinary courts. This resolved recruitment problems but caused significant resentment among the rest of the Slovak judiciary. The Constitutional Court found that the noticeable difference in salaries was discriminatory.

In 2003, to get appointed to the Specialized Criminal Court, judges needed to undergo special security vetting by the Slovak intelligence service. If the vetting found that a judge did not meet requirements or there were risk factors, the judge was declared incompatible with this position. The Constitutional Court stated that the requirement concerning security clearance breached the principle of the separation of state powers, offering the executive unjustified weight in removing judges. The effect of the Constitutional Court’s judgement, however, was not retroactive, and all judgments of the Specialized Criminal Court remained in force.

Today, the Specialized Criminal Court has 13 judges, including a chief judge. Less serious cases are tried by a single judge, and those that are more serious, by three judges. These judges have the same status as judges from regional courts (the level equivalent to appellate courts in Moldova), and the Specialized Criminal Court acts exclusively as a trial court whose judgements are appealable directly at the Supreme Court.

The monthly salary of a judge from the Specialized Criminal Court amounts to that of a judge from the Supreme Court and makes up 130% of the monthly salary of an MP. Moreover, judges of the Specialized Criminal Court and judges of the Supreme Court who adjudicate corruption cases (and other cases that fall within the jurisdiction of the Specialized Criminal

³⁶ Transparency International, report *Successful Anti-corruption Reforms*, April 2015, p. 5, available at: <https://knowledgehub.transparency.org/helpdesk/successful-anti-corruption-reforms>.

³⁷ *Slovak Spectator, Slovakia to Lose its Special Court*, ©2009, available at: <https://spectator.sme.sk/c/20032786/slovakia-to-lose-its-special-court.html>.

Court) receive a special financial bonus.³⁸ While some countries constituted specialized anticorruption courts to increase the efficiency of the judiciary, this reason did not play significant part in the establishment of the Specialized Criminal Court in Slovakia. The main impetus for its establishment came from concerns about the integrity of judges.³⁹ Regional judges were viewed as being captured by local elite networks and susceptible to influences from politicians, businesspeople, and figures of the criminal underworld. It is thought that the transfer of these cases from local or regional courts to the Specialized Criminal Court has helped to end the impunity of regional elites although this statement is difficult to verify.

The results of the Slovak anticorruption court are hardly surprising. It seems to work reasonably well and efficiently, maybe even more efficiently than regular courts. This can be explained by the fact that ordinary judges have a much larger workload. The court's efficacy and role in reducing corruption in the country has never been evaluated. An analysis of judgments concerning corruption cases showed that, after the establishment of the court, the number of convictions increased from 18 in 2011 to 103 in 2014 and then decreased to 76 in 2018⁴⁰. Bribery and illegal commissions are among the most widespread corruption acts in Slovakia. From 2017 through 2019, 42% of judgments concerned petty corruption of up to EUR 100, and 31%, corruption that exceeded EUR 1,000. Not a single high-ranking politician has been convicted for corruption so far despite a flurry of high-profile corruption cases⁴¹.

The court has been working for more than 10 years but the perceived level of corruption has decreased only a couple percentage points from 59% to 57% in 2019. Some critics say that the Specialized Criminal Court is toothless but blame the prosecution authority for failure to convict high-ranking officials. The prosecution authority fails to bring such cases to court even when there is sufficient evidence for that.

Bulgaria – In 2011, this country enacted the legal framework that established the Specialized Criminal Court and the Specialized Criminal Court of Appeal. Both have jurisdictions over cases concerning organized crime and corruption. Cassation appeals from the judgments of these courts are examined at the Supreme Court under the general rules.

The Specialized Criminal Court has the characteristics of an extraordinary tribunal. It has the power to try cases based on the profession/personality of the defendant rather than the committed crime. Although the European Commission has welcomed the establishment of this court, civil society expressed concerns about the way how judges were recruited for this court – many of whom were former prosecutors.⁴² In essence, specialized courts compete with courts of general jurisdiction and have turned into a parallel court system used to persecute inconvenient opponents of the government.

