

# Resource Center for Human Rights (CReDO)

Draft for discussions (20.03.2012)

## **Assessing the level of independence of public institutions and authorities responsible for policy implementation in the justice field in the Republic of Moldova**

Prosecutor's Office, Security and Intelligence Service (SIS),  
National Anti-Corruption Center (CNA), Center for Human Rights (CpDOM),  
National Integrity Commission (CNI), Border Police

### EXECUTIVE SUMMARY

Introduction.....	2
1. Depoliticizing institution's leadership.....	3
2. Independence and autonomy.....	7
3. Accountability and transparency.....	11
Summary of recommendations .....	15
ANNEX 1. Sources of international best practice .....	17
ANNEX 2. Sources of information on the studied institutions .....	18

Contacts: + (373 22) 212 816, 212 819; [credo@credo.md](mailto:credo@credo.md), [ostaf@credo.md](mailto:ostaf@credo.md)

## ***Introduction***

The purpose of this comparative study is to identify international best practices (IBP) regarding the autonomy and independence (from political influence) of public institutions responsible for policy implementation in the justice field, and assess to what extent the legislation and practices in the Republic of Moldova correspond to these standards.

The study covers 5 institutions in the Republic of Moldova: **Prosecutor's Office, Security and Intelligence Service (SIS), National Anti-Corruption Center (CNA), Center for Human Rights (CpDOM) and National Integrity Commission (CNI).**

At the first stage, we identified **76 legal provisions and objective criteria** that represent good and best practices regarding the autonomy and independence of the prosecution service, police, intelligence, anti-corruption and ombudsman institutions. Compilations of best practices made by international organizations (the **UN, Council of Europe, OSCE, OECD, IMF**) as well as prominent NGOs and research centers in the field were used as sources (Annex A).

The criteria are grouped in 13 categories, which in their turn refer to three main fields of institutional independence: **1) Depoliticizing of the institution's leadership, 2) Functional and operational independence and autonomy, 3) Transparency and accountability.**

At the second stage, we assessed to what extent the legislation of the Republic of Moldova, in particular, the laws regulating the studied institutions, corresponds to these standards. For each of the 76 criteria, the institution was awarded 1 point if the relevant provision exists in the legislation (or if the objective criterion is satisfied), 0 points if the provision is absent (or the criterion is not met), or 0.5 points if the provision is partially present or not fully functional (with an explanation).

Each category contains 5-7 criteria. Thus, an institution can get a maximum of 5 to 7 points in a particular category in case its legislation and activity is fully in line with identified international best practices. The raw category score is a sum of points an institution gained in the category. The final category score is calculated according to the formula:

$$\text{Final score}_{\text{institution, category}} = (\text{raw score}_{\text{institution, category}} / \text{max score}_{\text{category}}) * 100\%$$

and measures to which **extent an institution corresponds to international best practice.**

The weight of each criterion in the final category score is equal.

Institution's score in a particular field is calculated as an average of the institution's final scores in all categories from this field. The weight of each category in this score is equal.

General score for an institution is calculated as an average of its scores in the three fields. The weight of each field in this score is equal.

This methodology is the first step towards a more ample analysis, which would use focus group and expert survey techniques to improve assessment criteria, determine their relative importance and weight, as well as assess how well legal provisions in question are implemented in practice.

**Resource Center for Human Rights (CReDO).**  
**Independence of public institutions responsible for policy implementation in the justice field**

***1. Depoliticizing institution's leadership***

**ASSESSMENT CRITERIA:**

<b>1) Autonomy and security of the mandate</b>	<b>2) Appointment requirements</b>	<b>3) Appointment procedure</b>	<b>4) Dismissal conditions and procedure</b>	<b>5) Internal promotion procedure</b>
Established by law	Established by law	Established by law	Established by law	Established by law
Longer than mandate of the Parliament	Higher education, relevant experience	Appointment by the vote of the majority of elected members of Parliament	The motives are clear, relevant and proportional	Key role belongs to the institution's leadership, not external or political factors
Not renewable	Integrity, moral standing, professional reputation	Recommendation for appointment by a legitimate collegial body, principal and other stakeholders are represented	Transparent procedure (motives are disclosed)	Competitive, merit-based process
Does not coincide with the mandate of the Parliament, elected political body	Absence of restrictive requirements	Participation of professional groups, civil society	Pluralism of opinion: recommendation for dismissal by a legitimate collegial body	Transparent procedure (clear and known criteria)
Appointment in reasonable terms established by law, legitimate continuation and transfer of leadership is ensured	Incompatibility with certain other activities (other public office, business, political party membership), safeguards against conflict of interest	Competitive procedure (selection among several candidates, assessment of competencies and vision for institution's development)	Participation of professional groups	Participation of professional groups
		Transparent procedure (information about candidates and selection results are public)	The person against whom the dismissal procedure has been initiated has the right to be heard	
			Dismissal by qualified majority (2/3 members of Parliament)	

**RESULTS**

	Prosecutors	CNA	SIS	CpDOm	CNI	Police	Border police
1) Autonomy and security of the mandate	60	80	40	80	80	60	0
2) Appointment requirements	90	100	40	80	100	90	30
3) Appointment procedure	33	58	33	50	67	17	17
4) Dismissal conditions and procedure	29	57	43	57	43	29	7
5) Internal promotion procedure	80	40	40	20	0	50	70
<b>DEPOLITICIZING LEADERSHIP</b>	<b>58</b>	<b>67</b>	<b>39</b>	<b>57</b>	<b>58</b>	<b>49</b>	<b>25</b>

**Resource Center for Human Rights (CReDO).**  
**Independence of public institutions responsible for policy implementation in the justice field**

