



REPUBLIC OF MOLDOVA

NATIONAL REPORT

***„Implementation International Conventions
on preventing and combating corruption”***

Albania

(Durrës, 10-12 June 2005)

Criminal Law Convention on Corruption

I. Efficient implementation of international conventions and domain of combating corruption in great measure assures successful realization of commitments underlined on the state level.

Due to ratifying Criminal Law Convention on Corruption by Law nr. 428-XV from 30.10.03 in Criminal Law (Law nr. 985-XV from 18 of April put into operation from 12 of June 2003, art. 234 there were introduced notions of Passive bribery and Active bribery.

Active bribery – art. 325 of Criminal Code nr. 985-XV from 18 of April 2002, put into operation from 12 of June 2003. The subject of active bribery can be any responsible physical person, aged 16 years and who can activate on his/her own or on basis of accomplice, stipulated by art. 21 of Criminal Code.

Passive bribery - according to art. 3 of the Convention there was foreseen criminal liability for passive bribery of chairmen according to art. 324 of Criminal Code.

By chairman is understood a person, from an enterprise, institution, state organization or public administration organization or from one of its subdivisions who is conferred some rights and obligations in view of execution of public authorities functions or administrative disposal organizational or economic actions for permanence or for the time being, by law, by naming, by vote or by virtue of a charge.

According to Criminal Code, by a high level chairman is understood a chairman, whose mode of naming or election is regulated by Constitution of Republic of Moldova and organic laws, as well as persons authorized by high level chairman.

At the same time on basis of art. 2 of the Convention there was stipulated active bribery in public sector which was separated from active bribery in private sector. The subject of the offence can be no one, except chairman, according to article 123 of Criminal Code.

According to article 333 from Criminal Code the punishment for **Passive bribery** is established according to the next criterions:

(1) taking by person who administrates a commercial, civil or other nongovernmental organization a bribery in form money, floaters, other patrimonial goods and advantages, accept non belonging to him/ her services privileges or advantages, for fulfillment or not, to be late or to hurry fulfillment of an action in the interest of the person who gives the bribe or persons represented by him or her, if such action enter in service obligation of the person who takes the bribe,

- is applied a fine liability from 500 to 1500 convention units or with the imprisonment up till five years, in both cases with depriving the right to exert a certain function or activity up till five years.

(2) The same action committed:

a) repeatedly

b) by two or more persons

c) with bribe demand

d) big proportions

- is applied a fine liability from 1000 till 3000 conventional units or with imprisonment from five to ten years , in both cases with depriving the right to exert a certain function or activity for a term from two or five years.

According to article 334 from Criminal Code the punishment for **Active bribery** is established according to the next criterions:

(1) Giving the bribe

- is applied a fine liability from 500 till 1000 conventional units or with imprisonment to three years.

(2) The same action committed:

a) repeatedly

b) by two or more persons

c) big proportions

- is applied a fine liability from 1000 till 2000 conventional units or with imprisonment from two to five years.

(3) A person who gives bribe is free from criminal liability if the bribe was demanded or in case of self denouncement not being informed that criminal prosecution bodies know about the crime committed by him/her.

According to Criminal Code, by person who administrates a commercial, civil or other non-government organization is understood a person from the indicated organization or its subdivision is conferred some rights and obligations in view of exertion of administrative disposal or organizational and economic functions for permanence or time being, by naming, election or by virtue of a charge.

II. Money laundering – art. 243 of Criminal Code, nr. 985-XV from 18 of April 2002, put into operation from 12 Of June 2003;

For commission of legal operations with money or other values obtained intentionally by illegal ways

- is foreseen a liability from 500 to 1000 conventional units or imprisonment up to 5 years, in both cases with (or without) depriving of the right to occupy certain functions or to exert a certain activity for a period from 2 to 5 years.

(1) for the same action committed:

a) repeatedly

b) by two or more persons;

c) by using work position

- is foreseen a liability in the form of a fine from 1000 to 5000 conventional units or with imprisonment from 4 to 7 years.

(2) For actions foreseen by paragraphs (1) and (2) , committed by:

a) organized criminal group;

b) in big proportions,

- is foreseen a liability of imprisonment from 5 to 10 years.

The subject of an offence can be any person aged 16 years in case of commission of actions foreseen by paragraph (1) art. 243 of Criminal Code.

In case of commission of actions stipulated by paragraphs (2) and (3), the subject can be any person aged 14 years. According to art. 21 of Criminal Code the subject of the money laundering offence can be also a legal person which carries out enterprising activity.

According to Law on Prevention and Combating Money Laundering and Financing of Terrorism, **the money laundering** is defined as: either actions oriented towards legalization of source and provenience of money, goods or incomes proceeded from crimes either actions of hiding, disguise or falsification of information regarding nature, origin, motion, placing or ownership of these money, goods or incomes to a person who is known as possessing goods proceeded from criminal activity; obtaining, possession or use of goods, knowing that they proceed from commission of a crime, participation at any association, agreement, complicity by help or pieces of advice in view of commission such actions.

