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NEWSLETTER

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Synthesis and Foreign Policy Debates

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News in Brief



The Constitutional Court suspended on April 23 the two decisions of the Parliament, which aimed at dismissing the Chairperson of the Constitutional Court, Domnica Manole, and appointing Boris Lupășcu. "The interim Chairperson of the Constitutional Court admitted (...) the claim to suspend the action of the parliament decision regarding the annulment by partial withdrawal of the parliament decision no. 121 from 16 August 2019 on the appointment of a judge of the Constitutional Court and the parliament decision from 23 April 2021 on the appointment of a judge of the Constitutional Court, submitted by Sergiu Litvinenco, deputy in the Parliament of the Republic of Moldova", reads a statement of the Constitutional Court. The decision is final and cannot be appealed. On the morning of April 23, the parliamentary majority voted a decision to revoke the judge of the Constitutional Court, Domnica Manole, motivating that the Parliament is the body with the capacity to do so.



The Government of Romania provided to the Republic of Moldova, free of charge, 132,000 doses of AstraZeneca vaccine. The given doses from the reserve of the Romanian Ministry of Health were sent on April 17 to the National Agency for Public Health of the Republic of Moldova, in order to manage the pandemic against COVID-19. "In order to provide support to the Republic of Moldova to combat the spread of the new coronavirus, 2 more vaccine transport missions were carried out, totalling a number of 72,000 doses, on February 27 and March 27, 2021, respectively," said the Department for Emergency Situations from Bucharest. In December 2020, during a visit to Chisinau by the Romanian President Klaus Iohannis, the Romanian official announced that Romania would send to Chisinau an aid of 200,000 doses of vaccine against COVID-19. On the same day, the Republic of Moldova received another 48,000 doses of AstraZeneca vaccine against sent through the COVAX platform, a partnership between CEPI, Gavi, UNICEF and WHO.



The President of the Republic of Moldova, Maia Sandu, paid an official visit to the Council of Europe (CoE), Strasbourg, on April 19, where she discussed with European officials issues related to justice reform, the fight against high-level corruption, the development of an economic recovery programme, cooperation with local public authorities and regional security. Maia Sandu has also reiterated the commitment of the Republic of Moldova to fulfil the obligations assumed upon joining the CoE on building a viable rule of law. "Smuggling, money laundering, hybrid threats are all transnational threats. We have noted that many Eastern European countries are also struggling with weak institutions, which increases our collective insecurity in the region. I understand that there is a fatigue in Europe regarding the prolonged democratic transformation. People in my country are also tired of hearing about endless reforms and failed attempts to provide a better life for all. Authentic transformations require strong political will," said Maia Sandu in Strasbourg. The Council of Europe also launched, on Monday, the Council of Europe Action Plan for the Republic of Moldova for the years 2021-2024 in the presence of the President of the Republic of Moldova, Maia Sandu and the Secretary General of the Council of Europe, Maria Pejcinovici Burci.

The key to a successful reform: judicial integrity above all



Mădălin Necșuțu

Decimated by power struggles over the past 30 years and a fragile democracy, Moldova needs a "zero moment" in terms

of justice reform, perhaps the most important sector that, once reformed, would end the transition period of the last three decades.

The Republic of Moldova is facing a touchstone. We have witnessed in recent months, starting with December 2020, a real assault on the rule of law in which

► the current parliamentary majority has forced both the legislative system through a package of controversial laws and constitutional foundations.

The virulent attacks on the Constitutional Court and its judges have once again indicated the need to strengthen the rule of law. However, this can only be achieved through a profound reform of the judiciary, given that all popular aspirations such as combating poverty and corruption, and creating jobs are directly linked to a profound change in the justice sector that will set the tone for other changes in the Moldovan society.

It is hard to believe that the current political and legal systems will want to change the current status quo. The “bad old” system will not give up easily. It takes a lot of political will and, why not, external support from development partners to achieve this goal. No reform is easy to implement, but it is vital for the Republic of Moldova to start with the recovery of the current political class and of those in the judiciary and prosecution who do not really want a change.

The closed caste in which they are carrying out their activity has to become transparent. It has to align itself with the other two powers - the executive and the legislative - and form the triad of the balance of power in the state so that the Republic of Moldova can become a true Western-style democracy without autocratic features.

Corruption is a widespread and deeply rooted phenomenon in Moldova

Olesea Stamate, presidential adviser and former Minister of Justice of Republic of Moldova



We have discussed with the presidential adviser on justice issues, Olesea Stamate, about how the judiciary in the Republic of Moldova could be reformed and how viable the solution of the external evaluation of magistrates is on the backdrop of the autocratic tendency of this increasingly closed and opaque judicial system. She explained to us the resources behind a successful reform in this absolutely priority area for further development of the Republic of Moldova in the spirit of democracy and European values. Read about this in the following interview:

■ ***You have visited recently the Council of Europe, where the CoE Action Plan for the Republic of Moldova for the years 2021-2024 was signed. Could you please explain to us what this document entails, especially in the area of justice?***

■ This document has several components related to the justice area on various levels, including certain changes in the functioning of the judiciary, for instance the functioning of the Superior Council of Magistracy. The same is true of other institutions supported over time by the Council of Europe such as the Council for Equality and Elimination of Discrimination.

The document also provides for the promotion of alternative methods for non-judicial cases resolution. In principle, the document is a continuation and a deepening of what has been done in the last 5-10 years.

