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CRITICAL OPINION ON THE ESTABLISHMENT OF THE PROSECUTOR'S OFFICE
FOR ANTI-CORRUPTION AND COMBATING ORGANIZED CRIME

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Summary

The present article is dedicated to the legislative initiative for the unification of the Anti-Corruption Prosecutor's Office (PA) and the Prosecutor's Office for Combating Organized Crime and Special Causes (PC-COCS) into a single structure.

This study represents an approach to the necessity of reforming specialized Prosecutors' Offices through unification and the establishment of a unified structure from the perspective of creating such a subdivision, the opportunity of the amendments approved at the level of the two institutions, the usefulness of establishing a specialized institution, the challenges encountered, and the impact on the activity of the Prosecutor's Office system.

Keywords: *Anti-Corruption Prosecutor's Office, Prosecutor's Office for Combating Organized Crime and Special Causes, competence, unification, specialized institution.*

Introduction. The fight against the criminal phenomenon in general and especially against corruption and organized crime, the methods of committing which evolve from one year to the next, require a prompt but above all adequate reaction from the law enforcement agencies, especially from the Prosecutor's Office which has the role not only of organizing and supervising the fight against this scourge but also of combating it directly.

It is true that an adequate response to crime is possible only from a fortified system that corresponds to current trends. That is why the reform of law enforcement agencies in general and the Prosecutor's Office in particular is not only a necessity but also a continuous process, on the quality of which the efficiency of the fight against this dangerous scourge for modern society depends. Despite the permanent need to reform the Prosecutor's Office system, changes at its level cannot and should not be of a formal nature. Or, the fight against the criminal phenomenon and its effective combat directly and immediately depend on their quality.

Methods and materials applied. Given the level of approach to the respective subject, when developing this article we were guided by the principle of objectivity, in other

words, the events were analyzed impartially and without subjectivity in presentation and interpretation. When using documentary sources, we applied the principle of ranking sources, so that international instruments, the Constitution of the Republic of Moldova and the provisions of the Criminal Procedure Code, had a special value in relation to other organic laws. Additionally, the principle of dialectics was applied to the analysis of processes, events, facts, in the sequence of their procedure, revealing their causes and effects.

Discussions and results obtained. According to the Constitution of the Republic of Moldova [2] and Law No.3 of 25.02.2016 on the Prosecutor's Office "The Prosecutor's Office is an autonomous public institution within the judicial authority that contributes to the administration of justice, the protection of the rights, freedoms and legitimate interests of the individual, society and the state through criminal proceedings and other procedures provided for by law" [3].

The evolution of social relations, in the context of the democratization of Moldovan society and the need to align with European values, imposes the obligation to adapt and reform the judiciary, so that it can firmly respond to attacks against the rights and freedoms of man, society and the state. However, this goal can only be achieved in the context of a process of continuous reform in this field.

The process of *reforming justice* in general, and the Prosecutor's Office system in particular, does not involve making formal changes, but rather effective changes both at the level of the entire system and qualitative changes to the process itself.

So, reform does not imply any change but a change for the better [4, p.1652], these changes must aim to connect the field to the system of European values and represent in themselves qualitative changes that rationalize the system, improve it and make it more loyal for those who benefit from its services and more equitable for those who bear the consequences of the act of justice.

In this context, the process of reforming the Prosecutor's Office system was also initiated. A process that has begun in 2011 and continues in the present.

Thus, on November 25, 2011, the Parliament of the Republic of Moldova, through Law No.231 [5], adopted the Justice Sector Reform Strategy for 2011-2016, the general objective of which is to build an accessible, efficient, independent, transparent, professional and socially responsible justice sector that meets European standards, ensures the rule of law and respect for human rights, and contributes to ensuring society's trust in the justice system" [6, p.2].

According to that strategy, it is noted that there is a need to carry out interventions in order to confer real internal independence on prosecutors, but most importantly, for the first time, the opportunity to request specialized prosecutors' offices was discussed [5].

The process of reforming the Prosecutor's Office took place with the adoption in 2016 of Law No.3 on the Prosecutor's Office [3], which focused on developing sustainability, ensuring the independence, accountability and transparency of the institution [8, p.16].

"At the same time, efforts were directed towards ensuring accessibility, increasing the efficiency and professionalism of prosecutors, in line with European standards and practices, promoting the rule of law in the Republic of Moldova and ensuring respect for human rights" [8, p.16].

Namely, in order to achieve these objectives, the Strategic Development Plan of the

Prosecutor's Office for 2016-2020 was approved [8, p.16].

“In the context of ensuring the continuity of the implementation of the Prosecutor's Office Reform, in 2017 several departmental acts necessary for regulating their organization and functioning were reviewed and adopted. In the reporting year, the aspect of prosecutor specialization was one of the priorities for the Prosecutor's Office, being extremely necessary to ensure good performance in accordance with international standards and to the extent of citizens' expectations. In this regard, simultaneously with the development of the capacities of the Anti-Corruption Prosecutor's Office, the Prosecutor's Office for Combating Organized Crime and Special Cases was created. Moreover, in 2017 in the context of developing the capacities of specialized Prosecutors' Offices, the mechanism for seconding criminal investigation and investigation officers to these institutions was successfully implemented” [8, p.16].