III. Corruption in banking sphere – is charged for offences foreseen by chapter XVI of Criminal Code nr. 985-XV from 18 of April 2002, put into operation from 12 Of June 2003, offences committed by persons who administrate commercial, civil or non-government organizations and concretely:

- Article 333. Taking bribe/ passive bribe
- Article 334. Giving bribe/ active bribe
- Article 335. Work abuse
- Article 336. Prevarication

By person who administrates a commercial, civil or other non-government organization is understood in the sense of the article 124 of Criminal Code.

As a result we present you a suppositional example – in case of demand for obtaining a bank credit: A person who disposes a bundle of documents for obtaining a credit demands from a functionary of the bank asks delivery of a credit.

- For emergency in obtaining credit:
1. The functionary of the bank asks a bribe
 2. The client of the bank offers a bribe.

In Republic of Moldova specialized bodies were not informed about such cases.

IV. Sanctions and effective preventing measures. Criminal Code of Republic of Moldova stipulates that one of the purposes of the Criminal Law is prevention of new offences commission.

Another instrument in fight against corruption is National Strategy for Prevention and Combating Corruption approved by Decision of Parliament nr. 421-XV from 16.12.2004.

It is mentioned in the Strategy that Counteraction of Corruption is a long lasting process. This phenomenon can not be extirpated, but it can and must be diminished by a rigor control, by application some preventing measures which would view criminogenic factors and would remove conditions and which would generate corruption, as well as

direct tracing of corruption acts, criminal liability of guilty persons for on basis of legislation. It is absolutely necessary to complete prevention and counteraction with education actions for population in the spirit of intolerance towards acts of corruption and its encouragement in anticorruption campaigns promoted by public authorities. All the elements of the Strategy must action in conjunction and must be efficiently coordinated for being truly interdependent, in such a way that positive effect of one of them for fortification of the other ones and vice versa.

Thus the basic elements of the Strategy are:

- **counteraction** corruption by effective and efficient criminal norms;
- **preventing** corruption through elimination of its opportunities from systems and procedures of public institutions and law enforcement institutions;
- **education** of all kinds of population in the spirit of intolerance towards corruption and encouragement of an active support from citizens in activity for prevention and counteraction corruption.

According to European Convention on extradition from 13.12.195, in force for Moldova from 31.12.199 national legislation foresees extradition of persons, except the following cases:

(1) Republic of Moldova does not extradite own citizens and persons offered the right for permanent place of residence.

(2) Extradition will be refused as well in case if:

1. Offence was committed on the territory of Republic of Moldova

2. Regarding the person there was passed by the national Court or by the Court of the third country a sentence or a decision for fine or suspending the criminal process for the offence for the extradition is demanded or ordinance of the criminal prosecution body for suspending the criminal process or regarding this action there has been effectuating criminal prosecution by national legislation.

3. Expiration of limitation period for criminal liability on respective offence, according to national legislation or in case of amnesty

4. According to law the criminal prosecution can be started only on bases of preliminary complaint of the victim, but such complaint actually lacks.

5. Offence for which extradition of the person is demanded is considered by the national legislation as a political offence or an action connected to similar offence

6. General Prosecutor, Minister of Justice or the Court which examines the case on extradition have serious reasons to believe that:

a) the demand for extradition was handed over with purpose of prosecution or liability of a person out of racial, religious, sex, national, ethnic origin or political reasons

b) the situation of this person faces the challenge to be aggravated due to one of reasons mentioned above, letter a)

c) in case if the person will be extradited s/he will be subdued to torture, inhuman or disgraceful treatment in the requested country

7. The person demanded for extradition is offered political protection.

8. The country demanding extradition does not guarantee reciprocity in the sphere of extradition

(3) In case in which for the action for which the extradition is demanded is applied capital punishment by the demanding country, extradition of the person can be refused if the demanding party will not offer any guarantees, considered as sufficient, for non application of capital punishment for extradited person.