³⁸ Council of Europe, report *Efficiency and Quality of the Slovak Judicial System: Assessment and Recommendations on the Basis of CEPEJ Tools*, November 2017, p. 9, available at: <https://rm.coe.int/slovakia-assessment-report-on-efficiency-and-quality-of-theselovak-jud/16807915c9>.

³⁹ Matthew Stephenson, U4 Anti-Corruption Resource Centre, report *Specialised anti-corruption courts: Slovakia*, July 2016, p. 2, available at: <https://www.u4.no/publications/specialised-anti-corruption-courts-slovakia.pdf>.

⁴⁰ Transparency International—Slovakia, *Analýza súdnych rozhodnutí vo veciach korupcie*, January 2020, p. 2, available at: https://transparency.sk/wp-content/uploads/2020/01/TS_prezentacia_studia_korupcie.pdf.

⁴¹ US Embassy in Slovakia, *Official Human Rights Report 2019*, p. 13, available at: <https://sk.usembassy.gov/wp-content/uploads/sites/193/SLOVAKIA-2019-HUMAN-RIGHTS-REPORT.pdf>.

⁴² Radosveta Vassileva, *Capturing Bulgaria's Justice System: The Homestretch*, 2019, available at: <https://verfassungsblog.de/capturing-bulgarias-justice-system-the-homestretch/>.

Serbia – In 2016, the Serbian Parliament enacted the Law on the Organization and Jurisdiction of Government Authorities in Suppressing Organized Crime, Corruption, and Other Serious Crimes. However, this law came into effect only on 1 March 2018. This law established a special Department for Organized Crime Cases at the High Court of Belgrade (which acts as a trial court) to try crimes committed by organized crime groups, terrorism, and money laundering, including crimes related to corruption (the most serious crimes). A similar department was also set up at the Belgrade Court of Appeal. The Serbian Supreme Court of Cassation decides on ordinary and extraordinary appeals filed from the judgments of all courts of Serbia and on other aspects provided for in the law (such as conflicts of jurisdiction between courts). Overall, Serbia has a complicated court system,⁴³ which includes 159 courts (basic courts, higher courts—also known as high courts—appellate courts, and specialized courts—which include commercial trial and commercial appellate courts, contraventional courts, misdemeanor courts, misdemeanor and administrative appellate courts etc.).

Corruption crimes of smaller size are tried in courts of general jurisdiction. Thus, Serbia does not have a classical anticorruption court, but has specialized departments at courts of general jurisdiction, trial courts, and appellate courts. The chief judges of trial courts appoint chief judges of the specialized departments of their courts for a term of 4 years, recruiting them from among the judges assigned to the specialized departments. To be assigned to a specialized department, judges must have worked as criminal law judges for at least eight years.

We could not find information about the work of specialized departments, but according to one of the Serbian judiciary's activity reports,⁴⁴ in 2019, courts received 1,516 new corruption cases, disposed of 1,792 cases, and still had 1,290 pending cases at the end of the year. The backlog of cases is high, especially considering that in 498 of the pending cases, court procedures had been under way for more than three years. In general, Serbian judicial procedures in the biggest corruption cases are extremely long.

Ukraine – The establishment of a specialized anticorruption court in Ukraine was one of the recommendations of the Organization for Economic Cooperation and Development included in its analysis of anticorruption reforms conducted in 2015. The establishment of this institution took quite a long time. The initial draft law was filed in the Ukrainian Parliament in December 2017, judges were appointed in April 2019, and the court started working in September 2019.

The Venice Commission welcomed the approval of this law because, considering the problematic level of corruption in Ukraine, *“the only way forward in the fight against high-level corruption in Ukraine is the prompt establishment of a high specialised anti-corruption court.”*⁴⁵ The Anticorruption Court was established to try cases of corruption and those related to corruption or, in other words, to conduct criminal proceedings on cases prepared by the National Anticorruption Office of Ukraine.

Under the Ukrainian law, to get appointed as judge at a specialized court, candidates must

⁴³ The organization of the Serbian court system, 2020, available at: <https://vss.sud.rs/en/court-network-map>.

⁴⁴ Supreme Court of Cassation of Serbia, *Annual report on the Work of the Courts in the Republic of Serbia for 2019*, March 2020, p. 42, available at: <https://www.vk.sud.rs/sites/default/files/attachments/Annual%20Report%20ENG.pdf>.