NATIONAL SITUATION

	<b>1.1 Appointment requirements</b>	<b>1.2 Appointment procedure, mandate</b>	<b>1.3 Dismissal conditions and procedure</b>	<b>1.4 Procedure for appointing deputy directors, internal promotion</b>
<b>Supreme Court of Justice</b> <i>(for comparison)</i>	<i>No specific conditions for Supreme Court judges. Requirements for Supreme Council of Magistrates: 10 years experience and formal qualifications</i>	<i>President and vice-presidents of the Supreme Court of Justice are appointed for 4 years by the vote of the majority of elected Members of Parliament at the proposal of the Supreme Council of Magistrates (SCM). The parliament can reject the candidate proposed by SCM only once. SCM organizes the contest for the position of SCJ President and vice-president.</i>	<i>Supreme Council of Magistrates proposes dismissal (disciplinary sanction) of the SCJ President before the expiry of the mandate. The decision is adopted by the vote of the majority of elected Members of Parliament.</i>  <i>Motives: failure to carry out the duties of office, not very specific.</i>	<i>similar</i>
<b>Prosecutors</b>	15 years of relevant experience, formal qualifications, good reputation.	Prosecutor General is appointed for a 5-year term by the vote of the majority of elected Members of Parliament, at the proposal of the Speaker of Parliament. There is a limit of two consecutive mandates..  Supreme Council of Prosecutors does not play a role in selecting the Prosecutor General, only in appointing the deputies and prosecutors of lower rank.	<i>The Parliament, at the proposal of the Speaker, dismisses the Prosecutor General before the expiry of mandate with the vote of the majority of elected MPs.</i>  Motives: discrediting the image of the Prosecutor's office, a definitive criminal conviction, voluntary resignation.  Prosecutor General dismisses lower ranking prosecutors in the same cases.	<i>Prosecutor General, at the proposal of the Supreme Council of Prosecutors, appoints the deputies and lower ranking prosecutors.</i>
<b>CNA</b>	Higher education, 10 years of relevant experience, impeccable reputation, political neutrality	The candidate is selected via a competition organized by the Parliamentary Commission for legal issues, appointments and immunities. The Parliament appoints the Director with the vote of the majority of elected MPs for a single 5-year term (no possibility of a consecutive mandate).	The grounds for early termination of mandate are established in a plenary session of the Parliament on the basis of a report by the Commission for legal issues, appointments and immunities.  Motives: incompatibility, violation of legal provisions regarding the conflict of interest, voluntary resignation, definitive criminal conviction...  Dismissal as a result of not meeting the appointment requirements or receiving a negative score in professional integrity testing is decided by the Parliament with the vote of the majority of elected MPs, at the initiative of at least 15 MPs.	<i>The Parliament, at the proposal of the CNA Director, appoints his deputies.</i>  Heads of territorial subdivisions are appointed by the CNA Director on a competitive basis. The competition is organized according to the procedure adopted by the Parliament.

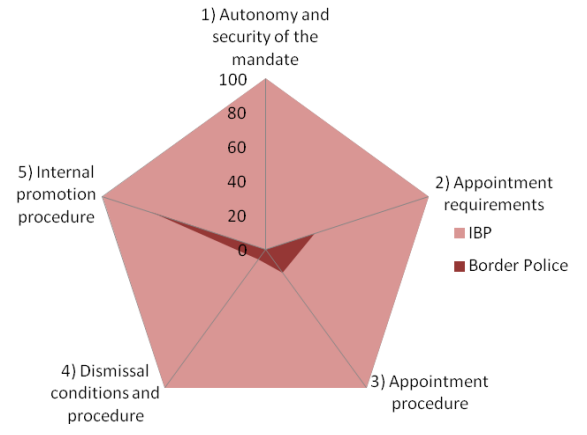
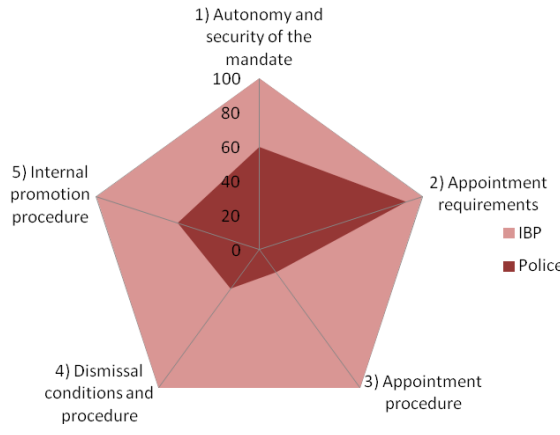
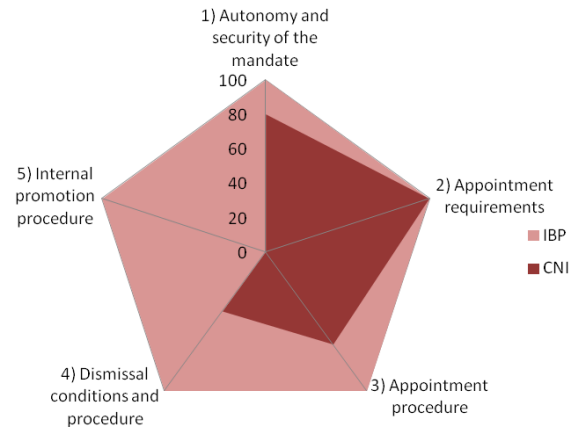
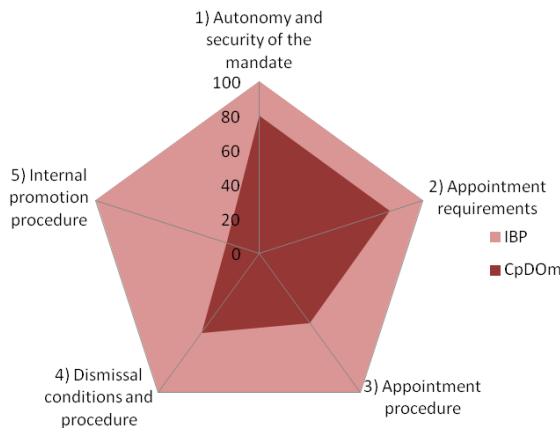
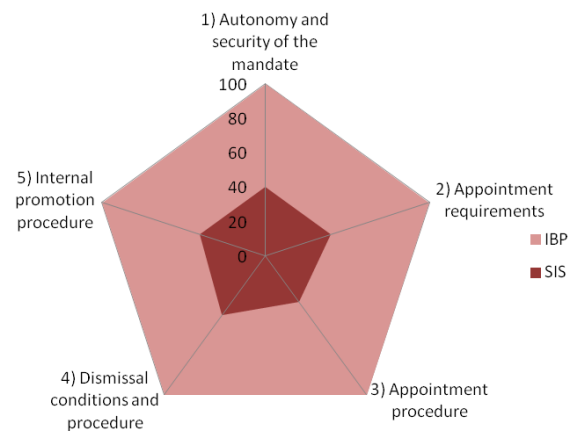
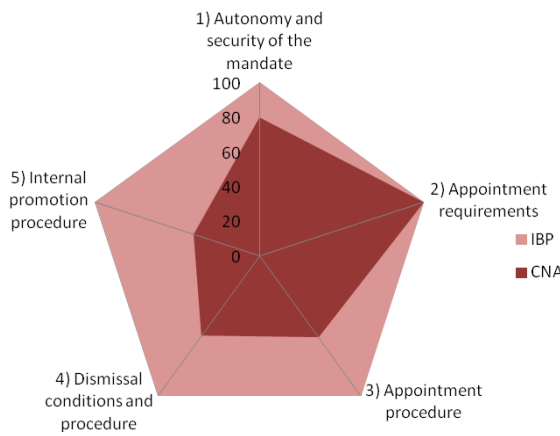
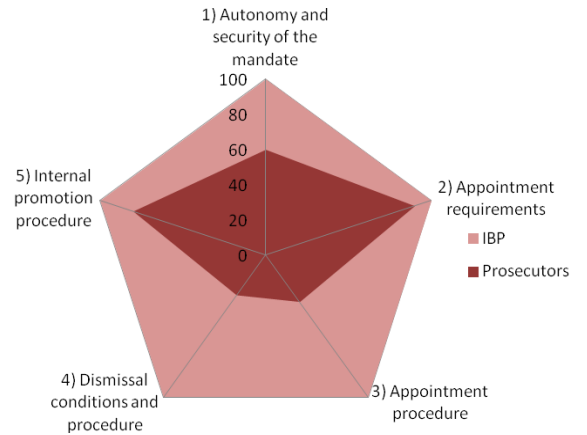
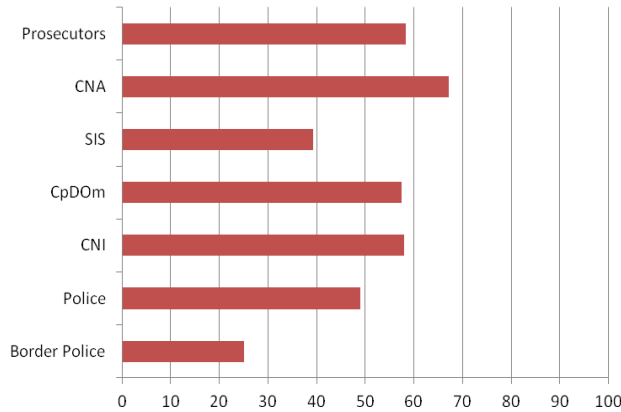
**Resource Center for Human Rights (CReDO).**  
**Independence of public institutions responsible for policy implementation in the justice field**