■ ***President Maia Sandu told the Council of Europe in Strasbourg that the fight against corruption remains her number one priority. How hard is the struggle with the political kleptocratic system of Soviet origin in Chisinau?***

■ The fight against corruption is hard. I am referring here to all areas, both corruption in the political system and in the justice sector. Corruption is a widespread and deeply rooted phenomenon in the Republic of Moldova. This is very damaging and we see that cases of both petty and large-scale corruption exist in other countries too.

Corruption is everywhere, from petty to large scale, in all areas of activity and this has an impact on the lives of ordinary citizens, the investment climat, and public budget, because with budget money we pay the reparations following the ECHR trials. But not only. I believe that if we were to calculate the indirect damages of corruption, they would exceed ten times the damages we pay by executing the ECHR decisions.

But the fight against corruption cannot be waged by the president alone, because she does not have such powers. It is very clear that the fight against corruption has to be carried out by the institutions with competences in this field. I am referring here to the Anti-Corruption

Prosecutor's Office, the National Anticorruption Center, the National Integrity Authority (ANI). However, these institutions are unfortunately malfunctioning. Specifically, they do not deal with what they should do for various reasons.

■ ***Did you also discuss justice related issues during your recent visit with President Maia Sandu to Bucharest? If so, can you please tell us what it was about and how Romania could help us in this regard?***

We discussed this issue though it was not necessarily the key topic of our discussion. However, this topic was also addressed with the representatives of the Romanian Senate, for example. There were some questions about how Romania could help us in the fight against corruption and in restoring justice in the Republic of Moldova. And the president said very frankly: "If you can send us some good anti-corruption prosecutors to Chisinau, it would be good."

But I understand that this exercise is a little more complicated, not necessarily impossible. In addition, other issues related to justice and the situation of human trafficking, violence against women and other such justice related issues have been discussed.

Reform of the judiciary, number one priority

■ ***If we were to make a list of reforms in Moldova, where would you place the judiciary reform?***

■ Obviously, it would come first. This is undoubtedly the first reform we need. That is why it is permanently

present in the President's speeches. It was also the number one message in the presidential election campaign. This is one of the key reasons why she received that vote of high confidence from the citizens. Because we have come to understand it that as long as we don't reform the judiciary, we cannot move forward.

And you will see this also in the polls. Most of the time, among the problems identified by the citizens, poverty, lack of jobs and then corruption are at the top. At present, in several polls, corruption ranks at least second, while the respondents from Chisinau put corruption in the first place. Perceptions have been changing lately. People understand that poverty is actually generated by corruption and that there is a direct connection between the two.

■ ***Is judicial integrity the key to judicial reform in the Republic of Moldova? What role should integrity (now at around 23%) play in the evaluation of judges? Is its role underestimated or not? What should be the weight of integrity in the judges' evaluation process?***

■ I believe that integrity is the key element and I do not know if we should assess this aspect as a percentage. Of course, there are other important elements such as professional training, experience, etc. Integrity, however, must be the first thing on the table. We are not saying here that there should be 50% integrity and 50% professionalism, no.

There must be integrity above all and integrity either exists or doesn't. It can't be measured in percentage.

If there is integrity, we can move on and discuss other issues as well, namely, if the judge is professional or disciplined and so on. Thus, integrity is paramount. Absolutely.

Extraordinary evaluation, an option for cleaning the system

■ ***The presidential institution is promoting the idea of external evaluation of judges. How do you explain its necessity and what are its advantages?***

■ Its necessity stems from the fact that, for many years now, the evaluation or cleaning of the system from within, using the available mechanisms, has not worked. When we came to power in 2019, I told my colleagues in the system. “Look, we are working on a bill on the extraordinary evaluation of actors in the justice sector. We are giving you a chance. As we prepare the legal framework for this assessment, you have the opportunity to demonstrate that you can clean up internally. If you do this, we don’t need extraordinary evaluation. So, it’s very simple.” Unfortunately, this did not happen. There were certain attempts when we were in government. We had some opening messages, then the Prosecutor General came to the SCM and asked for the lifting of immunity of two judges who were being investigated for illicit enrichment.

So, there were some signals. But then the Sandu government has lasted only for five months and thus could not work miracles. We know that, in principle, the justice system is quite dependent on what is happening in

politics. Somehow, the temperature in politics also has an impact on justice. But in order to avoid these permanent interdependencies in the face of changing governments, we need to think about some sustainable changes. And we believe that this extraordinary evaluation is exactly the beginning of these sustainable changes.

Yes, it will not have immediate effects. And even if we have a body of judges and prosecutors who have gone through this filter of extraordinary evaluation, we have no guarantee that things will be irreversible immediately. But we are beginning a long process that will help create an internal culture of integrity.

The critical mass in the justice system will no longer be made up of corrupt people, but will be composed of honest people. The latter will have the interest to remove them from the system as soon as they notice any corrupt colleagues or at least marginalize them. Now exactly the opposite is happening. We have honest judges who are marginalized and stigmatized by the judges or prosecutors who systematically break the law.

■ ***How could this hard core of people deeply rooted in the system that oppose such reforms be broken? Some of them are elderly and do not leave room for the young people with a newer vision of how the act of justice should be done...***

■ Namely the extraordinary evaluation is one of these mechanisms that could allow this. Most of the time, those who are

rooted in the system and corrupt are the ones who, of course, do not want to change the current status quo. They like the current situation.