The immediately following period was marked rather by the internal organization and streamlining of the Prosecutor's Office's activity with the following qualitative changes being introduced and promoted: the statute of the Prosecutor General's Office, which was criticized for inefficiency and the accumulation of the attributions of exercising criminal prosecution with those of implementing policies and unifying practice, was revised. As a consequence of the change in the structure and the revision of the competence, prosecutors within the Prosecutor General's Office, as a rule, no longer carry out criminal prosecution, their activity being oriented towards the development and implementation of policies and the unification of practice, with the provision of methodological assistance to other prosecutors [8, p.16].

“During 2019, the Prosecutor's Office was effectively integrated into the process of implementing state policy documents in major areas, such as: respecting human rights, combating money laundering and terrorist financing, preventing and combating corruption, but also organized crime, etc.” [8, p.16].

However, during the reference period, the activity of the Prosecutor's Office “...was also marked by the events that took place in society and in the political environment. The resignation of the Prosecutor General and the establishment of the interim of this position, the establishment of the pre-selection mechanism for candidates for the position of General Prosecutor, as well as the establishment of a new mechanism for the dismissal of the General Prosecutor were just some of the challenges that the Prosecutor's Office faced during the reporting period. It should be noted that, during 2019 the leadership of the Prosecutor's Office was successively taken over by 3 teams of managers, which inevitably influenced to some extent the activity of the institution's employees” [8, p.20].

Certainly, one of the most resounding changes at the level of the Prosecutor's Office was the arrival in 2022, at the head of the Anti-Corruption Prosecutor's Office (PA), of Ms. Veronica Dragalin, who won the competition over 4 other candidates, being selected by the Superior Council of Prosecutors (SCP) [9], and, upon their proposal, appointed to office by the order of the Acting General Prosecutor of that date [10].

The appointment of this candidate to the head of the PA was conditioned by a number of factors. The most important being determined by the fact that the candidate comes from outside the Prosecutor's Office system, and especially from outside the Republic of Moldova which led to the belief that he does not have all the “deficiencies” and “short-comings” which were presumed to be inherent in local candidates.

Moreover, the candidate came as an exponent of one of the most democratic and

progressive legal systems in the world.

It is worth noting that during that period, the Anticorruption Prosecutor's Office also supervised and led the criminal prosecution within the National Anticorruption Center (NAC), which, moreover, also provided analytical and informational support to the PA, as well as to other authorities at their request [11, p.12].

The appointment of a new chief prosecutor at the PA was supposed to consolidate and streamline the efforts of the subjects empowered with this right in the fight against the scourge of corruption. However, already in the first year of activity, significant disagreements emerged between the PA and the NAC. A conflict which resulted in mutual accusations between representatives of the two institutions.

Even though it seemed that the conflict had been overcome [12], on 31.07.2023 the legislature decided to intervene with new amendments to the criminal procedure law [13], which not only delimited the material competence of the NAC and the PA but, most importantly, the latter was deprived of the right to lead criminal prosecution within the Center, this role being assigned to the territorial prosecutors' offices.

According to the new paradigm the PA was to focus primarily on investigating cases of grand corruption which was difficult to achieve, given that the leadership of the criminal prosecution of cases under the jurisdiction of the NAC was maintained at the PA, and the NAC's jurisdiction was not significantly reduced. This meant that half of the criminal cases sent to court by the PA were actually criminal cases regarding petty corruption handled by the NAC [14, p.12].

Even though, apparently, removing the NAC from the PA's subordination was a justified change that would allow the PA to focus on grand corruption and not disperse its efforts on combating petty and systemic corruption, investigated by the NAC, in practice a series of difficulties arose.

On the one hand, the territorial prosecutor's offices were neither professionally prepared nor had the number of specialists to assume the leadership of the criminal prosecution in criminal cases investigated by the NAC.

On the other hand, with the removal of the NAC from the PA subordination, this institution was deprived of operational and logistical support, which made it difficult to fully, objectively and in a timely manner investigate the criminal cases assigned to the material competence of that institution. Therefore, with the withdrawal of the NAC from the PA subordination, the number of criminal prosecution support personnel consisting of criminal prosecution officers and seconded investigation officers was to be supplemented to procedurally support the activity of prosecutors called to exercise functional attributions in the name and in the interest of the PA.

At the same time, it was necessary to identify and assign a new headquarters, with the necessary technical and material equipment which would correspond to the profile of this institution and make it possible to carry out activities at the highest level. This desire was constantly reiterated by the people responsible for the administration of the PA [15].

Contrary to the development strategies of the Prosecutor's Office system, on 20.01.2025, the President of the Republic of Moldova convened a meeting of the Supreme Security Council (SSC) and, under the pretext of strengthening the fight against *political corruption* and *increasing national security*, proposed to consolidate the institutional architecture of the bodies responsible for combating corruption and the legal framework, for harsher sanctions of actors involved in political and electoral corruption [16].