⁴⁵ Opinion No. 896/2017 of 9 October 2017 of the Venice Commission on the Draft Law on Anticorruption Courts, adopted at Plenary Session No. 112 of 6 – 7 October 2017, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)020-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)020-e).

have minimum five years of judicial experience or minimum seven years of scientific work in law or minimum seven years of professional experience as a lawyer, including representation in court and/or criminal prosecution, or minimum seven years of cumulative experience in any combination of these positions.

All candidates participated in a hearing organized by a commission of international experts. This commission had six foreign specialists with impeccable reputations and broad experience in cases related to the fight against corruption. As a result, today, the public has high confidence in the recruitment process and in appointed judges.

343 candidates competed for the 39 vacancies. 27 of them now work at the specialized trial court, and 11, at the specialized appellate court. Both the trial court and the appellate court form one entity known as the High Anticorruption Court and managed by one chief judge.

Litigants can file appeals from the trial court's judgments in the appellate court, which examines cases in a panel of three judges. The appellate court's decisions are appealable at the Supreme Court's judicial panel specialized in corruption cases, which is formed of judges who have already worked at the Supreme Court rather than of specialized judges.⁴⁶

According to a preliminary assessment,⁴⁷ at the beginning of its work, the court had over 3,500 cases and materials (criminal cases, complaints, petitions, etc.), all from the backlog received from all over Ukraine. For a long time, these cases jammed the court's work. The insufficient number of judges at the specialized appellate court proved to be another issue. The absence of one judge for various reasons leads to the impossibility of forming a judicial panel, which causes delays in case examination.

According to the Anticorruption Court's activity report for September – December 2019, the workload of a judge at the specialized trial court included 147 cases and materials.⁴⁸ Although during the reference period, the court disposed of 56 cases, the court's performance is still difficult to assess.

Albania – The Law on the Organization and Operation of Anticorruption Courts, which provides, among other things, for the establishment of specialized courts, was adopted in 2016. However, Albania established trial and appellate courts specialized in cases of corruption and courts specialized in cases concerning organized crime only in December 2019. The trial courts have at least 16 judges, and appellate courts, at least 11, who are appointed for three years with the possibility of reappointment only for another term.⁴⁹ The practical efficacy of the Albanian specialized courts is difficult to assess because they have been working for only half a year. But it is known that Albania had difficulty recruiting judges and prosecutors. One quarter of the approximately 800 judges and prosecutors of the country have undergone a vetting process over two years to verify that they were independent of politics or were not involved in acts of corruption.

⁴⁶ Ivanna Y. Kuz, Matthew C. Stephenson, *Ukraine's High Anti-Corruption Court—Innovation for impartial justice*, 2020, p. 9, available at: <https://www.u4.no/publications/ukraines-high-anti-corruption-court.pdf>.

⁴⁷ *High Anti-Corruption Court starts work in Ukraine: how will it operate?* Ukraine Crisis Media Center, 2019, <https://uacrisis.org/en/73207-high-anti-corruption-court>.

⁴⁸ www.hcac.court.gov.ua, report „Аналіз здійснення правосуддя Вищим антикорупційним судом у 2019 році (як судом першої інстанції)” Kyiv 2020, p. 5, available at: https://hcac.court.gov.ua/userfiles/media/VAKS/statistics/analysis_justice_2019.pdf.

⁴⁹ Center for the Study of Democracy and Governance, report: *First Monitoring Report on the progress of the establishment of the Special Anti-Corruption and Organized Crime Structure (SPAK) and Special Courts against Corruption and Organized Crime*, November 2018, pp. 14 and 19, available at: http://csdgalbania.org/wp-content/uploads/2018/12/raporti_spak_final_english_web.pdf.

Although there are no best practices for specialized anticorruption courts, decision-makers can take inspiration from existing experience and models. Several European countries have set up specialized anticorruption courts that are also used to fight organized crime. That said, their practical efficiency has not been proven yet. Setting up anticorruption courts cannot eradicate corruption all by itself. For example, countries with the lowest levels of corruption (New Zealand, Denmark, Switzerland, Norway, Finland, or Sweden) do not have such specialized courts. It is naive to hope that the work of an anticorruption court alone will be sufficient, without efficient anticorruption mechanisms and bodies.

