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**“Reinforcing the Fight against Ill-treatment and Impunity”
European Union/Council of Europe Joint Programme**

**ASSESSMENT REPORT
on the draft Strategic Development Programme
of the General Prosecutor's Office of the Republic of Moldova**

October 2012

Prepared by

**the Directorate of Human Rights,
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on the basis of the assessment by:**

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Introduction

The Directorate of Human Rights, Directorate General Human Rights and Rule of Law of the Council of Europe tasked two consultants, Ms Birgitte Vestberg, former Prosecutor for Special International Crimes and acting Prosecutor General in cases of asset stripping (Denmark) and Mr Bostjan Penko, lawyer, former prosecutor and Director of the Office for the Prevention of Corruption(Republic of Slovenia) to carry out an assessment of the draft Strategic Development Programme (SDP) of the Public Prosecutor's Office of the Republic of Moldova (further referred to as “Moldova”).

The present assessment of the SDP is based on the Council of Europe Committee of Ministers Recommendations Rec(2000)19 on the role of the public prosecution in the criminal justice system and Rec (2012)11 on the role of the public prosecutors outside the criminal justice system and on the Recommendation 1604 (2003) of the Parliamentary Assembly of the Council of Europe on the role of the public prosecutor's office in a democratic society governed by the rule of law. It also takes into consideration the provisions of such documents as the Strategy for Justice Sector Reform 2011-2016 (SJSR), approved by the law No. 231 of 25 November 2011, the Guidebook of the State Chancellery of Moldova on drawing up Strategic Development Programmes of Authorities (the Guidebook), the European Commission Joint Staff Working Document (2012) 118 (SWD) on “Implementation of the European Neighbourhood Policy in the Republic of Moldova. Progress in 2011 and recommendations for action”, as well as the points of previous Council of Europe assessments and reports referring to the prosecution service of Moldova.

The assessment also considers points of view put forward by the participants during a public presentation and round table discussion on the draft SDP, which was organised in cooperation between the Council of Europe and the Public Prosecutor's Office of Moldova, on 15 October 2012 in Chisinau. This round table was organised within the framework of the Joint Programme between the European Union and the Council of Europe entitled “Reinforcing the fight against ill-treatment and impunity”.

The assessment is based on the translated documents transmitted by the Council of Europe to the consultants. Some comments may be the result of deficiencies of the English translation of the SDP.

Executive Summary

1. The SDP has been developed as part of a general development programme for the public administration authorities of the Republic of Moldova. It shall become the main document on managerial and strategic planning of the activity of the Public Prosecutor's Office, which would provide for an analysis of the current needs, set the objectives in line with the documents on national and international policies, directions of activity, medium-term priorities and ways of their implementation, assessment of the performance and ways of developing the institutional capacities, as well as procedures used to monitor, evaluate and report on the results of the Programme implementation. The efforts put into the drafting of the SDP have been appreciated.
2. At the same time, the authors are encouraged to further improve the SDP before its adoption. For a strategic development of the Public Prosecutor's Office in line with the European standards and good practices, it is recommended to address the following aspects in the process of finalising the draft SDP:
 - 1) the SDP would gain credibility and public support by focusing more on basic values such as the principles of legality, objectivity, impartiality, ensuring the rule of law and protection of human rights;
 - 2) human rights protection, although one of the most important public policy priorities, is not adequately promoted through the SDP's objectives;
 - 3) the SDP should focus on the basic function and role of the prosecution service - prosecution of criminal offences;
 - 4) the SDP should provide for the independence of prosecutors and ensure them reasonable conditions of service and adequate remuneration;
 - 5) to revise and streamline the SWOT, basing it as much as possible on objective data or assumptions and ensuring a better correlation between its four chapters;
 - 6) to clarify the relation between the public policy priorities for medium term and the strategic development programmes with their corresponding objectives;
 - 7) to consider updating the timeframe of the SDP to the period 2013-2015 and revising the terms related to the implementation of particular objectives;
 - 8) to ensure that the objectives set are attainable by the Public Prosecutor's Office, or that it has a significant level of control over their implementation;
 - 9) to further coordinate the draft SDP with the SJSR and address all the specific intervention areas of the SJSR calling upon the involvement of the Public Prosecutor's Office;
 - 10) to provide for objectives which will ensure increased transparency in prosecutorial decisions;
 - 11) an objective and more measures to prevent and fight corruption within the prosecution service shall be adopted;
 - 12) to analyse the need and possible advantages of simplifying the organisational structure of the Public Prosecutor's Office;
 - 13) the proposed measures for capacity building of the PPS shall be better correlated with the SWOT (all weaknesses/threats identified in the SWOT analysis shall be addressed);
 - 14) the SDP would benefit from an estimation of the costs which the Public Prosecutor's Office should incur for implementation of specific objectives etc.