And most of the time, obviously, they are the ones who participate in various schemes and acts of corruption. However, the extraordinary evaluation will identify them and eliminate from the system. Of course, there are also potentially shorter and easier ways, because extraordinary evaluation is a more complex and long-lasting exercise.

Need for resolution of major cases

■ ***And what would be the shortest way in this process?***

■ The shortest way would be if we had a brave enough general prosecutor to initiate proceedings against at least 4-5 major actors in the judiciary, but also in the prosecution system. This could set an example for everyone else. They would thus understand that from that moment on it is no longer possible, you either comply and play by the rules or you will be brought to account. For this to happen though, some of these “big fish” must be punished. However, for now, this has been delayed, and we do not even see a dynamic in this regard. That is why, as mentioned above, the extraordinary evaluation remains the only viable opportunity.

■ ***Do you see such a desire on the part of Mr. Stoianoglo or can we rather talk about the fact that he is also part of this system and the hard core, which we were talking about earlier? Sometimes he shows***

signs of wanting to get involved in investigating big corruption cases, but much remains at the intention level. How do you explain these sinusoidal movements of him?

■ It is difficult to understand what is happening with the Prosecutor General. Also for me this is sometimes a mystery. I think he is surrounded by people who have certain interests. But it is him who surrounded himself with these people, so he has no one to blame for that. It is not us who appointed new deputies and interim heads of the specialized prosecution office. It is him who selected them.

If he wants now to shift the blame on someone else for this, he can only blame himself, because he could have chosen other people. I understand that there are certain problems at the level of specialized prosecution offices. Even before 2019, but also now during this period, several honest prosecutors have left the institution. They knew how to do their job and they could no longer work in such an environment. The question now is what kind of environment the prosecutor general created if such prosecutors left.

From my point of view, there is no will at the level of the General Prosecutor's Office for major changes. Yes, certain things have been done. We have seen, for instance, searches and criminal cases initiated against the leadership of the National Administration of Penitentiaries. We cannot say that nothing has been done, but certainly either the priorities have not been identified well enough or they are deliberately not being addressed.

A functioning ANI, one of the main challenges

■ ***How do you see the functioning of the National Integrity Authority (ANI)? What more should ANI inspectors do for a better functioning of the institution in the conditions in which there has been observed that ANI still doesn't seem to have the courage to start investigating into possible irregularities of bigger names in the Moldovan politics, but also in justice, and it is more about low level officials?***

■ We have the same situation here as in the case of the General Prosecutor's Office. There are cases that have been dragging on for months and even years, where the discrepancy between the assets acquired and the income obtained is obvious.

And it is difficult to explain why this is happening. It becomes visible somehow that ANI has been focusing a lot on elucidating conflicts of interest more often at the local level. Of course, this creates a sense of mistrust in the work of this institution, as ANI should be the first filter to deal with integrity in the public sector. It is the institution that prevents. Even if they notice things that have already been done, their control is preventive. This gives the opportunity to remove from the public sector the actors with certain suspicions of integrity so that you don't have to initiate criminal investigations against them later on.

■ ***Why is ANI reluctant to go after the "big fish" that you've talked about earlier? When they approached some deputies, ANI withdrew immediately***

after the deputies had reacted. Why is this happening?

■ I think there is pressure exercised on ANI. I don't know to what extent this is about the ANI management, but certainly pressure has been put on the integrity inspectors. Influence comes from different parts, trying to influence the integrity inspectors' activity. But the basic problem is that the management of the institution doesn't have enough courage to move forward, regardless of political colour or who is targeted.

Transformations certainly don't happen over night and this behaviour is the result of the last 10-20 years during which the state authorities have functioned in the same way, trying to be somehow friendly with everyone, except the law, and maintaining good relations with everyone in power for any eventuality, because the heads of institutions don't know where they will work tomorrow. But this is the happiest case.

■ ***How do you interpret the constant pressure put by political actors on the judges of the Constitutional Court (CC), who have been bombarding the CC with complaints from the political area in recent months? By the way, the chairperson of the CC, Domnica Manole, asked for security after she had been threatened.***

■ This is unfortunate and of course there should be no such situations in a democratic state, but we are not there yet and I regret that certain actors who try to influence certain decisions of the Constitutional Court are making such abuses. Such attitudes cannot be tolerated.

On the other hand, it is satisfying that the judges have withstood the pressures and I very much hope that this will be a lesson for those who have tried to exert pressure and that such situations will not happen again in the future.

■ ***Igor Dodon has accused the Constitutional Court of being under the control of President Maia Sandu recently, but at the same time, we saw that PSRM has been intensely promoting the candidature of Vasile Bolea in order to take control of the institution through intermediaries.***

■ I would rather see the ambiguity in the statements made by those from the PSRM following some decisions of the Constitutional Court. When the decision suits them and they like it, they praise the work of the CC, and when it doesn't suit them, they accuse the Chairperson of alleged influences, which is inadmissible and seems to me a childish game on their part.

And let's not forget that one of the judges of the CC [Vladimir Țurcan] is clearly a person close to the PSRM. It's a known thing. Two of the Court's judges were also elected by Parliament following a contest which they annulled and instead two other judges have been elected. Back then, being dissatisfied with the result, they appointed two other judges, including Domnica Manole. I mean, it is them who appointed her and they now want to withdraw her from the Court. It is simply ridiculous!

