ANALYSIS

DEMOCRACY AND HUMAN RIGHTS

THE PRE-VETTING PHASES: THE UNSEEN FACE OF JUSTICE REFORM

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February 2025

The study analyses the implementation of the process of extraordinary evaluation of candidates in the self-administration bodies of judges and prosecutors and its impact on the Moldovan judicial system. At the same time, the authors discuss options for judicial reform, as well as mandatory policy elements to enhance the integrity of the judiciary.

The extraordinary evaluation process was implemented without amending the Constitution that would have allowed for derogations from fundamental principles and rights. As a result, a dysfunctional, discretionary, procedurally flawed and abusive process was foreshadowed, which undermined the fundamental rights of the candidates and compromised the evaluation process.

The way in which the Pre-Vetting Commission has applied its own rules has led to discrimination and a series of contradictions in the situations of different candidates, preventing a fair and transparent evaluation. The legislative changes, which have only favoured the Pre-Vetting Commission, had a negative impact on the candidates' rights as the ever-changing rules to their detriment have also meant greater difficulties in defending their integrity.

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EXECUTIVE SUMMARY

In autumn 2021, the Ministry of Justice of the Republic of Moldova announced the launch of a justice reform concept inspired by Albania's vetting model. The main goal was to introduce a process of extraordinary vetting of judges and prosecutors to ensure their integrity. The concept proposed assessing their assets and expenses against the legally available and declared disposable incomes of the candidates and their family members. If inconsistencies were found, the persons assessed were to be considered incompatible with their positions. The concept envisaged the involvement of three bodies: the International Monitoring Mission (comprising foreign nationals); the Evaluation Commission (comprising Moldovan nationals); and the Special Appeals Board. This system was derived from the Albanian experience.

The reform process was initially conceived as a general vetting system for all judges and prosecutors. In the end, however, the decision was made to implement a system of extraordinary evaluation for candidates who were to hold positions in the self-administrative bodies of justice, namely, the Superior Council of Magistracy (SCM) and the Superior Council of Prosecutors (SCP). In March 2022, the Parliament adopted Law No. 26 of 10 March 2022 on Some Measures Related to the Selection of Candidates for Administrative Positions in Bodies of Self-Administration of Judges and Prosecutors (Law 26/2022 on Pre-Vetting), which established a mechanism distinct from the one envisaged in the original concept announced by the Ministry of Justice. This law did not establish an international monitoring mission and appeal panel. Instead, a Pre-Vetting Commission was created, composed of six members appointed by the Parliament – three nationals, nominated by the parliamentary factions, and three internationals, nominated by Moldova's development partners. The Commission was provided with a Secretariat, a broad mandate, and a secret composition.

After the introduction of Law 26/2022, the legislation regulating the composition of the SCM and the SCP was amended to impose the obligation for the elected or appointed members of these bodies to pass an extraordinary evaluation by the Pre-Vetting Commission. The SCM was to be composed of 12 members: 6 judges elected by the vote of the General Assembly of Judges (GAJ) and 6 non-judges, proposed and appointed by the Parliament from among civil society. All 12 members of the SCM were to be elected/appointed on the basis of the evaluation of the Pre-Vetting Commission. The SCP was to be composed of 13 members: 4 ex officio members; 5 members elected by the vote of the General Assembly of Prosecutors (GAP) from among prosecutors; and 4 members from among civil society, one elected by the President of the Republic of Moldova, one by the Parliament, one by the Government, and one by the Academy of Sciences of Moldova. A total of 9 out of 13 members of the SCP were to be elected/appointed on the basis of the evaluation of the Pre-Vetting Commission.

After the introduction of the pre-vetting requirement, 28 judicial and 21 non-judicial candidates applied for the position of member of the SCM. For the position of SCP member, 19 prosecutors and only 3 non-prosecutor candidates from civil society applied. Out of the remaining candidates, 78 per cent of judges, 50 per cent of prosecutors, and 57 per cent of civil society representatives did not pass the evaluation. The Pre-Vetting Commission was also expected to evaluate candidates for the positions of members of the specialized bodies of the SCM and SCP responsible for the career and discipline of judges and prosecutors. In total, the Pre-Vetting Commission would have evaluated 122 candidates, including 65 prosecutors, 33 judges, and 24 civil society representatives.

It is curious that the members of the Pre-Vetting Commission positively assessed a lower number of members of the SCM and SCP from among judges and prosecutors who could be elected by the GAJ and the GAP, respectively. Thus, neither judges nor prosecutors could make a proper choice from among several eligible candidates to vote for. Even if the judges and prosecutors who did not pass the pre-vetting evaluation challenged the negative outcome, they were still deprived of the chance to re-enter the competition to be voted by the GAJ and, where applicable, the GAP. The Parliament made legislative changes that obliged the GAJ and GAP to appoint their members to the self-administrative bodies immediately and irrespective of the quorum, before the appeals of the other candidates had been resolved. Thus, the GAJ and the GAP did not elect, but only formally validated by vote, only those candidates who had been positively assessed by the Pre-Vetting Commission from the outset. Thus, in the end, it was not the judges and prosecutors who elected their representatives in the SCM and the SCP, but the Pre-Vetting

Commission was the one that elected their representatives in the self-administration bodies.

Given the political nature of the Pre-Vetting Commission established by the Parliament, the fact that this Commission, in turn, positively evaluated a smaller number of judges and prosecutors who could be elected to self-administrative positions within the SCM and the SCP revealed an increased risk of politicization of justice as a result of political control being applied to the self-administrative bodies of judges and prosecutors. The suspicions of politicization were confirmed at each stage of the evaluation process. In particular, such suspicions were borne out by the fact that the Parliament and the Government intervened through ad hoc amendments to the legislation, to the advantage of the Pre-Vetting Commission and to the detriment of the candidates' ability to defend themselves against the actions, methods, and solutions of this Commission. This created the perception that some candidates were favoured while others were disadvantaged in the procedure from the outset. At the same time, leading politicians have made numerous public statements about judges who were not likely to pass the extraordinary evaluation (pre-vetting, and later also vetting), reinforcing the perception of the politicization of the Pre-Vetting Commission's work. At the beginning of 2024, polls showed that, despite the participation of international members, two-thirds of members of the population did not trust the work of the Pre-Vetting and Vetting Commissions.

The study 'Phases of Pre-Vetting: the unseen face of justice reform' was conducted by the Association of Administrative Lawyers of Moldova (AJAM), with the support of Friedrich-Ebert-Stiftung (FES), the purpose being to analyse the pre-vetting implementation process and its impact on the Moldovan judicial system. The study is based on data collected between March 2022 and November 2024, highlighting the problems of the procedure applied and abuses reported during its implementation.

The myths of justice reform. The study analyses the history of events in 2019 that preceded the justice reform through the introduction of the extraordinary integrity check mechanism: fraud and money-laundering in the banking system; parliamentary elections; the Prime Minister and the Minister of Justice's requests to the SCM to dismiss a number of court presidents; the SCM's obedience to the executive, followed by the convening of extraordinary General Assemblies of Judges to dismiss members of the SCM; and the announcement by civil society representatives close to the Government of the approach to reform justice by "bulldozing justice by politics". The events described resemble the outbreak of a 'war' between the political power and the judiciary, in the midst of which the political power implemented a process of reform not so much of justice as against justice. The reform was aimed at introducing procedures for evaluating future members of the self-governing bodies of judges and prosecutors, the Superior Council of Magistracy (SCM) and the Superior Council of Prosecutors (SCP), known as a "pre-vetting" process.

The reform process did not base on an extensive problem analysis, but on the public propagation of myths, which ultimately justified the reform formulas. It is important to understand these myths in order to be able to ascertain whether the political power in the reform process proceeded according to the narratives with which it operated. The main myths were that the judiciary was unable to cleanse itself and was resistant to reforms; that this resistance needed to be politically defeated at all costs as judges were delaying the examination of important cases of corruption and money-laundering, such as the *Bank Fraud* and *Laundromat*; that the people had given the Government a clear and firm mandate to clean the judiciary; and that the level of trust in the judiciary was very low compared to the level of trust in politicians. The study showed that all these assumptions were ultimately false as the level of trust in judges and prosecutors was comparable to, or sometimes even higher than, the level of trust in the Government, Parliament, and the Presidency of the Republic of Moldova. Judges who had showed lenient attitudes in the high-profile corruption cases of the *Bank Fraud* and *Laundromat* were positively evaluated and those who proposed strict solutions were denigrated in the reform process. The latest myths about justice reform asserted in the public space have been mind-boggling. It has been claimed, for instance, that the methods of justice reform need to be made even tougher and that they should not take into account international standards in the field, because such standards do not work in Moldova, nor should the judiciary be fully independent.

The rules of the game in pre-vetting. The extraordinary evaluation process was implemented without any constitutional amendments which could allow for derogations from fundamental principles and rights. As a result, a dysfunctional and discretionary process was foreshadowed, which exceeded the time limits set for this purpose in the law. The imposition of unrealistic time limits by Law 26/2022, both for the Pre-Vetting Commission and for the Special Panel of the Supreme Courte of Justice (SCJ), did not ensure a speedy completion of the evaluation. After almost three years of the Pre-Vetting Commission's mandate, about 40 per cent of the candidates to be evaluated by it were handed over to other vetting commissions.

Law 26/2022 did not take into account the possibility of admitting appeals by candidates to the SCJ, as additional time was not foreseen for repeated evaluations by the Pre-Vetting Commission.

The Parliament made the main legislative interventions during the period of examination of appeals lodged by candidates against the Pre-Vetting Commission's decisions. The amendments were aimed exclusively at reducing the chances of the SCJ admitting candidates' appeals. Thus, the Parliament did not act as a rule-setting authority according to which the appeals were examined, but as a participant in the trial process, intervening on the side of the Commission in pending disputes.

Lack of fair play. The pre-vetting mechanism, which was established with the intention of ensuring the integrity of

judges and prosecutors in the Republic of Moldova, was marred by procedural shortcomings and abuses that undermined candidates' fundamental rights and compromised the evaluation process. Thus, candidates' liability for the situations and actions of persons considered "close" to them was established; inaccessible evidence was requested from candidates and unreasonable deadlines were imposed for its submission (2-3 days); the burden of proof was placed exclusively on candidates; the principle of the power of the decided/judged matter, the presumption of guilt, and the avoidance of double liability for the same act were annulled; retroactively, non-existent obligations were imposed; the candidates' right of defence was deprived of substance; the possibility of challenging the decisions of the Pre-Vetting Commission was illusory; the court was deprived of the right to have the last word in candidates' disputes with the Pre-Vetting Commission; and the Commission's decisions could only be upheld or sent back to the Commission for re-evaluation.

Furthermore, unreasonable deadlines were set for the examination of appeals and the re-evaluation of candidates by the Commission, which resulted in the appeals procedure having discriminatory effects on candidates. These abusive legal situations were aggravated both by the international members of the Pre-Vetting Commission's misunderstanding of the Republic of Moldova's legal framework and by the self-regulation of the activity of the Pre-Vetting Commission beyond the limits provided for by the legislation of the Republic of Moldova. The impossibility of obtaining the necessary information, the short time limit imposed for its provision, and the lack of an effective appeal framework turned pre-vetting into an often arbitrary and disproportionate process. Political interventions and the way in which the Commission has applied its own rules have led to discrimination and a series of contradictions in the situations of different candidates, preventing a fair and transparent evaluation of them.

Changing the rules of the game during the game. Central to the analysis are the dysfunctions in the pre-vetting process, caused by frequent amendments to Law 26/2022 that have resulted in an unstable, discriminatory legislative system, particularly at the stage of the SCJ's consideration of candidates' appeals. The lack of an effective mechanism to appeal the Commission's decisions was an issue anticipated in the previous FES study, Assessing the integrity of judges: no right of appeal?, published in December 2021.

All these legislative changes that favoured only the Pre-Vetting Commission had a negative impact on the rights of candidates, because the ever-changing rules to their detriment involved also greater difficulties in defending their integrity.

First, the Pre-Vetting Commission's mandate was extended several times, then the absolute immunity of the members of the Commission and the Secretariat from prosecution was introduced, and finally the time limits within which the Commission is obliged to evaluate candidates were excluded. The members of the Secretariat of the Pre-Vetting Commission have been classified, and thus their political connections have been camouflaged. The grounds for rejecting candidates' appeals against the Pre-Vetting Commission's decisions were limited by the exclusion of the status of the Pre-Vetting Commission as a public authority by the Parliament; this was nicknamed the 'Saturday Law' on accounts of its being hastily passed and published in the Official Gazette on a Saturday. Another legislative intervention was the order to destroy the materials of the evaluations, which was perceived by society as an intention designed to erase the traces of the abuses committed by the Commission and the Secretariat during the evaluation process.