3. Although the SDP refers to reforms envisaged in national strategic and policy documents such as the SJSR, if adopted by the Public Prosecutor's Office, it could give more clear references on the position of the latter as regards the main principles and the ways it sees those reforms implemented.
4. On the occasion of assessing the SDP, the consultants recalled the opinions and recommendations made by the Venice Commission and CoE experts on the occasion of the drafting and adoption of the current Law on the Public Prosecutors' Office of Moldova. They concluded that the drawbacks of the prosecution service in Moldova, as well as the recommendations made before and shortly after adoption of the current law in December 2008, remain highly relevant and the measures for their full implementation shall be reinforced.

ASSESSMENT
of the draft Strategic Development Programme
of the General Prosecutor's Office of the Republic of Moldova

by
Birgitte Vestberg

General remarks

5. Article 6, paragraph 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) states that in the determination of any criminal charge everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal. It is needless to mention – but is done so anyhow – that subjection to torture as means of criminal justice deprives a criminal justice system of fairness. It should be equally needless to point out that justice is not done if judges receive favours aimed at influencing decision-making.
6. Observance of these standards is the responsibility of the state and they apply not only to the courts but also to authorities responsible for investigation and prosecution. The guiding stars for investigation and prosecution are the principles of legality, objectivity, fairness and impartiality.
7. The Strategy for Justice Sector Reform 2011-2016 (SJSR) is to ensure coherent, consistent and sustainable reforms to the justice sector as a whole and to develop a justice sector which is fair, of high quality and with zero tolerance towards corruption. Inter alia, the Strategy's objective is to ensure the rule of law and protection of human rights.
8. With reference to the EU - Republic of Moldova Action Plan, the mentioned above SWD has invited the Republic of Moldova *inter alia* to implement the justice and law reform strategies with a focus on human rights protection and the urgent need to curb corruption.

The Justice Sector Reform

9. The reform places the General Prosecutor's Office in a central position, among other justice sector stakeholders, as responsible institution in various ways under Pillar 2 (Criminal Justice), Pillar 4 (Integrity of justice sector shareholders) and Pillar 6 (Respect for human rights in the justice sector).
10. To ensure coherent, consistent and sustainable reforms of the justice sector, the objectives of the SDP for Public Prosecutor's Office must reflect the specific intervention areas of the Justice Sector Reform.
11. Important objectives/outcomes of the SJSR are:
 - Pillar 2:
An efficient and effective criminal investigation procedure complying with international standards.
Legislation on criminal procedure adjusted to European standards.

Strengthening professionalism and independence of the prosecutor's office.
Strengthened professionalism of persons involved in investigation and prosecution activities
Efficient and modern prosecution procedure.
Ensuring respect for human rights.

Pillar 4:

A justice sector that is intolerant of and discourages corruption.
Effective mechanism to prevent and combat corruption in the justice sector.
Discouraged and diminish predisposition to commit acts of corruption.

Pillar 6:

Ensuring effective observance of human rights in legal practises and policies.
Shared, recognized and promoted culture of zero tolerance for acts of ill-treatment.
Improved mechanism for the application of coercive measures and preventive measures.

Accordance between the SDP and the Guidebook:

12. The Guidebook states that the purpose of a SDP is for central public administration authorities to improve their performance, identify strategic objectives and prepare for their implementation, identify capacity gaps and plan development of missing capacities. From an overall point of view, the SDP follows the stages I-IV set out in the Guidebook.

STRATEGIC DEVELOPMENT PROGRAMME

13. The SDP has been developed as part of a general development programme for the public administration authorities of the Republic of Moldova and there is good reason to praise the efforts and resources put into the project.