Based on the recommendations of the SSC, on 29.01.2025, the Minister of Justice, during a press briefing, stated that “Republic of Moldova is facing increasingly complex forms of crime that affect national security, in particular corruption, including political and electoral corruption, with the involvement of organized criminal groups aimed at destabilizing the rule of law, treason, hybrid warfare”, which is why he announced the merger of the two specialized prosecutor’s offices – PA and PCCOCS, into a single structure [17].

In light of the above reported events, on 12.02.2025, the draft Law on the Prosecutor’s Office for Anti-Corruption and Combating Organized Crime (PACCO) was registered in the Parliament of the Republic of Moldova [1].

It is not clear how quickly this project was developed and promoted, given that, as we will demonstrate below, the unification of the two specialized prosecutor’s offices was not anticipated by the Prosecutor’s Office Reform Strategy and does not correspond to the logical course of development of this institution.

As indicated above, the initiative to unify the two specialized structures was discussed and decided at the SSC meeting, but it did not represent a planned stage in the reform of the Prosecutor’s Office system.

We draw attention to the fact that “The Supreme Security Council is an advisory body that analyzes the activity of ministries and other central administrative authorities in the *field of ensuring national security and defense* and *presents recommendations* to the President of the Republic of Moldova on issues of internal and foreign policy of the state” [18].

“State security means the protection of the sovereignty, independence and territorial integrity of the country, its constitutional regime, its economic, technical-scientific and defensive potential, the legitimate rights and freedoms of the individual against the informational and subversive activity of special services and foreign organizations, against criminal attacks by particular groups or individuals” [19].

It is not clear to what extent the existence and functioning of two specialized prosecutor’s offices with distinct material competences threatens the sovereignty, independence, territorial integrity, constitutional regime, economic, technical-scientific and defensive potential of the Republic of Moldova.

Another argument in favor of unifying the two structures was the need to strengthen the fight against *electoral corruption*.

In our opinion, this argument does not hold either, or the investigation of electoral corruption crimes is the exclusive material competence of the NAC, not of the PA or the PCCOCS. The NAC was not targeted by this legislative initiative which raises some assumptions regarding the objective circumstances that were the basis for the development of this project.

This initiative seems all the more inopportune as it was not foreseen by the Prosecutor’s Office’s development strategy for 2021-2025 which continues to promote the need to consolidate the two specialized prosecutor’s offices, including by granting separate budgets and specialized personnel [8, p.30].

Moreover, the General Prosecutor’s Office itself expressed its negative views on the initiative to reorganize the two Prosecutor’s Offices, considering that this could have a significant impact on the terms of criminal prosecution and ongoing procedures [20].

Taken into account the initiative to unify and reform the two prosecutor’s offices

came from powers other than the judiciary, we believe that this fact categorically affects the *principle of separation of powers in the state*.

At least at this stage, the reasoning behind the unification of specialized prosecutors' offices is not clear, given that the unification process itself involves a multitude of organizational issues involving the approval of a new organizational chart, the secondment of prosecutors to the territory and the delegation of new prosecutors, a situation that will immediately lead to the delay of criminal prosecution of ongoing criminal cases, etc.

Considering the arguments presented in the explanatory memorandum to the Law on the Prosecutor's Office for Anti-Corruption and Combating Organized Crime [1], it seems that these amendments were conditioned by the need to strengthen the fight against *electoral corruption committed by criminal organizations, including cross-border ones*.

We do not agree with the authors who insist on the fact that there is an indissoluble link between corruption and organized crime, which is why they consider it necessary for them to be investigated by a single authority. Basing their position on the simple fact that most of the components of the crime that incriminate acts of corruption contain as an aggravating factor the commission of the crime in the interest of an organized criminal group or a criminal organization.

This argument is of little relevance, or rather, not all corruption crimes, even electoral corruption will necessarily be committed by organized criminal groups or criminal organizations.

On the other hand, organized crime is not limited to acts of corruption, but has a much broader spectrum, which is why, originally, it was considered necessary to establish an entity specialized in this field such as PCCOCS.

In another vein, there are numerous inaccuracies related to the provisions of the draft law under discussion and the establishment and further activity of this unique institution generically called „PACCO”, as follows.

According to Art.3 para.(2) of the Draft Law discussed [1], PACCO is specialized, inter alia, in the field of combating *corruption crimes and acts related to corruption*. Formulations that create some confusion in the interpretation of the law as neither the criminal nor the procedural law operates with such formulations.

According to Art.44 parag.(1) of Law No.82/2017 [21], *acts of corruption* are to be understood as – *crimes and contraventions, committed in the public and private sectors, the sanctioning of which is provided for by the Criminal Code and the Contravention Code*.

After which, in paragraph (2) of the same norm, the following acts are listed as acts of corruption: a) *active corruption*; b) *bribery*; c) *corruption of voters*; d) *passive corruption*; e) *taking bribes*; f) *receiving illicit remuneration for performing work related to serving the population*; g) *influence peddling*; h) *manipulating an event*; i) *fixed bets*; j) *illegal financing of political parties or electoral campaigns, violation of the management of the financial means of political parties or electoral funds*; k) *embezzlement of public assets*; l) *embezzlement of funds from foreign funds*; m) *use of funds from domestic loans or foreign funds contrary to their intended purpose*.

