



TECHNICAL ASSISTANCE REPORT

REPUBLIC OF MOLDOVA

Analysis of the Draft Law on the
Anti-Corruption Judicial System and on
Amending Some Normative Acts

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Acronyms and Abbreviations

ACC	Anticorruption Court
ACCCA	Anticorruption Chamber of the Chisinau Court of Appeal
AD	Asset Declarations
APO	Anticorruption Prosecutor's Office
CCEJ	Consultative Council of European Judges
DL	Draft Law
ECtHR	European Court of Human Rights
GRECO	Group of States Against Corruption
HACC	High Anticorruption Court (of Ukraine)
HQCJ	High Qualification Commission of Judges (of Ukraine)
IMF	International Monetary Fund
LEG	Legal Department of the IMF
OECD	Organization for Economic Cooperation and Development
PSC	Pre-Selection Committee
SAJ	Specialized Anticorruption Judiciary
SCC	Special Criminal Court (of Slovakia)
SCJ	Supreme Court of Justice
SCM	Superior Council of Magistrates
UNCAC	United Nations Convention against Corruption
VC	Venice Commission
WB	World Bank

Preface

Upon the initiative of the President of the Republic of Moldova, a Specialized Anti-Corruption Judiciary (SAJ) draft law aimed at strengthening efforts to combat corruption is being contemplated. The draft law on the “Anti-Corruption Judicial System and on Amending Some Normative Acts” (Draft Law or DL) was adopted by the Parliament of the Republic of Moldova (Moldova) at the first reading on November 30, 2023. A second reading is expected to occur at the next Parliamentary session. The DL contemplates the creation of an anticorruption judiciary and amends the existing Criminal Procedure Code, while adding provisions regulating “the organization and activity of a specialized anticorruption court and a specialized chamber of the Chisinau Court of Appeal”. Further, it amends the Administrative Code, the Civil Procedure Code, and other legal acts. Authorities have considered successful experiences of other countries and international good practice, particularly the anticorruption reforms in Ukraine, the Republic of Armenia, and the Slovak Republic, and the recommendations of the Venice Commission (VC) regarding specialized anticorruption courts in those and other countries. In addition, the Republic of Moldova has sought and received the VC’s opinion on the DL, as well as the comments from the World Bank (WB), civil society, political parties, and development partners.

Authorities have requested the IMF staff to provide high level recommendations on the DL, particularly on the independence, jurisdiction, and resources of the SAJ. In response to the authorities’ request, IMF staff has reviewed the DL, which provides an excellent basis for the SAJ, and would like to propose specific recommendations. The recommendations take into consideration local context, international standards and good practices on judicial independence. They are based on the analysis of the Explanatory Note to the Draft Law, the Constitution of the Republic of Moldova, Criminal Code, Criminal Procedure Code, and others legal norms, such as norms on reforms to the judiciary, conflicts of interest and the asset declarations regime. International good practices, studies and reports issued by other organizations and stakeholders were also considered.

The TA report has the following sections: Section I. Overview and Key Recommendations. Section II Independence and Effectiveness of Anticorruption Judiciary; Section III. Jurisdictional Competence; Section IV. Transparency; and two annexes. Harmonizing the analyzed sections and provisions of the DL with international principles on judicial independence, standards and best practices will increase the effectiveness of overall anti-corruption efforts in the Republic of Moldova.

In preparation of the TA report, IMF staff benefited from the expertise of Mr. Tilman Hoppe and Mr. Mykhailo Zhernakov.

Section I. Overview and Recommendations

The Draft Law on the Anti-Corruption Judicial System as approved at first reading by the Moldovan Parliament offers a robust framework for effective anti-corruption enforcement. The creation of the SAJ is a logical next step in Moldova's effort to reduce corruption following the establishment of the Anti-Corruption Prosecutor Office (APO) in 2016 and the recent clarification of its investigative and prosecutorial jurisdiction.

The proposed recommendations, summarized in the Table below, are informed by international good practices and designed to respond to specific challenges faced by Moldova. The following recommendations merit particular attention: (i) the term of the PSC's mandate lasts until all judges of the first cohort of SAJ' are selected; (ii) the PSC has access to information necessary to perform its mandate effectively, and sanctions are provided for unjustified refusal of access; (iii) decisions on the selection of a SAJ candidate is made by majority of the PSC and in case of a tie, the chair, selected among the PSC members, has a decisive vote; and (iv) the SAJ's jurisdiction is narrowly defined and aligned to the jurisdiction of the Anti-Corruption Prosecutor's Office. The report details the rationale for these and other recommendations.

A Specialized Anticorruption Court would significantly contribute to addressing corruption in Moldova by increasing the effectiveness of adjudication of corruption cases. Specialized anticorruption courts have a particular value in jurisdictions that are affected by systemic corruption, judicial backlog, and low confidence in the judiciary. As of 2022, twenty-seven countries, including those of a size similar to Moldova, had put in place anticorruption courts, six of them in Europe: Croatia (2008), Slovakia (2009), Serbia (2010), Ukraine (2018), Albania (2019), and Armenia (2021).¹ The creation of specialized anti-corruption courts is justified by their ability to contribute to effectiveness, integrity, and expertise in adjudication of corruption-related cases.

The lack of efficient adjudication of corruption cases in Moldova hampers the credibility in the system and raises doubts on its integrity, which calls for a skilled and independent SAJ. Data shows that "from the date the offence was committed to the date a Supreme Court of Justice (SCJ) decision was issued, an average of 5.6 years passed (5.1 years for decisions issued in 2017, 5.7 years in 2018, 5.8 years in 2019 and 5.9 years in 2020)."² Corruption cases involving high-level political subjects can take even longer. This is worrisome, because corrupt acts punishable by imprisonment up to five years are subject to a statute of limitations after five years from the date of commission of the alleged crime to the final court decision.³

Dedicated resources and competent judges specialized in anti-corruption could contribute to speed up the trials and reduce judicial backlog. Countries like Botswana, Cameroon, Croatia, Malaysia, Palestine, the Philippines, Sri Lanka, Thailand and Uganda have invoked the need to ensure efficiency as the main reason for the creation of specialized anticorruption courts. Special attention should be given to

¹ Specialized Anticorruption Courts – A comparative Mapping. U4. 2022 Update.

² *Impact Assessment of the draft Law on Anticorruption Courts*, November 2023. Presidency of the Republic of Moldova.

³ <https://crim.org/judecareea-sanctionarea-coruptiei-analiza-practicii-judecatoresti/> Judecarea și sancționarea corupției – analiza practicii judecătorești Centre for Legal Resources of Moldova. January, 2022.

most important corruption cases in order to maintain the efficiency of anti-corruption courts. Poor planning has led to overload of the newly created systems in some jurisdictions.⁴

Integrity and independence of the SAJ is quintessential to its success. The proposed merit-based, transparent and participatory selection of SAJ judges will contribute to independence, integrity and public trust in the newly created system. In countries with severe corruption vulnerabilities in general and in the judiciary in particular, special measures are warranted to prevent real or perceived external influence over the anti-corruption judiciary. Despite the recent improvements in Moldova and the creation of specialized panels on corruption cases in the past,⁵ significant challenges remain in the effectiveness of anti-corruption enforcement and limited trust in the judiciary is aggravating.⁶ Therefore, more forceful measures are justified to protect the judiciary from undue influence and regain the public trust. The mechanism proposed in the DL, such as the pre-selection commission (PSC) composed of international partners and civil society, and the integrity and competency requirements, are very important steps.

Therefore, the decision to create a SAJ is welcome. Building on the very strong DL approved by the Parliament in its first reading and informed by international experiences relevant to the Moldova context, specific changes necessary to ensure the SAJ's effectiveness are recommended below. The most critical recommendations are highlighted in bold letter.