II The Public Policy Priorities for Medium Term

The SDP lists under p. 2.1 the following priorities:

1. Human rights protection;
 2. Justice sector reform;
 3. Strengthening integrity and fight against corruption;
 4. European integration and
 5. Strengthening the capacities of justice system.
14. The SDP identifies and prioritises the mid-term policies but fails to state the period by which the priority is expected to be achieved by the Public Prosecutor's Office. Under objectives, however, the terms for completing concrete objectives are stated, but this gives no clear picture as to the chosen priority. An additional anomaly derives from the fact that some "terms" (implementation period) have already passed or have dates fixed later than 2015.
 15. The SDP lacks cohesion between priorities and programmes, and this is particularly reflected in the objectives. The later refer to the programmes without a clear link to

priorities, making it difficult to get a clear perception of how priorities are handled. This inconsistency makes it difficult to envisage the point of a number of objectives.

16. The programme would have gained by following the structure of the SJSR and thereby fitting the Public Prosecutor's Office into the SJSR, not excluding pointing out priorities and adding objectives. As indicated above, the structure of SJSR is divided:
 - Pillar 2: The Criminal Justice.
 - Pillar 4: Integrity of the justice sector actors standards.
 - Pillar 6: Respect for human rights in the justice system.

Under 2.2 SDP lists Strategic Development Programmes for 2012-2014:

1. Administration of justice in courts and courts of appeal;
2. Implementation of the criminal policy of the state;
3. Protection of rights and legal interests of persons;
4. Professional training in the domain of justice;
5. Integrated system of legal information.

These programmes are recommendable but should be more focused on the aspects of SJSR

III Objectives of the Public Prosecutor's Office are divided into programmes 1-5, reflecting the programmes mentioned under 2.2

17. The SDP Objectives have basically been copy-pasted from the SJSR even if there are differences in wording. These differences are most likely due to translation challenges. The meaning of "Capacity of ensuring internal security is functional" (programme 1) which is copy-pasted from SJSR is not obvious.
18. However some specific intervention areas mentioned in SJSR seem to be missing:
 - enhancing professional capacities of persons involved in prosecutions activities (though specific capacities have been mentioned);
 - creating a mechanism to ensure an integral behaviour of prosecutors and investigators, inter alia;
 - involving the society in monitoring the compliance with the professional ethics of the justice sector actors;
 - strengthening the whistleblower regime (inside and outside the system);
 - strengthening the system of collecting and analysing the data on children in contact with the justice system;
 - developing the technical-material basis and infrastructure in accordance with European standards in all places of freedom deprivation;
 - create effective mechanisms against torture and ill-treatment.
19. A whistleblower regime must be accompanied by mechanisms to avoid persecution of a whistleblower.
20. The priority 1 of the Medium Term Policy Framework is Human Rights and, in that light, very few objectives refer to human rights.
21. A challenge in relation to the objectives actually pinpointing human rights is the lack of specification as to which "human right" the objective is referring. Of special interest

to include in the SDP is a mechanism to ensure that knowledge of legal conditions for infringing fundamental human rights such as the right to liberty, respect of home and correspondence and all elements of a fair trial in ECHR Article 6 are built in every prosecutor from top to bottom.

22. Even if some objectives fail to live up to being sufficiently specific, most are measurable, attainable, relevant and tractable.
23. Unmentioned in the SDP is securing transparency in prosecutorial decisions particularly in the event of discontinuation of investigations. The reason for this may be that sufficient transparency already exists. This is however central to an aim of improving citizen confidence in the administered justice (programme 1) and prevent victims from being re-victimized
24. One objective unmentioned in the SDP as well as in the SJSR is looking into the advantages of organisational simplification. The organigram of the General Prosecutor's Office reveals a very complex organisation including 33 units at the central level, 10 specialised prosecutor's offices (including 5 at Court of Appeal level and 3 military prosecutor's offices) and 44 territorial prosecutor's offices. The staff tables show that outside the central level 33 offices have less than 10 prosecutors and 8 offices have 5 or fewer prosecutors. Local offices with few employees are more prone to developing "sub-cultures", with lesser regard for core values such as independence and incorruptible administration. Also "sub-cultures" might develop or keep lax attitudes to fundamental human rights. A well-functioning unit requires availability of all necessary capacities in the field of administration of justice. Fewer units also make it less complex to establish and use performance indicators.
25. Several programmes indicate "specialization of prosecutors" amongst the objectives. It is not clear whether the aim is to create specialized units. Specialization of units is generally considered useful in complex cases involving a need for special capacities such as investigating/prosecuting economic crime, money laundering, human trafficking, international crimes etc. Creating specialized units will of course also require specialized prosecutors. However specialisation tends to create a more complex organisation and should be avoided unless they add value to the overall performance.
26. Creation of "simplified procedures" appears under objectives as well as under the performance indexes. This is to be welcomed as a means of securing justice "within a reasonable time". Simplified procedures should include administrative procedures to minimize the number of transfers of papers between employees.
27. In all some 40 objectives are specified. This may be the result of a copy-paste procedure but it should be considered whether fewer but broader objectives would have a better chance of completion by 2014 (2015, if the implementation period is updated).
28. The Guidebook advises the authority to have full control over the implementation of the SDP Objectives. Many objectives do indeed seem valuable without obviously being within the full control of the Public Prosecutor's Office.