The mandate of the Pre-Vetting Commission ended before all the candidates' cases had been examined. The remaining cases were placed under the responsibility of another newly created entity, the Vetting Commission, which was to evaluate the SCJ judges and, in addition, continue to act as a Pre-Vetting Commission. Three weeks after the appointment of all members to the Vetting Commission, the conditions for the appointment of international members were changed through a law that restricted the initial prohibition for Commission members not to be party members to the prohibition of not being members only of parties from the Republic of Moldova. It was later discovered that 2 of the 3 international members of the Vetting Commission are, in their countries of origin, members and even presidents of political parties – another example in which the law changed in the Commission's favour.

These legislative interventions have undermined not only the principles of the rule of law and transparent decision-making, but also the credibility and objectivity of the whole evaluation mechanism.

Civil society's support for reform. Civil society involvement in the justice reform process in Moldova has been complex and, to some extent, valuable. Two non-governmental organizations (NGOs) – the Centre for Legal Resources of Moldova (LRCM) and the Institute for European Policy and Reform (IPRE) – have played a crucial role in promoting justice reforms, but their involvement has also led to conflicts of interest and illegal processing of personal data.

Thus, several members of these organizations, members of their families, and members of their governing bodies have found themselves involved in all the positions of the pre-vetting process: as members of the Pre-Vetting Commission; as members of the Secretariat of the Pre-Vetting Commission; as candidates who, having successfully passed the pre-vetting procedure, became members of the SCM and the SCP; and as candidates appointed as judges of the SCJ by these members of the SCM.

For example, the President of the LRCM, an NGO involved in the conceptualization and promotion of justice reform, has repeatedly encouraged "bulldozing justice by politics". The President of the LRCM is also the brother-in-law of the ex-Minister of Justice, who launched the concept of extraordinary

evaluation in the justice system. Subsequently, the President of the LRCM ran for the position of judge of the SCJ, while his organization was submitting shadow evaluations of his counter-candidates to the Vetting Commission. He was nominated by the SCM (in which, as a result of pre-vetting, members and founders of the LRCM were appointed) and became the first judge of the SCJ appointed following the reform. Thus, the reformer also became the main beneficiary of his reform, with the alleged support of his cronies.

The involvement of another civil society organization, IPRE, has led to scandals about illegal access to the personal data of candidates and many others, including several opposition politicians. In preparing shadow reports to support the work of the Pre-Vetting Commission for the evaluation of 20 candidate judges and prosecutors, 680,259 cadastral addresses were "accidentally" downloaded. IPRE's Director explained that the mistake had been made by a subcontracted collaborator, who was subsequently punished for it, and public apologies were offered.

The evaluation process from the candidates' perspective. The study presents also the results of a poll among the candidate judges and prosecutors who did not pass the pre-vetting procedure, in order to understand the experience, what they went through, and the irregularities and abuses to which they were subjected during the evaluation. The surveying of judges and prosecutors is valuable because this category of jurists is highly qualified, they are familiar with Moldovan legislation, and one of their important functions is to identify violations of the law.

The candidates highlighted shortcomings in the process, such as unreasonably short deadlines for responses, limited access to information necessary for the defence, and difficulties in obtaining documents requested by the Pre-Vetting Commission (inaccessible evidence). Candidates complained of biased interpretations of the questions put to them by the Commission, and discriminatory and humiliating treatment. Unlawful access to personal data, including information about their families, was another major concern, with candidates feeling that their fundamental rights had been violated, and that a climate of insecurity and fear for their physical integrity and that of their families had been created.

The evaluation process was flawed by elements that the candidates could not foresee by studying the provisions of Law 26/2022, such as the secrecy of the Secretariat of the Pre-Vetting Commission, the failure to grant candidates full access to the information gathered by the Commission from their files, the involvement of judges temporarily transferred from the lower courts in the examination of the appeals filed by them, and the admonishment of judges who had ruled in their favour when examining their appeals. No less than two-thirds of the candidates stated that if they had known the conditions of the evaluation in advance (which could not be deduced from the law), they would not have agreed to submit their application.

Doubts about the integrity of members of the Pre-Vetting Commission. The integrity of the members of the Pre-Vetting Commission was not a clearly articulated requirement in Law 26/2022, which only referred to their "irreproachable reputation". Thus, there was a huge discrepancy between the ethical and financial integrity requirements imposed on candidates appearing before the Pre-Vetting Commission and the integrity requirements imposed on members of the Commission and its Secretariat. Moreover, the integrity of the Pre-Vetting Commission was seriously undermined by the failure to comply with the legal criteria for the appointment of its members, as well as by the tolerance of conflicts of interest and incompatibilities of its members that were publicly disclosed.

This was the case with one of the international members and Chair of the Pre-Vetting Commission who, prior to his appointment, had been the subject of several critical articles in the Dutch, British, and American media, accusing him of maladministration and fraud in his previous positions. This public image was not compatible with the requirement of an "irreproachable reputation" at the time of his appointment to the Pre-Vetting Commission. He also infringed the incompatibilities regime imposed on members of the Pre-Vetting Commission by working in a public office in the Netherlands in parallel. Although he publicly admitted his incompatibility, the President of the Pre-Vetting Commission stated that he would not resign, describing his breach as insignificant. The other members of the Commission, who are obliged by law to take a stand and propose to Parliament the exclusion of a member who does not meet the conditions for appointment or who has violated the criterion concerning incompatibilities as a member of the Commission, did nothing. Another situation perceived by the public as a lack of integrity was the case of a national member, formerly a judge, considered by the press as responsible for the conviction of the Republic of Moldova at the European Court of Human Rights (ECtHR) in several cases. The Anti-Corruption Prosecutor's Office (APO) has publicly confirmed that the name of this member of the Pre-Vetting Commission appears in the phone records of the main figures in the *Bank Fraud* and *Laundromat* cases, in which they treat the respective member of the Commission as a person affiliated to them. This member of the Commission has resigned.

A lack of adequate responsiveness and low transparency in the handling of integrity incidents within the Pre-Vetting Commission compromised the candidates' evaluation process. Shortly after the first appointments to the SCM and the SCP, it was discovered that a member of the SCM was accused of corruption in a corruption case, while a member of the SCP was accused of involvement in rigging the competition to elect the Prosecutor General. Thus, two members of the self-administration bodies of judges and prosecutors, whose integrity had been allegedly verified by the Pre-Vetting Commission, resigned in the midst of corruption scandals, within 3 months of their appointment.

Unlimited possibilities of the Pre-Vetting Commission. The Pre-Vetting Commission and its Secretariat fell outside

any legal control, immunized by Parliament from any legal liability. The Commission had unlimited discretion, and applied double standards in evaluating the integrity of candidates. There have been cases in which similar but more compromising situations have received more lenient judgments by the Pre-Vetting Commission than easier and/or unproven situations.

The Pre-Vetting Commission abused the use of special means of investigation and made use of secret services, contrary to the Council of Europe's standards in the field of ensuring integrity processes in the judiciary. The Pre-Vetting Commission defied the authority of *res judicata* and the interpretations of the Constitutional Court (CC), which summoned it to comply with the Supreme Court's rulings in examining the candidates' appeals.

On the other hand, the candidates and their relatives have been placed under immense pressure, sometimes being publicly humiliated and forced to defend their integrity in the face of unfounded accusations brought against them by the Commission.

Unconcealed political interference affected the evaluation, undermining the independence of the judiciary. Although the original aim was to increase transparency in appointments to the bodies of judicial self-administration and the prosecution, the method used has led to increased suspicion and inconsistency, increasing the chances of political manipulation and speculation.

Appealing to the SCJ. The process of appealing Pre-Vetting Commission's decisions has been marked by a number of legal and political challenges, including legislative changes during the proceedings, mass resignations of judges, and external pressures on the judiciary. These factors have compromised the efficiency, speed, and transparency of the examination of appeals. In the end, the SCJ invalidated almost all the Pre-Vetting Commission's solutions and sent them back to the Commission for re-evaluation. The SCJ's decisions against the Pre-Vetting Commission's solutions were criticized by leading state officials and led to an intensification of political interventions in the pre-vetting process.

Repercussions followed in the form of disciplinary proceedings for the SCJ magistrates who overruled the decisions of the Pre-Vetting Commission, administered by the SCM established as a result of the pre-vetting, whose legitimacy of mandates directly depends on the non-passing of the pre-vetting by any other candidate as a result of challenging the Pre-Vetting Commission's solutions.

Implementation of the Venice Commission recommendations for Law 26/2022 on Pre-Vetting. Law 26/2022, adopted by the Parliament, did not take into account the important recommendations of the Venice Commission, and there are a number of divergences between the provisions of the Law and the international standards referred to by the Venice Commission in its Opinion No. 1069/2021.

The study describes the most important contradictions between Law 26/2022 and the recommendations of the Venice Commission, namely: 1) the promotion of the reform regarding the extraordinary evaluation of judges and prosecutors in the absence of a broad consensus with the parliamentary and extra-parliamentary opposition; 2) the failure of the authorities to provide evidence of a sufficiently serious situation in the judiciary system, which would require the establishment of an extraordinary evaluation mechanism. Unlike the authorities of Albania, which presented evidence to the Venice Commission, in the case of the Moldovan authorities, exclusively political arguments were put forward regarding the need to increase confidence in and the proper functioning of the judiciary; 3) the composition of the Pre-Vetting Commission did not meet the minimum international standards required by the Venice Commission, namely that it should be composed predominantly of judges; 4) the integrity criteria remained broad and vaguely defined in Law 26/2022 and their application was susceptible to discretionary and abusive interpretations, giving rise to a wide uneven practice and application of double standards by the Pre-Vetting Commission; 5) the decision-making process within the Pre-Vetting Commission was not adapted; and 6) the pre-vetting process and the mechanism for appealing the decisions of the Pre-Vetting Commission did not ensure transparency and fair access to justice.

False inspiration for the justice reform in Moldova: the Albanian vetting of judges and prosecutors. The study describes the extraordinary vetting system implemented in Albania in order to compare it with the pre-vetting mechanism implemented in the Republic of Moldova. The obvious conclusion is that the Republic of Moldova has not applied the Albanian model. The initial concept presented by the Ministry of Justice in autumn 2021 was inspired by the Albanian system, but both the initial concept and the Albanian model were abandoned together with the adoption of Law 26/2022. Under these circumstances, the speculation by the authorities that Moldova had adopted the Albanian model was a false pretext to justify the solutions of the justice reform in the Republic of Moldova

In Albania, the vetting process included additional safeguards to protect the rights of the judges and prosecutors evaluated, and the Venice Commission, as well as the ECtHR, emphasized the importance of respecting their fundamental rights. The same measures and recommendations of the Venice Commission were not implemented in the Republic of Moldova, which led to a loss of credibility of the reform. In the case of the Republic of Moldova the following important features of the Albanian system were missing: 1) planning the reform based on a comprehensive assessment of the problems in the field of justice; 2) broad parliamentary consensus when adopting the law on extraordinary evaluation; 3) amending the Constitution to regulate vetting, guarantees in the extraordinary evaluation, and ensuring non-repetition of the extraordinary evaluation; 4) ensuring rigorous integrity criteria for members of the evaluation bodies; 5) ensuring respect for state sovereignty by not admitting foreign citizens in

the evaluation process; 6) the involvement of foreign citizens only in the monitoring bodies of the Commission in charge of the extraordinary evaluation; 7) the creation of special jurisdictional bodies for appealing the solutions of the extraordinary Evaluation Commission; 8) the possibility for the subjects of the evaluation to challenge the actions and conduct of the members of the Commission; 9) the Evaluation Commission is a state administrative authority, bound to comply with the provisions of administrative legislation; 10) members of the Evaluation Committee are required to submit asset declarations; 11) membership of the Evaluation Committee is incompatible with any remunerated activities; 12) the Secretariat of the Evaluation Commission has not been classified; 13) narrow criteria for checking the integrity of wealth, entourage, and professional competence in the case of Albania; and 14) the court had the last word in disputes regarding the extraordinary evaluation.

Options for future reforms. The study suggests two possible reform options and alternative approaches to improve the transparency and integrity of the pre-vetting process to restore public confidence in justice. It also analyses the pros and cons of each of the proposed options.

Option 1: Conduct an audit of the entire process to recognize abuses and rehabilitate the unfoundedly discredited individuals. The deserving are thereby given a chance to be voted by the GAJ or the GAP, as the case may be, to constitute the SCM and SCP.

Option 2: Completely abolish the pre-vetting process, and instead introduce integrity criteria into the previous system, allowing GAJs and GAPs to elect their own members to the SCM and SCP, applying clear integrity criteria.

Regardless of further options for reforming the justice system, the study suggests the following policy elements to further strengthen integrity in the justice sector: 1) reviewing the reform implementation mechanisms; 2) creating a permanent structure for justice monitoring; 3) establishing a national system of protection for whistleblowers and those who stand up to abuse; 4) strengthening initial training and intensifying continuous training of judicial actors; 5) creating a stable national legal framework for justice reform; 6) acknowledging and correcting mistakes made in the pre-vetting and reform process; 7) making the pre-vetting review processes and sanctioning decisions transparent; 8) implementing a national system of compensation for victims of abuse; 9) promoting a public discourse of accountability and transparency; and 10) providing a mechanism to protect the rights of those who appeal against abuses.