No.	Recommendation	Specific Measures
1.	Strengthen and clarify the mandate, composition and operation of the Pre-Selection Commission (PSC)	<ul style="list-style-type: none"> • Define the term of PSC mandate to last until all judges of the first cohort of SAJ' judges have been selected. • Provide in the DL a 2-months deadline for establishment of the PSC after the law enters into force. • Define the term "international partners" as those with which Moldova has had agreements or joint and sustained efforts on anticorruption initiatives over the past years. A three-year threshold could be considered for more precision. • Mandate by DL that the international partners, like CSOs, who nominate PSC members are identified by the SCM. • Mandate by DL that experts nominated by international partners as PSC members have requisite, clearly defined minimum years of cumulative international experience in anti-corruption. • Mandate by DL that CSO participating in the PSC have at least 2 years of existence.

⁴ In Bangladesh, for example, judges dealing with corruption cases remain overburdened because they also adjudicate other cases. In Kenya workload of magistrates is one of the important reasons of delays in adjudication.

⁵ Explanatory note to the DL regarding the anti-corruption judicial system and on amending some normative acts. p.3.

⁶ According to the latest assessment of the Freedom in the World Country Report, "Moldova's judicial branch continues to be highly susceptible to political pressures that hamper its independence". [Moldova: Freedom in the World 2022 Country Report | Freedom House](#) According to opinion polls conducted by Moldova's Public Opinion Barometer (BOP) as of August 2023, only about 19.3% of Moldovan citizens trust courts, whereas 44.5% and 27.7% highly distrust or somewhat distrust them, correspondingly, for a total of 72.2% of Moldovans who distrust the judiciary. [Institutul de Politici Publice | Barometer of Public Opinion \(ipp.md\)](#) The tendency seems to be aggravating, considering that in June 2021 the total number of Moldovans feeling distrust over courts was of 65.5%, which means a deterioration of 6.7% in the course of the last five years. [Institutul de Politici Publice | Barometer of Public Opinion \(ipp.md\)](#)

		<ul style="list-style-type: none"> • Allow CSOs to nominate experts with international experience in anti-corruption irrespective of their affiliation with the nominating CSO. • Define in the DL that decisions on the selection of a SAJ candidate is made by majority of the PSC. In case of a tie, the chair has a decisive vote. The chair should be selected preferably from the PSC members nominated by international partners. • Mandate the PSC to select and submit to the SCM at least two candidates for each position at the SAJ. • Provide necessary powers to the PSC to access information necessary for effective performance of its mandate and provide sanctions for unjustified refusal of access. • Designate a secretariat for the PSC and identify its source of funding.
2.	Clarify and strengthen financial and ethical integrity requirements for SAJ candidates	<ul style="list-style-type: none"> • Harmonize the DL provisions on financial and ethical integrity with similar provisions of the law 26/2022 and define a 15-year time frame for the financial integrity assessment. • Amend the DL to provide a clear set of elements to be assessed when conducting the competence assessments and ensure that knowledge of criminal law, criminal procedure, general analytical skills, knowledge and expertise in anticorruption and the rule of law is assessed as part of the competence evaluation.
3.	Strengthen transparency of the pre-selection process	<ul style="list-style-type: none"> • Amend the DL to provide a clear requirement for transparency of the pre-selection procedures and decisions.
4.	Strengthen the tenure of ACC and ACCCA judges	<ul style="list-style-type: none"> • Amend the DL to eliminate the 6-year rotation period for the ACC and the ACCCA judges, as it can bring disruptions in the system and interrupt the adjudication process.
5.	Narrowly define the jurisdiction of the SAJ to focus on the most important corruption cases	<ul style="list-style-type: none"> • Provide narrowly defined subject matter jurisdiction of the SAJ, which is aligned to the jurisdiction of the Anti-Corruption Prosecutor's Office, to ensure that it focuses on most important corruption cases.
6.	Mandate the operationalization of the SAJ without delay	<ul style="list-style-type: none"> • Mandate to (a) start all administrative work necessary to support the adjudicatory function of the SAJ immediately after enactment of the law, including recruitment of administrative staff, putting in place IT systems, and ensuring needed infrastructure, and to (b) start the adjudicatory work of the SAJ within the 30 days after the minimum number of judges of the ACC and the minimum number of judges of the ACCCA have been appointed. Both courts should start operation simultaneously to ensure appeals of first instance decisions will be adjudicated by the ACCCA.

7.	Strengthen transparency of the SAJ proceedings	<ul style="list-style-type: none">• Include in the DL specific rules on publication of court decisions and preserving the SCM to regulate the matter where needed.
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Section II. Independence and Effectiveness of Anti-Corruption Judiciary

A. PROPOSED ORGANIZATION OF ANTI-CORRUPTION JUDICIARY IN THE DL

The DL sets the organization and functioning of the anticorruption judicial system to be established in Moldova, with a three-tier structure. According to article 3 of Chapter II, the anticorruption judicial system in Moldova will include an Anticorruption Court (ACC), an Anticorruption Chamber of the Chisinau Court of Appeal (ACCCA), and the Supreme Court of Justice (SCJ). Article 8 of Chapter III regulates the composition and organization of the ACC, which will have 15 judges. Further, it establishes that the ACC shall be headed by a President, who shall be assisted by a Vice-President. And last, it states that investigating judges shall work within the ACC. Article 9 regulates the composition and organization of the ACCCA, which will have 6 judges, and will be headed by the Vice-President of the Chisinau Court of Appeal. The judges must meet the criteria specified in the DL, as explained in Section III below.

The DL defines the jurisdiction of the ACC, the Chisinau Court of Appeals, and the Supreme Court of Justice. According to the DL, the ACC “shall judge in the first instance procedure all criminal cases assigned to it by the Code of Criminal Procedure.” Further, the “judicial control over the procedural actions performed by prosecutors in cases falling within the competence of the Anticorruption Court shall fall within the competence of the investigating judge of the Anticorruption Court.” In addition, the ACC “shall examine the legality of the declaratory acts issued by the National Integrity Authority establishing substantial differences between the revenues obtained and the expenses incurred, on the one hand, and the acquired wealth, on the other hand, as well as the requests of the National Integrity Authority regarding the confiscation of unjustified assets.”

The ACCCA is established within the Chisinau Court of Appeal as the second instance court for corruption cases. The ACCCA can hear “appeals and cassation appeals against decisions issued in the first instance by the Anticorruption Court, as well as other cases given according to the law within its competence.” Article 7 of the DL defines the scope of the jurisdiction of the SCJ with regards to corruption-related cases. Thus, the SCJ “hears appeals against judgments handed down by the Anticorruption Chamber of the Chisinau Court of Appeal, as well as other cases given according to the law within its jurisdiction.”⁷ By creating the ACCCA, the DL guarantees the right to appeal by a competent court in corruption cases. The creation of a specialized appeal mechanism is not unusual. In Armenia, for example, the second instance court for corruption cases was created in 2022, after the initial creation of the first instance Anticorruption Court in 2021.

⁷ A Government Opinion issued by the Ministry of Justice in November this year, acknowledged the possibility and convenience of creating a specialized anticorruption panel within the SCJ to adjudicate cases stemming from lower-level courts of the SAJ, a decision that could be taken by the SCM via regulation.