Performance index(ices)

29. The training and the number of courses or number of persons having been trained are appropriately included among the performance indexes. However, drafting of new laws or amendments to the existing legislative framework seems very dominant. Regulatory instruments such as guidelines (including monitoring systems), handbooks or best-practise manuals are very efficient and less resource-costly way of creating a streamlined prosecution service with clear-set goals for prosecutors. Allowing such regulatory instruments may require an amendment to the law on the public prosecutor's office. Guidelines, handbooks or best-practice manuals should not materialise without consultation with relevant partners including NGO's.
30. Attention is drawn to the Guidebook's indication that preparation of new or modification of current laws is an instrument (contrary to the SDP pointing to this as an performance index)
31. Very relevant are the efforts to simplify the procedures. However simplified procedures seem more relevant as objectives than as performance indexes.

Responsibility

32. The Guidebook advises the authorities to identify the specific internal unit or person that will be in charge of coordination of the overall implementation of respective SDP Objectives. The SDP however makes references to several (up to 7 Directorates) responsible, often adding individual divisions. In itself this does not exclude that objectives and performance indexes are met. In case of not meeting the objectives/performance indexes, identifying the reasons will prove more difficult.

Terms

33. As mentioned above, the SDP is already behind schedule as to living up to some terms and the programme needs to be revised as far as the terms are concerned. As to promotion of intolerant conduct towards corruption (programme 2) and trainings in the domain of professional ethics (programme 4) a term up to 2016 seems (very) unambitious. The term in December 2014 for capacities in the domain of prevention of torture (programme 3) is unambitious as well. The choice of terms indicate the priority given to the objective and should conform with II.2.1 Public Policy Priority for Medium Term.

Instruments

34. A whole variety of instruments has been put forward – all well known. The instruments seem appropriate and supposedly do not exclude adjustments if need be during the process.

Required capacities

35. The most often mentioned are “knowledge” and “abilities” and these are attached to well-known factors. The capacities seem to be practical and directly relevant for SDP implementation. However any connection to the SWOT seems unclear.

36. Knowledge of the EU law is mentioned very frequently and knowledge of the ECHR jurisprudence only once (programme 1 – existing contradictions between the Criminal procedure legislation and standards in domain of human rights and fundamental freedoms are eliminated). Knowledge of the ECHR jurisprudence should either be specified in the EU context or mentioned directly in relevant objectives.
37. According to the Guidebook, the SDP is supposed to identify capacity “gaps” i.e. capacities not already present. The wording of the requirement column indicates that some of these requirements are necessary/needed, but not missing. If indeed they were missing, they should be included in programme 4.
38. However, the Chapter **IV.4.1 Required Capacities and Consolidated Solutions** lists types and categories of required capacities on the organizational level (human resource management, organizational management, financial management) and on the individual level. The phrasing seems awkward (how can absence of something be presented as description of a required capacity?), but a translation error cannot be excluded. No solutions for the replenishment of required capacities seem focused on the basic pillars of a fair trial as mentioned in ECHR Article 6.
39. Finally, although the draft SDP refers to the Medium Term Budget Framework and to the fact that “the role of the SDP consists in reflecting the means by which the Public Prosecutor's Office will ensure implementation of priorities stated in the national public policy documents...”, it is not supported by any financial outline. This might pose serious problems especially in the next phase – implementation of the SDP.