1

INTRODUCTION

In autumn 2021, the Ministry of Justice announced that it would implement an Albanian-inspired[1] justice reform. A draft concept was published on the extraordinary evaluation of judges and prosecutors.[2] According to the concept, failure to pass the integrity evaluation would result in the dismissal of the evaluated person. During the integrity assessment, the person's assets and expenses in relation to his/ her legally available and declared income and that of his/her family members would be checked. If discrepancies were found, the subject would be considered as having failed the integrity check. The concept also proposed that the extraordinary evaluation be conducted with the involvement of three bodies: the International Monitoring Mission (foreign experts); the Evaluation Commission, consisting of four Evaluation Panels; and the Special Appeals Board (citizens of the Republic of Moldova). The model described was similar to the Albanian institutional vetting system.

Finally, it was decided that instead of the general vetting of all judges and prosecutors, as was the case in Albania, a system of extraordinary evaluation of candidates for the position of members of the self-administrative bodies of justice and the prosecutor's office (the SCM and the SCP) should be implemented in the Republic of Moldova, after which the vetting of judges and prosecutors from the supreme institutions (SCJ, Courts of Appeal, General Prosecutor's Office (GPO), specialized prosecutor's offices, etc.) should be organized.

Thus, at the beginning of 2022, the Parliament adopted Law No. 26 of 10 March 2022 on measures related to the selection of candidates for administrative positions in bodies of self-administration of judges and prosecutors (or "Pre-Vetting", hereinafter referred to as Law 26/2022). This legislation provided for a mechanism distinct from the one described in the concept published in autumn 2021 by the Ministry of Justice. The mechanism entailed the establishment of a single Pre-Vetting Commission, with a mixed composition of national and international members, and a special panel was to be set up at the SCJ to examine appeals against the Commission's decisions.

This study, 'The Phases of Pre-Vetting: the Unseen Face of Justice Reform', involved a collaboration between the Association of Administrative Lawyers of Moldova and the FES. The study follows on from another analysis conducted by the FES Moldova at the time when pre-vetting had only just been announced, in December 2021, entitled 'Assessing the integrity of judges: no right of appeal?'. That analysis analysed the integrity criteria that could have underpinned a vetting procedure in the Republic of Moldova, starting with societal expectations, existing judicial integrity regulations, statistics on the level of trust in the judiciary, and the proposals contained in the Concept on Extraordinary Evaluation of Judges and Prosecutors and the draft law presented by the Ministry of Justice in autumn 2021. The 2021 analysis anticipated a number of problems that could arise in the context of the implementation of pre-vetting, the most serious of which seemed to be the lack of effective possibilities for candidates to appeal the decisions of the Pre-Vetting Commission, a finding that was reflected in the name of the paper.

This study analyses the events unfolding in the pre-vetting process over almost three years of its implementation (March 2022—November 2024). At the time of the launch of the study, the pre-vetting process has not yet been completed.

The study differs from other monitoring carried out by other organizations in that it was not primarily based on the attendance of monitors/observers of the candidates' public hearings and court hearings considering the candidates' appeals.

The study 'Pre-Vetting Phases: the unseen face of justice reform' started from the idea that the candidates themselves can be a valuable source of monitoring, as only they have access to the processes before the hearings – the rounds of questions asked by the Pre-Vetting Commission, obtaining the information requested by the Commission, access to the administrative file, and other processes. Candidate judges and prosecutors are special subjects, with the necessary training and experience in the application and interpretation of the law, who are familiar with the provisions of the Constitution of the Republic of Moldova, the citizens' guarantees, and the guarantees of magistrates and prosecutors. Therefore,

1 https://www.zdg.md/stiri/stiri-sociale/expert-reforma-justitiei-in-albania-un-posibil-model-pentru-r-moldova/
2 https://justice.gov.md/public/files/Concept_EEJP_15_11_2021_1.pdf

obtaining information directly from the candidates and understanding the legal professional subtleties invoked by them in the pre-vetting process were considered a novel source of information for undertaking a different kind of study on the implementation of the pre-vetting procedure.

For the purpose of this study, on 8 December 2023, the AJAM, together with the FES Moldova, organized a focus group with the participation of 18 out of 33 candidates for the SCM and SCP who did not pass the evaluation (78 per cent of the judge candidates and 40 per cent of the prosecutor candidates). The picture was further enriched by data collected from the online tracking of the candidates' public hearings. From the published decisions of the Pre-Vetting Commission, a number of inconsistent solutions by the Pre-Vetting Commission on similar candidate situations were identified.

The study includes an extensive analysis of the recommendations set out in the Joint Opinion of the Venice Commission and the DGI of the Council of Europe No. 1069/2021, CDL – AD (2021)046 on the draft law on the evaluation of the integrity of candidates for the position of member of the self-administrative bodies of judges and prosecutors. The aim of this analysis is to determine whether these recommendations were followed by the Moldovan authorities. Similarly, examples from other countries that have implemented reforms of the justice system and vetting procedures are presented, with elements common to the Republic of Moldova, as well as the recommendations of the Venice Commission and fragments of the case law of the ECtHR.

Over the last three years, pre-vetting (and later vetting) in the Republic of Moldova has been compared with the Albanian model of vetting, although the Albanian system is very different from the system implemented in the Republic of Moldova. In the Albanian system, several additional solutions for guaranteeing the rights of the evaluated judges and prosecutors were implemented based on the recommendations of the Venice Commission, which, although also addressed to the Republic of Moldova, have been implemented very differently in the two countries. To make a relevant comparison, the study includes a presentation of the Albanian vetting model, written by the Deputy Minister of Justice and Chief Negotiator of the Republic of Albania on the justice chapter in Albania's European Union integration process.

The European Commission's insufficient assessment of the justice reform process in the Republic of Moldova calls for a study of alternative options for promoting public policies in this field. Yet the analysis of the above-mentioned novel elements allowed us to highlight various 'phases' of pre-vetting, such that hidden the perspective was rendered more visible and accessible to the general public.

2

MYTHS OF JUSTICE REFORM IN MOLDOVA

Summary. *This chapter analyses the perceptions and realities behind the judicial reforms initiated in the Republic of Moldova, in the context of major scandals such as bank fraud and the 'Laundromat' case. In the aftermath of these scandals, the Government launched promises to clean up the judiciary, and in the 2019, 2020, and 2021 election campaigns, fighting judicial corruption was a central focus. The reform process has been marked by conflicts between the Government and the SCM, which has been accused of inaction in the face of corruption in the system. Despite attempts at change, reforms have not been implemented in a coherent manner and the public perception of justice remains ambiguous, with low levels of trust in the institutions responsible for justice reform. Perceptions such as "justice resisting the reforms" or that "judges did not punish those involved in the 'Laundromat'", reflect public frustrations, but are not always consistent with the procedural and legal reality of the reform. Also, the myths of "self-cleansing" of the system and that "the system is resisting reforms" are examined, demonstrating that the real obstacles have been related to political interventions and the lack of a functioning SCM, which have prevented an effective reform process.*

The bank fraud and the 'Laundromat' case were unprecedented scandals in the history of the Republic of Moldova that irreparably compromised the 2012-2019 Government. The question "Where is the billion?" brought people out on the streets *en masse*, changed political power, and foreshadowed the key reforms that followed. Fighting corruption in the judiciary was one of the most important promises made in the electoral campaign for the 2019 parliamentary elections, the 2020 presidential elections, and the 2021 early parliamentary elections.

The proclaimed desire to "clean up" justice has always been at the epicentre of the reforms undertaken in the justice sector.

2.1 Short overview of justice reform before pre-vetting

On 20 June 2019, the Government released its programme, announcing the preparation of a special law on the extraordinary evaluation of the integrity and professionalism of all judges and prosecutors, including in relation to the aspect of the issuance of illegal acts and the verification of such individuals' wealth in relation to their official income.[3]

Five days later, the then Prime Minister Maia Sandu, accompanied by Justice Minister Olesea Stamate, attended a meeting of the SCM, accusing the Council of the fact that corrupt judges, people of a political or economic clan, were working in the judiciary system. The Prime Minister urged members of the Council to begin cleaning up the judicial system by sanctioning and eliminating judges who had made illegal and abusive decisions, to positively evaluate the correct judges, and to decide whether they wanted to be part of that change. The Prime Minister also announced that the Council only had a few weeks to achieve this.[4]

The day after the Prime Minister's visit, the SCM, in a closed session, removed from office the President of the SCJ, the President, and four Vice-Presidents of the Chisinau Court, on the basis of a memo prepared by a judge and in the absence of a verification by the Judicial Inspection i.e. contrary to the procedure.[5] The instantaneous reaction to the executive's request suggested that the SCM was thus preventing future Government criticism for inefficiency. Perceived by judges as politically subservient to the previous regime, the manifestation of the Council's willingness to serve a political power again did not go unnoticed by judges.

In summer 2019, the Ministry of Justice drafted a bill on the SCJ, in particular consulting NGOs and the SCM. Subsequently, in 2022 the Venice Commission and the Council of Europe's Directorate General for Human Rights commented on the draft in a joint opinion, which concluded

3 https://gov.md/sites/default/files/document/attachments/program_de_guvernare_0.pdf

4 http://m.tvrmoldova.md/justitie/maia-sandu-a-participat-azi-la-sedinta-csm-a-cerut-magistratilor-sa-curete-sistemul-judecatoresc-de-judecatori-care-au-luat-decizii-abuzive/

5 https://protv.md/politic/oficial-numele-judecatorilor-inlaturati-si-revocati-din-functii-de-csm-zd-g-md---2496929.html

that, apart from reforming the SCJ, the draft combined the assignment of new competences/functions to the SCJ with a reduction in the number of judges and a vetting process (§43-44).[6]

Against the backdrop of discussions about a reform that was little understood by judges, in September 2019, the judges called an extraordinary General Assembly to revoke the mandates of the SCM's judge members, considering that they no longer represented them.

In the judges' dispute with the members of the SCM, the Government has defended the Council at every turn. It vehemently criticized the Extraordinary General Assembly of September 2019 and encouraged judges not to attend the following assembly announced for October, at which new members of the SCM were to be elected from among judges. In October 2019, judges turned up in insufficient numbers and the assembly was not deliberative. The President of the LRCM, which has played an important role in the subsequent process of judicial reform, announced that politicians could "bulldoze" into the judiciary because of the extraordinary assemblies of the judges. Three years later, the "bulldozing" threats of the President of the LRCM were repeated, with the addition of predictions of a "war between politics and justice", but this was already evident in relation to the speed of examination of high-profile criminal cases.

CASE STUDY 1. Vladislav Gribincea, President of the LRCM, warns: "Politicians could bulldoze into justice"

Radio Chisinau, 25 October 2019, Vladislav Gribincea: Disputes in the judiciary could make politicians "bulldoze into justice" [7]

"The Cotidianul publishes the opinion of Vladislav Gribincea, [...], who argues that disputes in the judiciary could make politicians "bulldoze into justice". He argues in a Facebook post that the GAJ from 27 September was not legal, just as today's meeting, where new members of the SCM are to be elected, will not be legal. In his opinion, the way out of this impasse can only be the resignation of the current members of the SCM and the election of new ones, but not today."

Politik.md, 20 September 2022, Expert: If judges don't do their job, politicians could bulldoze into justice. [8]

"Vladislav Gribincea, President of the LRCM, anticipates a war between politics and justice. [...] the expert said that what is happening in the judiciary in terms of case examination is hard to understand, and as an example, the expert brought the Ilan Shor's case. Gribincea also says that aspects related to the examination of cases must be monitored, and if judges do not do their job, politicians could bulldoze into justice."

"I don't believe that the current Government controls what happens in the justice system. At the same time, the judges have to do their job in relation to how they carry out these procedures regarding the case examination. I would carefully monitor this aspect, and if the judges don't do their job, they should not get upset that politicians will then bulldoze the justice system. [...]", said Vladislav Gribincea.

The Venice Commission issued an opinion recognizing the legitimacy of the composition of the SCM, and in November 2019, Commission President Gianni Buquicchio called on the institutions of the Republic of Moldova to work together to ensure the independence and integrity of the judiciary.[9]

After the failure to revoke the mandates of the SCM members, the Council turned the self-cleansing of the judiciary into a "witch-hunt" against participants of the extraordinary general assemblies, in a remarkable collaboration with the GPO and the officers of the Intelligence and Security Service (SIS)[10]. Shortly afterwards, several criminal cases on illicit enrichment charges were brought against the judges elected to conduct the work of the extraordinary meetings, the secretaries of the extraordinary meetings, and the vote-counting committee of the extraordinary meetings. It should be noted that none of the cases brought against those magistrates have been brought to court.

In the years that followed, the political configuration and commitments to the previously announced reforms changed several times, and presidential and parliamentary elections followed. Representatives of the Action and Solidarity Party (PAS), whether in Government or in opposition, stopped making accusations against the SCM, thus helping it to survive the extraordinary General Assemblies of Judges in 2019. Instead, they have continued to systematically accuse judges and the judiciary as a whole of failing to cleanse itself. The political discourse regarding justice reform thus became a paradoxical one, in which the judiciary was considered to be "bad", being blamed for not having cleaned itself, while the SCM was always "good", even though it had all the levers for the so-called "self-cleansing" of the judiciary.