Subsequent, according to Art.45 of Law No.82/2017 [21], *are acts related to acts of corruption – crimes committed in the public and private sectors, which were committed together or in direct connection with an act of corruption, as follows: exercising official duties in the public sector in a situation of conflict of interest; exercising official duties in the pri-*

vate sector in a situation of conflict of interest; abuse of power or abuse of office in the public sector; abuse of office in the private sector; excess of power or exceeding official duties; negligence in office; falsification of voting results; fraudulently obtaining means from external funds; forgery of public acts; forgery of accounting documents; concealment of assets and personal interests by declarants in the public sector; concealment of assets and personal interests by declarants in the private sector; illicit enrichment; violation of the confidentiality regime of information from declarations of assets and personal interests; violation of lending rules, loan granting policies or rules for granting insurance compensation/indemnity; defective or fraudulent management of the bank; obstruction of banking supervision.

As can be seen from the analysis of the above-mentioned norm, acts of corruption and related acts not only exceed the number of crimes attributed to the material competence of PACCO, but also exceed the number of corruption and related acts incriminated by the current criminal law.

According to Art.11 para.(5) of the analyzed draft Law [1], upon the termination of the PA and PCCOCS activities, prosecutors, including chief prosecutors, will be proposed for transfer to other territorial prosecutor's offices, according to the existing vacancies. We consider this provision to be at least unfounded given that according to Art.11 para.(3) of the same law, PACCO is the legal successor of PA and PCCOCS. The situation seems even more unusual given that the rest of the staff, including consultants, specialists, technical and administrative staff, and staff seconded from other institutions will continue to work within PACCO.

So, prosecutors, including chief prosecutors, will have to accept the transfer to any territorial subdivision of the Prosecutor's Office, according to existing vacancies, and will receive the position-specific salary rights held within the PA and PCCOCS framework, until the positions are filled in the newly created entity.

We consider this provision to be at least unfounded, or at the moment, in the territorial subdivisions of the Prosecutor's Office there are not available the number of vacant positions that would correspond to the total number of prosecutors working in the PA and PCCOCS. Therefore, in order to be able to carry out this exercise, it is initially necessary to fill the positions in the territorial prosecutor's offices according to the number of prosecutors within the specialized prosecutor's offices that are to be transferred.

This exercise clearly disadvantages the prosecutors subject to transfer, as the vast majority of the places proposed to be filled refer to territorial prosecutors' offices, which do not correspond to the radius in which the respective persons reside, which imposes additional travel and living expenses for the respective persons and thus may put them in the position of giving up the prosecutorial profession.

In our opinion, the transfer of prosecutors from specialized prosecutor's offices to territorial prosecutor's offices is in fact nothing more than a demotion in position, which represents a disciplinary sanction.

In this regard, the provisions of Art.39 paragraph (5) of the Law on the Prosecutor's Office [3] are relevant, according to which "relegation from office implies the transfer from the position of chief prosecutor to a prosecutor's position or the transfer of the prosecutor from the General Prosecutor's Office or from a specialized prosecutor's office to a territorial prosecutor's office. Relegation from office is made on the basis of the sanctioning decision, by order of the General Prosecutor".

On the one hand, prosecutors are obliged to accept the transfer under the condi-

tions in which the two specialized prosecutor's offices are reorganized through merger, and on the other hand, the transfer is to be carried out on equivalent positions that are even fewer than the vacant positions in the territory.

It should be noted that, interpreting the norm of Art.11 para.(3) and para.(6) of the criticized law as a whole, it can be deduced that the notification of the prosecutors who are to be transferred will be made within the term of 30 days from the date of entry into force of the respective law, which is in cardinal contradiction with the provisions of Art.88 para.(1) letter b) of the Labor Code [22], which stipulates that upon liquidation of the unit, the employer shall issue an order (provision, decision, ruling) regarding the prior notification, under signature or by another means that allows confirmation of the receipt/notification of each employee concerned, of the employees 2 months before the liquidation of the unit. Probably aware of this truth, the authors of the legislative initiative tried to circumvent the situation created by preserving the previous salary rights for all prosecutors subject to transfer, until the appointment of the last prosecutor in the newly created structure [1].

At the same time, this provision is discriminatory in relation to prosecutors within the territorial prosecutor's offices who will receive salary rights specific to the position held under the conditions in which they will perform the same workload as prosecutors transferred from the two specialized institutions.

Another relevant aspect is the performance evaluation of the chief prosecutor of PACCO, which is carried out by an ad-hoc committee established by the Superior Council of Prosecutors [1].

Based on the wording of the norm in Art.6 of the draft Law under discussion [1], it can be deduced that this procedure limits the independence of the chief prosecutor and places him at the discretion of the General Prosecutor and the Superior Council of Prosecutors, who, every two years, can initiate his verification and, consequently, his dismissal for lack of performance.

In our opinion, the chief prosecutor of PACCO, after being evaluated and taking office, must receive the guarantee that he will organize and direct the activity of that institution without influences from outside the system.

Moreover, the composition of the evaluation committee which is made up of 5 members, at least two of whom have at least 7 years of experience as a prosecutor raises doubts. The members will be proposed: one by the General Prosecutor; one by the Minister of Justice; one by the Superior Council of Prosecutors; one by the Superior Council of Magistrates and one by the chief prosecutor of PACCO who is actually subject to evaluation [1].