V – VI. Liability for legal persons - Article 21, paragraphs (3) and (4) of Criminal Code nr. 985-XV from 18 of April 2002, put into operation from 12 of June 2003. The cited norm indicates the sign, characterizing a legal person as the subject of the offence: a) it must be constituted in order and mode foreseen by law; b) to carry out enterprising activity; c) liability is applied just in cases exhaustively foreseen by paragraph (4) art. 21 of Criminal Code. Criminal Code does not give the definition of legal person. According to article 55 of Civil Code, a legal person is an organization which possesses a distinct patrimony and is responsible for its obligations towards this patrimony, it can obtain and exert in proper name patrimonial and personal non patrimonial rights, to assume obligations, it can be a plaintiff and a defendant in a Court. It is considered to be constituted from the moment of registering and from this moment it can enjoy its legal capacities (paragraph (1) art. 60 of Civil Code) and its legal capability (paragraph (1) art. 61 Civil Code). As a result a legal person can be a subject of the offence from the moment of its state registering. Not any person, in sense of art. 55 of Civil Code can be a subject of the offence. According to paragraph (4) of article 21 of Criminal Code a subject of an offence can be only legal person which carries out enterprising activity. Article 125 of Criminal Code gives a legislative interpretation to enterprising activity carried out illegally. On deduction way, from this interpretation there might be formulated and the sense of legal enterprising activity. But this activity is exhaustively regulated by Civil Code in Chapter XI, section 1 and section 2, by Law nr. 845-XII from 3 of January 1992 “ On enterprising activity and enterprises”, by Law nr. 451-XV from 30 of July 2001 “On licensing certain kinds of activity”. From these considerations, subjects of offences can be only those legal persons which carry out enterprising activity according to stipulations of these legislative and normative acts. Criminal liability can be applied for legal persons only for offences stipulated by paragraph (4) of article 21 of Criminal Code. Criminal liability for legal persons which carry out enterprising activity does not exclude the liability of physical persons for committed crime. In this case the physical person must possess the signs foreseen by paragraph (1) of article 21 of Criminal Code and by corresponding article from special part of Criminal Code. In paragraph (3) of article 21 of Criminal Code, letters a) b) and c) there are foreseen some special conditions regarding specific characters of subjective side and objective side of offences committed by legal person.

VII. Creation of institutions for fight against corruption. According to Law nr. 1104-XV from 06.06.2002 there was created Center for Combating Economic Crimes and Corruption – a law enforcement institution, specialized in counteraction economic, financial and fiscal offences, as well as corruption. The juridical framework of the Center’s activity constitutes the mentioned above Law, Constitution of Republic of Moldova, other normative acts as well as international treaties to Which Republic of Moldova has adhered. The functions of the Center also consist of : prevention, tracing

out, and curb economic, financial and fiscal offences and crimes; counteraction corruption and protectionism; counteraction legalization of goods proceeded illegally and money laundering. The functions of the Center are exhaustive and can not be modified, except by law.

In combating the phenomenon of corruption is also involved the Prosecutor's Office of Republic of Moldova. According to Law of Republic of Moldova nr. 118-XV from 14.03.2003 on Prosecutor's Office, the structure of the Prosecutor's Office includes a specialized body specialized in combating corruption – Anticorruption Prosecutor's Office, which investigates the most important cases of corruption.

VIII. Protection of collaborators of Justice – Protection of collaborators of Justice is assured by stipulation in Criminal Code nr 985-XV from 18 of April 2002, put into operation from 12 of June 2003 in Chapter XIV, offences against Justice, which include the following ones:

Article 303. Interference into Justice accomplishment and criminal investigation.

(1) Any kind of interference in examination cases by Court having the purpose of stumbling multilateral, complete and objective examination of a concrete case or passing an illegal sentence.

- is applied a fine punishment from 200 to 500 conventional units or work for society from 180 to 240 hours, or imprisonment up till 6 months;

(2) Any kind of interference in activity of criminal investigation bodies having the purpose stumbling rapid, complete and objective investigation of criminal case;

- is applied a fine punishment up till 350 conventional units or work for society from 180 up till 240 hours, or arrest up till 6 months;

(3) Actions foreseen by paragraph (1) or (2), committed in the framework of work abuse;

- is applied a fine punishment from 200 till 600 conventional units or imprisonment from 2 to 5 years, in both cases with (or without) depriving the right to occupy certain functions or to exert a certain activity for a period of from 2 to 5 years.

Article 304. Slander of the judge, criminal investigator or person who contributes to justice accomplishment; slander of the judge, criminal investigator or person who contributes to justice accomplishment accompanied by their charge of commission of a grave, especially grave or exceptionally grave crimes related to examination of cases or materials by Court,

- is applied a fine punishment from 200 to 500 conventional units or arrest up till 6 months, or imprisonment.

Article 305. Attempt on judge's life, on criminal investigator's life or person's who contributes to justice accomplishment life, as well as their relatives, related to examination causes or materials by Court, committed with the purpose of stumbling legal activity of the mentioned above persons or out of revenge for such activity,

- is applied imprisonment from 16 to 25 years or life imprisonment.

According to article 27 of Law nr. 544-XIII from 20.07.95 “On the statute of judge”, the judge, his/her family and their property are being protected by state. On the judge’s or the president’s of the Court request the bodies of the Ministry of Internal Affairs are obliged to undertake rigor measures for security assurance for judge and members of his/her family, integrity of their goods.

It is also mentioned in this article that attempt on judge’s health and life, destruction or deterioration of his/her goods, threatening with murder, violence or deterioration of goods, slander or insult of judge, or attempt on the close relatives’ health and life (parents, wife, husband, children), are sanctioned by punishment stipulated by Law. The judge has the right to be assured by bodies of internal affairs.