B. INTERNATIONAL STANDARDS AND BEST PRACTICES RELATED TO INDEPENDENCE AND EFFECTIVENESS OF JUDICIARY

Countries must have independent, well-resourced and effective judicial systems to ensure fair justice administration in anticorruption criminal proceedings. The United Nations Convention Against Corruption (UNCAC), signed by Moldova in 2004, and ratified in 2007, establishes the obligation for State Parties to “take measures to strengthen integrity and to prevent opportunities for corruption. Such measures may include rules with respect to the conduct of members of the judiciary” (Article 11). Further, Moldova is a State Party (signed in 1999 and ratified in 2003) to the Council of Europe Criminal Law Convention on Corruption. This Convention requires State Parties to “adopt such measures as may be necessary to ensure that persons or entities are specialized in the fight against corruption”, have specialized authorities with the necessary independence to enable them to carry out “their functions effectively and free from any undue pressure”, and “ensure that the staff of such entities has adequate training and financial resources for their tasks” (Article 20). Moldova is also a State party to the European Convention on Human Rights and Fundamental Freedoms (ECHR), which guarantees the right to a fair trial (Article 6). European Court of Human Rights (ECtHR), while applying article 6 of the ECHR found that “combatting corruption and organized crime may require specialized measures, procedures and institutions”.⁸

Other international instruments provide further guidance by codifying good practices related to the functioning of judicial bodies. For instance, the Bangalore Principles of Judicial Conduct establish that “Judicial independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects” (Value 1). Moreover, “Impartiality is essential to the proper discharge of the judicial office” (Value 2). Also, a “judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer” (Value 3). Further, “Competence and diligence are prerequisites to the due performance of judicial office” (Value 6) and “the judiciary functions independently on the basis of the judge’s assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences”.⁹

Any method of judicial selection should safeguard against judicial appointments for improper motives. Principle 10 of the 1985 Principles on Independence of the Judiciary establishes that “Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law.”¹⁰ Further, according to the Twenty Guiding Principles for the Fight Against Corruption, adopted by the Council of Europe through Resolution (97) 24 of 1997, states commit to “ensure that those in charge of the prevention, investigation, prosecution and adjudication of corruption offences enjoy the independence and autonomy appropriate to their functions, are free from improper influence and have effective means for gathering evidence, protecting the persons who may help the authorities in combatting corruption and preserving the confidentiality of investigations” (Principle 3) and to “promote the specialization of persons or bodies in charge of fighting corruption and to provide them with appropriate means and training to perform their tasks” (Principle 7).

The Model Code of Conduct of Public Officials of the Council of Europe and the Lusaka Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct also establish that

⁸ Fruni v. Slovakia (Application no. 8014/07) and X and Y v. Ireland (Application no. 8014/07).

⁹ Bangalore Principles of Judicial Conduct. Value 1.1.

¹⁰ Basic Principles on the Independence of the Judiciary. 1985. [UN-Basic-principles-independence-judiciary-1985-eng.pdf \(icj.org\)](https://www.ohchr.org/en/docd.aspx?id=46823)

the judiciary must be independent. Article 20 of the Model Code of Conduct of Public Officials issued by the Council of Europe, establishes that “the public official [including judges] should not allow himself or herself to be put, or appear to be put, in a position of obligation to return a favor to any person or body. Nor should his or her conduct in his or her official capacity or in his or her private life make him or her susceptible to the improper influence of others.”¹¹ The Lusaka Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct have established that: “While judicial independence is in part a state of mind of members of the judiciary, the State is required to establish a set of institutional arrangements that will enable the judge and other relevant office holders to enjoy that state of mind. The protection of the administration of justice from political influence or interference cannot be achieved by the judiciary alone. While it is the responsibility of the judge to be free of inappropriate connections with the executive and the legislature, it is the responsibility of the State to establish the institutional arrangements that would secure the independence of the judiciary from the other two branches of government.”¹²

Depending on the nature and severity of corruption, special measures might be required to ensure integrity and efficiency of the judiciary to combat corruption effectively. The appointment of independent individuals in pre-vetting or pre-selection commissions can be a useful way to ensure the integrity of anticorruption institutions. During the last decades, open, more inclusive and participatory selection processes of prosecutors, judges and other judicial officials, have proved to be particularly useful to strengthen judicial integrity, restore public trust in the judiciary and re-establish the rule of law in countries suffering from severe state capture or systemic corruption. Indonesia and Ukraine stand out as prominent instances where the establishment of specialized anti-corruption courts was primarily driven by the imperative to enhance judicial integrity. In the case of Slovakia, for instance, a key rationale behind granting the Special Criminal Court (SCC) jurisdiction over significant corruption cases stemmed from apprehensions that regional courts could face interference or distortion in judicial decision-making due to the influence of local networks of elites and criminal elements.¹³

Despite recent improvements in the anti-corruption efforts in Moldova, the need for introducing special measures seems indispensable. Distrust in the judicial branch remains particularly high, as confirmed by recent assessments conducted by third parties over the judiciary of Moldova.¹⁴ The creation of SAJ is an important initiative to confront corruption more effectively.

C. SELECTION AND APPOINTMENT OF ACC AND ACCCA JUDGES

The selection of judges constitutes a critical aspect for the independence and effectiveness of the SAJ. The process for selection and appointment should be transparent, open, participatory, merit-based and fair. This involves establishing a rigorous mechanism, leveraging the know-how of independent anticorruption professionals with international expertise, and actively engaging with international community and civil society to bolster legitimacy, independence, and integrity of the selection process. Additionally, the process should be based on the meticulously defined criteria for assessment and competence evaluation, ensuring clarity and foreseeability.

¹¹ Model Code of Conduct of Public Officials. Council of Europe.

¹² [Lusaka Measures for The Effective Implementation of the Bangalore Principles of Judicial Conduct \(The Implementation Measures\)](#), adopted by the Judicial Integrity Group at its Meeting held in Lusaka, Zambia 2010.

¹³ [Specialised anti-corruption courts – A comparative mapping \(u4.no\)](#) Section 3.

¹⁴ [Moldova: Freedom in the World 2022 Country Report | Freedom House](#)

The DL creates a pre-selection commission (PSC) composed of “international experts” and civil society (Article 11, Para.4).¹⁵ The PSC is proposed to have 6 members, of which 3 are to be selected by “international partners”, and other 3 are to be “representatives of civil society” selected by the SCM.¹⁶ The term “international partners” is not defined in the DL, which may create practical challenges. The Law of Ukraine on High Anti-Corruption Court gives the nominating power to those international partners with whom Ukraine had “agreements or joint and sustained efforts on anticorruption initiatives”. Moldova may consider similar approach to avoid ambiguity in the implementation of the law. It is also noteworthy that in Ukraine “every such international organization may suggest to the High Qualification Commission of Judges of Ukraine at least two candidates to the Public Council of International Experts.”¹⁷

The DL should clarify that both CSOs and international partners nominating members to the PSC shall be identified by the SCM. It should also provide clear criteria for the PSC members selected by international partners and CSOs, such as relevant international anti-corruption and/or rule of law experience. Article 6.6 of the Law of Moldova no.65/2023 (regarding the external evaluation of judges and candidates at the position of judge of the Supreme Court of Justice) provides a clear definition that could be used as an example for clarifying the DL.¹⁸

The PSC is mandated to perform integrity checks and competence evaluations of ACC and ACCCA candidates, as the Selection Board of the Supreme Council for Magistrates (SCM) is not yet formed. As a temporary measure, aimed at timely and sound establishment and operationalization of the SAJ, the PSC is a welcome and necessary solution. If a specialized anti-corruption panel is created in the SCJ, a similar process for the selection of judges should be applied.

The PSC preselects the candidates in two stages, conducting integrity checks, assessing professional qualifications, and sending the list of pre-selected candidates to the SCM. At the first stage, the pre-selection commission verifies compliance with the minimum requirements for the position (e.g. number of years of professional experience), incompatibility to the position of a judge, and conducts an integrity check. At the second stage, the PSC assesses professional qualification of the candidates who successfully passed the first stage. After assessing all candidates, the PSC sends the full package of evaluation of each candidate to the SCM. It is unclear whether the SCM can deviate from the initial assessment of candidates presented by the PSC. The draft is also silent on the number of candidates the PSC should propose to the SCM for each SAJ position. Absence of clear legal provisions can result in impediments to the selection process. A preferred solution would be to mandate the PSC to submit to the SCM at least two candidates for each position and the SCM to choose from the list.

The PSC’s mandate should be of sufficient duration to avoid interruptions in the selection process, which might unduly delay the operationalization of the SAJ. Currently, the DL does not establish the term of the PSC. It is also unclear whether the PSC is responsible only for the pre-selection of the first cohort of SAJ candidates or for every other later pre-selection too. It is important that the DL clearly defines the reasonable duration of the PSC mandate to allow the formation of the SAJ. It is critically important to grant to the PSC the mandate to pre-select all judges of the first cohort of the SAJ. The effective end-date

¹⁵ The term “international experts” is used in the DL. IMF staff advice focuses on the technical capacity and international exposure of experts, not on their nationality. Experts with international experience can often be country nationals.

¹⁶ The DL follows in this regard the example of other anticorruption courts, including the HACC of Ukraine, albeit with some differences. Most importantly, the pre-vetting commission for the HACC in Ukraine was composed entirely by international members.