<b>SIS</b>	Not provided by law	The director is appointed for a 5 year term by the vote of the majority of elected Members of <i>Parliament</i> , at the proposal of the <i>President of the Republic of Moldova</i> .	The director is dismissed by the <i>Parliament</i> with the vote of the majority of elected MPs, at the proposal of the President of Moldova, the Speaker of Parliament or a group of MPs. Motives: adopting an administrative decision violating legal provisions regarding conflict of interest or incompatibilities.	<i>The President of Moldova</i> , at the proposal of SIS Director, appoints deputy directors.
<b>CpDOM</b>	At least 5 years of relevant experience in law, high professional competence, impeccable reputation	<i>The Parliament</i> appoints 4 parliamentary advocates for a 5 year term (limit of two consecutive mandates) at the proposal of the President of Moldova, 20 MPs, with the vote of the majority of elected MPs. The Parliamentary Commission for Human Rights presents a reasoned opinion on each candidate.	<i>The Parliament</i> , at the request of 20 MPs and with the vote of 2/3 of elected MPs, withdraws its confidence from the parliamentary advocate. Motives: definitive criminal conviction, document ascertaining conflict of interest, breach of obligations, acts incompatible with the status and dignity of the parliamentary advocate.	<i>The Parliament</i> , at the proposal of the Speaker, appoints the Director of the Center for Human Rights with the vote of the majority of elected MPs.
<b>CNI</b>	CNI members: 7 years of professional experience, impeccable reputation, formal qualifications. A member who has not held high public office can be elected CNI President.	<i>The Parliament</i> , with the vote of the majority of elected MPs, appoints 5 CNI members. 4 members are appointed by political parties and one by the civil society, with a positive opinion of the Commission for legal issues, appointments and immunities. <i>The Parliament</i> , with the vote of the majority of elected MPs, at the proposal of the Speaker and after consulting parliamentary fractions, appoints CNI President.	<i>The Parliament</i> , with the vote of the majority of elected MPs, dismisses a CNI member. Motives: not meeting appointment requirements, breach of obligations as a CNI member (lack of objectivity, illegalities, political bias).	<i>The Parliament</i> , with the vote of the majority of elected MPs, at the proposal of CNI President, appoints one vice-president.
<b>Police</b>	Minimal age of 35, a degree in law, at least 5 years of managerial experience. Good reputation is required in order to be employed by the Police.	Head of the General Police Inspectorate (IGP) is appointed by the <i>Government (Cabinet of Ministers)</i> at the proposal of the Minister of Internal Affairs for a 5 year term.	The head of IGP is dismissed by the Government at the proposal of the Minister of Internal Affairs, in cases of repeated disciplinary offenses, unsatisfactory result of performance assessment, or negative result of a professional integrity test.	<i>The Minister of Internal Affairs</i> , at the proposal of the head of IGP, appoints deputies. The head of IGP appoints heads and staff of subdivisions. Assessment results are taken into account for promotion.
<b>Border police</b>	Not provided by law	<i>The Government (Cabinet of Ministers)</i> , at the proposal of the Minister of Internal Affairs, adopts a decision to appoint the Head of Border Police Department.	<i>The Government (Cabinet of Ministers)</i> , at the proposal of the Minister of Internal Affairs, adopts a decision to dismiss the Head of Border Police Department. Motives are not specified.	<i>The Minister of Internal Affairs</i> , at the proposal of the head of Border Police, appoints deputies. Leadership positions are filled on a competitive basis.

**Resource Center for Human Rights (CReDO).  
Independence of public institutions responsible for policy implementation in the justice field**

**MOLDOVAN INSTITUTIONS VS INTERNATIONAL BEST PRACTICE**

**Depoliticizing leadership**



\*IBP – international best practice.

\*

**Resource Center for Human Rights (CReDO).**  
**Independence of public institutions responsible for policy implementation in the justice field**