II. Solutions to Streamline Anticorruption Efforts

1. Strengthening the Functional Capacity of the Anticorruption Prosecution Office

Presumably, one of the main goals pursued by setting up a court and judicial panels specialized in corruption cases is the optimization of anticorruption efforts. We think that there are other ways to make the fight against corruption more efficient, for example by strengthening the APO's capacity. Judges try cases based on the charges and evidence produced by prosecutors. If a case is poorly investigated and prepared, judges cannot "rescue" it because this would violate the principle of impartiality. To render anticorruption efforts more efficient, decision-makers should first focus on strengthening the APO's capacity to handle high-level corruption cases rather than come with proposals that only superficially touch on the last phase, that of trying a case. If we only set up a specialized court but do nothing to improve the investigation of corruption cases, we cannot expect qualitative changes.

Although the APO has been set up to fight high-level corruption, it spends lots of effort on cases of petty corruption. The premise of the APO reform was that this entity would focus on the investigation of cases of high-level corruption. This did not happen because the APO has kept the responsibility for handling the prosecution of cases transmitted into the NAC's competence and the NAC's competence was not reduced significantly.⁵⁰ We think that the APO's powers should be limited exclusively to cases of high-level corruption.

According to the activity reports of the Prosecutor General's Office of the Republic of Moldova,⁵¹ the number of criminal cases handled by anticorruption prosecutors (conducting of the criminal investigation) increased more than three times, from 307 in 2015 to 1,023 in 2019 (in 2017, it was 1,233).

⁵⁰ Legal Resources Centre from Moldova, position paper *The Anti-corruption Prosecution Office Should Investigate Only High-level Corruption*, Chişinău, November 2018, p. 13, available at: https://crjm.org/wp-content/uploads/2019/01/2018-11-Nota-Competentele-PA-fin_eng.pdf.

⁵¹ The data is from the activity reports of the Prosecution Authority of the Republic of Moldova for 2015 through 2019, available at: <http://procuratura.md/md/d2004/>.

Table 6. Prosecutors' load of corruption and corruption-related cases from 2015 through 2019

Type of activity	Indicators	2015	2016	2017	2018	2019
Conducting of the criminal investigation	Complaints registered in that year	295	416	657	532	500
	Complaints handled by prosecutors	316	430	702	578	552
	Criminal cases under proceedings (total)	307	826	1233	1102	1023
	Pending criminal cases in the beginning of the year (backlog)	102	112	484	594	593
	Initiated criminal cases	172	269	449	351	353
	Finished criminal cases	84	166	301	228	220
	Pending criminal cases in the end of the year (backlog)	112	484	594	593	264
	Cases submitted to court	43	78	177	113	81
Overseeing the criminal investigation	Criminal cases under proceedings (total)	1842	2200	2003	2014	1898
	Pending criminal cases in the beginning of the year (backlog)	785	877	838	879	713
	Initiated criminal cases	655	795	720	714	640
	Finished criminal cases	662	612	610	619	596
	Pending criminal cases in the end of the year (backlog)	886	842	888	713	587
	Cases submitted to court	255	259	278	284	267
Trial of cases in court	Judgments issued by trial court	231	228	270	292	264
	Convictions	189	179	219	237	195
	Dropped cases	22	28	33	40	50
	Acquittals	20	21	18	15	19

Source: Prosecutor General's Office of the Republic of Moldova, activity reports for the years 2015 through 2019, processing by the LRCM

In addition, the number of complaints received by the APO has increased by 41% from 2015 until 2019. In 2017, anticorruption prosecutors remitted 455 criminal cases to court, in 2018, 397, and in 2019, 348 (cumulatively, during both the conducting and overseeing of criminal investigation). According to the PGO, in 2019, judges tried 264 cases of corruption.⁵² Such a workload on anticorruption prosecutors warrants a specialized entity with a special status but does not necessarily entail the need for a specialized anticorruption court.