On the other hand, I don't believe the promotion of Mr Bolea to the vacancy of judge at the Constitutional Court is a serious intention. It was rather to

distract the attention from the real candidates promoted by them.

Restoring trust

■ ***How can the trust of Moldovan citizens in the justice sector be restored, one of the sectors with the lowest trust?***

■ Confidence will continue to decline unless certain very tough and direct actions are taken to reform the justice sector. We are not necessarily talking now about reforms such as the adoption of strategies and laws. We had enough of such. They were written very nicely, only they didn't have any real impact.

I believe that trust can be restored and that is exactly what we are working on. If the justice system works well, not immediately, but in a very short time, citizens will begin to regain their trust in it, because they will realise the judges or prosecutors are doing their job according to the law. And, step by step, the confidence level will increase. But this requires very tough reforms, starting from the top, and that is exactly what our concept of extraordinary evaluation provides for. Or, as I said, there is a simpler way, a scenario in which some "big fish" are caught and punished [among magistrates, for instance], and the others change by the power of example. Not immediately, but change is going to happen.

Some will quit, others who are close to retirement age will leave until the prosecutors have caught them, and the system will begin self-cleaning. But this requires some firm action from the Prosecutor's Office.

However, if this doesn't happen, extraordinary evaluation remains the only solution. You have to understand that there is a vicious circle here in the judiciary: we have two governing bodies that were designed according to the best European practices, but work according to the practices of the Republic of Moldova. And that's a problem.

Even if you are not satisfied with the activity of some members of the General Prosecutor's Office or of the specialized prosecution offices, you cannot replace them now, because you are blocked by the Superior Council of Prosecutors (CSP). Only the CSP adopts the decision on the appointment of the Prosecutor General. Of course, the prosecutor is later confirmed through a presidential decree, but you can't do anything without the CSP's decision.

The SCP is perhaps a more closed caste than the SCM, because the prosecution system is also more closed than the judiciary. Both the SCM and the CSP, being in principle similar, are the essence of the system. And as long as the system is largely corrupt, with some obvious exceptions, these bodies are the mirror of this system.

And the circle continues. Even if the mandates of some SCM and CSP judges and prosecutors expire this year and towards the end of the year, elections should be organized and new members - prosecutors and judges - will be elected, the main body of these institutions remains unclean. Thus we are in a vicious circle that is not going to end until we start cleaning the system.

■ ***Thank you!***

The public perception, which is not far from reality, is that the system is deeply corrupt

Ion Sturza, former Prime Minister of Republic of Moldova, president of APE



Former Prime Minister and President of the Foreign Policy Association of Moldova (APE), Ion Sturza, gave us an interview in which we addressed issues related to the justice reform in Moldova and how it could be done for the benefit of citizens. We have also discussed about the political class and the best ways to proceed with the judiciary reform in order to unlock trust, but also the funds of Moldova's external partners. We are inviting you to read the full interview below:

■ ***What would be in your opinion the pillars of a successful judiciary reform in Republic of Moldova?***

Is judicial integrity the key to the judicial reform?

■ Of course, integrity is the key to this reform because we have been dealing with the justice reform ever since the first day of Independence. Exceptionally big efforts have been wasted, but also money. One of the biggest sponsors of this process was the United States. A few years ago, they made a report announcing that over 60 million dollars has been spent on the justice reform in Republic of Moldova. Not to mention the budgets that have been allocated by the European Union or on the bilateral level. Unfortunately, this is a kind of saga, a serial with no end. Even during my time in Government [1999], we developed

some fundamental things such as the Criminal Procedure Codes.

However, I don't know what could be reformed today. What else could be invented but to implement the reforms? The Superior Council of Magistracy (SCM) was established as an independent and self-governed body of magistrates. Theoretically, the political system has no longer leverages to influence justice.

To get back to the judiciary, we need to talk about credibility and integrity. The public perception, which is not far from reality, is that the system is deeply corrupt and that all decisions are made according to the size of the wallet [of one of the parties] and that neither citizens nor economic agents can be sure that they can be protected by law and this system. And that is the fundamental problem. This is I think Maia Sandu's main stake or the stake of the newcomers in politics - to still try to make this system work for the law and for the people.

■ ***How do you assess the political pressure put on the Constitutional Court in recent months? Who is doing that and for what purpose?***

■ The stakes were too high. On

the one hand, some wanted early elections because they look good in the polls. Others understood that they not only have no chance to get a good score, but also to enter the Parliament. Thus, the stakes became very high.

After all, politics in Moldova means influence, money and many other things for those who practice it. Therefore, pressure was exerted, taking into account the previous experience, because the Constitutional Court, especially after 2000, has been very flexible in interpreting and reinterpreting the Constitution in the interest of certain groups of influence. Sometimes, it was even materially stimulated. They have tried again this time, but it didn't work. Or rather the influence was more in the area of "principles and values", in the area of ideology and less in the area of material incentives.

■ Are early parliamentary elections a certainty now after the Court's decision or can we still expect surprises from the current opposing parliamentary majority?

■ Nothing is certain in Moldova. Obviously, we have a major numerical imbalance between Maia Sandu and everyone else. Today, only Maia Sandu and PAS want early elections, while everyone else doesn't.