According to article 40 of the Law of Republic of Moldova “On Prosecutor’s Office”, from 14.03.2003, the collaborators of the Prosecutor’s Office, in exertion of their functions have the right to wear weapons and other means for self defense. In article 42 of the mentioned Law it is indicated that bodies of the Prosecutor’s Office dispose a police subdivision, offered for their service for granted by Ministry of Internal Affairs, which assures guard of buildings and other goods of the Prosecutor’s Office bodies, security for their collaborators, public order in Prosecutor’s Office headquarters; exerts control over persons on entrance and exit of the Prosecutor’s Office headquarters, exerts personal control, exerts other functions in conditions of law.

IX. Investigating or prosecuting authorities, gathering of evidence and confiscation of proceeds. According to Law “On Center for Combating Economic Crimes and Corruption”, nr. 1104-XV from 06.06.2002, and the Law “On operative and investigating activity”, nr. 45-XIII from 12.04.94, investigation of corruption cases are being effectuated by collaborators of the Center for Combating Economic Crimes and Corruption.

According to Criminal Procedure Code, criminal investigation on corruption cases, on the prosecutor’s statement, is being effectuated by the Center’s criminal prosecution officers or by collaborators of Anticorruption Prosecutor’s Office.

According to Criminal Procedure Code evidence constitute the elements obtained *de facto* according to mode stipulated by this Code, which serve on stating existence or non existence of the offence, to identification of the perpetrator, stating guiltiness, as well as stating some important circumstances for objective examination of the case.

(3) In quality of evidence in criminal process are admitted elements *de facto* stated through the following means:

- 1) declarations of suspect, accused and defendant, of injured party, civil party, responsible person, witness;
- 2) expert examination report;
- 3) corpus delicti;
- 4) reports on criminal and judicial investigation;
- 5) documents (including those official);
- 6) audio or video records, photos;
- 7) technical, scientific and medical detectives’ conclusions.

The problem of data admissibility in quality of evidence is being solved by criminal prosecution body, from office or on parties' request, or depending on case, by Court.

If the administration of evidence was effectuated according to stipulations of Criminal Procedure Code, contesting admissibility of evidence will be effectuated by party which demands its rejection. In contrary case, the obligation to argue its admissibility comes back to the party which administrated it or to the party for whose favor there were administrated evidence.

Confiscation of proceeds, as an assurance measure, is applied in conditions of art. 106 of Criminal Code nr. 985-XV from 18 of April 2002, put into operation from 12 of July 2003.

Article 106. Special confiscation.

(1) Special confiscation consist of forced and granted transmission to state used for commission of crime or originated from crime.

(2) To special confiscation are subdued goods:

a) resulted from the act foreseen by Criminal Procedure Code;

b) resulted or designed for commission of a crime, if they belong to the offender;

c) offered to determinate commission of a crime or to reward the offender;

d) obviously obtained by commission of a crime, if they are not to be restituted to injured party or are not designed for compensation of injured party.

e) detained illegally;

(2) Special confiscation is applied for persons who committed actions foreseen by Criminal Procedure Code.

(3) Special confiscation can be applied even in case if the offender is not determined a criminal punishment.

According to Legislation in force of Republic of Moldova, confiscation of goods is being effectuated only in cases mentioned before.

X. International cooperation: mutual assistance, extradition and provision of information during proceedings referring to corruption offences – are being realized on general conditions, foreseen by Chapter IX of Criminal Code nr. 985 from 18 of April 2002, put into operation from 12 of June 2003.

According to **article 13** on extradition of citizens of Republic of Moldova and persons who were offered political protection in Republic of Moldova, in case of a crime commission overseas, can not be extradited and will be subdued to criminal liability according to Criminal Procedure Code of Republic of Moldova.

Foreign citizens and stateless persons committing crimes outside the territory of Republic of Moldova, but situating on the territory can be extradited only on basis of an international treaties to which Republic of Moldova has adhered or in conditions of reciprocity on basis of a decision of the Court.

Whereas, according to article 541 of Criminal Procedure Code of Republic of Moldova the demand for extradition is being effectuating in the following way:

(1) Republic of Moldova can address a foreign country with demand for extradition of a person towards whom is being effectuated criminal investigation related

to offences for which criminal law foresees a maximum punishment of at least one year for prison or another, a rougher punishment towards whom there was passed a sentence for imprisonment for a term at least 6 months in case of extradition.

(2) Demand for extradition is being effectuating on basis of international treaties which was ratified by Republic of Moldova and the demanding country or on basis of written obligations in conditions of reciprocity.