For the reasons described above, the large number of handled cases and the increasing number of complaints do not allow the APO's personnel to focus on high-profile cases of corruption. Limiting the APO's powers to cases of high-level corruption will enable anticorruption prosecutors to focus their efforts without having to compromise the quality or efficiency of their work because of the large workload. The reduction of handled cases will lead to a better quality of investigation during the prosecution phase and a better representation in court.

Therefore, we propose assigning the overseeing of the criminal investigation performed by the NAC to prosecutors from territorial prosecution offices and limiting the APO's powers exclusively to cases where it conducts criminal investigation directly. Cases of petty corruption can be easily investigated by prosecutors from territorial prosecution offices because they do not involve a high risk for prosecutors' careers and do not warrant costly investigation means.⁵³

Cases of corruption (particularly those of high-level corruption) require special handling because of their complexity. To cope with large workloads related to the investigation of high-profile cases, the APO needs sufficient human, technical, and material resources.

2. Strengthening Judges' Capacity to Try Cases of Corruption

According to Article 15 (2) of Law No. 514/1995 on the Judicial Organization, courts may have specialized departments or judicial panels. Judges who specialize in criminal matters can also be trained in corruption cases.

Hypothetically, it is possible to have several judges specialized in corruption cases in several courts. These courts, however, should be sufficiently large—that is, they should have at least three specialized judges each—to enable the randomized assignment of corruption cases. A solution could be to have all cases of corruption examined in the courts of Chişinău, Cahul, and Bălţi—the cities where the NAC and the APO are based. All it takes is amending Article 40 of the Criminal Procedure Code to clarify that corruption cases must be tried in the court in whose jurisdiction the prosecution took place.

For example, judges from the Buiucani Office of the Chişinău Court, whose judicial cadre includes 38 judges and whose judges specialize in criminal matters and try all corruption cases that fall within the competence of the Chişinău Court (Table 4), can receive additional, deeper

⁵² The data presented in the activity reports of the Prosecutor General's Office differ from those presented in the reports of the ACA. According to the ACA's report, in 2019, courts tried and issued sentences in 159 cases. The report is available at: <https://bit.ly/31jxAXF>. The PGO's report, on the other hand, states on page 47 that trial courts issued 264 sentences in 2019. This report is available at: <http://procuratura.md/file/Raport%20public%20Procuratura%202019%20rectificat%2004.05.2020%20.pdf>. In this document, the LRCM used the data from the official reports of the ACA.

⁵³ *Idem*, p. 50.

training on the specificities of corruption cases. The same approach could be applied to judges from the departments for criminal cases of appellate courts and the SCJ.

As of today, the Bălți Court has similar specialization possibilities, whereas the Cahul Court has them to a lesser extent. The latter court has fewer judges, but their number can be increased after the new premises are built and all judges are brought under the same roof.

Conclusions

Before deciding on the necessity of a specialized anticorruption court in the Republic of Moldova, it is essential to consider the reasons for this specialization. This assessment should take into account the public policies adopted earlier, legal, economic, and sanitary aspects, and the risks that may impose constraints or affect the work of such a court at a later time. The right approach will depend on the concrete context, but any improvement in the fight against corruption will require greater emphasis on political and societal values and attitudes.

The collected data and analyses made us conclude that a specialized anticorruption court is not appropriate in the Republic of Moldova for the following reasons:

- 1) This initiative does not fit in with the policy measures taken in the past years. The proposals to set up an anticorruption court came after the disbandment of all specialized anticorruption courts in 2016. Reverting to this concept after just 4 years is at least confusing and apparently entails the revival of negative practices abandoned in 2016.
- 2) In the Republic of Moldova, there is not sufficient workload to keep an anticorruption court busy. Over the past five years, from 2015 through 2019, courts tried 199 criminal cases concerning corruption every year on average, and 162 of these cases were disposed of with judgments. Over the same five years, the average annual caseload of a judge included approximately 620 cases, and the average number of cases disposed of with a judgment was 610. If decision-makers decide to establish an anticorruption court, the judges that will work at this court will have the smallest annual caseload of all courts of law—approximately 22 cases per judge if the court has at least nine judges (the minimal number of judges per court established after the reorganization of courts) and 66 cases per judge if the anticorruption court has minimum three judges.
- 3) That a single trial court—which will likely be located in Chişinău—will try all corruption cases means there will be difficulties with the trial of cases brought from regions because these cases will require all participants to travel to the capital city. In the past two years, approximately two thirds of corruption cases were tried in regional courts. This will pose obstacles in accessing the court, will slow down case examination, and will increase court costs.
- 4) If all corruption cases are tried by only a handful of judges, third parties will be able to influence them easier. It is much easier to put inappropriate influence on a small and known number of judges than on a numerous body of judges. Furthermore, the initiative virtually excludes the possibility of the randomized assignment of corruption cases, which is an important measure to prevent corruption in the judiciary.