It is clear that the fight is not over yet, but this decision of the Constitutional Court is a very important step in triggering early

elections. I believe that everyone in Chisinau should resign and accept that sooner or later these elections should take place. The sooner the better, because this moral and legal disaster in Parliament can no longer continue.

Closed caste that works according to its own rules

■ There are many cases reported in the press regarding the integrity of certain magistrates. The cases have been made public, being well known to the general public. How does it happen that such people end up with key positions in the judiciary? How is this phenomenon explained?

■ It is because the system itself chooses them. And the system is not monitored by the society. It is not influenced for better or worse from the outside. They took advantage of the autonomy of the system and created their own internal system of protection, promotion, which is based on anything but competence and meritocracy.

There are also exceptions, but as you have seen, all those who are the exception are in one form or another expelled from this system. It's a major problem to break this group matrix. Maia Sandu's attempts, sometimes desperate, to bring the external evaluation can also preserve this system. We can take the example of the General Prosecutor Alexandru Stoianoglo, whom I'm still giving a credit of

trust, and who has been selected through the process chosen by Sandu.

Today, however, a large part of society, including Maia Sandu, is challenges Stoianoglo. At the same time, I think that if it had been someone else, Sandu's favourite for instance, would he/she have been able to break this system? I doubt it as I think there are no quick or miraculous solutions. It is a lasting thing that should be taken step by step. And here we could take the example of other countries. Maybe even from Romania or other European countries, but let's not have illusions. This is our society. As long as we are poor, as long as we have a totally corrupt political system, a non-transparent economic system, we cannot create a haven of transparency, professionalism and integrity in the judiciary.

■ Why do you think the judiciary is reluctant to the idea of external evaluation?

■ Even if some would consider themselves less targeted or in danger of this evaluation, this caste does not want to have any cracks. Any small crack in this internal process of nepotism, relationships and kinship, dependence on each other, which exists today in the judicial system of Moldova cannot be accepted.

Those in the judiciary should also understand that they cannot be out of public control. Even if they want to be out of political influence,

in the end, the Parliament is the exponent of the people's will and the Parliament is the one that promotes the rules of the game.

Here we should not exaggerate when we're saying that the system should be completely out of political or public control.

Modest results of the National Integrity Authority

■ **How do you see the functioning of the National Integrity Authority (ANI)? What else can ANI inspectors do for a better functioning of the institution?**

■ For example, in Romania after 2004, an entire system of law enforcement institutions was created. These institutions were interconnected and worked in parallel. This also refers to the Romanian Intelligence Service (SRI) and the National Anticorruption Directorate (DNA) and to ANI and the judicial system that started front-end the cleansing of the Romanian society, not only of politics. Because the legislation was quite permissive. And we have witnessed some really spectacular trials. Following the ANI decisions, the careers of many senior officials have ended abruptly.

I don't know to what extent this matrix experience, which in Romania they call it "parallel state", could be built in Moldova. But the idea itself is absolutely ok. We have practically identical legislation and a process of employees' selection at

ANI, but the result is very modest. Because it is about the perception that ANI doesn't touch politicians. And ANI has started with some extremely marginal or superficial cases, leaving aside the more serious ones.

If ANI imposed a more rigorous control on the politicians and civil servants in a correct and lawful way, I don't think any of the local politician or elected official in Moldova would survive it.

I think it's a "youth disease." Many institutions in the Republic of Moldova, and here I am referring to the Competition Council, ANRE and others, which are quite independent, have good legislation as support, but are very shy in exercising their functions.

Resolving major cases

■ **How can the trust of Moldovan citizens in justice, one of the least trusted sectors in public polls, be restored?**

■ It could be restored if there was a finality at least on the big cases. With regard to big cases, it is not only the historical justice or the punishment of notorious criminals that matter. This is also an element of public cleansing, where the system would give a very clear signal. It could say: "No matter how much pressure and how much money are at stake, we have solved the cases and did justice to you, citizens, because they've stolen from you!"

And this could have an extraordinary psychological effect. The same happened in Romania with prime ministers, famous businessmen, etc. And this has played an important role in the positive public perception regarding the justice system. This is also needed in Moldova, but unfortunately, things are not only dragging on here, but they are also derisory in this regard.

I don't see how this justice system could change the public perception. Moreover, we are looking at the macro level and many of these big issues are unresolved. But at the same time, tens of thousands of people have been clashing with the justice system in the Republic of Moldova every day. Almost every citizen has a problem that should be resolved in court. So, through personal experience, often a dramatic one, they lose confidence. Because they may not have had the right to a proper investigation, they may have been subjected to pressure to pay bribes and many others.

And I don't learn about these things from the press, every day I face people who come to me, asking to give them 10,000 Euros to pay a prosecutor or a judge, because their child got into trouble. These are dramatic things. Even if we are going to solve these problems or major cases, we need to do something for ordinary citizens facing this system.

■ ***Speaking of major and difficult cases, do you think at least a small part of that stolen billion will ever be recovered?***

■ It's a shame. I think that the mere fact that there is a party named after the biggest crook in the recent history of Moldova is a big shame. If we had more dignity, we would erase not only the party, but also this name. This is a big shame and it shows how rotten the society is, but also the political and economic systems.

Based on how the prosecutor's office is acting today and the investigations, the chances of recovery are null. It was an extremely trivial scam in itself, but with treacherous ramifications that you can't take it head-on. Even if we brought and put Ilan Șor and a few dozen other accomplices behind bars, this alone will not help to recover at least any part of the money.