In the meantime, the term of office of several member-judges of the SCM expired. They were expected to be replaced at the GAJ, which is held in the ordinary way every year. Between 2019 and 2022, however, no ordinary General Assemblies of Judges were convened, as they were banned by the Government through the Commission for Exceptional Situations, which invoked pandemic restrictions in this regard, even though parliamentary and governmental activity was not banned during the same period.

In 2021-2022, the Government identified and announced a reform inspired by the Albanian experience of reforming the judicial system of extraordinary external evaluation of judges

6 https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)

7 https://radiochisinau.md/vladislav-gribincea-disputele-din-sistemul-judecatoresc-ar-putea-face-ca-politicienii-sa-intre-cu-buldozerul-in-justitie-revista-presei---97535.html

8 https://politik.md/expert-daca-judecatorii-nu-si-vor-face-treaba-politicienii-ar-putea-intra-cu-buldozerul-peste-justitie/

9 https://www.venice.coe.int/webforms/events/?id=2860

10 See, for instance, detention of the president of the Balti Court of Appeal; https://anticoruptie.md/ro/dosare-de-coruptie/sis-si-procurorii-anticoruptie-au-descins-la-biroul-si-acasa-la-judecatorul-alexandru-gheorghies-din-cadrul-curtii-de-apel-balti-scandalurile-in-care-a-fost-implicat-magistratul

and prosecutors (vetting), starting with the evaluation of candidates for membership of the SCM, SCP, and their specialized bodies (pre-vetting).

Three years later, the pre-vetting procedures are still not over. Out of 12 members of the Council, 11 have been appointed: five out of six judges and all six non-judges to a new SCM. In terms of composition, this means that the SCM does not meet the standards recommended by the Council of Europe, according to which no less than half of the members of such councils should be judges elected by their peers at all levels of the judiciary.[11]

Only some of the candidates for membership in the specialized bodies responsible for the evaluation, career, and discipline of judges have been evaluated and, as a consequence, have not yet been appointed in 2024. In the meantime, this has blocked both the appointment of new judges to office and their evaluation, promotion, and disciplinary sanction.

On 30 March 2023, an exception was instituted by the Law no. 65 of 30.03.2023 on the External Evaluation of Judges and Candidates for the Position of Judge of the Supreme Court of Justice (Law 65/2023 on Vetting), which allowed the temporary transfer of judges, for a period of six months, from the lower courts to the SCJ.[12] The SCM, which at the time was operating in a reduced composition of eight out of 12 members, embraced this solution – which was widely contested in the legal community from the perspective of guarantees of independence, irremovability, and competence – and ordered the temporary transfer of seven judges from the lower courts to the SCJ.

An IPRE survey released in February 2024 showed that the public do not trust the results of the vetting carried out by Special Commissions with the participation of international experts, which check the integrity and wealth of judges and prosecutors; only 39 per cent of respondents trust the work of these commissions, while 58 per cent do not.[13] In the same survey, 58 per cent of respondents said that they trust judges and 56 per cent said they trust prosecutors. Some 58 per cent said they have positive opinions about judges and prosecutors and only 36 per cent said they have negative opinions.

For comparison, according to the same survey, only 36 per cent of respondents reported having a positive opinion of politicians, while 60 per cent reported having a negative one.[14]

The survey also revealed that during the three-year reform period (2021-2023), the majority of citizens, 62 per cent, believe that the situation in the justice system has remained the same or has worsened.[15]

Half a year later, in July 2024, the sociopolitical barometer conducted by IMAS showed far more worrying trends: 69 per cent of the population reported believing that the situation in the justice system has worsened (41 per cent) or remained the same (28 per cent), while 22 per cent reported believing that the justice system has improved.

According to the survey, 33 per cent attribute the lack of evident progress in justice reform to the current Government, 16 per cent attribute it directly to the President of the Republic of Moldova, and only 9 per cent agree that "the system is resisting", while the judges and prosecutors are directly responsible for the lack of progress in justice reform.

In the three years of reforms carried out between 2021 and 2024, the prevailing opinion in society about justice was that it is under the influence/control of the current Government; this perception worsened from 61 per cent in November 2021 to 69 per cent in July 2024.[16]

The success of any reform requires a very precise understanding of the problem that is proposed to be solved in this way, and failure to understand the problem will inevitably lead to failure. It is clear that there is a critical level of disappointment in justice reform. What has caused this disappointment, though?

For the general public, the reforms in the field of justice were based on several explanations by politicians:

1) people have given the Government a strong mandate and full confidence to reform justice;

2) the justice system is to blame for the fact that the billions stolen from the banking system have not been returned;

3) the judges involved in the 'Laundromat' scandal were not punished, through the fault of the judges;

4) the Government gave the judges enough time to clean themselves up, and then the politicians intervened; and

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11 Recommendation CM/Rec(2010)12 of the Committee of Ministers to Member States on judges: independence, efficiency, and responsibilities: https://search.coe.int/cm#{%22CoEIdentifier%22:[%2209000016805afb78%22],%22sort%22:[%22CoEValidationDate%20Descending%22]

12 Law 65/2023 on Vetting, Art. 21 para. (8).

13 The First National Public Opinion Survey on Integrity in the Justice Sector, conducted by Magenta Consulting for the IPRE, funded by the European Union and co-funded by the Soros Foundation Moldova, launched on 6 February 2024, pp. 28 and 73. See here: https://ipre.md/2024/02/06/sondaj-de-opinie-justitiepentrumoldova-95-dintre-cetatenii-republicii-moldova-care-sustin-aderarea-la-ue-considera-ca-reforma-justitiei-e-cruciala-pentru-integrarea-europeana/?lang=en

14 *Ibid,* pp. 17-18, 36-37, 40-41.

15 *Ibid,* p. 16, 35.

16 Socio-Political Barometer, conducted by IMAS with Independent News, July 2024, slides 19 and 21 of the report. For details, see the report here: https:

5) the justice system, thieves and bandits, oppose reforms.

Are these claims valid or are they just myths? Even if they contain a certain amount of truth, these are still myths rather than reality.

2.2 Myth: "Citizens have more trust in the Government, the Parliament, and the President than in the justice system"

The Moldovan population's trust in the judiciary and the politicians who are in charge of the justice system reform is not unequivocal. The 2019 Barometer of Public Opinion (BOP) indicates that the population's distrust in the Parliament and the Government has always been higher than in the judiciary. In 2021, the BOP indicates more distrust in the Government and the Parliament than in the judiciary that these institutions had started to reform, with the highest trust in the presidency.[17] The 2022 and 2023 polls, however, show that distrust in all these institutions has reached practically the same levels, while distrust in the President has surpassed the level of distrust in the judiciary.[18] Contrary to the expectations, during the implementation of reforms, the lack of trust in Justice, has only aggravated.

BOP: selected the answer "I have no trust at all" to the question about trust in institutions

	June 2021	November 2022	August 2023
Government	46,6%	45,1%	43,3%
Parliament	50,5%	47,9%	45,6%
Justice	44%	47,4%	46,3%
Presidency	26,9%	47,6%	46,4%

The IPRE survey referred to above reveals a level of trust in judges and prosecutors that is almost double the level of trust in politicians.

Although the justice reform and the fight against corruption were clear expectations of voters in the 2019-2021 elections, the public opinion polls, inexplicably, do not reveal greater trust in the Government, Parliament, and, in the last two years, the Presidency of the Republic of Moldova, than in the justice system expected to be reformed. Therefore, it is unclear why the exponents of justice needed to be removed from the process of conceptualizing the reform if those who assumed this role (the Parliament and the Government) were no more credible in the eyes of the citizens than judges and prosecutors.

2.3 Myth: "The justice system is to blame for the fact that the billion stolen from the banks have not been returned"

The bank fraud itself should not be blamed on the magistrates, but rather on the politicians of the time. Judges, on the other hand, can be blamed for their lack of speed in solving the cases. As a rule, however, they are not in a position to speed up the pace of procedural justice, in which every suspect, defendant, and accused person must have their rights respected. In international practice, the investigation of such cases of fraud takes 8-15 years.

Essentially, the role of the courts in the process of recovering this money is to authorize the seizure of assets identified by prosecutors to examine the cases submitted, and, if the defendants are found guilty, to issue convictions and order the confiscation of criminal assets. Once confiscated, these assets are subject to sale and only then can the money be returned to the state budget.

There were no court rejections to seize assets identified in the bank fraud investigation. The vast majority of defendants in the bank fraud cases have been convicted, and assets have been confiscated whenever these were seized. It is not the task of judges and prosecutors to sell confiscated assets and return the money to the budget. According to the Criminal Assets Recovery Agency, 70 per cent of the damage caused by fraud has been secured by seizures.

2.4 Myth: "The system must be cleansed of the judges who failed to punish the Laundromat"

Between 2010 and 2014, more than 22 billion dollars from the Russian Federation passed through the banking system of the Republic of Moldova as part of the operation generically called 'Laundromat'. The money transfers were made to appear legal through the involvement of 17 Moldovan magistrates who issued court orders to collect the money on the basis of dubious documents in breach of procedural requirements. Meanwhile, in the Russian Federation, several people involved in the so-called 'Moldovan scam', which involved the laundering of RUB 500 billion, were sentenced to prison terms ranging from 16 to 20 years.[19]

In 2016, 15 judges and three bailiffs were apprehended for their involvement in the money-laundering scheme and charged with the offence of issuing obviously unlawful decisions. In 2017, their cases were referred to the court and the judges were suspended.

17 http://bop.ipp.md/
18 *Ibid.*
19 https://anticoruptie.md/ro/dosare-de-coruptie/dosarul-laundromat-pedepse-impresionante-in-rusia-pentru-ortacii-lui-plahotniuc-si-platon

In October 2020, the SCM – maintained with the backing of the Maia Sandu Government after unsuccessful attempts to dismiss it at an extraordinary General Assemblies of Judges – decided to reinstate five of the suspended magistrates and pay their salaries for the entire period of their suspension. At the time, these magistrates were defendants whose cases were pending before the court.

The candidate for President of the Republic of Moldova, Maia Sandu, in the 2020 electoral campaign, criticized the reinstatement of those judges in very harsh terms, attacking "justice" in general, but "forgetting" to mention the essential role of the SCM.[20]

CASE STUDY 2. Moldova's President Maia Sandu: Judges who laundered billions of dollars through Moldova are reinstated by Dodon's justice system

Facebook, Maia Sandu, 27 October 2020

"Judges who have laundered billions of dollars through Moldova are today reinstated by Dodon's justice. Thieves feel emboldened, mafiosi feel in power, bandits feel protected. This is Dodon's Government. There seems to be no end to the lawlessness and debauchery in Dodon's justice system.

After dangerous criminals are released from prisons early, murderers are acquitted, today, five of the judges who participated in the Russian Laundromat (the so-called Laundromat through which tens of billions of US dollars were laundered through our country) are reinstated. Instead of being held accountable, these judges will receive millions of lei in compensation. Each of them will get at least 1.2 million lei (around 7 million in total). We will pay this money together with you, for the mess made by Dodon's justice system. This injustice can no longer be tolerated. It is time to bring honest and professional people into the courts and prosecutors' offices. And we need to get rid of the corrupt and thieves as soon as possible, while we still have someone to rebuild this country."

Supreme Security Council (SSC), 20 March 2023

President Maia Sandu convened the SSC on Monday, 20 March 2023, after the failed election of the members of the SCM. The meeting decided to accelerate the creation of the SCM. *"The SCM is to be functional in 30 days, not later. The Parliament will appoint the non-judge members who have passed the evaluation of the Pre-Vetting Commission and from among these members the SCM will be created and it will function regardless of what the judges decide,"* the Head of State said. According to her, another recommendation of the SSC was to bring young specialists into the justice system.

"The assembly was held with violations. Independence of judges does not mean independence of corruption. Those who can neither justify their fortunes, nor the abuses they have committed, nor the protection of the corrupt have lectured morality to the citizens. We note that justice has been hijacked by the common interests of certain judges who let criminals go free, who allowed Laundromat, the theft of the billion to go unpunished or invalidated democratic elections," said Maia Sandu[21].

From 2021 to present, the court of first instance has ruled on seven out of 14 indicted judges; the first two decisions were to convict and the five that followed were to acquit. In both convictiond of the judges involved in the Russian Laundromat, the reporting judge was Alexei Panis.[22] In the first acquittal case of a judge involved in the Russian Laundromat, the reporting judge was Eugeniu Beșelea,[23] and in two other cases of acquittal the reporting judge was Livia Mitrofan.[24] It is worth mentioning that Ms Mitrofan was also sitting as a member in the panels that has issued convictions.

Although the fact that judges did not convict the judges involved in Laundromat has always been used as an argument in favour of implementing drastic judicial reforms, in practical terms, the judges who acquitted the judges involved in the Laundromat were more often favoured by the reform than those who convicted them.