Conclusions

40. The aim of this assessment is to evaluate the merit of the SDP in the light of the Council of Europe Standards and European good practices. A prosecution service must abide to basic standards such as the principles of legality, objectivity, and impartiality, and ensure the rule of law, protect human rights (including non-use of torture and uprooting corruption). This requires training and monitoring at all levels of the service. The SDP shows awareness of these principles but it would gain in credibility by putting these basic values more into focus in the present development programme.
41. For a prosecution service to function properly the rights of prosecutors must be safeguarded. The SDP should also focus on the independence of prosecutors, to give them reasonable conditions of service and adequate remuneration. Recruitment and promotion based on objective factors is mentioned in the SDP but should not stand alone.
42. In addition to adequate remuneration, combating corruption requires codes of conduct, whistleblowing mechanisms and transparency. These subjects deserve inclusion in the SDP.

25 October 2012

ASSESSMENT
of the draft Strategic Development Programme
of the General Prosecutor's Office of the Republic of Moldova

by
Bostjan Penko

43. This assessment takes into consideration the results of a round table discussion of the SDP that took place on 15 October 2012 in Chisinau, Republic of Moldova. During this activity, the SDP for 2012 - 2014 has been presented by its drafters as the main document on managerial and strategic planning of the Public Prosecutor's Office activity, which provided for the analysis of current needs, set of priority objectives being in line with the documents on national and international policies, directions of activity and medium-term priorities and ways of their implementation, assessment of performance and ways of the institutional capacities development, as well as procedures used to monitor, evaluate and report on the results of the Programme implementation.
44. It has been pointed out that the SDP is only a part of a wider activity, namely a significant legislative measure in this regard was the adoption of the Law on the approval of the Justice Sector Reform Strategy for 2011-2016 (Law No. 231 of 25.11.2011) and of the Action Plan for the implementation of the Justice Sector Reform Strategy for 2011-2016 (approved by the Parliament Decision No. 6 of 16.02.2012).
45. The SDP was mentioned to be drawn up with the view to implement the provisions of the mentioned legislative acts, in accordance with which the institutions under reform shall develop strategic development and funding plans in conformity with the strategic directions and specific areas of intervention stipulated by the Strategy as well as in conformity with the provisions of the Government Decision No. 176 of March 22, 2011 "On approval of the Methodology for the elaboration of strategic development programs for central public authorities" and the Guide on SDP elaboration.
46. I questioned the actual concept and nature of SDP - is it a strategy developed on the bases of actual powers and authorities of the Prosecution Service to bring about a coherent, original, expert-based piece of sub-legislation or is it just a subordinated document, derived from the above mentioned documents and therefore quite limited in its reach and purpose. This seems to be an important issue for clarification of the situation regarding the scope and the importance of the SDP in relation to other parts of the justice sector. We were informed that, with the view to coordinate the process of the SDP development, a group consisting of the heads of subdivisions of the General Prosecutor's Office, representatives of subordinate institutions and international experts has been established, having the functions to organise and coordinate the entire process of the SDP development, to ensure timely and qualitative development of the SDP, to decide on the content of the SDP and to organise a participatory process of the SDP development. We were also informed that the SDP is developed for a period of 3 years starting from 2012 on. The first year has already almost passed whereas the SDP is still a draft. Also a notion of annual plans for the operational planning of the institution's activities, that will provide certain measures on SDP implementation, has been mentioned. This is all fine, but on the other hand it is not clear at all when and by whom the SDP is going to be adopted. In my view it should be adopted on a higher level, not only as an internal document of the prosecution service.

