

Anti-Corruption Expertise of Draft Legislation in Moldova

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14 November 2014
Tirana, Albania

Shortest definition of **corruption**:

- Misuse of office for private gain
(Klitgaard, Maclean-Abaroa, and Parris, 2000:2)
- Abuse of entrusted power for private gain
(Transparency International)

Source of corruption:

- Office
- Position
- Powers
- Duties
- Responsibilities



used for private gain

How do all of these appear?

Laws, by-laws, administrative acts...

...while instituting public functions, defining official powers, duties and responsibilities are also creating opportunities for interpreting their intended meaning and therefore generating more or less obvious opportunities for future **corruption**

“Que toute loi soit claire, uniforme et précise: l'interpréter, c'est presque toujours la corrompre.”



*(Dictionnaire philosophique, 1764,
citations de François Marie Arouet,
dit **Voltaire**)*

“Let all laws be clear, uniform and precise: to interpret laws is almost always to corrupt them.”

When discretion of public officials to interpret laws is dangerous?

When he may choose an interpretation of the legal provisions which he prefers

When he may choose a preferred interpretation rather than the one expected by the citizen

When such interpretations may be used for private gain

Solution to dangerous discretions of legal interpretation

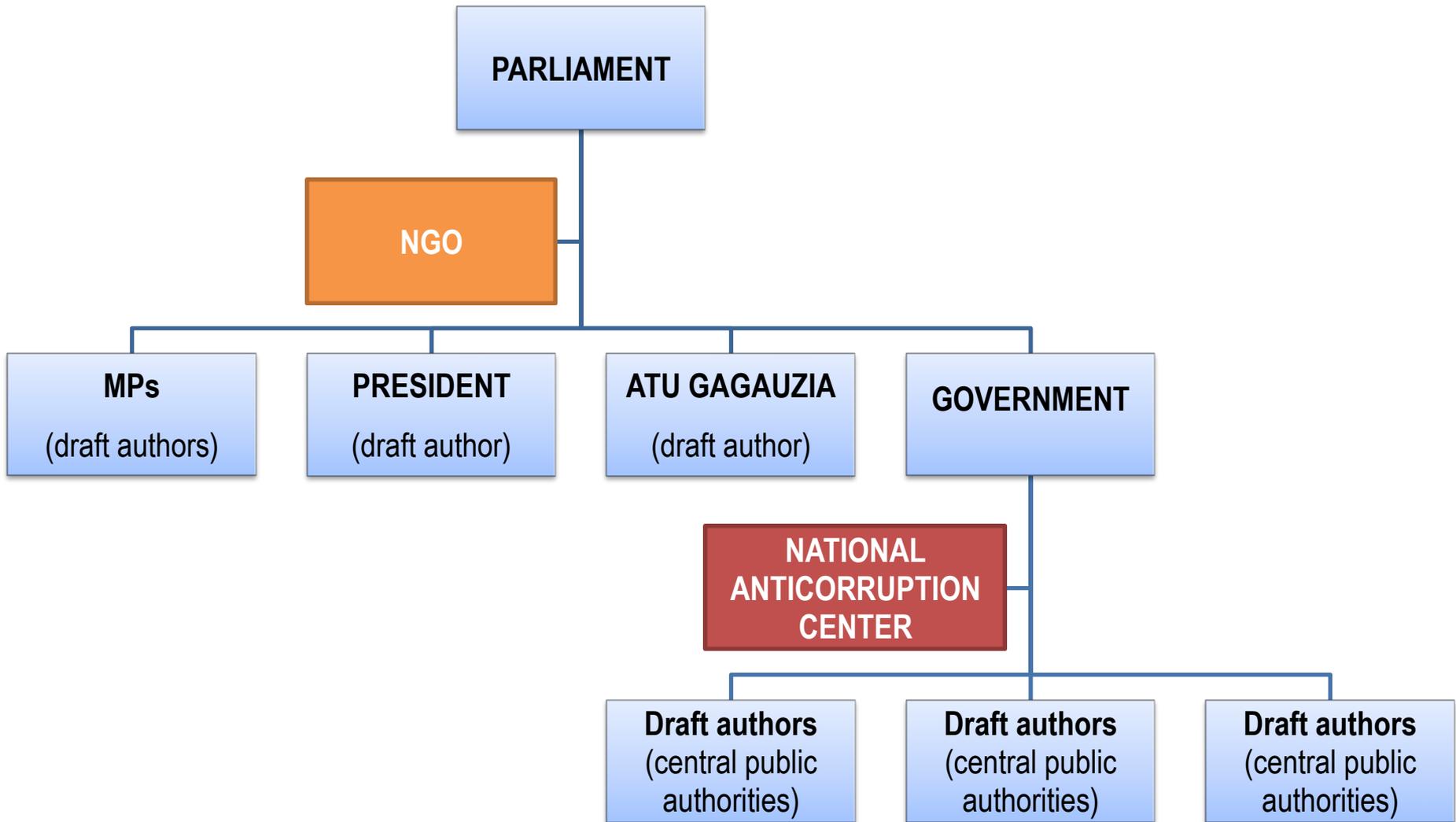
- **Anti-corruption expertise (corruption proofing)** - a process of review of the draft rules (laws, by-laws, administrative acts) aimed at detecting the provisions which favour or might favour corruption and other abuses upon application (corruptibility risks).