First of all, the minimum of two members with at least 7 years of experience as a prosecutor is too few to objectively evaluate the activity of the chief prosecutor of a specialized prosecutor's office. In our opinion, the designated prosecutors should have extensive professional experience in all subdivisions of the Prosecutor's Office, including specialized prosecutor's offices, but also in the positions of chief prosecutor, in order to objectively evaluate and appreciate the activity of the chief prosecutor of PACCO.

Secondly, we consider it absolutely inadmissible that the structure of this commission includes members appointed by the Minister of Justice and the Superior Council of Magistracy, because it violates the principle of independence, or "the Prosecutor's Office is independent of the legislative, executive and judicial powers of any political party or

socio-political organization, as well as of any other institutions, organizations or persons. Interference in the activity of the Prosecutor's Office is prohibited" [3].

Given that the new structure will not be able to be put into operation immediately, the opportunity has been foreseen for the appointment of an interim chief prosecutor of PACCO by the General Prosecutor, until the competition for the replacement of the chief prosecutor is organized. Already, the chief prosecutor will be able to constitute his "transition team" by proposing candidates for ordinary prosecutors who will be delegated by order of the General Prosecutor with the agreement of the Superior Council of Prosecutors for a period of up to one year [1].

Subsequently, the Superior Council of Prosecutors will initiate the competition for the position of chief prosecutor and prosecutors within PACCO and will immediately appoint them to office with the external evaluation [23] of the prosecutors in office to be carried out along the way.

In our opinion, this procedure of co-opting prosecutors within the new structure seriously affects the independence of the prosecutors who will take office. Or, the delegation of prosecutors is made at the discretion of the General Prosecutor, based on the proposal of the interim chief prosecutor who was also appointed to office by the latter, for a limited term. Even after the eventual appointment of PACCO prosecutors, they will not be sure of the position they will occupy, as their external evaluation stage follows, which also "may disqualify them".

The lack of predictability of the prosecutor's mandate within this specialized structure may make them vulnerable to requests from hierarchically superior prosecutors on whom their further delegation depends.

In this regard, the assessments of the Venice Commission [24] are relevant, which, among other things, notes that "...the changes introduced as a result of the reorganization of the judicial system should be carried out in such a way as not to pose a problem in terms of the administration of justice and the treatment of the prosecutors initially appointed. These changes must guarantee that the principle of the independence of each prosecutor is not affected. Prosecutors should always be treated with the respect due to their position within the prosecution service as such".

Another issue that raises the confusion of practitioners and which may cause certain difficulties in the practical application of this normative act concerns the procedure for the secondment of criminal prosecution officers, investigation officers and information and security officers.

According to Art.8 of the criticized draft Law [3], the delegation of criminal prosecution officers, investigation officers and information and security officers is made by order of the General Prosecutor, based on the prior approval of the head of the respective institution and the consent of the subject concerned. Which in our opinion contradicts legal logic, or the functional powers of the General Prosecutor do not extend to collaborators of other institutions.

We believe that the secondment of criminal prosecution officers, investigation officers, and information and security officers should be carried out by order of the head of the institution to which they belong, at the request of the General Prosecutor and with the consent of the subject concerned.

Finally, we consider the political decision to unify the two specialized prosecutor's offices unfounded, given that they investigate distinct criminal phenomena that require

different approaches, specific professional training and particular approaches, which can only be carried out by structures specially established to investigate these phenomena.

This initiative does not correspond to the spirit of reforming the Prosecutor's Office system. It was not even anticipated by the Prosecutor's Office development strategy [8, p.20] for the reference period. This speaks not only of the inopportuneness of this reform, but also of the fact that this change was not previously sought and prepared for its implementation.

The Venice Commission's assessments expressed in its opinion on the draft law on the abolition of the section for investigating crimes in the judiciary will be taken into account, which stated that "While recognizing that the organization and structure of a criminal prosecution service is a matter for the authorities to decide, the Venice Commission has consistently supported institutional specialization in the fight against corruption" [25]. This indicates that the institution called upon to fight corruption must be a specialized and distinct institution.

We draw attention to the fact that, even "in Romania there are two specialized prosecutor's offices (the equivalent of the Moldovan Prosecutor's Office) – the National Anticorruption Directorate (DNA) and the Directorate for the Investigation of Organized Crime and Terrorism Offenses (DIICOT). Both exercise exclusive jurisdiction over the entire territory of the country and organize their own territorial structures" [14, p.4].

Therefore, we consider it appropriate to continue to operate two distinct entities on the territory of the Republic of Moldova, one specialized in combating grand corruption and the other in combating organized crime. It does not matter whether these two structures will be established as specialized prosecutor's offices or will be organized in the form of sections and directorates of the General Prosecutor's Office.

Another aspect with which we disagree is related to the fact that by virtue of the criticized law, the suspension of the terms of criminal prosecution [3] was ordered, including the limitation periods regarding the holding of the person to criminal liability for the formulation of complaints and the exercise of appeals. Or, according to the provisions of Art.7 para.(1) of the CPC, "the criminal trial shall be conducted in strict accordance with the unanimously recognized principles and norms of international law, with the international treaties to which the Republic of Moldova is a party, with the provisions of the Constitution of the Republic of Moldova and of this Code". Therefore, other normative acts cannot intervene to complete, supplement or suspend the provisions of the criminal procedural law.