## ***2. Independence and autonomy***

### **ASSESSMENT CRITERIA:**

<b>1) Formal guarantees of independence</b>	<b>4) Operational and decisional autonomy</b>	<b>5) Intra-institutional autonomy</b>	<b>2) Budgetary autonomy</b>	<b>3) Financial autonomy</b>
Institution's autonomy is guaranteed by law	Institution's mandate is established by law, no contradictions or overlap with other institutions	The staff is autonomous in operational decision-making	Financing from the state budget	Headquarters and staff covered
Focus on policy implementation and supervision functions	Institution performs only activities stipulated by law	There is a mechanism for denouncing illegal or immoral instructions to the court or a supervisory body	The budget can be reduced in comparison with the previous year only with justification	Basic institutional functions (on the basis of a functional analysis of previous year's indicators) are covered
Operational immunity of the institution's leadership and staff is guaranteed	The principal has control powers only in terms of setting priorities and evaluating the carrying out of institution's mandate	The staff has the right to be heard and the right of appeal in disciplinary or transfer cases	Institution's budget cannot be reduced after state budget has been approved	Expertise costs and hiring of experts, staff training and technical equipment are covered
Interference in individual cases by the principal, others is forbidden	The Judiciary has control and supervisory powers only relating to legality and human rights protection	There are procedures to launch internal investigations and operative activities	The institution formulates its own budget with justification	Staff's remuneration and status are comparable to the European benchmark
Political recommendation to examine and investigate certain cases and situations is forbidden	There is a mechanism for denouncing and investigation of illicit external influences	Penalties and sanctions for illicit influences within the institution provided by law, proportional and cannot be circumvented	If the institution contributes to returning funds to the state budget, a share (10-50%) of these is attributed to the institution's budget	Stable salary structure with raises and bonuses linked to institutional and individual performance
There are enforceable penalties for political interference and recommendation	Clear and proportional sanctions for illicit external influences are provided by law			

### **RESULTS**

	Prosecutors	CNA	SIS	CpDOm	CNI	Police	Border Police
1) Formal guarantees of independence	67	67	50	100	17	33	25
2) Operational and decisional autonomy	42	42	50	42	17	50	17
3) Intra-institutional autonomy	80	20	60	10	0	50	20
4) Budgetary autonomy	20	40	30	20	20	30	20
5) Financial autonomy	80	30	50	30	20	40	50
<b>INDEPENDENCE AND AUTONOMY</b>	<b>58</b>	<b>40</b>	<b>48</b>	<b>40</b>	<b>15</b>	<b>41</b>	<b>26</b>

**Resource Center for Human Rights (CReDO).**  
**Independence of public institutions responsible for policy implementation in the justice field**

**NATIONAL SITUATION**

	<b>2.1 Formal guarantees of independence</b>	<b>2.2 Operational and decisional autonomy</b>	<b>2.3 Intra-institutional autonomy</b>	<b>2.4 Budgetary autonomy</b>	<b>2.5 Financial autonomy</b>
<b>Supreme Court of Justice</b> <i>(for comparison)</i>	<i>Separation of powers, independence of the judiciary from the legislature and the executive, independence of courts and judges.</i>		<i>Judges cannot be subject to interference in the act of justice.</i>	<i>Drafts its own budget subject to approval by the Parliament. Budget cannot be changed throughout the year.</i>	<i>Structure: President, 3 vice-presidents, 45 judges Personnel budget: 14793,9 K lei. Salaries (lei/month): President 8800 Vice-president 7500 Judge 6000</i>
<b>Prosecutors</b>	The Prosecutor's Office is hierarchic, centralized, the structure is approved by the Parliament at the proposal of the Prosecutor General. The law guarantees that institution is independent and subject only to law. The prosecutor is inviolable, the activity is guided by the principle of autonomy, interference with the prosecutor's activity is forbidden. Prosecutors cannot be affiliated with political parties.	The Prosecutor's Office is independent its activity, subordination to the legislative or the executive, external influences and interference are excluded. The prosecutor is subject strictly to law, has decisional autonomy, external influences are forbidden.	The Prosecutor General coordinates the activity, has financial and administrative leverage in relation with prosecutors. Hierarchic subordination. Interference in other prosecutor's activity is a disciplinary offence. Illicit instructions of the superiors can be reported and challenged in court.	The Parliament adopts the budget. Office premises, operative equipment, IT equipment and means of transportation are provided from state budget.	Personnel: 748 prosecutors + 90 civil servants;  Personnel budget: 53441,91 K lei  Salaries (lei/month): Prosecutor General 8300 Deputies 6200-7100 Heads subdivisions 5150-6000 Prosecutors 3800-4150
<b>CNA</b>	The law declares the Center an apolitical and independent body. CNA employees are inviolable persons under state protection. Interference in CNA employee's activity is forbidden.	According to legal provisions, CNA is organizationally, functionally and operationally independent and subject only to law. Internal mechanisms for denouncing conflict of interest.	CNA is a unitary, centralized and hierarchic body. Employees are subordinated only to their direct superiors. In case of illegal orders or directives, the employee has to be guided by law (no clear mechanism).	CAN Director drafts the budget subject to the Parliament's approval	Personnel: 523 officers + 53 technical staff Personnel budget: 29798,9 K lei Salaries (lei/month): Director 6500, Vice-director 6000, Head subdivision: 3600-5400, Officer: 2400-3600
<b>SIS</b>	Activity of SIS is regulated by the Parliament, President and the Government. The person of SIS officer is inviolable, external interference is forbidden. SIS staff cannot be involved in political parties, entrepreneurial activity	Formal guarantees of non-interference in SIS officer's activity. Political or business-related activities are grounds for dismissal from the Service.	SIS officer is subject only to law and fulfills directives of superior officers. Interference with other officer's activity is a disciplinary offence, issuing an illegal order is a motive for dismissal from the Service.	Parliament adopts organizational structure and personnel size. Government provides technical and material means.	Personnel: 1124 units Personnel budget: 60373,8 K lei Salaries (lei/month): Director 7100, Deputy 6500 Head subdivision 3800-5700 Officer 2400-3600