Thus, Judge Alexei Panis, who issued the first two and so far the only convictions of the judges involved in the Russian Laundromat, was not reappointed by President Maia Sandu to the ceiling. In contrast, Judge Eugeniu Beșelea, who issued the first acquittal of the Laundromat judges, was reappointed by the President to the ceiling age, after being proposed in September 2023 by the newly constituted SCM following the pre-vetting reform.[25] This judge was included in the list of judges selected to consider corruption cases in the Chisinau Court by order of the court's Interim President, Livia Mitrofan, who also passed the pre-vetting procedure. According to information on the SCM's website, Eugeniu Beselea was invited to participate in official delegations abroad together with the SCM members.[26]

In a recent journalisitc investigation into judges who were promoted to specialise in examining only corruption cases in the Chisinau Court, several judges with alleged affiliations to the person believed to be the author of the Laundromat scheme in Moldova – Veaceslav Platon – were identified. Eugeniu Beșelea has admitted that he acquired a reputation because of the acquittals given to the judges indicted in the 'Russian Laundromat'. On 2 August 2021, he rejected the prosecutors' request to release the arrest warrant for Veaceslav Platon, who had fled the country a few weeks earlier.[27]

20 https://www.facebook.com/maia.sandu/posts/1434981540043794?ref=embed_post
21 https://radiochisinau.md/-justitia-a-fost-sechestrata-de-judecatorii-care-au-lasat-criminali-in-libertate-revista-presei---177651.html
22 Sentencing of Igor Vornicescu on 24 February 2021: https://jc.instante.justice.md/ro/pigd_integration/pdf/dcf18092-0cf2-4b0f-a733-d8a7a8b0696f
Sentencing of Sergiu Lebediuc on 26 February 2021: https://jc.instante.justice.md/ro/pigd_integration/pdf/4688de6f-832f-4bfd-8f96-f96535cd08c2
23 Ghenadie Bîrnaz acquitted on 2 March 2021: https://jc.instante.justice.md/ro/pigd_integration/pdf/d221245d-473f-4fde-b050-48e62ba57e7c
24 Gheorghe Marchitan acquitted on 23 September 2022: https://jc.instante.justice.md/ro/pigd_integration/pdf/6f053ca8-20c1-4d17-932c-ea0ad22a911f
Sentencing of Seghei Gubenco on 18 August 2023: https: https://jc.instante.justice.md/ro/pigd_integration/pdf/3fc92ce4-201f-40cc-a0ed-16a01883c10a
25 https://www.zdg.md/stiri/stiri-justitie/cererile-a-sapte-judecatori-pentru-numirea-in-functie-pana-la-atingerea-plafonului-de-varsta-respinsi-anterior-de-maia-sandu-din-nou-pe-masa-sefei-statului/
26 https://www.csm.md/ro/noutatii/3718-schimb-de-bune-practici-cu-estonia-in-vederea-eficientizarii-justitiei.html
27 https://tv8.md/2024/08/13/foto-cine-sunt-judecatorii-anticoruptie-din-moldova-averi-interese-si-dosare-controversate-partea-i/263494

Magistrates Panis and Mitrofan both ran for the position of member of the SCM. Alexei Panis did not pass the pre-vetting procedure by the Commission, although he only issued convictions in the cases of judges involved in the Laundromat, unlike Livia Mitrofan, who passed the evaluation, although she mainly issued acquittals in cases of the same category. Livia Mitrofan was not elected by the GAJ as a member of the SCM, but in the new composition of the SCM formed after the pre-vetting process, Ms Mitrofan was promoted to the position of Acting President of the Chisinau Court. In her turn, Livia Mitrofan promoted several judges who had issued solutions in favour of Veaceslav Platon in the specialized panel for examining corruption cases (Eugeniu Beșelea, Stela Bleșceaga, Olga Bejenari). Later, one of these judges (Stella Bleșceaga) was even promoted to the SCJ.[28]

Therefore, the narrative of a judiciary that needed to be cleaned of the judges who had not issued convictions in the Laundromat turned out to be diametrically opposed.

2.5 Myth: "The Government allowed the judges to clean themselves first and they failed to do so"

Accusations that the judiciary was unwilling to clean itself had become commonplace by November 2021, when the Ministry of Justice published the first concept for reforming the justice system through external evaluation mechanisms for judges and prosecutors. These accusations were constantly reiterated by the Government whenever they were asked why the justice reform was delayed: "Justice has been given time to clean itself, but justice has not done so."

Moreover, the judiciary has no self-cleaning mechanisms other than those at the disposal of the SCM – the only body through which the judiciary can govern itself, protecting its independence from other powers. The SCM and its specialized bodies are responsible for the processes of the evaluation, selection, promotion, transfer, ethics, and discipline of magistrates. Dissatisfaction with the insufficient use of tools to ensure judicial integrity can only be addressed to the SCM.

At the same time, politicians had previously actively intervened in the Extraordinary General Assemblies of Judges in September and October 2019 in order to avoid overthrowing the members of the SCM and thus maintain the collaboration with them, which was initiated in June 2019, when the Prime Minister attended the Council meeting together with the Minister of Justice.

Paradoxically, since then, politicians have hardly ever criticized the work of the SCM, directing criticism only at the judiciary in general and at the work of individual judges.

Even when the CSM reinstated five of the suspended magistrates indicted in the Laundromat cases and ordered that their salaries be paid for the entire period of their suspension, the future President of the Republic of Moldova apostrophized the judiciary for that decision but avoided criticizing the Council. In practice, the Council's work to clean up the judiciary by the means at its disposal continued to displease the Government. The Government never criticized the Council for its unsatisfactory work, but did directly criticized the judges. In the meantime, in the period 2020-2022, the terms of office of the SCM members expired one by one, and they could only be replaced by other members appointed by the GAJ, which proved impossible.

For almost four years during the period 2019-2022, the Government, through the decisions of the Commission for Exceptional Situations headed by the Prime Minister, expressly prohibited the meetings of judges during ordinary annual general assemblies under the pretext of pandemic restrictions. In fact, in doing so, the Government only artificially prolonged the collaboration with the SCM members.

The CC has stated that a SCM without a full mandate is not entitled to manage the career processes of judges.[29] Thus, the judges found themselves unable to have a functioning SCM that could clean up the system: the term of office of the Council members had expired and they were forbidden to dismiss or appoint other members of the Council, while the judges were held publicly accountable throughout that period because the judiciary did not want to clean up.

2.6 Myth: "The system is resisting reforms"

The justice reform is in fact perceived as a reform "against justice", while the cautious behaviour of magistrates might be natural in such circumstances, including among honest magistrates. However, the most vocal judges who take a critical stance are not associated with corruption or targeted in a negative light in journalistic investigations.

The judiciary has often been accused of resisting reforms. However, when judges do not participate in the processes of their own reform – only SCM members are involved, whose mandates the judges have tried to revoke and which have expired anyway – the actions taken as part of such reforms cannot be credible or perceived as thoughtful or effective.

Although, in the public space, judges have shared the opinion that the justice reform is necessary, as it is also necessary to clean the system of corrupt magistrates, attempts to involve them in the reform have been systematically challenged in the reform processes.

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28 *Ibid.*

29 https://www.constcourt.md/ccdocview.php?tip=hotariri&docid=805&l=ro

2.7 New myths: "Justice should not be independent" and "International standards in the field of justice do not work in Moldova"

The adoption of Law 26/2022 marked the beginning of the latest reform in the field of justice, based on the extraordinary evaluation of the members of the SCM and SCP (pre-vetting) and of judges and prosecutors (vetting). Two and a half years later, the first cycle of this reform has ended, but many complaints have been directed at its speed and efficiency.

During this period, frustrations over the ineffectiveness of the justice reform have culminated in new narratives that promise to foreshadow further justice reforms.

One of these new myths, which emerged in autumn 2024 – propagated by one of the members of the reformed SCM through the pre-vetting process, appointed to the SCM by the Parliament from among civil society – is that justice should not be independent and that it should be accepted both in the SCM and in other entities. Previously, in autumn 2023, he made another public statement that was inexplicable given his status as a SCM member, namely that the State of the Republic of Moldova needed undertake human rights violations in certain circumstances, and that the conviction of state authorities by the ECtHR was normal.

CASE STUDY 3. Member of the SCM, Ion Guzun: "The state needs to take responsibility for human rights violations. We have to accept that the judiciary is not independent"

Unimedia.md, 11 September 2024, "We have to accept that the judiciary is not independent." The statement was made by the member of the SCM, Ion Guzun, during the TV show 'Punctul pe azi' on TVR Moldova. [30]

"To make a comparison, Switzerland, being a neutral state, is already seriously discussing, on the military side, how to have better cooperation with NATO and other authorities. That is why, within the SCM and other entities, we have to accept that the judiciary is not independent, we have to communicate, we have to cooperate with other entities," Ion Guzun said.

Rlive.md, 26 September 2023, Rezoomat, the member of the SCM, Ion Guzun, said that as long as the right to life is not affected, the state of Moldova has to undertake the violation of human rights and that the situation of conviction of any state authorities by the ECtHR would be normal.[31]

"We have to undertake, as a country, that we, [...] any entity, at some point in time, can be subject to condemnations at the ECtHR. The most important thing is that we make sure that we do not violate the right to life, that we improve things along the way, that we change things or, at least, that all the judgments made (...) have guaranteed the right to defence [...], even if in the end it was unfavourable. From my point of view, a conviction by the ECtHR is condemnable, because it shows that the Republic of Moldova has not fulfilled certain commitments, I don't know, for example, the rule of law, certainly by paying some money from the state budget, but there exist issues that the state has to undertake."

The second myth that emerged in the electoral period between the first and second rounds of the presidential elections was announced by the President of the Republic of Moldova, according to which "good international practices of justice reform did not work in the Republic of Moldova" and, in the post-electoral period, truly drastic measures would have to be taken, for which "white gloves" would have to be taken off.

CASE STUDY 4. President of the Republic of Moldova, Maia Sandu: "International good practices in the field of justice reform have proved insufficient and ineffective for Moldova"

Newsmaker.md, 25 October 2024, "Immediately after the elections, the Parliament and the Government have to take completely different measures. Maia Sandu named "the most important lesson"".[32]

"The most important lesson, if you ask me, is that you can't do justice reform wearing "white gloves", as the citizens say, and I heard them saying that we had to act much tougher. And this is what we will do, this is what the Parliament and the Government need to do as soon as this election is over. Good international practices in terms of judicial reform have proved insufficient and ineffective in the case of Moldova, where this corruption has penetrated too deeply. And these people in the system, behind the façade of the independence of the judiciary, have now ended up betraying the country and jeopardizing the future of this country. This can't go on. So immediately after these elections, the Parliament and the Government need to take measures totally different from what has been done so far", Maia Sandu said.

"We must not break the law, this is not a way, but the law must be made differently and extraordinary methods must be used. We are in an exceptional situation, with risks to the security of the state, to our democracy, when people who have a lot of money come and buy the decision of the sovereign people of the Republic of Moldova. So we are in an exceptional situation. During the electoral campaign, the institutions must sanction them, identify all those who are involved in these schemes, but after the end of this campaign, the Parliament and the Government need to and I know that they will come up with exceptional measures that will be in line with the situation we are in," Maia Sandu concluded.

Conclusions of Chapter II. 'Myths of justice reform in Moldova'

– Justice reform in Moldova is heavily marked by myths that reflect the tensions between public expectations and reality. Although there have been significant efforts to 'clean up' the justice system, the process has stalled due to internal conflicts between Moldovan politicians and the judiciary.

30 https://unimedia.info/ro/news/fc3283b5ae595bcf/video-membrul-csm-ion-guzun-trebuie-sa-acceptam-ca-puterea-judecatoreasca-nu-este-independenta.html

31 https://www.facebook.com/watch/live/?ref=watch_permalink&v=833538594907712&sw_fnr_id=650697843&fnr_t=2

32 https://newsmaker.md/ro/imediat-dupa-alegeri-parlamentul-si-guvernul-trebuie-sa-ia-masuri-total-diferite-maia-sandu-a-numit-cea-mai-importanta-lectie/

– The myth that the judiciary is opposing the reform or that judges have failed to punish the 'Laundromat' corruption cases underestimates the complexity of the judicial process and the need to respect due process.

– The last pre-reform SCM, discredited and with an outdated mandate, functioned by accepting political interventions and protection, failing to undertake a real 'self-cleaning' of the system.

– Despite criticism, judges did not have the necessary levers to reform and clean themselves (other than through the SCM), and political interventions have made these reforms look more like an attack on justice than real change.

– Justice reform through extraordinary evaluations was inspired by the "bulldozing politics into justice" approach. This approach can be considered to have been a failure, since the reformed members of the SCM have announced that the judiciary should no longer be independent, while the President of the country has declared that the approaches so far have not been tough enough and the international practices and standards in the field of justice do not work in the Republic of Moldova

Lessons learnt

– A clear and realistic understanding of the fundamental problems facing the justice system is essential for a successful justice reform.