¹⁷ Article 9.2. of the Law of the HACC.

¹⁸ “(6) For the purpose of this law, development partners are understood as international donors (international organizations, diplomatic missions and their representatives from the Republic of Moldova) active in the field of justice reform and fighting corruption during the last 2 years. The list of development partners is approved by the Government.” Article 6, paragraph 6, Law 65/2023.

of the PSC could be one month after the pre-selection of the last judge. This would give enough time to the PSC to present a final report on its work to the SCM and to the general public. It would also give reasonable time to other courts to identify and transfer the relevant cases to the SAJ in an organized manner.

The DL should require that the PSC members nominated by CSOs have requisite knowledge and experience in anticorruption and/or the rule of law. In addition, to avoid the spontaneous creation of CSOs with the sole intention of manipulating the composition and work of the PSC, it is important that CSOs participating in the process have been in existence over a period of at least two years. The details of the selection process of CSOs could be regulated by the SCM and should be made public.

The DL should also define the key elements of process for the selection of a SAJ candidate by the PSC. For an effective decision-making process, the PSC should select the candidates by a simple majority of votes. In case of tie, the chair, who should be selected from the members nominated by international partners should have a decisive vote, as a way to enhance the credibility and independence of the PSC.

The DL lacks provisions regarding the resources to be allocated to the PSC. More specifically, the DL does not determine which structure serves the PSC as secretariat and how it is funded.¹⁹ It does not include rules on means and methods of remuneration of the members of the pre-selection commission. In this regard, the authorities could consider adopting similar provisions to those contained of the Evaluation Commission under Article 3, paragraphs 4, 5, and 6 of Law 26/2023.

i. Minimum requirements, incompatibilities and integrity of ACC and ACCCA candidates

The minimum requirements should be formulated with sufficient clarity to avoid abuse. The DL requires a candidate for the ACC to have “at least 5 years, and a candidate for ACCCA at least 6 years actually worked as a judge in Moldova or abroad, including in international courts, or has a professional experience of at least 10 years (or 12 to be judge of the ACCCA) in the field of law [...]” (Article 10, para. 1, lit. 1 and 3). The current drafting may lead to undesired outcomes. For instance, a potential candidate with 4 years and 10 months of experience as a judge plus 8 years of experience working for an international court, could not compete for the position. Authorities should adjust the requirement to allow all potential candidates with a certain fix number of years of accumulated relevant experience to participate.

The incompatibility requirements in the DL may reduce the pool of candidates. Under Article 10, paragraph 4, of the DL, “Persons who have worked in the position of prosecutor in the Anticorruption Prosecutor's Office (APO) of the Republic of Moldova in the last seven years cannot run for the positions of judge of the Anticorruption Court or judge of the Anticorruption Chamber of the Chisinau Court of Appeal.” Although the Explanatory Note states in this regard that “this provision anticipates any potential recusals, for example, in the cases in which the prosecutors participated in the connected investigation by virtue of their position,” it is not sufficiently clear on the rationale underneath the selection of the seven-year threshold nor acknowledge that a judge could always recuse him/herself in case of conflict. A less restrictive measure could be considered by reducing the scope of the cooling-off period. For instance, the DL disqualifies the candidates who have been prosecutors or employees of the APO during the previous two years. This measure could help prevent a mass move of prosecutors from APO to the SAJ and could help prevent conflicts of interests without unduly limiting the pool of candidates.

¹⁹ Contrary to good international practice in countries like Comoros or Ukraine.

The objective elements that should be taken into consideration in assessing financial and ethical integrity, as well the period to be evaluated should be clearly defined in the DL. According to the DL, candidates must enjoy an “irreproachable reputation, since there are no reasonable suspicions²⁰ about him/her committing acts of corruption, acts related to acts of corruption or corruptible acts within the meaning of the Law on integrity, as well as meets the criteria of financial and ethical integrity” (Article 10.b)).²¹ Article 8 of the Law 26/2022, which reads as follows could offer a solution: “a) the candidate's assets have been declared in the manner established by law” and “b) the Evaluation Commission finds that his/her wealth acquired in the past 15 years corresponds to the declared revenues”. Due consideration should be given to the decisions of the European Court of Human Rights according to which “[G]iven that personal or family assets are normally accumulated over the course of working life, placing strict temporal limits for the evaluation of assets would greatly restrict and impinge on the authorities’ ability to evaluate the lawfulness of the total assets acquired (...)”.²² Further, adopting provisions such as those of Articles 8.5 and 8.6. of Law 26/2022 would give further clarity and guidance on the information that the pre-selection commission would have to verify. The adoption of such rules could be complemented with a similar provision to that of Article 9.2. of Law 26/2022, whereby the PSC should require candidates to fill and send an asset and interests declaration form and a list of close persons within the meaning of Law No. 133/2016 on Declaration of Assets and Personal Interests, who are working or have worked in the past 5 years in the judiciary, prosecution and public service. In sum, specific regulations on elements to be assessed and time range of the assessment should be included in the DL. Although a life-long integrity of SAJ members is essential to build trust in the institutions, sufficient safeguards should be given to prevent imposing an excessive burden over candidates going through the vetting process. As VC recommended, the vetting bodies should “take into account the legal provisions which had been in force at the time of committing the respective actions.”²³ Taking into consideration all the elements discussed above, imposing a 15-year time frame for the integrity check, which includes personal and family assets, is warranted.

The term “ethical integrity” also requires greater clarity. Article 8.2 of Law 26/2022 provides that the candidate “[is] deemed to meet the criterion of ethical integrity if: a) he/she has not seriously violated the rules of ethics and professional conduct of judges, prosecutors or, where applicable, other professions, and has not committed, in his/her activity, any wrongful actions or inactions, which would be inexplicable from the point of view of a legal professional and an impartial observer; b) there are no reasonable suspicions

²⁰ In the case of *Xhoxhaj v. Albania* (no. 15227/19, §352, 31 May 2021), the Court clarified that the shift in the burden of proof onto the applicant during vetting proceedings is not inherently arbitrary under the “civil” limb of Article 6 § 1 of the Convention. This determination was made in the context of the Independent Qualification Commission (IQC) presenting preliminary findings and providing access to the case file evidence. This is consistent with previous practice under Article 5 para. (1) of the Evaluation Rules of the Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administrative bodies of judges and prosecutors, pursuant to Law No. 26/2022, of 2 May 2022 in Moldova, whereby only if a candidate fully meets all the indicators set forth under article 8 paragraphs (2)-(5) of Law No. 26/2022 it can satisfy the criterion of “ethical and financial integrity.”

²¹ Integrity checks and risk assessment of candidates are important means to protect the integrity of the judiciary. In a recent report on vetting in Kosovo, the VC considered that “In a system of prior integrity checks, the decision not to recruit a candidate can be justified in case of mere doubt, on the basis of a risk assessment. However, the decision to negatively assess a current post holder should be linked to an indication of impropriety, for instance inexplicable wealth, even if it cannot be proven beyond doubt that this wealth does come from illegal sources.” Also, “[I]n other investigations like wider integrity checking the burden of proof will be discharged on the balance of probability.” Venice Commission, CDL-AD(2022)011-e, Kosovo - Opinion on the Concept Paper on the Vetting of Judges and Prosecutors and draft amendments to the Constitution, adopted by the Venice Commission at its 131st Plenary Session (Venice, 17-18 June 2022), §§10,9.

²² Case of *Thanza v. Albania*. (*Application no. 41047/19*). Judgment. [THANZA v. ALBANIA \(coe.int\)](#)

²³ CDL-AD (2023)035. Venice Commission.

that the candidate has committed corruption acts, acts related to corruption or corruptible acts, within the meaning of the Law on Integrity no. 82/2017.” Similar integrity criteria can be introduced in the DL.