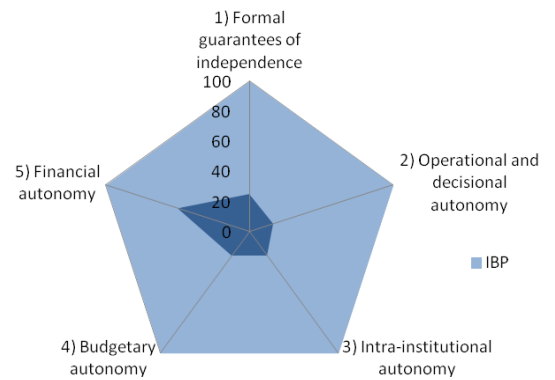
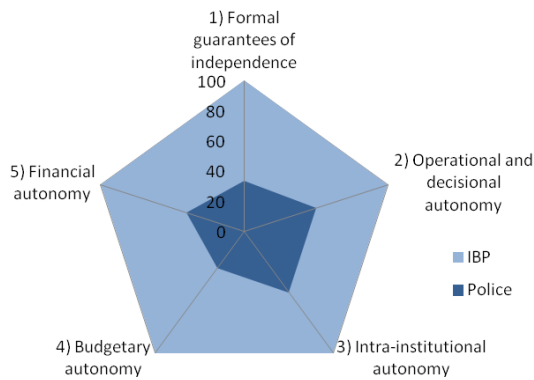
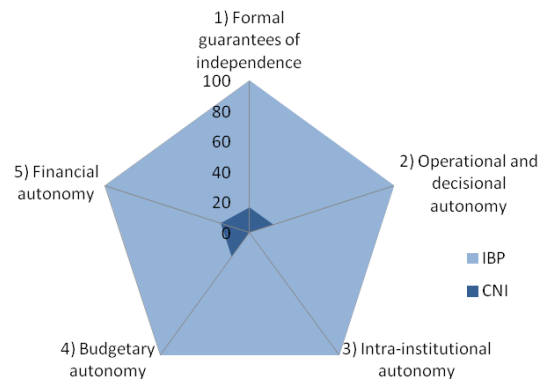
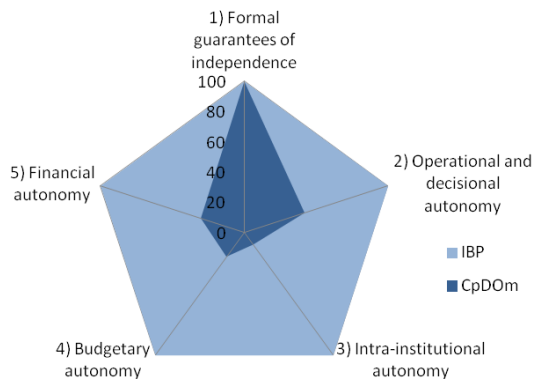
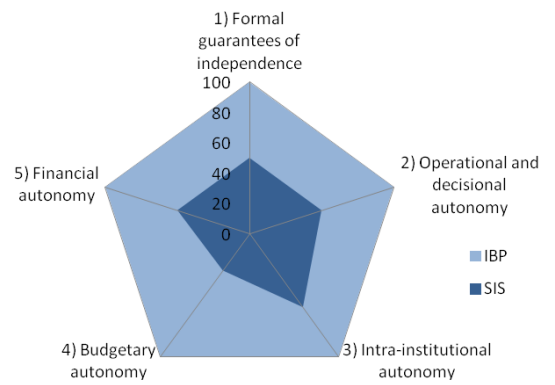
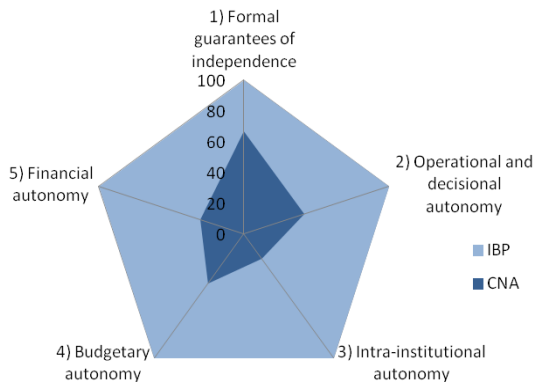
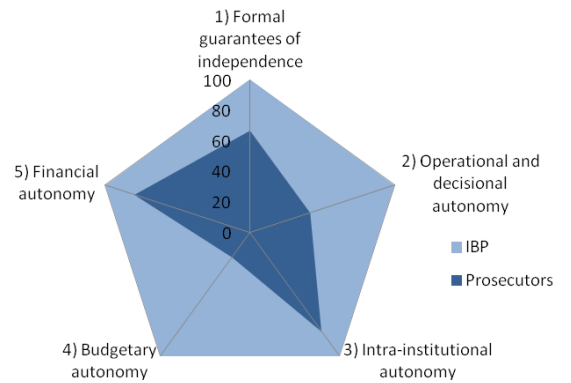
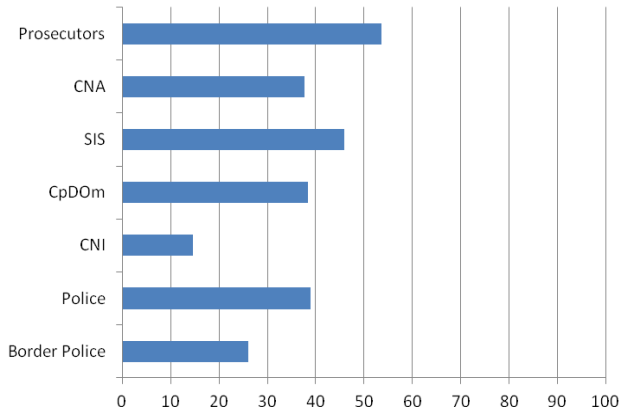
**Resource Center for Human Rights (CReDO).**  
**Independence of public institutions responsible for policy implementation in the justice field**

<b>CpDOM</b>	Parliamentary advocates are independent from other state authorities. They cannot be subject to criminal or administrative liability without preliminary agreement of the Parliament, except for flagrant cases. PAs have no right to be involved in political activity.	Interference in the activity of parliamentary advocates in order to influence the decisions on certain cases is an administrative offence. Involvement of parliamentary advocates in political activity is a motive for dismissal.	Parliamentary advocates are equal in rights, distribute areas of competence by mutual agreement, can act on their own initiative, can delegate some of their responsibilities to specialized staff. CpDOM Director distributes requests to be examined by advocates according to area of expertise.	Budget of the Center is approved by the Minister of Finance and adopted by the Parliament	Personnel: 55 units. Personnel budget: 2479,4 K lei Salaries: Director 6800, Parliamentary advocate 6400, Head subdivision: 4000-5100 Expert, consultant: 2400-3600
<b>CNI</b>	The law declares the Commission an autonomous and independent public authority. CNI members and civil servants cannot be members of political parties.	Not provided by law	Not provided by law	Financing from state budget.	Personnel: 26 units. Budget and salary grades not yet determined.
<b>Police</b>	General Police Inspectorate is subordinated to the Ministry of Internal Affairs	No one but the persons authorized by law can intervene in police officer's activity	Police officers have to fulfill legal orders of their superiors, refuse to execute illegal orders.	Financing from state budget.	Personnel: 9116 units. Budget and salary grades not yet determined.
<b>Border police</b>	The Government adopts the structure	Formal guarantees of non-interference	Not provided by law	Financing from state budget. Technical and material support guaranteed.	Personnel: 3543 units, including 335 technical staff. Personnel budget: 131849,7 K lei Salaries (lei/month): Deputy director: 7000 Head subdivision: 3600-5400 Officer: 2400-3600

**Resource Center for Human Rights (CReDO).  
Independence of public institutions responsible for policy implementation in the justice field**

**MOLDOVAN INSTITUTIONS VS INTERNATIONAL BEST PRACTICE**

**Independence and autonomy**



*\*IBP – international best practice.*

**Resource Center for Human Rights (CReDO).**  
**Independence of public institutions responsible for policy implementation in the justice field**