(3) In case of necessity to ask extradition of non condemned person in conditions foreseen by paragraphs (1) and (2), all the necessary materials are being remitted to General Prosecutor for solving the problem regarding handing over the demand for extradition to respective institution of a foreign country. The question regarding condemned persons and handing over demand for extradition is being solved by Minister of Justice.

In case when there was not signed an international treaties with the demanding country, the question regarding demand for extradition is being solved on diplomatic way.

(4) The demand for extradition must contain total description on:

1) The name and address of the demanded institution;

2) The name of the askable institution;

3) international treaty or agreement on reciprocity on basis of which the extradition is requested.

4) Name, surname and the last name of the person for whom the extradition is demanded, date and place of birth, information on citizenship, residence or place of location and other data regarding the person, as well the possible description of his/her physical characters, photo and materials which would help to identify the person;

5) The committed act by the demanded for extradition person, juridical framing of the committed act, information on damage caused by committed offence, as well as the text of national criminal law which foresees criminal punishment for this crime, with obligatory indication of the sanction;

6) Information regarding place and date of passing the sentence brought into force or ordinance for accusation, enclosing authenticated copies from these documents.

(5) On demand for extradition there will be enclosed the authenticated copy of judicial conclusion, or depending on the case, conclusion of instance on authorizing preventive arrest. On demand of extradition the condemned person, except the copy of the brought into force sentence, are also enclosed data regarding non-executed part of the punishment.

With the purpose to enhance the provision of information the **Article 550** of Criminal Procedure Code foresees such a measure as:

Transmission of goods

(1) On request of demanding person, in mode foreseen by the CPC there can be detained and transmitted goods, in measure allowed by national legislation;

1) objects which might present importance as evidence in a criminal case for which the extradition was demanded;

2) incomes proceeded from offences for which the extradition is demanded and goods which were in possession of person at the moment of arrest or were found later;

(2) Objects and incomes mentioned above paragraph (1) can be transmitted even in case when extradition can not be realized because of demise of the person or his/her evasion from the court.

(3) If the demanded objects are necessary in quality of evidence in another national criminal process, their transmission can be postponed until the end of the current process or they can be transmitted for time being, with the condition of being returned.

(4) The rights over these objects or values are reserved for republic of Moldova and they will be transmitted to demanding party, with condition of ending the criminal process as soon as possible and without expenditures, being returned.

Civil Law Convention on Corruption

XI. Compensation of damage - Compensation of damage, caused by commission of a crime, is being realized by civil action in criminal process, mode for deposition and solving of which is regulated by Title II, chapter I of Criminal code nr. 985-XV, from 19 of April 2002, put into operation from 12 of June 2003, at the same time, national legislation, Law nr. 1545-XIII from 25.02.98 foresees mode for compensation moral and material damage, caused by illicit acts of criminal law bodies, Prosecutor's Office and the Court.

According to stipulations of article 1 of the mentioned above law, there can be compensated moral and material damage, named further damage, caused to physical or legal persons as a result of:

- a) illegal detention, illegal application of repressive measure of arrest, illegal application of criminal liability;
- b) illegal effectuating, in case of criminal investigation or judging criminal case, search, illegal sequester of goods, illegal discharge, as well as other procedures which limit rights of physical and legal persons;
- c) illegal subdue to administrative arrest or work for society, illegal confiscation of property, illegal application of fine;
- d) effectuating operative measures of investigation, by violation legal stipulations;
- e) illegal sequester of book-keeping documents, other documents, money, seals, as well as blocking bank accounts.

(2) The caused damage is in integrity compensated, indifferently towards the guiltiness of chairmen from criminal prosecution bodies, of prosecutor's office and of courts.

According to article 2 of the mentioned Law, damage caused by illicit actions, foreseen by article 1, paragraph (1), is not compensated in case when during the criminal prosecution or judicial investigation, physical person, by self slander stumbled the finding the truth.

Article 4 stipulates that the right for compensation of damage in size and mode foreseen by the mentioned Law, appears in case:

- a) passing the decision for compensation;
- b) removal of the person from criminal prosecution or cessation of the criminal prosecution;
- c) passing by the Court decision on cancel administrative arrest dealing with rehabilitation of physical person;
- d) adoption of decision by ECHR or by the Council of Europe's Committee of Ministers regarding compensation of damage or realization of equal agreement between injured party and representative of the Government of Republic of Moldova in European Commission for Human Rights and ECHR.
- e) Effectuating operative measures of investigation with violation legal stipulations before suing criminal case, with condition that, in 6 month term from the

moment of effectuating such measures; decision to sue a criminal case was or not adopted.

XII. Liability (including the State liability for corruption acts, committed by public servants).

The legislation of Republic of Moldova is based on the principle of personal character of criminal liability. National Legislation interprets all corruption acts as crimes and they are criminalized according to Criminal Code:

1) A person may be liable to criminal responsibility or criminal sentencing only for the acts committed with guilt.