There are other ways of recovering that money. I've said it publicly before as the accomplices were not only in the country, they were also abroad. I am referring here to the correspondent banks, to large international banks through which this money has passed and which have violated all national and international rules of financial prudence. They are subject to liability and should be held accountable for recovering the damage as other states do and there are many examples in this regard. We,

however, are being led astray, in my opinion.

Electoral chances and European money

■ ***Regarding the parliamentary elections, what good strategy do you see on the right-wing?***

■ In Moldova, there is no exactly right- and or left-wing parties. The pro-Europeans think of themselves as being on the right-wing, and the pro-Russian and Eurasian vector on the left-wing. However, I see right-wing parties that could work with the East and left-wing parties that could integrate into the left European political families.

The right-wing parties have now the chance to get a historic score in the upcoming parliamentary elections, which will allow them to form a majority and a one-color government in Chisinau. Unfortunately, when we talk about this right-wing parties, we refer primarily to PAS, which for me is still an enigma of what it represents.

In fact, the credit of trust will be given to Maia Sandu. The other parties on the right-wing have virtually no chance of entering Parliament. It's a sad thing. Maybe if they formed a wider coalition and focused on challenging anti-European and anti-Romanian left-wing competitors, they might have a better chance. But I know what they are going to do, namely they will challenge Maia Sandu. As the

former ally Andrei Năstase is doing with great enthusiasm, to our great regret, and as the so-called unionist parties do. And so, all the weight and responsibility of the so-called pro-European right lie on Maia Sandu's shoulders.

■ ***Does external funding depend on the judicial reform? If reforms were launched, would more money come to Chisinau from Brussels?***

■ Not just from Brussels. A surprise was also Romania, which so far has not talked much about the problems of justice and corruption in Chisinau. Not that they were ashamed, but because they had corrupt and non-transparent correspondents in Chisinau.

Now, apparently, the funds that should be allocated by Romania to Republic of Moldova are conditioned by the fight against corruption, which is a good thing. I believe that, in general, this conditionality has been inspired by Chisinau. Desperate of putting those in Chisinau to work or making them more aware, I believe that Maia Sandu and some politicians in Chisinau are trying through Brussels to condition the allocation of funds, which is crucial or very important for the Republic of Moldova through the reform of the judiciary or the fight against corruption.

■ ***Thank you!***

Editorial

Justice, in deliberation. It's been 10 years!

Ten years ago, Republic of Moldova officially undertook to reform the judiciary. It has adopted a first Justice Sector Reform Strategy for five years. Then, after studying and analysing the results of the “Great Reform”, the rulers decided that a “shock therapy” was needed in the judiciary. The “shock therapy” has weakened the sector to such an extent that, since 2018, the changing governments have been reluctant to apply but “soft treatments”: a “small reform” of justice, then a “short reform” of justice. Who knows what's next? The frequent changes in the “treatment schemes” and inconsistencies on the part of those who applied them have strengthened the resilience of the judicial actors to reform “treatments”.

When did we get the “treatment” wrong?

The reform actions implemented over the last ten years have clearly shown that the main mistake of the reformers was that they focused too much on changing the “forms”, while ignoring or paying too little attention to the “content”. The change of the judicial map, the adoption of a new Law on the Prosecutor's Office, the amendment of the legislation on the Superior Council of Magistracy, etc., did not ensure, unfortunately, a more independent and fair justice. Why? Because they did not ensure a better quality of the actors in the justice system. The society has lost confidence in the judiciary not because of the poor internal organization chart or because a court is closer or farther from their home, but because there are too many compromised judges and prosecutors in the system.

When admitting to the system and promoting, the “filters” of the Evaluation Board and the Selection Board are set to benefit those with experience to the detriment of those of integrity, it is complicated to clean up the system. However, professionalism and experience do not necessarily imply integrity of magistrates. And the lack of integrity often



**Editorial by Mariana Rață,
journalist, TV8**

becomes an instrument of blackmail and control of professional and experienced judges.

14 points for integrity

A simple evaluation of the criteria used by the SCM Performance Evaluation Board of Judges shows that out of the 100 points awarded in the evaluation, the integrity of judges “weighs” only 14 points, while for the efficiency and quality of work, that is, experience and professionalism, 80 points are awarded.

The integrity of judges is less relevant to the assessment than how quickly the judge drafts decisions and resolves cases. 14 points for integrity vs. 80 points for the speed of solving cases and drafting decisions.

The criteria for assessing the integrity of judges established by the Regulation adopted by the SCM are also curious. If you expect members of the Performance Evaluation Board to look into whether the judge has been involved in public scandals, has properties that exceed revenues, spends more than he/she earns, has made decisions that have laundered billions or committed raider attacks, their activity endangered the state security, you are wrong!

What matters to them is that the judge has no disciplinary proceedings, has not lost cases in the ECHR in the last six years (despite the dozens of cases lost before that period), respects the Code of Ethics, which FORBIDS them to criticize their colleagues, make public statements without the permission of the superior, and wash the dirty linen in public.

It is important that the judiciary recognize his/her authority, but what really matters is what the court chairperson thinks about the reputation of the person under evaluation. With such integrity assessment criteria, the system is destroying the dissidents and whistle-blowers in the judiciary preventing any attempt by reformist forces within the system.