The DL should provide requisite power to the PSC to collect necessary information to effectively assess the integrity of the candidates. The DL should include a norm similar to article 6 of Law 26/2022, which allows the pre-vetting commission to “collect and verify any data relevant to the evaluation of candidates”, “have access to any information systems that contain data relevant to the fulfillment of its mandate, namely the evaluation of the ethical and financial integrity of candidates, including via de the interoperability platform (MConnect)”, “hear the candidate and other persons holding relevant information about the candidate’s integrity”, “request information from individuals or legal entities of public or private law, and gather any information relevant to the fulfillment of its mandate”, and “other power provided for by this law”.²⁴ The powers granted to the PSC should ensure no undue limitations are created to block access to relevant information to the veto process.

ii. Professional qualification and skills for ACC and ACCCA Candidates

Standards for professional qualification and skills should be strengthened and clearly articulated in the DL. Article 10.2 of the DL establishes that: “(2) *The professional qualities and skills required to hold the position of a judge of the Anticorruption Court shall concern: a) the ability to understand and analyze legal situations falling within the competence of the courts of the anticorruption judicial system; b) clarity of written and verbal expression; c) experience relevant to the position.*” This language largely follows the good practice set by the Law of the HACC of Ukraine, which requires that the judge “*possesses knowledge and practical skills necessary for performing judicial functions in corruption-related cases.*”²⁵

It is important that SAJ judges have requisite knowledge in criminal law, criminal procedure, anticorruption and the rule of law, as well as general analytical skills.²⁶ It is unclear how the new rules under the DL would interplay with those set forth under Article 3 of Law LP147 of 2023 (which rules the selection and performance evaluation of judges). We suggest establishing clear assessment criteria and harmonizing the DL with Law LP147 and Law 544-XIII of 1995 (on the Status of Judges).²⁷ This should be done, however, taking into consideration the paramount importance of specific expertise and competences required for the SAJ judges to professionally and fairly adjudicate cases related to corruption.

D. TRANSPARENCY OF SELECTION OF SAJ MEMBERS

Selection of SAJ candidates should fulfill openness and transparency requirements under Moldovan legislation and best international practice. The Laws 26/2022, 65/2023²⁸ and 252/2023²⁹ contain detailed rules on the openness and transparency of selection procedures.³⁰ According to article

²⁴ Article 6. Law 26/2022.

²⁵ Article 7.1. Law of the HACC of Ukraine.

²⁶ Corruption and money laundering cases involving complex constellations of cash-flows, banking, accounting, business structures, value assessment, or tax issues.

²⁷ [Law on Status of Judge - Lawyer Moldova \(lawyer-moldova.com\)](http://lawyer-moldova.com)

²⁸ On the external evaluation of judges and candidates for the office of judge of the Supreme Court of Justice. [Law of the Republic of Moldova "About external assessment of judges and candidates for judgeship of the Highest trial chamber" \(cis-legislation.com\)](http://cis-legislation.com). Also, see Article 15, paragraphs 2, 3, and 4, of Law 65/2023.

²⁹ Articles 2 and 16 of Law 252/2023.

³⁰ We refer to the pre-vetting commission that vetted candidates to be selected as magistrates of the SCM.

12.2 of Law 26/2022, the “hearings shall take place in a public session, which shall be audio/video recorded” and “Video recordings of the hearings in public sessions are placed on the Commission’s official website.”³¹ The publication in the website www.vetting.md of the videos and relevant decisions of the vetting process of candidates by the pre-vetting commission under Law 26/2022 could be replicated in the DL as a means to boost confidence and trust in the selection process.³² Further, Moldova could include enhanced norms for transparency of the selection proceedings, such as those under Article 8.7 of the Law of the HACC in Ukraine, which extended the obligation to record video and audio and do live broadcast not only to the actual interviews, but also to the session of assessment of results.³³

E. TENURE AND REMOVAL OF SAJ MEMBERS

The DL foresees no special rules on dismissal, removal, tenure and immunity of SAJ members. The existing laws on the matter generally comply with the Basic Principles on the Independence of the Judiciary (1985)³⁴ and with the high-level recommendations outlined in Section I, but some adjustments are needed. The DL should clearly state whether article 25 of Law 544-XIII/1995 on the Status of a Judge applies. According to said norm, which has been reviewed and positively assessed by GRECO, a judge can be dismissed if (a) he or she resigns; (b) if an obvious incompliance is established in a performance evaluation; (c) if s/he is transferred to another position (for which it must file a request and/or give its consent); (d) as a consequence of disciplinary proceedings; (e) if a final conviction was passed against him/her; (f) in case of loss of citizenship; (g) in case of a violation of the rules on incompatibility; (h) in case of medical disability; (i) upon expiry of his/her term of office when not appointed for life tenure; or (j) if a final court judgment confirmed his/her (limited) legal capacity.³⁵

³¹ Similar provisions are found in Ukrainian (and other) vetting laws. Adopting measures in the DL to ensure transparency and public access to information relating the nomination, application, assessment, and evaluation of judges is very important. As a minimum, the call for interest for potential candidates must be made through adequate channels that ensure fairness in the preparation of materials and submission of applications by interested parties; the interviews to the candidates must allow public access of interested citizens and the media and must be recorded and uploaded to the website of the SCM; all application material (not covered by confidentiality norms) filed by candidates must be accessible to the public; and the assessments of candidates by the PSC will be published.

³² The pre-vetting commission to select magistrates of the SCM was created by Law 26 of 2022. “The Independent Evaluation Commission for assessing the integrity of the candidates for the position of member in the self-governing bodies of judges and prosecutors, also known as the Pre-Vetting Commission, is an independent, collegial body, mandated to evaluate the integrity of judges and prosecutors from the Republic of Moldova, who aim to become members of The Superior Council of Magistracy (CSM), the Superior Council of Prosecutors (CSP) or their specialized bodies, created on the 4th of April, 2022, according to the Law no. 26 of 10.03.2022 regarding some measures related to the selection of candidates for the positions of members in the self-governing bodies of judges and prosecutors, the Commission for assessing the integrity of future leaders in justice is made up of six members, three of whom were appointed by the Parliament, being respected the principle of proportionality between the majority and the opposition, emerging from the number of mandates obtained, and the other three were proposed by the development partner.” [General information - "Pre-Vetting" Commission](#)

³³ Article 8.7. HACC. “A citizen of Ukraine may be appointed for the position of a judge of the High Anti-Corruption Court if he or she complies with the requirements to the candidates for the position of a judge specified in the Law of Ukraine “On the Judiciary and Status of Judges” and possesses knowledge and practical skills necessary for performing judicial functions in corruption-related cases. (...)”

³⁴ Basic Principles on the Independence of the Judiciary. [Basic Principles on the Independence of the Judiciary | OHCHR](#). “18. Judges shall be subject to suspension or removal only for reasons of incapacity or behavior that renders them unfit to discharge their duties” and “19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.”

³⁵ GrecoEval4Rep(2016)6-rev, at § 102, <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/168075bb45>.

The DL establishes a 6-year rotation mechanism for judges of the ACC and of the ACCCA (Article 12, para.3)³⁶, which is likely to produce negative consequences, and should therefore be adjusted or eliminated. Although well intentioned,³⁷ the mechanism portrayed in the DL can have several negative consequences: (i) The courts lose the accumulated know-how of well-trained judges who, in the peak of their career, must stir away from the SAJ, and move to other fields of the law, (ii) it can undermine judicial independence, as the judges whose mandate is about to end will need to start looking – and lobbying – for a new position, and (iii) If the selection process remains at it is, the mandate of all judges will end at the same time, creating a significant vacuum that would need to be addressed.³⁸ In Kenya, the efficiency of the anticorruption judiciary was compromised by the practice of rotating magistrates every two years. When magistrates are transferred to a new assignment before completing a case, it necessitates either the magistrate's travel back to conclude the trial or the case being handed over to a new magistrate. Delays can result from challenges to violations of the immediacy principle or the necessity to reschedule hearings.³⁹

³⁶The judges of the Anticorruption Court and the judges of the Anticorruption Chamber of the Chisinau Court of Appeal shall be appointed or transferred to office for a term of 6 years. Upon expiry of the 6-year term, they return to the previous position of judge they held until the transfer or, with their consent, are granted another position of judge in a court of the same level." Article 12, paragraph 3, of the Draft Law.