### ***3. Accountability and transparency***

**ASSESSMENT CRITERIA:**

<b>1) Internal control</b>	<b>2) External control</b>	<b>3) Institutional transparency</b>
Institutional plan/program covering public products, results, indicators and expected impact of the institution's activity	Institutional control of the principal and regular reporting are established by law	Principle of transparency in the institution's activity is established by law
Procedure for evaluating the performance of staff and employees	Reports contain both quantitative and qualitative data on achieving the priorities and institutional performance	The institution has a website, information about leadership and contact details are published
Procedure for testing personal integrity	Institution's reports are heard and debated by the parliamentary commissions	Yearly reports are public and updated
Requirement to denounce conflicts of interest and sanctions for noncompliance	Control by the Judiciary: legality, human rights protection	Information about the disciplinary committee's activity is public
Internal code of ethics	Institution is subject to regular public audit	Income statements of the institution's leadership are public
Clear and transparent procedures for disciplinary action and dismissal of staff	There is an independent body for external supervision (representatives of the principal, professional groups, civil society) that hears the citizen's complaints	Access to the public part of the institution's cases and files is provided
Integral system for case processing and internal process management	There is no overlap between different institutions' control functions	Institution's strategic development program was consulted with the public

### **RESULTS**

	Prosecutors	CNA	SIS	CpDOm	CNI	Police	Border Police
1) Internal control	50	57	43	14	29	71	57
2) External control	43	64	50	43	14	36	21
3) Institutional transparency	71	43	43	50	14	29	43
<b>ACCOUNTABILITY AND TRANSPARENCY</b>	<b>55</b>	<b>55</b>	<b>45</b>	<b>36</b>	<b>19</b>	<b>45</b>	<b>40</b>

**Resource Center for Human Rights (CReDO).**  
**Independence of public institutions responsible for policy implementation in the justice field**

**NATIONAL SITUATION**

	<b>3.1 Institutional positioning</b>	<b>3.2 Competencies</b>	<b>3.3 Internal control</b>	<b>3.4 External control, reporting, performance indicators</b>	<b>3.5 Transparency</b>
<b>Supreme Court of Justice</b> <i>(for comparison)</i>	<i>Separation of powers – the judiciary</i>	<i>Judging cases at first instance and in appeal</i>		<i>No specific provisions</i>	<i>Provisions regarding transparency of the act of justice</i>
<b>Prosecutors</b>	Parliamentary control	Conducting criminal prosecution	Professional attestation once every 5 years, denouncing conflicts of interest, internal code of ethics.	Institutional control by the Parliament, judiciary control. The Prosecutor General presents yearly reports to the Parliament.	The law ensures transparency, access of the society and the media to info about the activity of the Prosecutors. Info on leadership, reports, agenda of the disciplinary body are available on the website.
<b>CNA</b>	Parliamentary supervision	Prevention, detection and deterrence of crimes and administrative offences related to corruption, protectionism, terrorism. Providing anticorruption expertise.	Professional attestation once every 4 years, professional integrity testing, lifestyle monitoring, declaring income and property, personal interest declarations.	Monitoring by the society, parliamentary supervision, judiciary control; control of legality by the Prosecutor's Office; external public audit. Yearly reporting to the Parliament and the Government.	According to the law, yearly report should be public, yet it is not available on the website. Info about leadership, income declarations of the CNA Director are published on the site.
<b>SIS</b>	Control by the Parliament and the President	Fields: combating activities aimed against state security, at violent change of the constitutional order, undermining the sovereignty, independence and territorial integrity of the state. Activities: intelligence, counter-intelligence, investigative measures.	Professional attestation once every 4 years, income and property declarations, personal interest declarations.	Institutional control by the Parliament, President, Government. Parliamentary control via the Commission for Security. SIS presents yearly activity reports to the Parliament. Supervision by the Prosecutor's office. Human rights control – head of the Service, Prosecutor's office, the courts.	According to the law, the citizens are informed about institution's activity via mass-media and other means. Information about institution's leadership is available on the website.
<b>CpDOM</b>	Reporting to the Parliament	Protection of human rights	Denouncing conflict of interest	Institutional control by the Parliament. The Center presents to the Parliament a yearly report on the human rights situation. The report is debated and an opinion drafted by the Commission for Human Rights.	Transparency required by law, yearly reports are published in the Official Monitor, info about PAs available on the website
<b>CNI</b>	Reporting to the Parliament	Control of incomes and conflicts of interest of civil servants	Income, property, personal interest declarations, incompatibilities	Institutional control by the Parliament	No legal provision