The Constitutional Court itself ruled that "in order to unify the legal procedural framework and exclude confusing and contradictory provisions, in order to respect the fundamental rights and freedoms of all persons involved in the criminal process, the legislator stipulated that the legal norms of a procedural nature from other national laws may be applied only on condition that they are included in the Criminal Procedure Code. Such a legislative technique is likely to ensure the elimination of inconsistencies between the provisions of the Criminal Procedure Code and the criminal procedural norms contained in other laws, the coherent, certain and uniform application of the respective norms, so that full respect for the fundamental rights and freedoms of man can be guaranteed" [26].

The Court emphasizes that "the Criminal Procedure Code determines the procedural order, the limits and the modalities of the activity of the judicial bodies on the territory of the republic. Being an organic law from the point of view of the general constitutional

provisions established by Art.72, the Criminal Procedure Code does not have priority over other organic laws, but as a special law, according to the general rules of law, regardless of the date of adoption, it acquires superiority over other organic laws according to the principle of *lex specialis derogat generali*. Therefore, the legislator, in order to achieve the constitutional principles of the rule of law, to ensure the legality and protection of the fundamental rights and freedoms of the person in the sphere of criminal justice, codifying the norms that regulate the manner of conducting criminal prosecution and adjudicating the criminal case in court, was entitled to legislate the priority of the Criminal Procedure Code over other laws that regulate relations of the same nature” [26].

It is true that the respective draft law does not affect the deadlines for preventive measures applied to criminal cases within the two specialized prosecutor’s offices, but these deadlines may be affected by the extension of the procedure for transferring criminal cases from the PA and PCCOCS to the PACCO and the delegation of prosecutors within the new structure.

At the same time, it is not clear, under what conditions and what will be the procedure for withdrawing criminal cases from the PA and PCCOCS and transmitting them to the General Prosecutor’s Office, so that they can subsequently be returned to the newly established entity. Will handover-reception documents be drawn up, will the criminal cases be submitted by simple correspondence, or will orders for withdrawal and transmission of criminal cases be drawn up, in accordance with the provisions of Art.271 para. (7) of the CPC [28]?

In another context, in this “journey of files” there is a risk of information leakage, the confidentiality of the criminal prosecution may be affected, given that other people may also have access to the criminal case materials.

Another aspect that raises some suspicions is related to the „rush” with which this draft law was drafted and proposed without a detailed analysis of the situation in the field, without public consultations, without the opinions of the institutions concerned and, most importantly, without the opinion of the Venice Commission.

Conclusions and recommendations. Generalizing the information discussed above, we can conclude on the following relevant aspects. The reform of justice in general and the prosecution in particular is a necessary and continuous process, but it must correspond to development strategies in the field, be carefully developed by working groups that know the specifics of the field and only after studies and analyses of the situation in the field, including in relation to other states that have registered successes (an example to follow in this regard is Romania).

The fight against *political corruption* is not a sufficient reason to merge two specialized prosecutors’ offices into a single unit. Given that these two structures are not even the main subjects in the fight against political corruption. The competence to investigate political corruption crimes belongs primarily to the National Anticorruption Center.

In another vein, reforming an institution that is intended to be the main subject in the fight against electoral corruption on the eve of parliamentary elections is, at the very least, a risky change that can make this process even more difficult given the organizational problems that can spread over time.

The unification of the two prosecutors’ offices will cause a series of organizational problems, many of which could not even be anticipated at this stage, which will seriously and irreparably affect the criminal prosecution in criminal cases pending in the two insti-

tutions and which will result not only in the unfounded delay of the criminal prosecution, but also in the violation of procedural deadlines, which in the future may condition the impossibility of holding the responsible persons criminally liable.

Given the specific nature of the criminal cases being processed, the confidentiality of the criminal prosecution may be affected in the process of transmitting criminal cases from old structures to new ones.

The start of the procedure for unifying the specialized prosecutors' offices will not only jeopardize their activity, but also constitute an exercise that affects the independence of prosecutors, as on the one hand the staff of the two specialized prosecutors' offices will be relegated to the territorial offices, and other prosecutors will be delegated to PACCOS for a limited period of 6 to 12 months, who will not necessarily participate or. If they do participate, will not necessarily pass the competition to fill the positions within the newly created structure, and even if they do take up the position, there is a risk that they will not be promoted later in external evaluations. This may affect the motivation of prosecutors to get involved and to undertake the investigation of large-scale cases involving a large volume of work and a longer term of criminal prosecution.

Also, the transfer of all PA and PCCOCS prosecutors to the territory is impossible given that at the moment, within the specialized prosecutor's offices, there are not a sufficient number of vacant positions.

The implementation of such a reform can only be achieved within the framework of a development strategy of the respective institution and only with the coordinated approval of all relevant institutions, but especially with the positive approval of European development partners.