³⁷ The explanatory notes of the DL state: "The term is established to ensure the rotation of judges at the anti-corruption courts and to prevent isolationist or unethical practices from taking root."

³⁸ A significant argument against such a rotation system is the aspect of competence: It takes years for a judge to build competence in the area of anticorruption and money laundering, and this competence is lost if that judge rotates after six years. For the case of Ukraine, it has been said that: "An indisputable positive thing is the high-quality training of judges and staff members both before the start of the court's procedural activities and during the performance of their powers. Specialization of judges also plays a role since they are tailored for corruption cases, having deepest knowledge in that area." TI Ukraine (5 September 2023), New Building, Weak Basement: How Systemic Problems Affect the HACC, <https://ti-ukraine.org/en/news/new-building-weak-basement-how-systemic-problems-affect-the-hacc/>.

³⁹ Director of Public Prosecutions, Kenya. 2014. Annual anti-corruption report by the director of public prosecutions. Nairobi.

Section III. Jurisdictional Competence and Operationalization of the SAJ

A. SUBJECT MATTER JURISDICTION

The DL assigns judges of the SAJ with jurisdiction over the full range of corruption offenses. (Article 31-1 CPC) However, it appears as if Article 36-1 of the DL, which is intended to amend the Criminal Procedural Code (CPC), limits the jurisdiction by considering the seniority of the offender: “Article 36-1. Jurisdiction of the Anticorruption Court. The Anticorruption Court judges, in the first instance, hear cases concerning the offenses referred to in articles 181-1–181-3, 239–240, 243, 324–335, 352-1 para. (2) of the Criminal Code, those related to them, and in the case of crimes committed using the work position provided for in articles 190 and 91 of the Criminal Code, if the listed offenses were committed by the persons indicated in articles 269 and 270-1 of this Code.” The limitation “if the listed offenses were committed” is ambiguous: It could refer to the last two offenses (“if the latter offenses were committed”) or to all offenses listed in para. 1 (“if the offenses listed in this paragraph were committed”).⁴⁰ The use of either wording in parenthesis could clarify the ambiguity, depending on what authorities prefer.

The subject matter jurisdiction of the SAJ should be aligned to that of the Anti-Corruption Prosecutor’s Office, focusing on the most important corruption crimes.⁴¹ Currently, the jurisdiction covers corruption cases, as well as money laundering irrespective of a predicate offence.⁴² It also deals with the cases of unexplained wealth prescribed by the Code of Administrative Violations. Narrowly defined subject matter jurisdiction for anti-corruption courts enhances the court's efficiency. By doing so, the court can focus its resources on the most significant or deserving cases for specialized adjudication.⁴³ The credibility of the anti-corruption court could be jeopardized if its caseload includes cases perceived as less significant and cases take long to reach a final decision. This risk was exemplified in Nepal, where critics draw attention to a multitude of cases in the Special Court dealing with forged university certificates. Similarly, in Slovakia, media coverage underscores the resolution of minor bribery cases, leading to suggestions to narrow the jurisdiction of the Special Criminal Court to more substantial matters.⁴⁴

B. OPERATIONALIZATION OF THE SAJ

According to the DL, the critical date for the “start of operation” and for assigning new cases to the ACC depends solely on the appointment of a minimum number of judges and begins on the same

⁴⁰ A heated public debate on its jurisdiction preceded establishing the Anticorruption Court in Ukraine. The government at the time (under President Poroshenko) was not particularly in favor of such a specialized court. The former government proposed establishing anticorruption chambers in existing courts. When national and international stakeholders pressure arose for an anticorruption court, some lawmakers tried to widen the jurisdiction as much as possible aiming to swamp the court with cases, and diverting attention from high-profile corruption cases. The attempt failed, and the offense’s magnitude became a compelling jurisdiction factor. Moldova will have to factor in this risk when deciding on the scope of jurisdiction.

⁴¹ [1680acdd9e \(coe.int\)](#) Trends and practice of Special Courts and Specialised Judges in the Anti-Corruption area. Technical Paper of the Council of Europe. Prepared by: Filipe Marques - Council of Europe Expert, and Kyela Leakey, Council of Europe Expert.

⁴² Article 36-1 CPC as revised by the DL foresees SAJ jurisdiction over money laundering in general.

⁴³ Stephenson, Matthew. Specialized Anti-corruption Courts: A comparative mapping, U4Issue, 2016:7. [Specialised anti-corruption courts: A comparative mapping \(u4.no\)](#)

⁴⁴ Parajuli, S. P. 2010. “Criminal Justice Response to Corruption in Nepal.” Resource Material Series No. 80. Tokyo: UNAFEI.

day. The lack of a reasonable timeframe between the triggering condition (the appointment of the minimum number of judges) and the start of operation may create operational difficulties that should be avoided.⁴⁵ To ensure timely operationalization of the SAJ, the preliminary administrative arrangements should start immediately upon the enactment of the DL. The expectation would be that when the minimum number of judges are appointed they can immediately count on the required administrative support from the Secretariat of the Anticorruption Court, which is set up according to Article 15 of the DL and the Act on Judicial Organization. The judicial function of the SAJ should start as soon as feasible, but no later than 3 months after the appointment of a minimum number of judges (i.e. 5 judges for ACC and 4 judges for ACCA). Those judges should prepare and adopt all internal rules of operation of the ACC and the ACCCA within one month. Other practical recommendations on the start of operations of the SAJ are provided in Annexes 1 and 2.

C. TRANSPARENCY OF SAJ

Special rules on transparency are not foreseen in the DL, and therefore general rules on transparency applicable to judicial proceedings would apply, but the DL would benefit from additional elements on transparency to boost confidence by the public. This would also be consistent with Article 117 of Moldovan Constitution, which establishes the public character of legal proceedings, and with principle 9 of Resolution (97)24 of the Council of Europe on the Twenty Guiding Principles for the Fight Against Corruption of 1997, which states that governments commit to: “ensure that the organization, functioning and decision-making process of public administrations take into account the need to combat corruption, in particular by ensuring as much transparency as is consistent with the need to achieve effectiveness”.⁴⁶ Increased transparency would also be consistent with the Bangalore Principles of Judicial Conduct, which state that “justice must not merely be done, but must also be seen to be done”⁴⁷ and with the Resource Guide on Strengthening Judicial Integrity and Capacity issued by UNODC, which state that “the norms of transparency are (...) supported by the practical benefits that can be expected from increased transparency. Specifically, greater transparency allows for enhanced public oversight of the judiciary. The concepts of judicial review and court accountability inherently rely on the fact that statutory texts and court judgment decisions are readily available to judges, court personnel, legislators, public officials, lawyers and the public. Thus, making sure that judicial and legal information is transparent and accessible should be an important aspect of any judicial reform initiative.”⁴⁸ The Resource Guide also states that “To be transparent, courts need to ensure that the public and the media can attend court proceedings, but equally important is providing the public with ready access to court documents, especially judgments and other decisions, as well as court-related administrative information, such as data on the judiciary’s caseloads and clearance rates, collection of court fees, and the use of budgetary allocations.”⁴⁹

⁴⁵ The Ukrainian provision grants the anticorruption court the power to announce the day of the start of operations, which gives all stakeholders more clarity and foreseeability. For example, if the Ukrainian HACC has the minimum number of judges appointed, it can announce that two days after the operation formally begins. In practice, the newly selected HACC judges met in May 2019 and realized that they needed 3 to 4 more months to prepare the operability of the court (obtain and equip a building, hire staff, etc.). On September 5, the judges officially announced the start of operations. Without this realistic period of preparations, the court would have had a hasty start, to the detriment of public perception and an adequate treatment of cases.

⁴⁶ Resolution (97)24 of the Council of Europe on the Twenty Guiding Principles for the Fight Against Corruption of 1997.

⁴⁷ Bangalore Principles of Judicial Conduct, Value 3: Integrity, Application 3.2.

⁴⁸ [11-85709_ebook.pdf \(unodc.org\)](#) p. 85.

⁴⁹ Idem.

Annex 1: Country Examples

This Annex summarizes the processes leading to the setup and operationalization of anticorruption courts in three European countries (Ukraine, Slovakia and Armenia).