2) Only the person that intentionally or by imprudence committed an offence provided by the Criminal Law is liable to criminal responsibility and to criminal sentencing.

According to Chapter 5 “Petition in regress” article 17 of Law nr. 1545 from 25.02.1998, on mode of compensation for damage caused by illicit action of criminal prosecution bodies, of prosecutor’s office and by court: “The state, authorities of public administration causing damage by illicit actions of criminal investigation office, prosecutor’s office and court are obliged to present to guilty persons demand for compensation for damage:

- a) totally - in case when the guiltiness of chairmen was proved by final decision.
- b) partial – in bases and in conditions established by legislation.”

XIII. Validation of Contracts.

According to stipulations of article 220 “ Nullity of juridical act which runs counter to legislation, public order or moral principles” of Civil Code:

(1) Juridical act or clause which runs counter to imperative norms are null if the legislation does not stipulate otherwise;

(2) Juridical act or clause which runs counter to public order or moral principles are null;

(3) The nullity of a clause does not draw the nullity of the whole juridical act, if it is possible to suppose that it was signed in lack of clause declared as null.”

XIV. Protection of employees who disclose corruption. According to Law 1458 from 28.01.1998 on state protection of injured party, witness and other persons assisting criminal process, the state protection is guaranteed by undertaking juridical, organizational, technical measures by specialized state bodies designed to protect life, health, property as well as other legal rights and interests of mentioned persons and members of their close relatives, against illegal actions and attempts.

The state protection through the activity of bodies which decide application of protection measures, or which effectuates protection measures, enjoy the following categories of persons:

Persons which informed law enforcement institutions about committed crimes, participated on tracing, prevention, curbing and investigation, witnesses injured parties and their legal representatives in criminal processes, suspected persons, accused and defendants: the close relatives of the persons mentioned on letters a), b), c), and :

wife/husband, parents and children, adopted children, sisters and brothers, grandparents and nephews, but in exceptional cases other persons who are being used for pressure over mentioned persons.

XV. In article 5 of the law of Republic of Moldova, Law on book-keeping nr.426-XII from 04.04.95, which is designed to establish balance sheet and to check the accounts, is mentioned:

(1) physical and legal persons which carry out enterprising activity, non-commercial organizations, named further economic agents, budgetary institutions, barristers and notaries are obliged to organize and to administrate own book-keeping according to the mentioned law and respective normative acts.

(2) The manager of economic agent, budgetary system, barrister, notary are obliged to name by order responsible persons in the process of exertion their organizational functions, reception, transmission and keeping documents worked out during the activity of economic agent, budgetary institution, barrister, notary, as well to determine the types of documents which are being elaborated in the framework of scientific, technical and producing activity,

Supervision of the correct fulfillment of mentioned measures is exerted by internal security of enterprises, censorship commission and audit companies.

In case of some violation in book-keeping evidence, the chief book-keeper and the manager of the enterprise will be subdued to financial, economic, fiscal and administrative sanctions.

XVI. Acquisition of evidence. According to law stipulations nr. 225-XV from 30.05.2003 (Code of Civil Procedure), article 119 „Presentation and suing of evidence” is stated the gathering of evidence by both participants:

(1) Evidence is gathered and presented by parties and others participants at the trial. The court can contribute to the gathering and presentation of necessary evidence, at the request of parties and other participants at the trial, if in the process of gathering evidence occur difficulties.

(2) The president of the court addresses to the competent bodies a delegation with the contest request, in case of the necessity of gathering evidence from abroad. If the delegation is submitted to a foreign body, the court can establish the part that owns the proofs that are to take measures of improving and executing the delegation

XVII. Assurance with funds necessary for the execution of court decisions and the maintaining the status quo in waiting for a decision.

According to law stipulations nr. 225-XV from 30.05.2003 (Code of Civil Procedure), article 175 „Measures of assuring the action”, the judge or the court is in force, in assuring the action:

a) To sequester the goods or the sums of money of the defendant, including those that are at other people;

b) To prohibit commission such actions;

c) To prohibit to other persons to commit certain acts related to the object of conflict, including the transmission of goods to the defendant or the achievement of any obligations towards him/her;

d) To suspend the sell of goods sequestered in the case of intentioned an action of taking off the sequester from them (radiated from the inventory act);

e) To suspend the criminal prosecution, based on a executor document, contested by a debtor on a judicial way.

(2) The Judge or the court can apply, depends on the case, other measures of assuring the action that will correspond to the goals specified in article 174. There could be admitted simultaneously some more measures of action assurance if the worth of sequestrated goods do not succeed the worth of action.

United Nations Convention Against Corruption

Although at the moment the UN Convention against corruption is its' internal procedure of ratifying, there was handed over to Parliament of Republic of Moldova the Project on modification internal legislation according to requirements of other international treaties, to which Republic of Moldova has adhered, with the purpose of introduction in internal legislation such notions **as foreign public servants, functionary of a public international organization.**

Thus, according to draft of Law, handed over to Parliament of Republic of Moldova, there will be introduced the following modifications:

To article 46 of Criminal Code, "Organized criminal group":

- Organized criminal group is a fortified reunion of **at least two persons** who gathered in advanced with the purpose of commission one or more crimes.