**Resource Center for Human Rights (CReDO).**

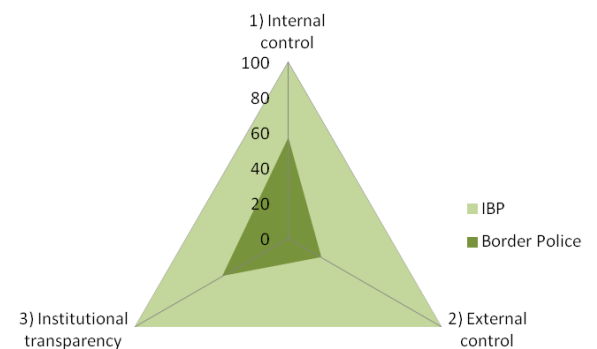
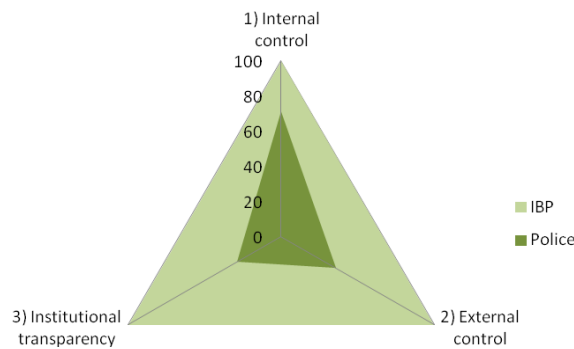
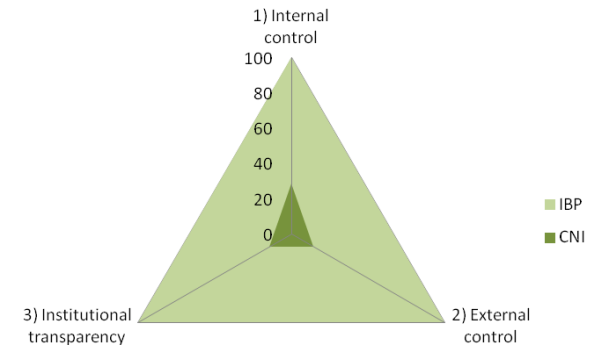
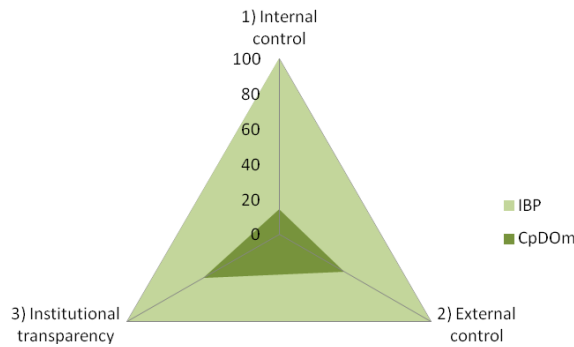
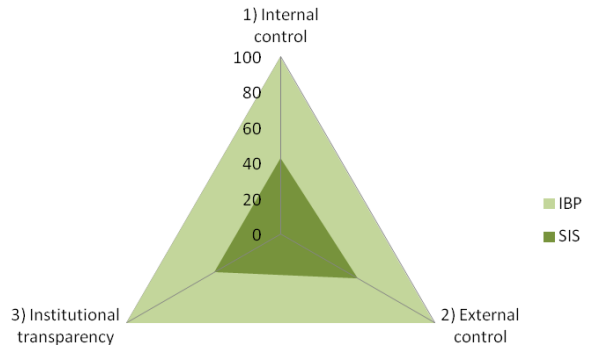
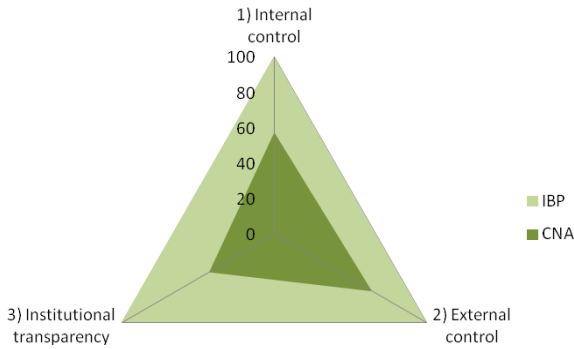
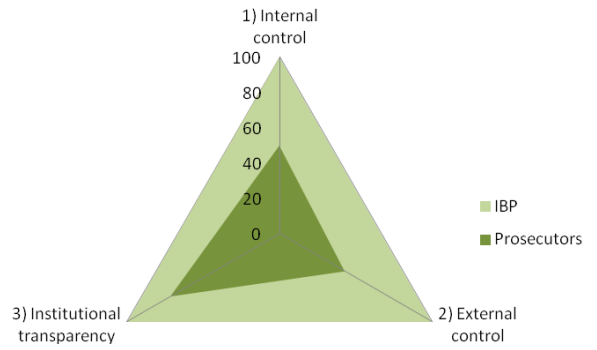
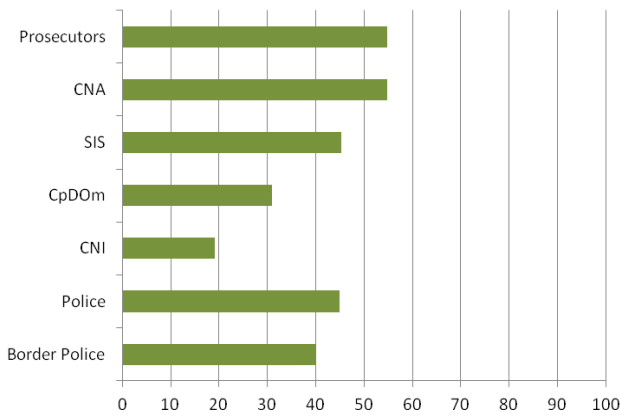
**Independence of public institutions responsible for policy implementation in the justice field**

<b>Police</b>	Reporting to the Ministry of Internal Affairs	Maintaining, ensuring and restoring public order and security, prevention, investigation and detection of crimes and administrative offences.	Income and property declarations, declarations of personal interest, professional integrity testing, lifestyle monitoring, yearly personnel assessment, internal code of ethics.	Ministry of Internal Affairs determines strategic directions for the development of Police and implementation of the Government Program, drafts and promotes state policy in the field. Institutional control – MIA, Prosecutor’s Office, national and international human rights organizations. Control over the use of budget funds – MIA and other competent bodies. Head of the General Police Inspectorate reports to the Minister of Internal Affairs and the Prime Minister, upon request. He also presents reports to the media once every 6 months.	According to the law, the Police will inform the public about its activity. General Police Inspectorate has been created recently and does not yet have a website.
<b>Border police</b>	Reporting to the Ministry of Internal Affairs	Border control and supervision, combating illegal migration and border crime	Yearly personnel assessment, income and property declarations required, internal code of ethics	Institutional control by the Ministry of Internal Affairs. Control by the Parliament, President of Moldova and the Government (competencies not specified). Public audit by the Court of Accounts.	Transparency provision in the law (cooperation with the civil society and the media, maintaining website, decisional transparency).

**Resource Center for Human Rights (CReDO).  
Independence of public institutions responsible for policy implementation in the justice field**

**NATIONAL INSTITUTIONS VS INTERNATIONAL BEST PRACTICE**

**Accountability and transparency**



*\*IBP – international best practice.*

### *Summary of recommendations*

#### **Regarding the appointment and dismissal of the institution's leadership:**

1. Apart from professional qualifications, there need to be clear criteria for candidates, including *professional reputation and moral standing* in the society.
2. Several candidates need to be assessed by a *joint commission, with professional groups and civil society participating*, as well as representatives of the policymaker and the institution monitoring policy implementation in the field.
3. *Transparency of the selection and appointment process* needs to be ensured.
4. Political discretion of appointment on the basis of a qualified opinion of the aforementioned commission (several candidates can be proposed).
5. The mandate should be *longer than 4 years*, and preferably *should not coincide with the mandate of elected officials*; a single (*non-renewable*) long mandate is optimal.
6. The law should establish a list of *clear and relevant motives* to initiate a dismissal procedure, the motives being *proportional to the impossibility to continue the exercise of function*.
7. Intra-institutional promotion and appointment procedures should be *competitive, merit-based, and involve professional groups*.