– The political context and election slogans may anticipate justice reforms, but they are not sufficient to ensure their successful design and implementation. Justice reforms can only be based on a genuine and comprehensive understanding of the problems they address; on evidence, not myths.

– To be credible, justice reform processes must be based on the principles of transparency, independence, and exclusion of political interference.

– If, instead of international standards in justice, reform methods contrary to these standards are applied, the conclusion cannot be that international good practices have not worked in Moldova.

– International standards and best practices are known as such because they have repeatedly proven their effectiveness. They just need to be applied strictly, consistently, uniformly and in good faith.

3

RULES OF THE GAME IN PRE-VETTING

Summary. *This chapter analyses the process of the extraordinary evaluation of judges and prosecutors in the Republic of Moldova, established by Law 26/2022, which was allegedly inspired by the Albanian model. In 2021, the Ministry of Justice published a concept concerning the evaluation of integrity of judges and prosecutors, which foresaw their evaluation in relation to their assets and professional conduct. After several revisions, the concept was transformed into a draft law applying only to candidates for the positions of members of the SCM and the SCP, thus reducing the initial scope of the announced process. The law was adopted in March 2022 and established the legal framework for the evaluation of these candidates.*

The Pre-Vetting Commission, composed of members appointed by the Parliament and international partners, evaluated the candidates on the basis of criteria of ethical and financial integrity. The criteria include checks on assets, conflicts of interest, and previous professional activities. However, despite the established procedure, the process was delayed and lasted until mid-November 2024. The regulation of the procedures for appealing the decisions of the Pre-Vetting Commission had a considerable impact on the lengthening of the process.

After the early parliamentary elections and the massive return of the PAS party to power in autumn 2021, the Ministry of Justice published a draft concept on the extraordinary evaluation of judges and prosecutors, strongly inspired by the example of Albania. The adoption of this model did not imply, however, also the intention to amend the Constitution, as had been the case in Albania.[33]

The concept proposed that the individual judge or prosecutor in question's failure to pass the integrity evaluation would lead to their dismissal. Checks would be carried out on individuals in relation to their assets and expenditures as against their legally available and declared income, conflicts of interest, and how he/she had dealt with concrete cases, including whether he/she had issued noticeably abusive/illegal decisions. It was proposed that the extraordinary evaluation be carried out with the involvement of three bodies: the International Monitoring Mission; the Evaluation Commission (composed of four Evaluation Panels); and the Special Appeals College. The International Monitoring Mission would have access to the country's information resources in order to be able to select the members of the Evaluation Commission and the Special Appeals Board.

This concept was not transposed into a draft law. Instead, a different law was drafted that simplified matters considerably. Firstly, not all judges and prosecutors would be evaluated, but only candidates for membership of the SCM and the SCP, as well as for membership of their specialized bodies. The role of the international experts was no longer to select the members of the Evaluation Commission and observe its work, but to evaluate the candidates sitting in the Evaluation Commission as members, alongside members who are citizens of the Republic of Moldova.

The consequence of non-promotion was only the limitation of the possibility to stand as a candidate, without any repercussions on the career of the judge or prosecutor.

The draft has been scrutinized by the Venice Commission, but the degree of transposition of the Venice Commission's recommendations remain questionable. Law No. 26 of 10 March 2022 on measures related to the selection of candidates for the positions of members of the self-administrative bodies of judges and prosecutors (Law 26/2022 on Pre-Vetting) was passed.

3.1 Candidates

Law 26/2022 on Pre-Vetting establishes that extraordinary evaluation measures are applicable to candidates for the following **categories of positions**:

a) member of the SCM;

b) member of the Board for the selection and career of judges;

33 http://justice.gov.md/public/files/Concept_EEJP_15_11_2021_1.pdf

c) member of the Board for the evaluation of the performance of judges;

d) member of the Disciplinary Board of Judges;

e) member of the SCP;

f) member of the Board for the selection and career of prosecutors;

g) member of the Board for the evaluation of the performance of prosecutors; and

h) member of the Disciplinary and Ethics Board subordinated to the SCP.

The SCM is composed of 12 members: six non-judge members appointed by the Parliament's decision and six judge members elected by secret ballot by the GAJ, as follows: four from the lower courts; one from the Courts of Appeal; and one from the SCJ.

According to the general rule, the SCM announces the date of the meeting of the GAJ, at which its members are to be elected, at least two months before the date of the meeting, and candidates need to submit their applications at least 30 days before the date of the meeting.[34]

Contrary to the general rule, special, shorter deadlines have been set for candidates for the position of member of the SCM registered for elections or contest until 27 March 2022, to whom Law 26/2022 on Pre-Vetting applies. Thus, within seven days since the adoption the Pre-Vetting Commission of the decision on the evaluation of the last candidate for the position of member of the respective council, registered for election or contest before 27 March 2022, the SCM and the SCP, respectively, shall convene the general meeting for the election of the members of the respective council and boards, which shall be organized no later than 35 days from the date of convocation.[35]

After the introduction of the passig of pre-vetting requirement, 39 people applied for the position of member of the SCM, including:

– 28 judge candidates, of whom five withdrew after the start of the evaluation, and 23 were evaluated. Of the 23 evaluated judges, 5 (22 per cent) passed the evaluation (all from the lower courts) and 18 (78 per cent) did not pass; and

– 21 non-judge candidates, of whom 9 (43 per cent) passed the evaluation and 12 (57 per cent) did not.[36]

The SCP consists of 13 members: four ex officio members (the President of the SCM (including interim), the Minister of Justice (including interim), the Ombudsman, and the Prosecutor General (PG)); five members elected by the GAP from among the prosecutors in office by secret vote, directly and freely expressed (one from among the prosecutors of the GPO and four from among the prosecutors of the territorial and specialized prosecutor's offices); and four members elected by competition from among civil society (one by the President of the state, one by the Parliament, one by the Government, and one by the Academy of Sciences of Moldova).

Candidates for the position of member of the SCP shall submit their applications for participation to the SCP at least 30 days before the date of the meeting of the GAP.[37]

The following have applied for the position of the SCP member:

– a total of 19 prosecutor candidates, of whom 2 withdrew before the start of the evaluation and 3 withdrew after the start of the evaluation. Out of the remaining 14, 7 (50 per cent) passed the evaluation (5 from the territorial prosecutor's offices and 2 from the GPO) and 7 (50 per cent) did not pass the evaluation; and

– three non-prosecutor candidates from among civil society, of whom one withdrew. Both assesed civil society candidates (100 per cent) passed the evaluation.[38]

In addition to 49 candidates for membership of the SCM and 20 candidates for membership of the SCP, the Pre-Vetting Commission was also expected to evaluate candidates for membership of the specialized boards. Thus, in addition to the candidates for the SCM and the SCP, 16 candidates were registered for the specialized boards of the SCM in the competition, including five persons who do not overlap with those on the list of judges registered for the SCM or for several boards at the same time, while for the SC's specialized boards some 48 candidates registered in the competition.

The **Pre-Vetting Commission had to evaluate** a total of 122 candidates, including 65 prosecutors, 33 judges, and 24 civil society representatives.

Exactly two years after the adoption of Law 26/2022, the Pre-Vetting Commission had, in the first stage, evaluated only the candidates for the positions of members of the SCM and SCP, in total 69 persons (56 per cent), while for the other 53 persons (44 per cent) who applied for specialized boards of the SCM and SCP, the Commission had not started yet the evaluation. This number does not include the candidates for

34 Law 947/1996 on the SCM, Art. 3.
35 Law 26/2022 on Pre-Vetting, Art. 15 para. (7) letters a) and b).
36 https://vetting.md/candidati/
37 Law 3/2016 on the Prosecutor's Office, Art. 69 paras. (2)-(4).
38 https://vetting.md/candidati/

the specialized bodies of the self-administration of justice. The Pre-Vetting Commission's website lacks any data on these categories of candidates to be evaluated by the Commission, as this function was passed on to another extraordinary Evaluation Commission. In mid-November 2024 the Pre-Vetting Commission announced the end of its mandate.

Law 26/2022 on Pre-Vetting does not regulate any **rights for candidates** during their evaluation by the Pre-Vetting Commission, except for the hearing, during which candidates have the following rights:

a) to attend the meetings of the Evaluation Commission and give oral explanations;

b) to be assisted by an attorney or a trainee attorney during the evaluation procedure;

c) to consult the evaluation materials, at least three days before the hearing;

d) to submit, in writing, any additional data and information that he/she deems necessary, in order to remove suspicions about his/her integrity; and

e) to appeal the decision of the Evaluation Commission.[39]

3.2 Pre-Vetting Commission

The Pre-Vetting Commission is composed of six members, led by a Chair chosen from among the members.[40] They are appointed as follows:

- three members, citizens of the Republic of Moldova, at the proposal of parliamentary factions with respect to the proportional representation of the majority and the opposition, approved with the vote of 3/5 of the elected Members of Parliament (MPs). In practical terms, this meant two members appointed by the parliamentary majority and one member appointed by the opposition. The opposition's failure to nominate a member to the Commission or to reach the required quorum for appointment did not prevent the parliamentary majority from appointing its members and the Commission from carrying out its work;[41] and
- three members, at the proposal of the development partners, approved by 3/5 of the elected MPs. To this end, the partners were to sign a joint letter proposing six eligible candidates to the Parliament, from which the Committee for Legal Affairs, Appointments and Immunities was to select three candidates to propose to the plenary of the Parliament.[42] The list of development partners (international organizations, diplomatic missions, and their representations in the Republic of Moldova) active in the field of justice reform and the fight against corruption in the last two years was approved by a Government Decision.[43]

The nominal composition of the Pre-Vetting Commission is confirmed by a Parliament Decision. Members of the Commission were appointed by the Parliament Decision of 4 April 2022.[44] The members of the Pre-Vetting Commission from among the citizens of the Republic of Moldova received a monthly allowance equivalent to twice the basic salary of the SCJ judge, who has more than 16 years of seniority in the position of judge,[45] i.e. 61,450 lei (more than 3,000 euro).

The Pre-Vetting Commission was provided with a Secretariat – an ad hoc structure without a legal personality in its own right, independent of any public authority, established exclusively to assist the Pre-Vetting Commission in the exercise of its duties. The functioning and staffing of the Secretariat were approved by the Pre-Vetting Commission. The Secretariat's employees were recruited by the development partners. The Secretariat's work is coordinated by the Head of the Secretariat. The latter, together with the Secretariat's staff, is independent in decision-making and reports exclusively to the Pre-Vetting Commission and its Chair.[46] The activity of the Pre-Vetting Commission and its Secretariat shall be financed at the expense and, within the limits of the financial means approved in the annual budget law, from other sources not prohibited by law.[47]

The Chair of the Pre-Vetting Commission and the Head of the Secretariat are entitled to imperatively request the public authorities and institutions to delegate and temporarily second the persons requested by the Commission to assist its work, including by way of derogation from the laws regulating the functioning and status of the employees of these public authorities and institutions.[48]

The Law provides the Pre-Vetting Commission with functional

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39 Law 26/2022 on pre-vetting, Art. 12 para. (4).
40 *Ibid,* Art. 3(2).
41 *Ibidem,* Art. 5(1)-(4).
42 *Ibid,* Art. 5(1) and (4).
43 (7), Government Provision 45-d of 21 March 2022 for the approval of the list of development partners in the field of justice reform and fight against corruption.
44 Parliament's Decision 88 of 4 April 2022 on confirming the nominal composition of the Independent Integrity Evaluation Commission for candidates for membership of the self-administration bodies of judges and prosecutors.
45 Law 26/2022 on Pre-Vetting, Art. 3 para. (4).
46 *Ibid,* Art. 3 para. (5).
47 *Ibid,* Art. 3(6).
48 *Ibid,* Art. 3(7).

independence and decision-making autonomy from any individual or legal entity, regardless of their legal form of organization, including from the political factions and development partners that participated in the appointment of its members. In its work, the Pre-Vetting Commission is governed by the Constitution, the Moldovan legislation and its own rules of organization and functioning, as approved by it.[49]

Membership in the Pre-Vetting Commission is incompatible with any public office and ceases, inter alia, in the event of any of the following: withdrawal of membership due to the occurrence of circumstances of incompatibility; intentional violation of the law and the rules of organization and functioning of the Pre-Vetting Commission; and the committing of a flagrant crime, etc.[50]

The Pre-Vetting Commission evaluates candidates and takes decisions on the results of the evaluation of their integrity; collects and verifies any data relevant to the evaluation of candidates; has access to any information systems containing data relevant to the fulfilment of its mandate, namely the evaluation of the ethical and financial integrity of candidates, including through the interoperability platform (MConnect); hears the candidate and other persons who are in possesion of relevant information about the candidate's integrity; requests information from individuals or legal entities of public or private law; and gathers any information relevant to the fulfilment of its mandate.[51]

Members of the Pre-Vetting Commission are obliged to ensure the confidentiality and security of personal data; not to disclose confidential information about candidates and their close persons; to refrain from any activity in the event of conflict of interests, or from any actions incompatible with membership of the Evaluation Commission; and to refrain from actions that could discredit the Commission or cast doubt on the objectivity of its decisions.[52]

3.3 Evaluation criteria

The integrity evaluation of candidates consists of checking their ethical integrity and financial integrity. A candidate was deemed to meet **the ethical integrity criterion** if:

– he/she has not seriously violated the rules of ethics and professional conduct of judges, prosecutors or, where applicable, other professions, and has not committed, in his/her activity, any wrongful actions or inactions, which would be inexplicable from the point of view of a legal professional and an impartial observer;

– there are no reasonable suspicions that the candidate has committed corruption acts, acts related to corruption or corruptible acts, within the meaning of Law 82/2017 on integrity; and

– has not violated the legal regime of declaring personal assets and interests, conflicts of interest, incompatibilities, restrictions, and/or limitations.