To article 47 of Criminal Code, "Criminal organization (association)":

(1) A Criminal organization (association) is considered a reunion of criminal groups organized in a fortified community whose activity is based on divisions between members of the organization and its' structures, administration functions, assurance and execution criminal intentions of the organization with the purpose to influence economic and other kinds of activity of legal and physical persons, or to control in other ways in the view of obtaining advantages and **achievement internal or / and transnational** economic, political or financial interests.

Will be introduced in Criminal Code five new articles: 123¹, 123², 123³, 123⁴, 123⁵ with the following contents:

"Article 123¹ Public agent.

By public agent are being interpreted more notions referring to definition of : "functionary", "public functionary", "mare", "judge", "prosecutor", "minister" functions compatible with legislation in force of Republic of Moldova and their exertion citizens of other states, which correspond to conditions of article 123 of the mentioned above code.

Article 123² International functionary.

By international functionary is understood a person having the quality of functionary or contract agent in the sense foreseen by the statute of an international and supranational public organization to which Republic of Moldova has adhered, as well as any person being or not the member of such an organization, exerts functions which correspond to mentioned functionaries or agents.

Article 123³ A chairman of a foreign country

(1) *By a chairman of a foreign country understood a person which in the state with the permanent residence has the function of a public agent and corresponds to conditions foreseen by paragraph (1) of art.123 from the mentioned code.*

(2) *By a high level chairman of a foreign country is understood a person which in the state with the permanent residence has the function of a public agent and corresponds to conditions foreseen by paragraph (2) of art.123 from the mentioned code.*

Article 123⁴. The judge of an international court.

(3) *By the judge of an international court is understood a person, having the function of a judge,(the prosecutor) of an international or regional court or tribunal, the jurisdiction of which was accepted by Republic of Moldova and which corresponds to conditions foreseen by art.123² from the mentioned code. These conditions are being spread over functionaries of mentioned above courts, which exert the functions of a judge's clerk.*

Article 123⁵. Members of Parliamentary Meeting of an International Organization.

(4) *By member of Parliamentary Meeting or of an International Organization is meant a person, who by law stipulations, naming or vote exerts the function of the member of the Council of Europe's Parliamentary Meeting or General Assembly of United nation Organization or parliamentary meeting of other international or super national organization, to which Republic of Moldova has adhered.*

Article 145, paragraph (3) after letter e) are being introduced 2 new letters f) and g) with the following contents:

“f) over an international functionary or a chairman of a foreign country;

g) by an organized criminal group or a criminal organization;

letters f) - m) become respectively h) - o):

To article 151 paragraph (3) after letter b) is being introduced a new letter c), with the following contents:

“c) over an international functionary or a chairman of a foreign state”;

letters c), d) and e) become respectively d), e) and f).

Article 158 is being completed by a new paragraph (3), with the following contents:

“(3) Actions foreseen by paragraphs (1) and (2), committed by an organized criminal group or by a criminal organization

are punished by imprisonment from 5 to 10 years with depriving the right to exert a function or an activity for a term from 3 to 5 years;

To article 164, paragraph (2), after letter a) is being introduced a new letter b) with the following contents:

“b) over an international functionary or foreign chairman”;

letters b), c) and d) become respectively letters c), d) and e).

To article 165 paragraph (2), after letter d) is completed with a new letter e) with the following contents:

”e) by a chairman or high level chairman”;
Letters e) and f) become respectively f) and g);
paragraph (3) is being completed by a new letter a) with the following contents:
“a) committed by an international chairman, or a chairman of a foreign country”;
letters a) and b) become respectively b) and c).

To article 171 paragraph (3) after letters b) are being completed by a new letter c) with the following contents:

“c) committed by an organized criminal organization;
letters c) - f) become respectively d) – g);

To article 172 paragraph (2), after letter c) is being completed by a new letter d) with the following contents:

“d) organized by an organized criminal group;
letters d) and e) become respectively e) and f);

To article 181 is being introduced a new letter a) with the following contents:

“a) committed by chairman or a high level chairman;
letters a) – e), become respectively letters b) – f);

To article 182 is being introduced a new paragraph (2) with the following contents:

“(2) The same actions committed :

a) by a chairman or a high level chairman;

b) by a group of persons,

is applied a fine liability from 500 to 1000 conventional units or with detention for a term from 5 to 7 years, and both cases with the depriving the right to exert a function or an activity for a term from 3 to 5 years”.

The single paragraph becomes paragraph (1).

To article 243, paragraph (2), after letter c) is being completed with a new letter d) with the following contents:

“d) by an international functionary or by chairman of a foreign country or a high level chairman of a foreign country”.