#### **Regarding functional independence and autonomy:**

1. Laws regulating the activity of these institutions should *expressly guarantee functional and operational independence and autonomy*. These guarantees should cover and forbid not only *interference in individual cases*, but also *political recommendation to examine and investigate certain cases and situations*.
2. In case of institutions responsible for combating phenomena involving high-level decision-makers, independence should be ensured by regulating all of the institution's activities *only through laws adopted by the Parliament*.
3. For institutions and authorities *subordinated to the Executive, guarantees of institutional independence should be mandatory and emphasized*. Interference in functional and operational activity by the Executive should be sanctioned. *Institutions may be subject to control only relating to legality*.
4. Budgetary autonomy means that the institution should be able to formulate its own budget, based on institutional objectives and plans. Any modification of the budget should be justified by a Ministry of Finance opinion. The institution should be granted *sufficient financial resources to perform its operational activity*. *Reduction of the institution's budget throughout the year should be expressly prohibited* by law.
5. The law should establish efficient mechanisms to *protect the institutions' employees from unjustified influence from outside or from within the institution*. Efficient mechanisms will include accessible procedures for denouncement of such cases, launching internal investigations and operative activities, sanctions and penalties for such influences.
6. **Enforcement of criminal sanctions** for illicit external influences on the institutions' activity and staff.

**Resource Center for Human Rights (CReDO).**  
**Independence of public institutions responsible for policy implementation in the justice field**

7. Procedural, administrative and logistical independence of staff responsible for qualification of cases.

**Regarding accountability and transparency:**

1. *Principal-agent relations* should be created *between the mentioned institutions and authorities to which they report* regarding policy implementation in the field. The mechanism separating sectoral functions of policy making and implementation should be institutionalized, thus reducing political influence and intervention in the agencies' activity.
2. The model of administrative and operative subordination should be replaced by *performance reporting* on policy implementation objectives and tasks set before the institution. Institutional reporting is a *modern model for strengthening the separation of policy making and monitoring from implementation functions*.
3. Institutional reporting to the concrete authority, the Parliament or the Executive, should be based on several decisive criteria: 1) main object of the institution's activity should not coincide/overlap with the authority to which it reports, 2) institution's activities should be well integrated with authorities receiving final results of this activity, 3) ensuring efficient and result-oriented performance of the institution.
4. In order to ensure adequate reporting on institutional performance and progress of policy implementation, institutions will draft *institutional plans covering products offered to the society, results and indicators that need to be achieved and expected impact on the field of intervention*.



## ***ANNEX 1. Sources of international best practice***

Principles of the UN High Commissioner for Human Rights relating to the Status of National Institutions ([The Paris Principles](#)) adopted by General Assembly resolution 48/134 of 20 December 1993

European Commission for Democracy Through Law (Venice Commission), [Compilation on the Ombudsman Institution](#), Strasbourg, 1 December 2011, CDL(2011)079.

European Commission for Democracy Through Law (Venice Commission) Report on European Standards as Regards the Independence of the Judicial System: [Part II – The Prosecution Service](#), Venice, 17-18 December 2010, CDL-AD(2010)040

[Guidebook on Democratic Policing](#) by the Senior Police Adviser to the OSCE Secretary General, Vienna, May 2008, 2<sup>nd</sup> Edition

Jeremy Pope, [Independent Anti-Corruption Agencies](#), Chapter 11 in *Confronting Corruption: The Elements of a National Integrity System*, Transparency International Source Book, 2000.

G. Klemenčič, J. Stusek, I. Gaika, [Specialised Anti-Corruption Institutions - Review of Models](#), OECD Anti-Corruption Network for Eastern Europe and Central Asia, 2007

J. Pope and F. Vogl, [Making Anticorruption Agencies More Effective](#), IMF Finance and Development, June 2000, Volume 37, Number 2.

Hans Born and Ian Leigh, [Making Intelligence Accountable: Legal Standards and Best Practice](#). Geneva Centre for the Democratic Control of Armed Forces, Norwegian Parliamentary Intelligence Oversight Committee, Human Rights Centre of the University of Durham (UK), 2005.

## ***ANNEX 2. Sources of information on the studied institutions***

### **Procuratura Generală**

<http://www.procuratura.md/>

Legea nr. 294-XVI din 25.12.2008 cu privire la Procuratură

Hotărîrea Parlamentului Republicii Moldova nr. 78 din 04.05.2010 privind aprobarea organelor Procuraturii, a localităților de reședință, a circumscripțiilor în care activează și a numărului de personal

### **Serviciul Informații și Securitate (SIS)**

<http://www.sis.md/>

Legea Nr. 753 din 23.12.1999 privind Serviciul de Informații și Securitate al Republicii Moldova

Legea Nr. 170 din 19.07.2007 privind statutul ofițerului de informații și securitate

Legea Nr. 619 din 31.10.1995 privind organele securității statului

Hotărîrea Parlamentului Nr. 800 din 11.02.2000 cu privire la aprobarea efectivului Serviciului de Informații și Securitate al Republicii Moldova

### **Centrul Național Anticorupție (CNA)**

<http://www.cccec.md/>

Legea Nr. 1104 din 06.06.2002 cu privire la Centrul pentru Combaterea Crimelor Economice și Corupției / cu privire la Centrul Național Anticorupție

Hotărîrea Guvernului Nr. 50 din 03.02.2010 cu privire la structura și efectivul-limită ale Centrului pentru Combaterea Crimelor Economice și Corupției

### **Centrul pentru Drepturile Omului (CpDOM)**

<http://www.ombudsman.md>

Legea Nr. 1349 din 17.10.1997 cu privire la avocații parlamentari

Hotărîrea Parlamentului Nr. 57 din 20.03.2008 de aprobare a Regulamentului Centrului pentru Drepturile Omului, a structurii, a statului de funcții și a modului de finanțare a acestuia

### **Comisia Națională de Integritate (CNI)**

Legea nr. 180 din 19.12.2011 cu privire la Comisia Națională de Integritate, Regulamentul Comisiei Naționale de Integritate

**General**

Constituția Republicii Moldova din 29.07.1994

Codul Penal al Republicii Moldova Nr. 985 din 18.04.2002

Codul Contravențional al Republicii Moldova Nr. Nr. 218 din 24.10.2008

LEGEA Bugetului de Stat pe anul 2011 nr. 52 din 31.03.2011,  
Anexa nr.2 Limitele de cheltuieli pe autorități publice finanțate de la bugetul de stat

LEGE Nr. 355 din 23.12.2005 cu privire la sistemul de salarizare în sectorul bugetar  
Anexa nr.3 Salariile lunare ale persoanelor din cadrul autorităților publice, numite în funcție conform legislației

LEGE Nr. 48 din 22.03.2012 privind sistemul de salarizare a funcționarilor publici  
Anexa nr.1 Salariile de funcție ale funcționarilor publici conform gradelor și treptelor de salarizare  
Anexa nr.2 Gradele de salarizare pentru funcțiile publice din autoritățile publice centrale

Legea nr. 158-XVI din 04.07.2008 cu privire la funcția publică și statutul funcționarului public

Legea nr. 16-XVI din 15.02.2008 cu privire la conflictul de interese

Planurile de dezvoltare strategică, rapoartele anuale, codurile de etică ale instituțiilor studiate