- 5) The establishment of a court and judicial panels specialized in corruption cases will require the narrow specialization of a limited number of judges. And there are no international standards that regulate the narrow specialization of judges. Besides, dividing a jurisdiction into secondary branches of the law or categories of cases is not very suitable for countries with small population and a low level of activity.
- 6) There are no international standards about the establishment of specialized anticorruption courts. Every country has the discretion to adopt the anticorruption institutional framework that fits its national context best. Most countries that decided to set up anticorruption courts are from Asia and Africa. Several European countries have also set up courts specialized in corruption cases and the fight against organized crime. Their practical efficiency, however, has not been proven yet. Setting up anticorruption courts cannot eradicate corruption all by itself. For example, countries with the lowest levels of corruption (New Zealand, Denmark, Switzerland, Norway, Finland, or Sweden) do not have such specialized courts. It is naive to hope that the work of an anticorruption court alone will be sufficient, without efficient anticorruption mechanisms and bodies.
- 7) One important truth that should not be forgotten is that the efficiency of a specialized anticorruption court depends greatly on the performance of the body or bodies empowered to investigate and to bring cases to this court. A court can try only the cases that it receives, and if law enforcement officers do not gather evidence (or do it deliberately badly), even a well-designed specialized court will not be effective against corruption. The specificity of corruption cases consists in how they are investigated rather than how they are tried in court. And this is exactly why it is sensible to strengthen the APO's capacity, including the capacity to investigate cases of high-level corruption.


Recommendations

- 1) We encourage the Ministry of Justice and the Moldovan government to drop the initiative concerning the establishment of a specialized anticorruption court because it is not justified legally, comes at odds with the optimization of the judicial map, entails numerous risks, and is essentially contrary to authorities' declared objectives concerning the fight against corruption.
- 2) We recommend increasing the efficiency of anticorruption efforts by strengthening the AOP's capacity to investigate high-level corruption and transmitting some of its powers to the NAC. We propose assigning the overseeing of the criminal investigation performed by the NAC to prosecutors from territorial prosecution offices and limiting the APO's powers exclusively to cases where it conducting criminal investigation directly. Cases of petty corruption can be investigated by prosecutors from territorial prosecution offices because they do not involve a high risk for prosecutors' careers and do not warrant costly investigation means.
- 3) As an alternative to setting up new courts, existing courts could get their judges specialized. With a small number of criminal cases, the specialization of judges in every court is not a reasonable idea. It is, however, possible to have judges from several courts specialize in all cases of corruption received by those courts. This can be done by amending Article 40 of the Criminal Procedure Code to change the courts' jurisdiction over corruption cases in accordance with the place where the prosecution took place (where the NAC's and the APO's subdivisions are located) rather than the place where the crime was committed. This will lead to fewer courts empowered to try corruption cases and, respectively, fewer judges who will try such cases, which will allow the organization of training for these judges with more ease and efficiency and will obviate the need for an expensive court that can be easily exposed to influence from third parties. What is, however, important is that every court have at least three judges specialized in these matters to enable the randomized assignment of corruption cases. When the amount of corruption cases is small, specialized judges will be able to try cases from other categories.
- 4) We recommend increasing the capacity of judges specialized in criminal cases to try cases of corruption.

Legal Resources Center from Moldova (LRCM) is a nonprofit organization that contributes to strengthening democracy and the rule of law in the Republic of Moldova with emphasis on justice and human rights. Our work includes research and advocacy. We are independent and politically non-affiliated.

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