What matters is the common interest, not the departmental or personal, group comfort. Society needs a truly functional Prosecutor's Office that will not be influenced by any political force or power, be it the executive or the legislative. Only then the citizens will have confidence in it. The population needs a Prosecutor's Office that responds to its pressing needs, not one that serves group or party interests. A Prosecutor's Office that functions democratically, that makes sure that the rule of law works for everyone, but not selectively [27. p.15].

Perspectives. Given the different material competence of the two specialized prosecutor's offices, we consider it appropriate to strengthen and consolidate them as separate structures (specialized prosecutor's offices or departments, sections within the General Prosecutor's Office), with a clear delimitation of competence.

In order to strengthen the two institutions, it is necessary to amend the normative acts regarding specialized prosecutors' offices in the sense that they are granted a higher degree of autonomy in the hierarchy of the Prosecutor's Office system, with the approval of separate budgets, technical and material endowments according to the needs and activity profile.

With reference to the PA, given that the NAC was removed from its subordination, it is necessary to increase the number of criminal investigation officers and seconded investigation officers to assist prosecutors in carrying out criminal investigations.

Indeed, the PA is going to channel its efforts into the fight against grand corruption, including electoral corruption, only when it is committed by various criminal groups or organizations.

Given that the NAC was removed from the PA's subordination, in order to, on the

one hand, the circumstances established in this study, and, on the other hand, the special role that specialized prosecutors' offices have in combating the criminal phenomenon, as a series of crimes with a high degree of complexity and difficulty have been attributed to their competence, the proper investigation of which requires the cooperative effort of several procedural actors: prosecutors, criminal investigation officers and investigation officers. We consider it necessary for the present study to be continued, especially from the perspective of evaluating the possibilities of organizing specialized prosecutors' offices within autonomous structures with diverse personnel that would include not only prosecutors with a certain level of training, but also their own criminal investigation officers and investigation officers who in the future would not have to be delegated from other structures.

Bibliographical references

1. Draft Law on the Prosecutor's Office for Anti-Corruption and Combating Organized Crime. Available: <https://efaidnbmnnnibpajpcglclefindmkaj/https://www.parlament.md/preview?id=a9d8d65c-e5db-422f-a9c8-6616aaa3a278&url=https://ep-sp.parlament.md/materials/638749944215504677/Documents/20250213164256.pdf&method=GetDocumentContent>.
2. Constitution of the Republic of Moldova of 29.07.1994. In: Official Gazette of the Republic of Moldova No.78 of 09.03.2016.
3. Law on the Prosecutor's No.3 of 25.02.2016. In: Official Gazette No.69-77/113 of 25.03.2016.
4. Dima E., and others. Explanatory Dictionary of the Romanian Language (DEXI). Chișinău: Arc; Gunivas, 2007. p.1652. 2280 p. ISBN 978-9975-61-155-8(ARC) ISBN 978-9975-908-04-7(Gunivas).
5. Law of the Republic of Moldova No.231 of 25-11-2011 on the approval of the Justice Sector Reform Strategy for 2011-2016. In: Official Gazette No.1-6, Art.06 of 06-01-2012.
6. The concept of reforming the prosecutor's. Strengthening professionalism and independence. November 2013. p.2. Available: https://efaidnbmnnnibpajpcglclefindmkaj/https://www.justice.gov.md/public/files/concept.ref.procuratur.fin.06.11.2013.v.g._redactari_PG_11.11.2013_12.11.2013_final.pdf.
7. Law of the Republic of Moldova No.231 of 25-11-2011 on the approval of the Justice Sector Reform Strategy for 2011-2016. In: Official Gazette No.1-6, Art.06 of 06-01-2012.
8. Prosecutor's Office of the Republic of Moldova. Strategic Development Program of the Prosecutor's Office for the years 2021-2025. Chisinau, 2021. 42p. Available: https://efaidnbmnnnibpajpcglclefindmkaj/https://www.procuratura.md/sites/default/files/2023-01/2021-02-09_PDS%202021-2025%20semnat.pdf. [Accessed on 01.03.2025].
9. Decision of the Superior Council of Prosecutors No.1-94/2022 of 07.06.2025, regarding the evaluation of the results of the selection stage and the nomination of the candidate for the position of Chief Prosecutor of the Anti-Corruption Prosecutor's Office. Available: https://efaidnbmnnnibpajpcglclefindmkaj/https://procuror.magistrat.md/files/cariera_files/94._hot._evaluarea_rezultatelor_etapei_de_selectie_pa.pdf. [Accessed on 02.03.2025].
10. Order of the Interim Prosecutor General of the Republic of Moldova No.1111-p of June

15, 2022.