In the absence of rules of ethics and conduct approved for the field in which the candidate works or has worked, it shall be verified whether or not the candidate's past conduct casts reasonable doubts on his/her compliance with the ethical and conduct standards established for judges and prosecutors.

A candidate is deemed to meet **the criterion of financial integrity** if:

– the candidate's assets have been declared in the manner established by law; and

– The Pre-Vetting Commission finds that the candidate's wealth acquired in the last 15 years corresponds to their declared income.

In order to assess the candidate's financial integrity, the Pre-Vetting Commission verifies:

– compliance by the candidate with the taxation regime, in the part related to the payment of taxes on the use of funds and income derived from owned property, as well as taxable income and the payment of import and export duties;

– compliance by the candidate with the legal regime of declaring assets and personal interests;

– the method of acquiring the assets owned or possessed by the candidate or his/her close relatives, as well as the expenses for the maintenance of such assets;

– the sources of income of the candidate and, where applicable, of his/her close relatives;

– the existence of loan, credit, leasing, insurance, or other agreements that can generate financial benefits, where the candidate, the person close to him/her, or the legal entity of which they are the beneficial owners is a contracting party; and

– the existence of donations, where the candidate or his/her close relatives has the status of donee or donor, etc.

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49 *Ibidem,* Art. 4 para. (1).
50 *Ibid,* Art. 4 paras. (9)-(11).
51 *Ibid,* Art. 6.
52 *Ibid,* Art. 7.

In assessing and deciding on these criteria, the Pre-Vetting Commission is not bound by the findings of other bodies with competences in the field.[53]

Following the evaluation procedure, the Pre-Vetting Commission issues a reasoned decision as to whether or not the evaluation has been passed. If a candidate withdraws from the competition after the institutions responsible for organizing the elections or, as the case may be, the competition, have forwarded the lists of candidates to the Pre-Vetting Commission, irrespective of the reason given by the candidate, this is deemed to be equivalent to the candidate's failure to pass the evaluation.

The decision of the Pre-Vetting Commission must include the relevant facts, the reasons, and the Commission's conclusion as to whether or not the evaluation should be positive. The decision shall be taken by a majority vote of the members participating in the taking of the decision and the members of the Commission shall not be entitled to refrain from voting. In the event of a tie vote, the Pre-Vetting Commission shall repeatedly examine the information on the candidate in question and put it to the vote the following day. If a tie vote is repeated, the candidate is deemed to not to have passed the evaluation.

A candidate shall be deemed not to meet the integrity criteria if there are serious doubts as to the candidate's compliance with the requirements of ethical and financial integrity, which have not been removed by the person assessed.

The decision of failing the evaluation shall constitute a legal basis for not admitting the candidate to the elections or competition. The decision is forwarded to the competent bodies for consideration of the infringements found, but the findings in the decision do not have probative value for further proceedings or processes.

The decision of the Pre-Vetting Commission is sent to the candidate's email address and to the institution responsible for organizing the elections or, as the case may be, the competition. If the candidate does not notify the Pre-Vetting Commission within 48 hours of the date of dispatch of the decision of the Pre-Vetting Commission of his/her refusal to publish, the decision on his/her assessment will be published on the website of the institution responsible for organizing the elections or, where applicable, the competition, in a depersonalized form, except for the candidate's name and surname, which will remain public.[54]

3.4 Appeal procedures

The decision of the Pre-Vetting Commission not to pass the evaluation may be appealed by the candidate within five days from the date of receiving the reasoned decision. The unfavourable decision of the Pre-Vetting Commission is appealed before the SCJ and is to be examined within 10 days. In practical terms, the examination of the appeals took around 6-7 months; in two cases, it took one month, and in one case it took 12 months. During this time, one appeal was rejected and 22 appeals by candidates were accepted.

An appeal against the decision of the Pre-Vetting Commission shall be heard and determined in accordance with the procedure laid down in the Administrative Code, subject to the exceptions established by law, and shall not have suspensive effect on the decisions of the Pre-Vetting Commission, elections, or competition in which the candidate participates.

When examining the appeal against a decision of the Pre-Vetting Commission, the SCJ may adopt one of the following decisions: to reject the appeal or to accept it and order that the Pre-Vetting Commission resume the procedure of evaluating the candidate. If the Pre-Vetting Commission resumes the evaluation of a candidate, the provisions of the integrity evaluation procedure described above apply.[55]

Since the resumption of the evaluation procedure, the Pre-Vetting Commission has repeatedly evaluated seven candidates over a period of eight months. The shortest re-evaluation interval was four months. At the same time, the deadlines set for convening the GAJ and the GAP were not adjusted to allow all candidates whose appeals were upheld to be elected to the posts for which they had applied.

Just before adopting the first decisions of the Pre-Vetting Commission, the Parliament of the Republic of Moldova narrowed the basis for admitting appeals and ordering the re-evaluation of candidates in order to avoid the possibility of annulment of the Commission's decisions on the grounds of procedural violations only in cases where the SCJ would find that, in the evaluation procedure, the Pre-Vetting Commission had admitted some serious procedural errors, which affected the fairness of the evaluation procedure, and that there were circumstances that could lead to the candidate passing the evaluation.[56]

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53 *Ibid,* Art. 8.
54 *Ibid,* Art. 13.
55 Law 26/2022 on Pre-Vetting, Art. 14.
56 Law 26/2022 on Pre-Vetting, Art. 14 para. (8) letter b), in the wording of Law 354 of 22 December 2022.

Conclusions of Chapter III. 'Rules of the Game in Pre-Vetting'

– Despite the intentions to introduce reform the Albanian model of justice reform, the process was implemented without constitutional amendments and did not reach the initially announced scale (in the first stage, only the self-administrative bodies of the judiciary and prosecution were involved).

– The complexity and imbalances of the pre-vetting procedure, established for assessing the integrity of judges and prosecutors in the Republic of Moldova, together with the restriction of candidates' rights, have foreshadowed a dysfunctional process, which exceeded the time limits set for this purpose.

– Imposing of unrealistic time limits by Law 26/2022, both for the Pre-Vetting Commission and for the Special Panel of the SCJ, did not ensure a speedy completion of the evaluations. Even after almost three years in office, about 40 per cent of the candidates to be evaluated by the Pre-Vetting Commission were passed on to other vetting commissions.

– Law 26/2022 did not take into account the possibility of the admissibility of appeals of candidates before the SCJ, as no additional time was provided for repeated evaluations by the Pre-Vetting Commission, while the GAJ and GAP were not given time to learn the results of the appeals before forming the SCM and SCP.

– The Parliament made the main legislative interventions in the pre-vetting process during the period of examination of the appeals lodged by candidates against the Pre-Vetting Commission's decisions. The amendments were aimed exclusively at reducing the chances of the admission of the candidates' appeals by the SCJ. Thus, the Parliament did not act as a rule-setting authority according to which the appeals were examined, but as a participant in the process, intervening in the pending disputes on the side of the Commission.

Lessons learnt:

– Transformations in justice are complex and long-term processes that need to be carefully thought through; they cannot be rushed by setting deadlines and imposing unrealistic tasks for carrying out the evaluation of judges and prosecutors or examining their appeals.

– Reducing the guarantees for judges and prosecutors in extraordinary evaluation procedures below the constitutionally guaranteed level, in the absence of amendments to the Constitution of the Republic of Moldova, slows down reform processes, because it defies the practice of applying the Constitution of the Republic of Moldova.

– The Parliament's involvement in justice reform processes must remain impersonal, so as not to undermine their credibility. Legislative interventions in the framework of justice reforms must not turn the legislature into a 'big brother' of the Pre-Vetting Commission, offering it guarantees of infallibility.

4

LACK OF FAIR PLAY

Summary. *This chapter examines the multiple irregularities and inequities in the pre-vetting mechanism for candidates for membership in the self-administrative bodies of judges and prosecutors of the Republic of Moldova, established by Law 26/2022. Although this process was supposed to ensure a fair assessment of the integrity of candidates, numerous practices put in place by the Pre-Vetting Commission violated fundamental rights, including the right to defence and the presumption of innocence. One of the main problems is that the responsibility for integrity is placed not only on the candidate, but also on persons "close" to him/her, including extended relatives, without providing an adequate legal framework for obtaining financial or asset information from/about them. In addition, the unrealistic deadlines imposed for collecting and providing information, coupled with difficulties in accessing evidence, have led to abuses and limited the ability of candidates to defend their integrity and reputation.*

The Pre-Vetting Commission also imposed retroactive requirements and assigned non-existent obligations, such as keeping financial documents for long periods. In addition, through discriminatory and unclear procedures, candidatess had no real opportunity to challenge decisions, while the courts were often unable to effectively influence the process, resulting in a discrepancy between the decisions of the SCJ and the Commission. Finally, the Commission's authority to interpret and apply its own regulation rather than national law and the Constitution further exacerbated the lack of transparency and fairness.

The evaluation mechanism of candidates for membership in the self-administrative bodies of judges and prosecutors was established without amending the Constitution, which led to the defiance of a number of legislative and constitutional guarantees.

Moreover, the Pre-Vetting Commission further established practices unforeseen by the legislation. Thus, the pre-vetting process became a patchwork of elements that deprived the evaluation of fair play.

4.1 Candidates' responsibility for the situation and actions of persons considered "close" to them

As part of the evaluation, candidates were required to provide detailed answers about themselves and their close relatives,[57] for a period of 15 years, regardless of the evolution of their relationship and the existence of communication at the time of the evaluation. The circle of persons for whom the candidates were to provide information included persons deemed by law to be "close".

The concept of a 'close relative' is defined in the legislation on the declaration of personal assets and interests and includes spouses, cohabitees, dependants, blood relatives up to the fourth degree (children, parents, brothers, sisters, grandparents, grandchildren, uncles, aunts), and relatives by affinity up to the second degree (brothers/sisters-in-law, parents-in-law, parents-in-law, sons-in-law, and daughters-in-law).[58] This notion of 'close relatives' is not applied to the declaration of assets but it is applied to conflicts of interest. Thus, for candidates subject to pre-vetting who were previously obliged to submit declarations of assets and interests, it was impossible to find financial and asset information of 'close persons' in their own annual declarations for the last 15 years. The declarations of assets only reflect the situation of 'family members'.

The notion of a 'family member' is much narrower, covering only spouses, cohabiting partners, minor children, and dependants.[59] Therefore, candidates undergoing pre-vetting who came from the public sector and who had declared their assets and interests could, at best, quickly find in their own declarations filed in the past only information about those close persons who were 'family members'.

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57 Law 26/2022 on Pre-Vetting, Art. 2 para. (2).

58 Art. 2 of Law 133/2016 'On the declaration of assets and personal interests' defines the notion of *"close person – spouse, child, cohabitant of the subject of the declaration, dependant of the subject of the declaration, also a person related by blood or adoption to the declarant (parent, brother/sister, grandparent, grandchild, uncle/aunt) and a person related by affinity to the declarant (brother-in-law, sister-in-law, father-in-law, mother-in-law, son-in-law, daughter-in-law)"*.

59 Art. 2 of Law 133/2016 'on the declaration of wealth and personal interests' defines the notion of "*family member* – spouse, minor child, including adopted child or dependant of the subject of the declaration".

The inability to obtain detailed information about the situation of a wide circle of persons considered by law as "close" was usually retained by the Commission as a doubt as to the integrity of the assessed candidate.

The Commission assigned to the candidates all the alleged 'sins' of spouses, cohabitants, parents, children, uncles, aunts, nephews, brothers-in-law, sisters-in-law, parents-in-law, sons-in-law, daughters-in-law, uncles-in-law, aunts-in-law, nephews etc.

For comparison, in Albania, the law regulating vetting procedures provides for the concept of "objective impossibility" of the candidate to provide certain evidence or materials that would normally be required to be provided within the framework of his/her assessment. Art.32 of the Albanian Vetting Law provides: "If the person being vetted faces an objective impossibility to submit supporting documents justifying the lawfulness of the creation of assets, the person shall certify to the vetting body that the supporting document is missing, lost or cannot be reproduced or obtained in any other way. The vetting bodies shall decide whether the absence of supporting documents is justified".