47. With respect to the description of the current situation in the SDP, I have the following comments, remarks, concerns and where appropriate, recommendations.
48. It is not clear whether the actual political will for adopting and implementing conceptual reforms through the SDP (including revision and change of existing legal and constitutional framework) exists or not. The existence of political will to promote institutional reforms is not identified as a strong point in the SWOT analysis but only as an “opportunity”. At the same time the “inconsistency of political will in implementing reforms” and “incorrect perception by the legislative and executive powers of the Prosecutor's office responsibilities in relation to those pertaining to other state institutions in the process of ensuring public order, protection of rights and freedoms of citizens, representation of state interests and combating crime” are mentioned as threats to the programme.
49. Referring further to the SWOT analysis, under the topic “strong points” is mentioned the “efficient organisational and functional structure”, while there immediately are given elements which contradict this assumption. For example, “absence of an autonomous budget, premises and personnel of the Apparatus of the Superior Council of Prosecutors”, “unclear delimitation of functions between the General Prosecutor’s Office and the Superior Council of Prosecutors” or “absence of a subdivision (of prosecutors) with analytical competences” are presented as “weak points”.
50. It is noticeable that the phenomenon of corruption, which in the public perception is deeply rooted within the judicial branch of state power of Moldova (of which the public prosecutor’s service is a part), is not referred to in the SWOT analysis at all. This should be due to either a regrettable but reparable omission, or to a different view of the authors of the draft SDP on the presence within the service and effects of the phenomenon on the functioning and image of the public prosecutor’s service.
51. Also under the “strong points” of the SWOT analysis it is mentioned that “Legislation regulating the activities of the Prosecutors’ Office is relatively new and adjusted to international standards”. I can agree only with the former but in no way with the later part of this statement. With this respect I see as a lost opportunity the situation where the drafters of the current Law on the Public Prosecutors’ Office have had at their disposal the expert assessment of then still a draft law made by the Venice Commission and issued on 19 June 2008. In my view the authorities should have accepted and fully taken into account the concerns expressed by the authors of the Venice Commission expert assessment, especially those related to the need to clarify to what extent the individual prosecutor has autonomy in decision-making or is subject to hierarchical control. In particular, it should be clear in what circumstances the prosecutor’s autonomy can be overridden by a senior prosecutor.
52. I would also agree with the opinion of the Venice Commission that the change in the definition of the public prosecutor’s service in Article 1, while it aligns more closely to the Constitution, appears to be a step away from changing the service into a modern service operating in accordance with the principles of a democratic society under the rule of law, because elements of the prokuratura-style prosecution system are still present. It has already been recommended, and I fully support it, that the best solution would be to amend Article 124 of the Constitution and then proceed with this conceptual change to

lower levels of legislative, institutional and practical development of the Prosecution Service in Moldova. Regrettably this has not happened and today it is only possible to act within the existing constitutional and legal framework.

53. The opinion of the Venice Commission has been reinforced by the assessment of two experts assigned by the CoE, namely Mr Duarte and Mr Hamilton - this opinion was issued on 27 July 2009 when the Law on the Public Prosecutors' Office has already been in force. I find it important to stress and support what they concluded about some of the major issues that are very much relevant also today.
54. They noticed, as I did myself, that a substantial number of the criticisms made by the Venice Commission in its opinion of 19 June 2008 have not been dealt with. In particular, the failure to clarify the extent to which the individual prosecutor had autonomy in decision making or was subject to hierarchical control remained a problem. I agree with the view that it is necessary to be clear in what circumstances the prosecutors autonomy can be overridden by a senior prosecutor. Under Article 27 of the current law the Prosecutor General is entitled to issue written orders, resolutions, and mandatory instructions and is also entitled to revoke, suspend or cancel acts issued by prosecutors if they run counter to the law. Article 31 appears to enable any person within the hierarchy of the prosecution service to issue mandatory instructions to more junior persons.
55. I fully agree with my colleagues that it is important to specify exactly what is meant by describing the system as hierarchical. The important thing is to specify what exactly is the power of instruction given to anybody within the system, to whom exactly this power is given, what precisely is the scope of authority of individual prosecutors, when they may take decisions on their own initiative, which decisions require to be approved by a more senior prosecutor, which decisions may be reviewed or set aside, and by whom and on what grounds. It is also true that the law gives very little guidance on what the answers are to any of these questions and therefore the SDP, as the implementation document, could be very helpful in directing the practice with its measures towards a proper balance between the independence and accountability of the prosecutors.
56. With respect to the issues raised above, during the round table discussion of the SDP, I made comparison also with my domestic (Slovenian) legislation in order to provide some good examples that Moldovan authorities might follow. First, I mentioned that in Slovenia individual state prosecutors, as officials of the state, are responsible for carrying out functions relating to criminal prosecution. The State Prosecutor's Office in Slovenia is an institution within which state prosecutors operate as individual officials. The State Prosecutor's Office stands at the top of the organization of state prosecution that is not explicitly hierarchically organized; this is due to the abolition of higher state prosecutor's offices as organizational units, to the granting of independence to state prosecutors and to the fact that not the state prosecutor's offices are responsible for carrying out functions but the state prosecutors individually, as state officials.
57. I draw the attention to the issue that the post of an individual state prosecutor in Slovenia is permanent and that the basic rights of a state prosecutor include a salary, salary supplements and other receipts, which are the same as for judges, disability, pension and social insurance, which are the same as for other employed on the active list, annual leave of between thirty and forty days, the right to additional training and grants, the