A. UKRAINE

Ukraine created its High Anticorruption Court (HACC) with the passage of a law in June 2018. In 2019, the judges were selected by the High Judicial Qualification Commission (HJQC). The official establishment of the HACC was made on 11 April, 2019, when President Poroshenko signed the decree whereby 38 judges were appointed.⁵⁰ That same day they took oaths.⁵¹ By the end of October of that same year the HACC issued its first ruling.

Judges of the HACC are elected by the HJQC, with the assistance of a Public Council of International Experts (PCIE), who can block candidates from serving on the court based on integrity concerns.⁵² The PCIE has 6 members appointed by international partners. Candidates are subject to enhanced screening procedures that involve the PCIE as a means of ensuring greater judicial integrity.⁵³ After the vetting process, the HJQC passes it to the constitutional judicial governance body - the High Council of Justice which can do another interview. After, the candidates are presented for appointment of the President.

It is noteworthy that the PCIE was given a six-year long mandate. However, the PCIE members would be selected for 2 years according to the law.⁵⁴ The 2-year period sought to ensure the PCIE members could complete their main task of vetting the first cohort of the HACC without interruptions while at the same time ensuring rotation of members. The first working session of the PCIE took place for 30 days in January 2019, after judicial candidates had taken their practical exams. For the start of operations, the Law of the HACC introduced two transitional provisions that set the start date of the operation. One, which determined that the HACC shall start its operation provided (with the condition) that at least 35 judges have been appointed. And another, which establishes that *“Within thirty calendar days of the day of appointment of the judges of the High Anti-Corruption Court in the number specified in item 5 of this chapter (35), the oldest judge of the High Anti-Corruption Court shall convoke a meeting of judges of the High Anti-Corruption Court to decide on the day of the start of operation of the High Anti-Corruption Court, resolve organizational issues of the court’s activity and elect investigative judges.”* The DL for Moldova could make good use of a similar provision.

⁵⁰ Note that according to Article 5 of the Law of the HACC the “number of judges of the High Anti-Corruption Court shall be determined in accordance with the Law of Ukraine “On the Judiciary and the Status of Judges”. However, according to paragraph 5 of Chapter VI of the same law, “The High Anti/Corruption Court shall start its operation provided at least thirty-five judges of the High Anti-Corruption Court have been appointed based on the results of the competition held in accordance with the Law of Ukraine (...)”

⁵¹ [Ukraine launches High Anti-Corruption Court](#). *www.unian.info*. 11 April 2019. Retrieved 8 May 2019. [Ukraine launches High Anti-Corruption Court | UNIAN](#)

⁵² [Ukraine’s High Anti-Corruption Court \(u4.no\)](#)

⁵³ Kuz, I. and Stephenson, M. 2020. Ukraine’s High Anti-Corruption Court: Innovation for impartial justice. U4 Brief 2020:3. U4 Anti-Corruption Resource Centre, Chr. Michelsen Institute.

⁵⁴ Law on the High Anticorruption Court of Ukraine. 2018.

Since its inception, the HACC has issued judgments in significant corruption cases. In 2021, it issued 34 convictions. In 2022, the convictions rose to 37, despite the constraints caused by the Russian war in Ukraine. 33 were guilty verdict and 4 acquittals. Of the former, 23 led to imprisonment and 10 were suspended sentences. By the end of 2023, the HACC is approaching the first one hundred verdicts. Some relevant cases are still pending final verdicts. It is noteworthy that some small number of accused under the jurisdiction of the HACC have benefitted from the statute of limitations due to a stagnation of judicial process.

Among those convicted by the HACC are officials who would have been protected by a captured judicial system, such as a former prosecutor (5 years of imprisonment for incitement to bribery and fraud), a Member of Parliament (7 years of imprisonment with confiscation of property); a former deputy prosecutor (6 years of imprisonment), 6 judges for receiving or offering bribes or promising to influence their colleagues (sentenced each to at least seven years in prison), a forestry department director for attempting to bribe a detective of NABU with 100,000 USD (convicted and sentenced to 5.5 years of imprisonment), a former Deputy Minister of Temporarily Occupied Territories (10 years of imprisonment with confiscation of property); a former director of the Department of Capital Construction of a Regional State Administration (7 years imprisonment with confiscation); an acting director of a State Owned Enterprise (7 years of imprisonment); a former head of a District State Administration (8 years of imprisonment); a former official of the Ministry of Justice (6 years of imprisonment); a former head of a State Owned Enterprise (5 years imprisonment); and a significant number of corrupt businessmen and their accomplices, just to mention a few.

This shows the capacity of the HACC to effectively adjudicate justice with independence.

Lessons learned

- A limited mandate for vetting bodies is advisable to ensure continuity to fulfill its primary task of vetting the first cohort of judges of specialized anticorruption courts without interruptions, while also allowing for the rotation of commission members. (Based on Ukraine's experience, and as mentioned in Section II, Moldova can consider adopting a two-year mandate for the PSC, similar to the PCIE's original mandate in Ukraine).
- The veto power of candidates of the PCIE in Ukraine is a strong tool considering the full independence of its members from local political and social dynamics. For Moldova, the DL should further instruct that the chair of the PSC should be one of the members named by the international partners and that, in case of tie, the chair could have the deciding vote, as already recommended in Section II.
- A transitional provision regulating the minimum number of judges that should be appointed for the start of operation of the new specialized anticorruption court is advisable. Ukraine's HACC introduced transitional provisions regulating the start of operations, specifying that a minimum of 35 judges must be appointed. Moldova will benefit from a similar provision already stated in the DL, which ensures a critical mass of five judges before the court becomes operational. However, we suggest aligning the start of operation of the ACC and the ACCCA.
- To gauge the effectiveness of the anticorruption court, Moldova should establish clear metrics and reporting mechanisms, ensuring transparency in the court's proceedings and the impact on corruption cases.

B. SLOVAKIA

In 2003, Slovakia passed a law to create a Special Court, later rebranded as the Special Criminal Court (SCC), primarily to handle cases related to corruption and organized crime. The SCC was a direct response to the pervasive influence of criminal networks and local elites over the regular lower courts. The SCC faced substantial criticism from the judicial establishment, largely stemming from the higher compensation offered to SCC judges. Despite encountering political and constitutional challenges, the SCC managed to endure, albeit with some modifications.⁵⁵

Established in 2005, the SCC, unlike Ukraine's case, appointed judges without involving international experts or organizations. Operating as a first-instance trial court, SCC judges, equivalent to regional court judges, handle cases related to corruption, money laundering, organized crime, and serious offenses. Approximately one-third to one-half of the SCC's docket involves corruption or serious economic crime.⁵⁶ Although not exclusively an anti-corruption court, a significant portion of its docket comprises corruption cases. With 13 judges, including the president, the SCC uses single-judge panels for less serious cases and three-judge panels for more serious matters, deciding by majority rule.⁵⁷

SCC judges are appointed and removed following procedures similar to regular courts. Candidates must pass a judicial exam and submit their names to a selection committee appointed by the Judicial Council, whose proposed nominee is subject to the Judicial Council's approval or rejection. Established to address concerns about local judicial integrity, especially potential influence from local elites and organized crime, the SCC aims to shield judges from such pressures. Advocates of the SCC suggest that a national court with judges of high integrity, devoid of local affiliations, would be more effective in handling cases and protecting judges from external threats.⁵⁸

The SCC has issued significant decisions, such as the conviction of the standing Governor of the Central Bank, who was sentenced on April 3, 2023 to serve 2 years in jail and pay a fine of 100,000 Euros.⁵⁹ Further, in October 2023, a former president of the country was found guilty of tax fraud but received a two-year suspended sentence. The decision was appealed.⁶⁰ In addition, in August 2023, the former head of the National Financial Police Unit of the National Crime Agency, was convicted by the SCC for receiving a bribe.⁶¹ Similar to the case of Ukraine, progress of the SCC shows the contributions of such kind of institutions in rooting out systemic corruption.

⁵⁵ [Specialised anti-corruption courts: Slovakia \(cmi.no\)](#) p.1

⁵⁶ *Idem.* p. 5.