Even so, a judge with a total lack of integrity, who doesn't get any points on this criterion, can obtain the grade "very good" from the Performance Evaluation Board and the Selection Board (71-85 points) and thus green light into the system and promotion. The system stimulates loyalty and dexterity, not honesty!

"Filter" in deliberations

After passing the Colleges, the judges to be appointed or promoted get through the second filter, which is even more uncertain, and more unclear - the Superior Council of Magistracy. So far, it is not clear to experts, journalists or society how a judge who cannot justify his/ her fortune, targeted in journalistic investigations on corruption or money laundering, is preferred by the CSM in promotion to another honest or less controversial judge.

I asked about this one of the CSM members from among law professors, in the context of the recent competition for the position of Chairperson of the Chisinau Court of Appeal. While answering the question why they had voted for a controversial candidate with suspicions of integrity, the answer was: "We chose him because he is a professional!". In other similar cases, the SCM members' response was even more laconic: "That was based on the intimate conviction!".

What can be the margin of "intimate conviction" in making the decision to admit or remove a judge from the system? Can it exceed the points received by the candidate for efficiency, quality or integrity? The answer can be found in the "breaks" of the SCM deliberations, but not in the decisions of the Council, which should be well reasoned. Unfortunately, they are not.

"Fresh Blood" Traps

In the last four years, 130 new judges have accessed the judiciary. This accounts for a quarter of the total number of magistrates (489 judges). However, the "fresh blood" instead of improving the state of affairs and the perception of Justice, has been assimilated and homogenized with the old one. A study conducted in 2018 by the Center for Legal Resources of Moldova showed that almost 50 percent of judges in the Republic of Moldova had less than five years' experience and were not yet appointed for life. The initial five-year term affects the independence of judges in an essential way and is exactly the period in which the system makes them loyal.

My observations resulting from the investigations I have made in recent years are that several major cases or

controversial decisions have been handed over to judges who were in that 'trap' of the first five years of activity. It is also about the case on the cancellation of the results of the 2018 local elections in Chisinau, and the Filat and Șor cases, or the kidnapping of the Turkish teachers. Those who passed the "fire test" were promoted for a period until they reach the age limit (e.g. Andrei Neculcea, Olesia Țurcan). Those who opposed and reported the bad influences in the system were removed from the system at the first five-year exam. Eloquent in this sense is the case of the judge from the Ciocana court, Mihai Murguleț.

The Government has committed to amend the Constitution in order to eliminate the initial five-year term of office of judges for already ten years. It only takes 61 raised hands in Parliament to adopt and implement this commitment which requires no budget allocations or other efforts. However, so far, this threshold has not been removed.

Compromised judges given farewell with honour

The only solution successfully applied by the CSM and the state so far to get rid of compromised judges was to create advantageous conditions for them to retire - either high retirement benefits for leaving the system, higher pension or other benefits.

All this has been granted for a period of time to allow those who discredited the justice system to quit the system. And so, instead of punishing those who have damaged the image and credibility of the judiciary, the CSM sent with honour. It is natural to ask ourselves: what does the judicial self-regulation body lack - evidence or courage?

How is the door of Justice going to open: from the inside or from the outside?

The above arguments above show that the system was never open for a real lustration and that it has always looked for solutions to dilute the condition of integrity for judges among dozens of other technical conditions.

In view of the emergence of a clear political will to clean up the judiciary of corrupt and compromised judges, the moment will soon come when the judiciary will have to choose - either clean up the house themselves and then unlock the door for the society to see the change, or the door of Justice will be forced from the outside by a tough external evaluation of judges. It is up to the magistrates to decide which solution suits them best.

Expert Opinion

Integrity should be promoted by strengthening the efforts, but also the integrity control mechanisms of ANI, CSM and CSP

The judiciary in the Republic of Moldova faces a lack of trust due, among many others, to the lack of integrity of actors in the justice sector. The society perceives the lack of integrity through journalistic investigations that reveal serious cases of conflict of interest, unjustified assets, luxurious lifestyle and connections with politics but also with organized crime.

Julian Rusu, Deputy Executive Director of the Institute for European Policy and Reform (IPRE)

Although the national law emphasizes integrity by verifying the assets and interests of legal actors by the National Integrity Authority (ANI), but also the professionalism and impeccable reputation, the regulations implemented by the Superior Council of Magistracy (CSM) and the Superior Council of Prosecutors (CSP), both in the justice system as well as outside it, there is a perception of selective or even arbitrary application of these requirements towards the representatives of the justice system.

I believe that integrity has to be promoted through the strengthening of efforts, but also the integrity control mechanisms of ANI, CSM and CSP, as well as through much more drastic tools such as the extraordinary evaluation of actors in the justice sector.

In the first case, the verification of integrity and interests by ANI requires additional impetus, by prioritizing the subjects to be assessed in the first place and by providing additional tools such as assessing the wealth in possession at market value, by expanding the circle of people verified, in particular of the relatives of the judicial actors subject to control and by removing the legal loopholes allowing for the legalization of assets of dubious origin through donations in family events.

Integrity either exists or doesn't

Integrity cannot be set in percentages. This is one of the main problems of the current mechanism within the CSM and CSP. The specialized colleges of these two self-management authorities



are guided by their own regulations that set a percentage share for integrity, which is a wrong track from the start. Integrity of a justice sector representative either exists or doesn't.