right to promotion, and the right to have the post held for him/her if he/she is selected as a National Assembly deputy, a Constitutional Court judge, president or prime minister, minister, ombudsman or ombudsman's deputy.

58. I explicitly refer to the issue of external and internal independence of the prosecutors in Slovenia with a clear intention to promote similar solutions, as included in the legislation of my country, also in Moldova. In Slovenia, as part of the judiciary, state prosecutor's offices are independent state bodies, and state prosecutors perform their tasks only pursuant to the Constitution and the law. Slovenian legislation ensures that each state prosecutor, as a state official, performs his function independently, and that a state prosecutor cannot be given instructions or orders for his work in a specific criminal case. Only general instructions on the conduct of state prosecutors relating to uniform application of the law at state prosecutor's offices, and to ensuring uniformity of the prosecution policy are permitted; such instructions being issued by the State Prosecutor General. The head of a district state prosecutor's office can issue general instructions in matters within its sphere of competence. General instructions must be issued in written form. The independence of a state prosecutor in Slovenia is safeguarded by the institute of "evocation". If a state prosecutor does not agree with the general instructions, he/she can refuse to work on a specific case; the case can then be assigned to another prosecutor or taken over by a superior or higher state prosecutor. The later must issue an order in written form and send one copy of it to the State Prosecutor General.
59. Another important issue to discuss was the opinion of both CoE experts that the prosecution in Moldova continued to exercise substantial power to intervene in the life of citizens and enterprises alike without even needing a warrant or approval from a court and that the extent to which the prosecutor's office continued to exercise functions outside the sphere of criminal prosecution remained unclear. I agree with my colleagues that the failure to amend the Constitution in this regard is to be regretted. Article 124 of the Constitution still seems to place the emphasis on the Public Prosecutor's Office role on matters other than criminal prosecution, what is also obvious from certain provisions of the Law on the Public Prosecutor's Office.
60. In the interpretation of the existing legal provisions and especially in the methods of the implementation that could be promoted through the SDP I would like to stress the following.
61. It is one of the major possible positive developments that could be promoted through the SDP to recognize the importance of the change of the role of the Public Prosecutor's Office in a modern society. This could be done in practice through guidelines and general instructions that would focus and channel the activities of the prosecutors to participation in criminal and administrative proceedings where they actually are a party and not an outside intervenient. All efforts should go in that direction, prosecution service should mainly concentrate on improving and enhancing its capacities in prosecution of serious economic crime and corruption - in particular the individual cases that need to be investigated and brought before court. This is in my view the best (and the only legitimate) way for the prosecution service to protect the general interests of the society in Moldova, its legal order and the rights and freedoms of its citizens.
62. Through the SDP the idea of abandonment (it could be slow and gradual) of the powers as stipulated e.g. in Article 19 of the Law on the Public Prosecutors Office could be

further elaborated and enhanced. It is in my view the issue of interpretation, which could be either extensive or restrictive - later meaning that the prosecutors would remain entitled to file a protest according to Article 19 but would understand this provision as an exemption and not as a rule or an obligation.