To article 259, paragraph (2), after letter b) is being completed by a new letter c) with the following contents:

“c) by an organized criminal group or a criminal organization;”;
letters c), d) and e) become respectively, letters d), e) and f).

To article 273, paragraph (3), after letter a) is being completed by a new letter b) with the following contents:

“b) committed by an organized criminal group or a criminal organization;”;
letter b) becomes respectively letter c).

To article 275, disposition of the paragraph (3) is exposed the in the following redaction:

“(3) Actions foreseen by paragraphs (1) and (2):

- a) committed by a organized criminal group or a criminal organization;
- b) if they have provoked grave injuries of corps’ integrity or other grave consequences for people’s health;
- c) accompanied by death of a person;

To article 303, disposition of paragraph (3) is exposed in the following redaction:

(3) Actions foreseen by paragraphs (1) or (2) committed by:

- a) by a chairman or a high level chairman;
- b) in interest of an organized criminal group or a criminal organization;

To article 324, paragraph (2) after letter b) is completed by a new letter c) with the following contents:

“c) by a chairman of a foreign country by a high level chairman of a foreign country”;

letters c) and d) become respectively d) and e);

Paragraph (3) after letter a) is completed by 4 new letters b), c), d) and e) with the following contents:

“b) by an international chairman;

c) by a member of parliamentary meeting of an international or over national organization, to which Republic of Moldova has adhered;

d) by a judge of an international court whose jurisdiction was accepted by Republic of Moldova or by judge’s clerk;

e) by a chairman of a foreign country;”

letters b) and c) become respectively f) and j);

To article 325, paragraph (2) is completed with a new letter a) with the following contents:

”a) regarding a foreign chairman”;

Letters a), b) c) become respectively b), c), d)”;

Paragraph (3) is completed by 5 new letters a), b), c), d) and e) with the following contents:

“a) regarding a high level chairman;

b) regarding an international functionary;

c) regarding member of a parliamentary meeting of an international or over national organization to which Republic of Moldova has adhered;

d) regarding a judge of an international court whose competence was accepted by Republic of Moldova or a functionary of such institution;

e) regarding a high level chairman of a foreign state”

letters a) and b) respectively for letters f) and g).

To article 329, disposition of paragraph (2) exposes in the following redaction:

“(2) The same actions which:

- a) led to commission by a directly subordinated person offences foreseen by articles 243, 324-326 and 330;
- b) provoked death of a person
- c) provoked other grave consequences;”

To article 331, paragraph (2) is exposed in the following redaction:

(2) The same action committed:

- a) by a high level chairman;
- b) by an international functionary;
- c) by member of a parliamentary meeting of an international organization to which Republic of Moldova has adhered;
- d) by a judge of an international court whose competence was accepted by Republic of Moldova or by a functionary of such an institution;
- e) by a high level chairman of a foreign country;
- f) accompanied by grave consequences;

According to article 334 is being introduced a new article 334¹ with the following contents:

“Article 334¹. Non respect of the legislation on prevention and combating corruption.

Lack of control from a person who administrates a commercial, civil or other non-government organization over the activity of a subordinated to his/her authority person, if it led to crime commission by a subordinated person foreseen by articles 243, 333 and 334 by the mentioned code.

- is applied fine liability in size of from 500 till 1500 conventional units or detention for a term from 3 to 5 years with or without depriving the right to exert certain functions or to exert certain activity for a term from 3 to 5 years.

To article 362, paragraph (3) is completed with a new letter a) with the following contents:

“a) committed by an organized criminal group or criminal organization”;
letters a) and b) become respectively b) and c).

Article II. Code on offences, approved on 29 of March 1985 (News of Supreme Soviet and Government of Soviet Social Moldavian Republic, 1985, nr.3 art. 47), with further modifications and amendments, is being modified as follows:

1. **To article 174¹⁷** is exposed in new redaction with the following contents:

Article 174¹⁷ Protectionism.

Protectionism, exactly intentional action or inaction of a chairman in the framework of an enterprise, institution, state organization or public administration as well as the person who administrates a commercial, civil or other non-government organization, regarding protection or offer support for persons interested in obtaining some advantages or other profits by favorable attitude towards them, indifferently the reasons by which s/he was drawing on, but which have influenced the desirable result, in case in which there lack constitutive elements of the offence;

- draws application of a fine from 150 to 300 minimal salaries.

Article 174¹⁸ is exposed in new redaction with the following contents:

“Article 174¹⁸ Non-respect of legislation on prevention and combating corruption

Non respect of the legislation on prevention and combating corruption, as well as inadequate control from persons enumerated in article 174(17) over employees subordinated directly to their authority, which led to their corruption comportment, in case when there lack constitutive elements of the offence, -

- draws application of a fine from 150 to 300 minimal salaries.