Emergence of anticorruption expertise in Moldova

- **June 2006** – NGO launched corruption proofing
- **23 August 2006** – Gov Decision # 977 passing the Rules of conducting anti-corruption expertise of draft laws and by-laws
- **10 November 2006** – Law # 332 amending law on legal acts, law on normative acts of Gov, Law on the National Anticorruption Center
- **3 May 2007** – Order # 47 of the Director of the Anticorruption Center approving the Methodology of the anti-corruption expertise

Anti-corruption expertise specifics

- **Scope** – all draft laws and draft regulatory acts (exceptions: policy & singular use documents)
- **Responsible entity** – National Anticorruption Center
- **Timing** – once the draft is final in the Government, before it is sent out to the MoJ for legal expertise
- **Deadline** – 10 days, extendable to 1 month
- **Methodology** – written and software



Special concerns of the anti-corruption expertise

- Justification of the draft's solutions?
- “Hidden goals”?
- Financial coverage of the draft?
- Beneficiaries of draft?
- Sufferers from the draft?
- Compliance with other legislation?
- Establishing new public authorities?
- Regulating the activity of public authorities' and/or the activity of their officials?

Anti-Corruption Expertise report:

I. General Evaluation

1) Author, 2) Category, 3) Goal

II. Justification of the Draft

4) Transparency, 5) Sufficiency, 6) Financial coverage

III. Substantive evaluation of the draft

7) Private interests' promotion, 8) Damages, 9) Legal cohesion,
10) Draft's language, 11) Public authorities activities,
12) Draft's detailed analysis:

No	Draft article	Draft text	Expert's Objection	Corruption Risk	Recommendation for remedy

IV. Conclusions

Categories of corruptibility risks:

I. Legal Wordings

II. Legal Coherence



arising due to

AMBIGUITY

III. Transparency & Access to Information

IV. Exercising Individual Rights & Obligations

V. Exercising Public Authority's Duties

VI. Oversight Mechanisms

VII. Liability & Sanctioning



arising due to

**LACK OF
PREVENTION
MECHANISMS**

2014 – 6 months efficiency:

(in 338 drafts 2.504 pages long)

CORRUPTION RISKS CATEGORIES	How frequently found in draft laws?	How frequently found among other risks?	How frequently author accepted to remedy the risk?
1. Ambiguous linguistic formulations	14%	13%	60%
2. Conflicting provisions	22%	22%	50%
3. Faulty reference provisions	2%	2%	0%
4. Excessive administrative discretions	37%	46%	86%
5. Excessive requirements to fulfill rights	7%	5%	100%
6. Limited access to information	4%	3%	0%
7. Lack of control mechanisms	8%	5%	40%
8. Unclear liability and lack of sanctions	6%	4%	0%
TOTAL (efficiency of corruption proofing)			68,5%