63. I also pointed out that within the existing legal framework there is some room for changes and improvements, also in the context of the SDP, that might influence further development in the right direction. It is the way of implementation, guidelines, good practices, education, training, etc. that can significantly contribute to the gradual change of the existing concept - and these are all elements of the SDP that can be further elaborated and promoted in that direction - following the idea of full accountability of the prosecutor for his/her performance but at the same time ensuring him/her maximum internal and external independence.
64. It is important to recognise also through the SDP that, according to Article 4 of the Law on the Public Prosecutors Office, it is the individual prosecutor who is an office holder by whose virtue the Prosecutors Service as an organisation exercises its competences. All provisions that contradict this main rule should be interpreted in favour of the internal independence of individual prosecutors, also junior ones, in order not to create a system of dependence, fear from taking right decisions and too much attention to the idea of what will be the reactions of senior and superior prosecutors. It is therefore of extreme importance how the provisions of Article 2 para 5 of the law are applied - their application could be subjected to measures (training, education, directions, guidelines) elaborated through the SDP. The same is relevant for the Article 31 paras 5 and 6 of the current law. The internal independence of the prosecutor, especially from any undue influences by his superiors, should be preserved and strengthened throughout the SDP.
65. Another important issue that has been raised in the debate is the structure and the tasks of the Public Prosecution Service as a whole and of the Office of the Prosecutor General in particular .
66. After analysing the SDP in this respect I came to the following conclusions. In the programme, especially on the operational level, one can find a number of tasks and objectives that have nothing to do with the main role and function of the Public Prosecution Service. An example of this is on page 29 of the SDP, Programme 1 - Administration of Justice. It seems to me that the General Prosecutor's Office is replacing the tasks and the role of the Ministry of Justice, that should in normal circumstances carry out all activities related to drafting of the laws from the area of criminal justice. In my view, normative activities should not be the main objective of the General Prosecutor's Office. Prosecutors and judges may only contribute to the content of new legislation that is being drafted with their practical knowledge and experience from the courtrooms, but they should never be identified as responsible for drafting laws.
67. Exactly the same concerns are related to the next objective (page 30 of the SDP) named "System of Prosecutors specialisation in specific criminal cases is adopted and applied" and also to the content of the column titled "Required capacities" on pages 30 and 31 of the SDP.
68. I would recommend to the drafters of the SDP to respect the principle of separation of powers to executive, legislative and judicial, as a basic democratic standard in a state

where rule of law is in place. It is never a good idea to give power to particular institution to draft and compose legislation that would later be applied by the same institution. In such occasions the laws are not properly balanced and usually give too much power to the institution in which they were created, especially if the institution is repressive in its nature. To avoid this danger democratic states have introduced the separation of powers principle under which legislative, executive and judicial powers are clearly separated.

69. This subject raises the issue of the structure and composition of the Prosecution service and especially the Office of the Prosecutor General, which is in my view a huge institution with too many different tasks entrusted, where some of them are not directly related to the performance of the basic prosecutorial duties. And there is a great number of experienced prosecutors at the peak of their careers who are engaged in different non-prosecutorial activities in the Office of the Prosecutor General, what is in my eyes a managerial and organisational mistake. If one looks into the tables named “Portfolio of the subdivisions of the General Prosecutor’s Office” and compares the number of the non-acting prosecutors with the number of prosecutors who actually prosecute crimes before courts of first instance it becomes clear that the number of former is much too high. In my view this is a big waste of the best possible personal for prosecution of serious, especially organised and economic crime.
70. Having this in mind I strongly support the idea of reorganisation and optimisation of the structure of the Office of the Prosecutor General, its internal organisation. However this should be done in different manner and direction and with a different conceptual approach than envisaged in the SDP, especially on page 51 under the Chapter 4.2 - Recommendations regarding Capacity Building. The SDP recommends creating even new subdivisions of the Office of the Prosecutor General, whereas I believe that there are already too many and that at least some of them should be omitted or merged in order to achieve less complicated, more economical, rational and more transparent structure of the Office, where it will be clear who does what (and why) within the institution. I am also against adding new functions and structures to the Office. I am of the opinion that strategic development of the General Prosecutor’s Office should not be redirected towards development of documents on strategic development and policies by providing their integrated management, etc. as mentioned in the first point of the above indicated chapter.
71. In my view the SDP should be elaborated and built on the clear understanding of the basic function and role of the prosecution service - prosecution of criminal offences. The rest is in my opinion more or less in the domain of other institutions that should support the prosecutorial organisation from the outside - through drafting and adopting effective legislation, providing the necessary resources, staff, education, training, etc. These are all very important factors for the proper functioning of the prosecution service, but many of them fall under the domain of executive (Ministry of Justice) or legislative branches of power. The prosecution service should keep the focus on prosecution and this focus should be obvious also in the SDP for this important institution.

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