If the candidate for the position of judge or prosecutor, at the beginning of his career or later in promotion, cannot prove where the assets he/she holds come from or his relatives cannot prove the origin of those assets, we can no longer speak about integrity. What is worse is that integrity is assessed as a technical criterion in the assessment process and is not treated as an admissibility criterion in the profession.

In the absence of integrity, a candidate for the position of judge or prosecutor cannot move to the

next stage of evaluation and has to be disqualified, while the data at the basis of this decision should be sent to ANI, criminal prosecution and the state tax service for application of the law - control of property, confiscation of unjustified property, criminal sanction for illicit enrichment or application of another article of the Criminal Code, in the presence of necessary evidence, as well as application of provisions relating to the payment of taxes established in the Tax Code.

No finality on major cases

The extraordinary evaluation of justice actors is an extraordinary exercise and applicable when other instruments do not prove effective. In the case of the Republic of Moldova, we are, unfortunately, in such a situation. The actions taken to ensure the integrity of public persons in the justice sector and the non-admission of compromised persons to the system have not produced the expected results.

Although actions have been taken to increase the salaries of judges and prosecutors, more leverages have been offered to the CSM and the CSP to apply professionalism and integrity criteria, the working conditions for judges and prosecutors have gradually improved, new authorities to support prosecutors in criminal prosecutions have been established - Agency for Recovery of Criminal Property (ARBI) - but also the positions of the Service for Prevention and Combating

Money Laundering (SPCSB) and of the National Anticorruption Center (CNA) have been strengthened, there is no finality on major cases, while controversial judges and prosecutors still work in the justice system.

In order to be able to apply the extraordinary evaluation of actors in the justice sector, three essential conditions are needed: political will, support from development partners and sufficient financial and human resources. Within IPRE we have already presented one of the institutional options of such an evaluation, which also took into account the constitutional provisions related to the functions and powers of the SCM and CSP, but also those related to the independence of judges.

In short, the proposal involves the creation in cooperation with the development partners of an International Monitoring Mission (IMM), which will participate in the selection of members of the Evaluation Commission (EC) and of judges of the Special Board of Appeal (CSA). The IMM will provide both the support needed to substantiate EC decisions, but will also be able to challenge the EC decisions if they think they are unfounded, incomplete or subjective. The CSA will examine the appeal against the EC decisions, including the appeals by the persons subject to evaluation.

In order not to block the justice system, the evaluation is proposed to take place in three stages: in the first stage, there will be evaluated

the leading professionals of the Supreme Court of Justice (SCJ) but also judges of the SCJ, chairpersons and deputy chair persons of the Courts of Appeal, the members of the SCM and the CSP, the persons with management positions within the General Prosecutor's Office and the Specialized Prosecutor's Offices (PA and PCCOCS), as well as the managers of other authorities active in the justice sector. In the second and third stages, the evaluation of the other actors in the justice system will be based on the hierarchy within the courts and prosecutor's offices.

The mechanism needs to be applied only once, and the process of developing and testing the model requires close consultation in terms of constitutionality but also compliance with the recommendations of the Venice Commission.

Direct control will focus primarily on integrity. If the integrity criterion is not met by the evaluated persons, the professionalism criterion will no longer be evaluated. In order to comply with the constitutional requirements related to the presumption of legality of ownership, the EC will initially present evidence confirming the contrary, while the evaluated person will have the opportunity to argue his/ her positions through additional evidence.

How can ANI be helped

ANI is the authority that verifies the wealth and interests of all persons with public positions established by

law, including participants in justice. Thus, in order to ensure a priority focus on the assets of actors in the justice sector, a minimum percentage of the total number of people in public office, including justice actors, should be set for ANI.

Secondly, ANI has demonstrated recently more openness to the information that has become public, thus undertaking the actions required by law. However, the verification of assets is limited by the current legal framework, which states that the declarant shall include in the declaration the contractual value and not the market value of the asset, shall not include a larger circle of family members of the person subject to control, subject to verification of assets, and the sanctioning process also involves the judicial control of the documents issued by ANI. In addition to these legal drawbacks, there is an insufficient number of integrity inspectors as well as

limited access to data held by other authorities that have information on the persons subject to verification. On top of that, ANI does not have access to information with regard to properties in other states.

It is essential that ANI take the initiative on major cases, which involve people with leading positions in the justice system, which has been mentioned several times in the investigative press. These cases, which raise multiple questions about the integrity of justice actors, especially those who also hold leadership positions, hit hard on the image of the justice system, discrediting judges, prosecutors and other honest professionals in the system.

In this sense, the prompt response from ANI regarding the information published in the press is all the more important as the citizens are waiting for the finality of the journalistic investigations made public. The institutional and organizational

constraints of ANI are not seen as a credible argument by citizens, so that the image of ANI also suffers from the delay in examining these important cases.

Last but not least, the activity of ANI was also subjected to coercive attempts through restrictive regulations. The amendments to the law made by the Parliament in December 2020 and subsequently suspended by the Constitutional Court further affect the institutional stability and compromise the efforts made to deliver on major cases.

The use in bad faith of the retroactivity principle of the milder criminal or administrative law, which is found in the amending law adopted by Parliament, only betrays the interest in limiting the ANI interventions, including when verifying the assets and interests of political actors holding public positions. Such attempts are inadmissible.

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