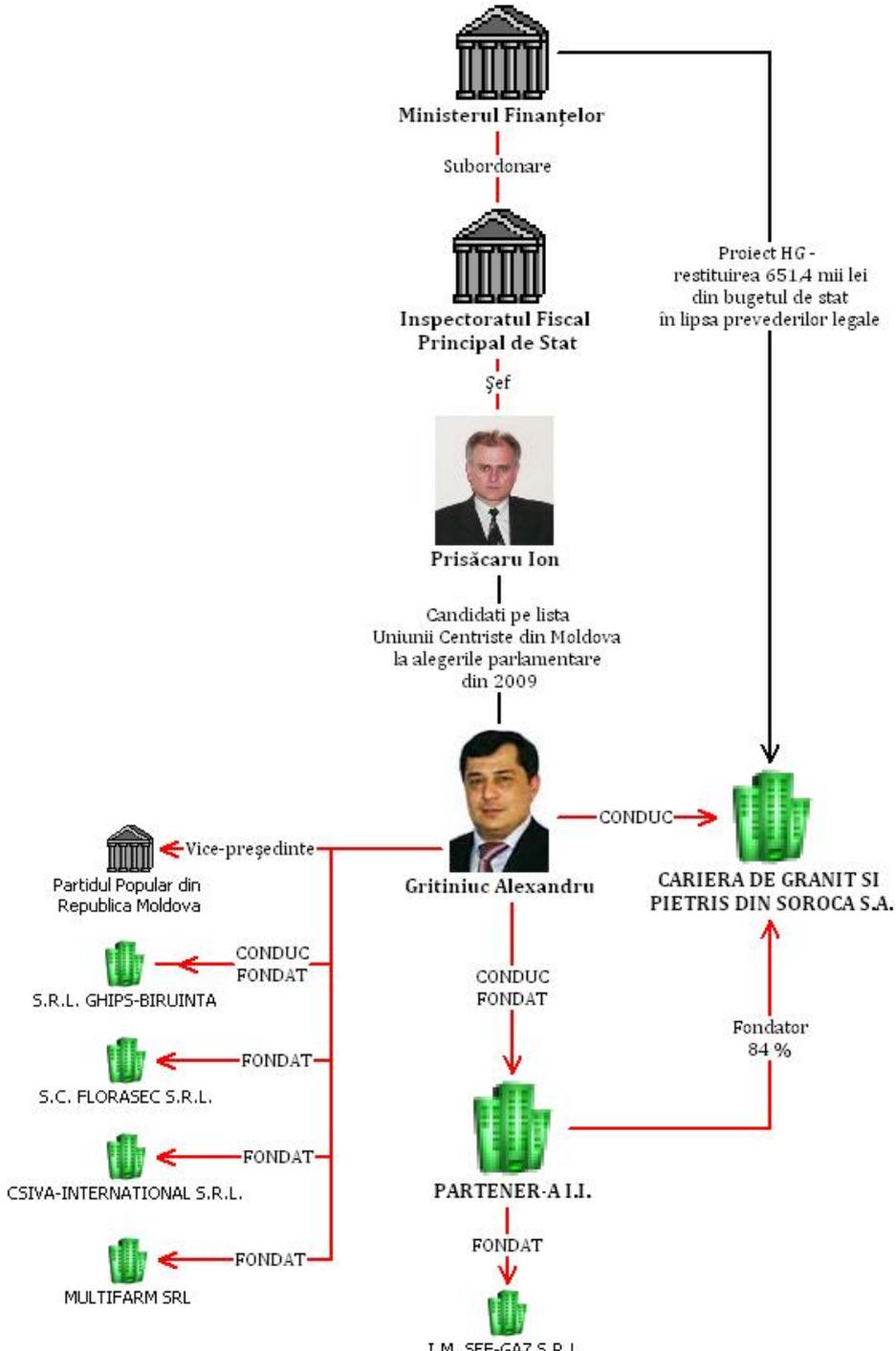
Lessons learnt in Moldova

- Secures quality drafting
- Secures drafting in public interest
- Solution is more important than critique
- Usefulness limited in time
- Later “recycling” of good ideas
- State expertise is useful in identifying concrete promotion of private interests

Typology of promoted private interests identified in drafts

- Exemptions from taxes and custom duties
- Changing land destination
- Public-private partnerships
- Changing rules of retail selling
- Creation of industrial parks
- Financial favouring of certain institutions
- Other.

Example of private interest promotion identified:



Specifics of approving drafts promoting private interests

1. Urgency

2. Lack of transparency

meaning that:

- The draft is not sent for mandatory anti-corruption expertise
- The anti-corruption expertise is not allowed enough time

Rhetorical...

Who was first to be corrupted:

the man by a law

or

the law by a man?

Use of corruption proofing for other prevention mechanisms

- Institutional corruption risk assessment
- Integrity testing – results' report – outlining vulnerabilities to corruption (including legal)