⁵⁷ [SlovakRepublicphase3reportEN.pdf \(oecd.org\)](#) p. 28.

⁵⁸ [Specialised anti-corruption courts: Slovakia \(cmi.no\)](#) p. 2.

⁵⁹ [Slovakia's central bank boss convicted of bribery – POLITICO](#)

⁶⁰ [Former Slovak president convicted of tax fraud, receives a fine and suspended sentence | AP News](#)

⁶¹ [Former Slovak top police official convicted of corruption - spectator.sme.sk](#)

Lessons learned

- Addressing corruption at the local level differs from tackling national-level issues. The SCC's centralization bolstered judicial independence, but cases involving prominent national figures have not yet been brought before the court to the extent expected.
- The efficacy of an anti-corruption court depends on the performance of law enforcement and the prosecution service. Even a well-designed specialized court is limited if law enforcement fails to gather evidence or if prosecutors do not bring or handle cases effectively. Moldova must continue efforts to strengthen the independence and effectiveness of enforcement authorities and APO.
- Careful attention must be paid to the court's jurisdiction, considering both caseload concerns and the advantages of focusing on a select number of significant cases versus granting broader jurisdiction over a larger volume of cases.

D. ARMENIA

In April 2021, the National Assembly passed legislation establishing the Anti-Corruption Court, aimed at eradicating systemic corruption, and ensuring accountability for both current and former public officials.⁶² The vetting and appointment of the 15 judges took place from July to August 2022 with the help of international experts.

In 2022, the Corruption Prevention Commission initiated a competition⁶³ to engage international experts in facilitating the due diligence and integrity screening processes for both judges and staff members (CPC 2022).⁶⁴ Thus, the Armenian Corruption Prevention Commission adopted in practice a similar approach to the one under the Law on the HACCC of Ukraine. But it is noteworthy that the involvement of experts with international experience was not a requirement under the Law that established the Anticorruption Court in Armenia. Article 21.8 only required the involvement of “experts in the process of qualification verification” and their opinion was not binding but would be taken into account when voting to compile the list of candidates for judges.⁶⁵

As of November 2022, the Anti-Corruption Court became operational, although some vacancies for judges still needed to be filled.⁶⁶ From August 2022, the Court started receiving cases, including cases in which criminal proceeding had started but not gone to trial. That included a case against a former Prosecutor General.⁶⁷

The President of the Anticorruption Court was only appointed until February 2023 by the President of Armenia⁶⁸. Strong criticism was voiced due to controversial, allegedly politically affiliated appointments.⁶⁹

⁶² [Judicial code of the republic of Armenia" on amendments and additions to the constitutional law. Article 15.](#)

⁶³ [Corruption Prevention Commission of the RA announces a competition of international experts - Information - Corruption Prevention Commission of the Republic of Armenia \(cpcarmenia.am\)](#)

⁶⁴ [Overview-of-corruption-and-anti-corruption-in-Armenia_2022-final.pdf \(transparency.org\)](#)

⁶⁵ Article 21.18 of the [Judicial code of the republic of Armenia" on amendments and additions to the constitutional law](#)

⁶⁶ [Armenia's New Anti-Corruption Court – EVN Report](#)

⁶⁷ [Armenia's New Anti-Corruption Court - EVN Report](#)

⁶⁸ [Decrees of the President of RA - Documents - The President of the Republic of Armenia](#)

⁶⁹ [Election Of Anti-Corruption Court Judge Sparks Controversy In Armenia \(azatutyun.am\); see also Armenia Stuck in Anti-Corruption and Judiciary Reforms – Caucasus Watch](#)

The public has raised demands to ensure the judiciary is fully shielded from political parties by blocking judges that have previously been involved in politics or having a political affiliation.⁷⁰

In September 2022, the Ministry of Justice filed a draft bill for the creation of an Anticorruption Court of Appeal. Further, an anticorruption chamber had already been created in the Court of Cassation, according to the Article 30 of the Judicial Code, aiming to ensure higher standards of independence at all levels in the adjudicatory process.⁷¹

The start of operation of the Court was foreseen under Article 21 of the Law. The Law stated that it would enter into force on the tenth day following its official publication; that the anti-corruption court begins to operate from the moment of the appointment of 10 judges specializing in the investigation of corruption crimes and 3 judges specializing in confiscation of illegally obtained property and related cases; and the Appellate Anti-corruption Court starts functioning from the moment of appointment of three judges in each specialization. We have not been able to verify firsthand the actual start of operations of the Armenian Anticorruption Court.

Further, local civil society organizations have recently questioned the government's claim of having eliminated systemic corruption⁷² and have noted that tracking the status and outcome of investigations on corruption is difficult.⁷³ Recent surveys also show that distrust in the judiciary in Armenia remains high. According to the survey, “the media, judges and courts, parties are the most corrupt structures in public perception”.⁷⁴

Lessons learned

- Involving experts with international experience in vetting and appointments adds credibility and expertise to the process, aligning with best practices observed in Moldova and Ukraine.
- Controversies surrounding appointments underscore the critical importance of ensuring an independent judiciary, free from political influence or affiliations.
- The challenges in verifying the start of court operations highlight the need for transparent reporting mechanisms to track progress, build public trust, and assess the court's impact over time.

⁷⁰ Id.

⁷¹ [Armenia's New Anti-Corruption Court - EVN Report](#)

⁷² [Corruption Has Gotten Worse in Armenia – Transparency International – Oragark](#)

⁷³ [Overview-of-corruption-and-anti-corruption-in-Armenia_2022-final.pdf \(transparency.org\)](#) p. 7

⁷⁴ [Public opinion on corruption in Armenia. The results of the study among 1520 people - Official news - Corruption Prevention Commission of the Republic of Armenia \(cpcarmenia.am\)](#)

Annex 2: Additional considerations for effective operationalization of SAJ

a) Resources and Technical Support:

A robust and secure IT architecture for the ACC, which prioritizes the autonomy and ensures protection against unauthorized access is important. Adequate planning for IT should be a key consideration to ensure smooth operations. Likewise, adequate budgeting support for the development and maintenance of the ACC's ICT infrastructure is required. Council of Europe Guidelines emphasizes on the importance of ICT in enhancing the efficiency and effectiveness of the justice sector. ICT should be viewed as a tool to improve the administration of justice while upholding key principles such as access to justice, impartiality, and independence. Moldova may learn from the Armenian experience, which undertook increased measures to ensure adequate IT systems were in place, partly responding to the weakness of IT systems in the judiciary, as observed by the World Bank.⁷⁵ Last, Moldova may consider establishing an electronic register for corruption cases, drawing inspiration from USAID's support for a similar initiative in Serbia. This electronic system can streamline case management and enhance transparency.

b) Sustained Domestic Ownership and International Support:

To ensure the long-term success of anti-corruption reforms, sustained domestic ownership and international support are key. Adequate planning to ensure engagement and accountability mechanisms that help keep CSOs, academia, and key stakeholders engaged with the work to overcome the challenges faced by the ACC and the ACCCA would be necessary. Embracing international support and oversight, with proper safeguards to uphold judicial independence would also be necessary. Moldova could learn from the experiences of Albania, Ukraine, and other countries, where support from international stakeholders proved beneficial.

c) Training:

Adequate training of judges and staff of specialized anticorruption courts is needed to ensure that judicial operators are up to date with latest developments in corruption mechanisms.

With the support of international development partners, Moldova should put in place a continuous education plan for SAJ members and personnel. The curricula should include substantive areas necessary for effective anti-corruption adjudication as well as technical skills such as case-management, use of technology, etc.

Many development partners working in Moldova have provided valuable training to anti-corruption divisions and courts in other countries, contributing to enhanced capabilities and efficiency.

By implementing these recommendations, Moldova can fortify its Anti-Corruption Court, addressing technological challenges, ensuring sustained international support, and providing essential training for its effective functioning.

⁷⁵ [The 5 biggest challenges to reforming Armenia's justice system \(worldbank.org\)](https://www.worldbank.org/en/publication/5-biggest-challenges-to-reforming-armenia-s-justice-system)