11. National Anticorruption Center. Activity Report for 2022. Chisinau, February 28, 2023. 57p. Available: https://efaidnbmnnnibpcajpcglclefindmkaj/https://www.cna.md/public/files/RAPORT_CNA_2022.pdf. [Accessed on 02.03.2025].
12. INP: The Head of the National Anti-Corruption Commission on relations with the Anti-Corruption Prosecutor's Office: they are working relations. 19.09.2023. Available: https://www.ipn.md/ro/seful-cna-despre-relatiile-cu-procuratura-anticoruptie-sunt-relatii-7967_1099468.html. [Accessed on 02.03.2025].
13. Law No.245 of 31.07.2023 amending some normative acts (amending the Criminal Procedure Code and the Contraventions Code). In: Official Gazette of the Republic of Moldova, 22.08.2023, No.325-327, Art.579.
14. Legal Resources Center of Moldova (LRJM) and Expert Forum of Romania (EFOR). Position paper: The Anti-Corruption Prosecutor's Office should investigate only grand corruption. November 2018. 14p. Available: https://efaidnbmnnnibpcajpcglclefindmkaj/https://crjm.org/wp-content/uploads/2019/01/2018-11-Nota-Competentele-PA-fin_ro.pdf. [Accessed on 03.03.2025].
15. Anti-Corruption Prosecutor's. Annual Report 2024. Available: <https://efaidnbmnnnibpcajpcglclefindmkaj/https://www.procuratura.md/anticoruptie/sites/procuratura.md.anticoruptie/files/2025-01/raportul-procuraturii-anticoruptie-2024.pdf>. [Accessed on 07.03.2025].
16. Presidency of the Republic of Moldova: Meeting of the Supreme Security Council: New measures to combat political corruption and ensure the integrity of parliamentary elections, 20.01.2025. Available: <https://presedinte.md/presa/sedinta-consiliului-suprem-de-securitate-noi-masuri-pentru-combaterea-coruptiei-politice-si-asigurarea-integritatii-alegerilor-parlamentare>; [Accessed on 04.03.2025].
17. The newspaper of the guard: Minister of Justice announces a possible merger of PC-COCS with the Anticorruption Prosecutor's Office, 29.01.2025. Available: <https://www.zdg.md/stiri/ultima-ora-ministra-justitiei-anunta-o-eventuala-fuziune-a-pc-cocs-cu-procuratura-anticoruptie>. [Accessed on 04.03.2025].
18. Regulation of the Supreme Security Council, approved by the Decree of the President of the Republic of Moldova No.58 of 29.03.2021. In: Official Gazette of the Republic of Moldova 02.04.2021, No.88-95, Art.89.
19. Law No.618 of 31.10.1995 on state security. In: Official Gazette of the Republic of Moldova 13.02.1997, No.10-11, Art.117.
20. Agora. Short, medium and long-term risks have been identified. PG, on the project to merge specialized prosecutors' offices, 13.02.2025. Available: https://agora.md/2025/02/13/au-fost-identificate-riscuri-pe-termen-scurt-mediul-si-lung-pg-despre-proiectul-de-comasare-a-procuraturilor-specializate?fbclid=IwY2xjawIfLqpleHRuA2FlbQIxMQABHc3fhe8C3B9k0czVJ8_cItYRFAuozmIAnE-51Ru_EO8c9nPyimaFKWUVujw_aem_bB8Qtg6OK-Ph92moykCMZw. [Accessed on 04.03.2025].
21. Law of the Republic of Moldova No.82 of 25.05.2017 on integrity. In: Official Gazette of the Republic of Moldova 07.07.2017, No.229-243, Art.360.
22. Labor Code No.154 of 28.03.2003. In: Official Gazette of the Republic of Moldova 29.07.2003, No.159-162, Art.648.
23. Law No.252 of 17.08.2023 on the external evaluation of judges and prosecutors and

- amending some normative acts. In: Official Gazette of the Republic of Moldova of 22.08.2023, No.325-327, Art. 581.
24. Council of Europe. Venice Commission. Romania – Opinion on the draft Law for dismantling the Section for the Investigation of Offences committed within the Judiciary, adopted by the Venice Commission at its 127th Plenary Session (Venice and online, 2-3 July 2021)(&42). CDL-AD(2021)019-e. Available: [https://www.venice.coe.int/web-forms/documents/?pdf=CDL-AD\(2021\)019-e](https://www.venice.coe.int/web-forms/documents/?pdf=CDL-AD(2021)019-e). [Accessed on 08.03.2025].
25. Opinion 1079/2022 of the European Commission for Democracy through Law (Venice Commission) on the draft law on the abolition of the section for the investigation of crimes in the judiciary. CDL-AD (2022) 003. Strasbourg, 21 March 2022. Available: <https://efaidnbmnnnibpcajpcgclefindmkaj/https://www.forumuljudecatorilor.ro/wp-content/uploads/Avizul-1079-2022-al-Comisiei-de-la-Venetia-in-limba-romana.pdf>. [Accessed on 06.03.2025].
26. Decision of the Constitutional Court No.1 of 22.01.2008 on the review of the constitutionality of Art.2 para.(1) and para.(4) of the Criminal Procedure Code. In: Official Gazette of the Republic of Moldova No.25-27/1, 05.02.2008. Available: <https://constcourt.md/ccdocview.php?tip=hotariri&docid=86&l=ro>. [Accessed 03.10.2024].
27. Oboroceanu Ion. Reform of the Prosecutor's Office: it's time to get down to business. In: Journal of the National Institute of Justice, 2014, No.1, pp.15.
28. Criminal Procedure Code of the Republic of Moldova No.122-XV of 14.03.2003. In: Official Gazette of the Republic of Moldova 07.06.2003, No.248-251.