In the ECtHR judgment in the case of Xhoxhaj vs Albania of 9 February 2021, the Court referred to this aspect (paragraph 351): "In addition, the Court observes that section 32(2) of the Vetting Act provides attenuating circumstances if a person being vetted faces an objective impossibility to submit supporting documents (see paragraph 136 above). In the applicant's case, the vetting bodies held that the applicant had not provided any supporting documents justifying the existence of an objective impossibility to demonstrate the lawful nature of her partner's income from 1992 to 2000 (see paragraphs 28 and 69 above).")

4.2 Inaccessibility of evidence and unreasonable time limits for providing evidence

Since the deadlines for providing answers to the Commission's questions were not expressly regulated by law, the Pre-Vetting Commission set derisory deadlines, on average 3 working days, within which candidates had to provide financial, patrimonial, and other information on their own situation and that of persons close to them for the last 15 years.

For instance, in the Xhoxhaj vs Albania case, the ECtHR found that, from the point of view of the fairness of the proceedings it is important to be provided with time and facilities to prepare an adequate defence, (Art. 6 (1) ECHR under the „civil limb").

The legislation on access to information provides that such requests shall be satisfied within 15-20 working days (equivalent to 21-23 calendar days) from the moment of the registration of the request.[60] Providers of information may only disclose personal information to the persons to whom the information relates, as information about other persons is personal data of those persons and constitutes restricted information.[61]

Therefore, under Moldovan legislation, the assessed candidates could only request information about themselves and required at least three weeks to one month just to obtain the information.

As regards obtaining financial and asset information about other persons, Law 26/2022 on Pre-Vetting did not regulate any mechanism to facilitate candidates' access to information requested by the Commission, which is not available to them and which they have to request from other persons or from holders of information about these persons. However, candidates could have been in hostile, distant, divorced, etc., relationships with persons considered to be "close" to them according to the law for the last 15 years. Moreover, from the explanations of the candidates that could be followed during the public hearings, situations emerged where the persons considered "close" were abroad, in a serious condition, in poor physical or mental health, or deceased at the time of the assessment. Information and documents about the property alienated to other persons previously owned by the candidate or persons considered "close" to him/her in the last 15 years similarly could not be obtained from state bodies or these persons without their cooperation. For example, a copy of the contract of sale or purchase of a real estate or vehicle that the candidate did not keep could no longer be requested from the Public Services Agency, because the property currently has another owner. In the case of vehicles, the Public Service Agency generally keeps the contracts for five years. Moreover, the candidate cannot obtain information about assets disposed of in the last 15 years by any of the persons considered "close" to them without their cooperation, which may not be forthcoming for reasons unrelated in any way to the lack of integrity of the candidate assessed, such as hostility, lack of communication, being abroad, old age, amnesia, illness, or even death (objective impossibility).

4.3 Placing the burden of proof solely on the candidate

Law 26/2022 on Pre-Vetting did not treat the integrity of the candidate as a personal characteristic of the candidate alone, but as a trait both of the candidate and of persons considered to be "close" to him/her in the last 15 years. At the same time, the law placed the burden of proof for the Commission's removal of doubts about the candidate's ethical and financial integrity on the candidate: "*a candidate shall be deemed not to meet the integrity criteria if serious doubts have been found as to the candidate's compliance with the requirements of ethical and*

60 Art. 16 para. (1) and (2) of Law 982/2000 on access to information (in force until 8 January 2024).
61 Art.7 para. (2) lit. c) and Art. 8 of Law 982 of 11 May 2000 'on access to information', in force until 8 January 2024.

financial integrity, which have not been mitigated by the evaluated person".[62] The financial integrity requirements also include the situation of the candidate's extended family members in the last 15 years.[63]

On the other hand, while the Pre-Vetting Commission was empowered by law with direct access to the informational databases necessary to fulfil its mandate, as well as to gather information from any public authority, individual, and legal entity holding information on candidates and persons considered by law as being "close" to them, such information was requested within a restricted time limit (10 calendar days), with the possibility of sanction for failure to submit the requested information or violation of the deadline for submission. Unlike the Commission, the candidate is entitled neither to request information about other persons considered by law to be "close" to him/her in the last 15 years from anyone, nor to obtain information about himself/herself within the usual time limits imposed by the Commission. During the assessment and until the hearings, the candidate has no right of access to the materials of his/her integrity assessment,[64] but has the burden of proving his/her integrity, as well as the integrity of persons to whom the information is completely inaccessible without their cooperation. Although the candidate's assessment materials gathered by the Commission may contain information that the candidate could not obtain on his/her own, the candidate is still required to explain that which he/she does not have access to and often cannot even understand. Thus, the candidate is faced with a choice between: 1) not removing the doubts raised by the Commission because he/she does not have access to the necessary information when the doubts are raised (until the hearings), or 2) inventing an explanation to somehow remove these doubts, at the risk of later finding out that there is information in his/her assessment materials gathered by the Commission with which he/she could have easily removed those doubts with a more relevant explanation.

To this end, the ECtHR states clearly in its judgement Xhoxhaj vs Albania: "352. The Court further reiterates that it is not per se arbitrary, for the purposes of the "civil" limb of Article 6 § 1 of the Convention, that the burden of proof shifted onto the applicant in the vetting proceedings after the IQC had made available the preliminary findings resulting from the conclusion of the investigation and had given access to the evidence in the case file (see Gogitidze and Others v. Georgia, no. 36862/05, § 122, 12 May 2015, in the context of forfeiture proceedings in rem, and, mutatis mutandis, Grayson and Barnham vs. the United Kingdom, nos. 19955/05 and 15085/06, §§ 37-49, 23 September 2008, in the context of a confiscation order in drug-trafficking cases).

Placing the burden of proof on the candidate to remove doubts about their integrity and that of others, combined with the impossibility of interpolating the necessary data and the prohibition to have access to the assessment materials gathered by the Commission before providing written explanations, placed candidates in a situation in which they could not provide explanations or had to 'invent' them. These excessive constraints imposed by the Commission sometimes seemed to create the appearance that some candidates would lie or at least contradict themselves, in a manner that was completely unnecessary for establishing their integrity.

On several occasions during the hearings, the Commission pointed out contradictions of this kind between the information it had gathered and withheld from the candidate and the explanations the candidate tried or was unable to give, finding that the candidate had not removed the Commission's serious doubts about his/her integrity. Moreover, according to information gathered from the candidates' questionnaires, prior to their hearing by the Pre-Vetting Commission, contrary to the express statutory right of access to their assessment materials,[65] the Commission provided selective access to these materials, limiting itself to only those it considered "relevant". Some candidates were only able to gain access to some of their assessment materials during the examination of their appeals by the SCJ. None of the candidates who participated in the questionnaires were able to obtain full access to their assessment materials.

4.4 Annulment of the power of the matter decided/adjudged, presumption of guilt, and double liability for the same act

The Constitution of the Republic of Moldova regulates the binding nature of judgments and other final judicial decisions, the enforcement of judgments, and other final judicial decisions.[66] The Administrative and Procedural Codes make it mandatory to comply with the principles of the matters decided/adjudged. At the same time, the presumption of innocence is a fundamental right enshrined in the Constitution that does not allow any derogation, since it is forbidden even to adopt laws that would suppress or diminish fundamental human rights and freedoms.[67]

Law 26/2022 on Pre-Vetting provided that, in assessing whether the requirements of the integrity criteria are met, the Pre-Vetting Commission does not depend on the findings of other bodies with competence in the field.[68] Notwithstanding the principle of decided matter, the Pre-Vetting Commission re-examines any situation previously verified by other

62 Art. 13 para. (5) of Law 26/2022 on Pre-Vetting.
63 *Ibidem,* Art. 8 para. (5) letter c)-f).
64 *Ibidem,* Art. 12 para. (4) letter c).
65 *Ibid.*
66 Article 120 of the Constitution of the Republic of Moldova.
67 Ibid, Art. 54(1) and (3) in conjunction with Art. 21.
68 Art.8 (6) of Law 26/2022 on Pre-Vetting.

competent public authorities and finds, as a rule, the opposite of what is stated in the acts of those authorities, since the Commission is not obliged to gather evidence with regards to the innocence of the person assessed. The Commission often easily reached the conclusion that the person had failed of his or her own free will to remove doubts as to his or her integrity, as the authorities' findings of innocence were treated as not binding on the Commission. This led to the absurd situation where the person assessed had to prove his/her innocence in any way other than by proving his/her innocence to the competent body, since the evidence, having already been assessed by the competent authority, was not considered binding. In this way, almost all candidates in respect of whom there were such acts were subject to repeated examination and were repeatedly held liable for the same act.

Examples include the decision of the disciplinary college not to sanction on the grounds that the act is not a disciplinary misconduct; the finding of the National Integrity Authority (NIA) that there is no conflict of interest, incompatibility, improper declaration of personal assets and interests, or unexplained wealth; the prosecutor's order not to initiate criminal proceedings or to cease/terminate criminal proceedings; and the court's decision to annul an act of the NIA. Such solutions were in fact opportunities for the Pre-Vetting Commission to make candidates repeatedly prove their innocence.

The discrepancy between the presumption of innocence with which the public authorities operate and the presumption of guilt applied by the Pre-Vetting Commission has generated an excessive margin of discretion for the Commission to take into account or not to take into account the favourable solutions of other authorities, with the possibility of favouring or aggravating the situation of the candidates. This margin of discretion often allowed the Commission to disregard the existence of favourable acts for the candidates, and in at least one case led to a diametrically opposite situation. In the case of the candidate Iulian Muntean, nominated by the Parliament, the Pre-Vetting Commission, for unclear reasons which it did not explain to the public, did not follow its own methodology for vetting candidates, although it was obliged by law to verify the existence of reasonable suspicions of corruption acts committed by candidates. It later turned out that Iulian Muntean was a defendant in a criminal corruption case.

CASE STUDY 5. The Pre-Vetting Commission deviates from the methodology for verifying information about candidates

The article 'In the case of some – yes, in the case of Iulian Muntean – no // APO: the Pre-Vetting Commission did not request information' by *anticoruptie.md*, 21 September 2023[69]

The APO clarified, on Thursday, 21 September, its role in the pre-vetting procedure. In its public response, the PA said that it had sent the Pre-Vetting Commission the information available in the case of the candidates under evaluation, if a request had been made. In the case of Iulian Muntean, a candidate for the position of member of the SCM, no query in this regard was sent. [...]

"According to the legal provisions, [...] the provision of such information ex officio by the APO [...] contradicts the principle of presumption of innocence," the specialized prosecutor's office said. Instead, says the source, the Pre-Vetting Commission can request information relevant to the fulfilment of its mandate. The Commission requested information from PA about certain candidates, but did not do so in the case of Iulian Muntean.

"To date, the APO has received multiple requests from the Pre-Vetting Commission regarding several candidates for the SCP and the SCM subject to the Commission's evaluation. In order to ensure that a full response was provided, Anti-Corruption Prosecution staff both checked the databases and requested this information from each prosecutor separately. Upon all requests by the Pre-Vetting Commission, the APO forwarded to the Commission the available information on each candidate under evaluation. The APO was not asked by the Pre-Vetting Commission to provide information about the candidate Iulian Muntean, as it had in the case of other candidates," said the APO."

4.5 Retroactive imposition of non-existent obligations

Another consequence of the Pre-Vetting Commission's interpretation of the candidate's obligation to remove doubts as to his/her integrity was the requirement to produce documents confirming the income, expenses, and assets of the candidates and of persons considered by law to have been "close" to them for the last 15 years and more, even if there was no legal obligation to conclude certain asset transfer transactions in written form or to keep a copy of such documents for all such persons.

It is not clear why the Commission gathered financial information on persons considered "close" to the candidates when any link between the candidate's activity and those persons' financial situation was excluded.

For example, the Commission raised serious doubts about some candidates' compliance with the requirements of ethical and financial integrity and asked them to remove these by means of evidence, even though the candidates in question were children at the time of the Commission's doubts. It turned out that the doubts had to be removed by documents implicitly presumed to be kept by a minor.

CASE STUDY 6. Pre-Vetting Commission assigns non-existent obligations to candidates during their childhood

The (depersonalized) Pre-Vetting Commission questions one of the assessed candidates:

According to e-Cadastre, your parents X. and Y.Z. own agricultural land of ... ha, which was purchased between 2000 and 2022. According to the information available to the Commission, in the period 2007-2021, your father, X.Z., had a total taxable income of .... MDL, and your mother, Y.Z., had a total taxable income of .... MDL [...].

***a.** Please explain the source of the money your parents used to buy ... ha of land.*

***b.** Please provide documentary evidence of the source of funds.*

69 https://anticoruptie.md/ro/dosare-de-coruptie/in-cazul-unora-da-in-cazul-lui-iulian-muntean-ba-procuratura-anticoruptie-comisia-pre-vetting-nu-a-solicitat-informatii

Candidate's reply (extract):

a. *According to Art. 8 paragraph (4) letter b) of Law No. 26/2022, the Evaluation Commission shall ascertain whether the assets acquired by the candidate in the last 15 years correspond to the declared income. In the question asked, the Commission refers to assets acquired by my parents 22 years ago, when I was only 12 years old. However, I became a judge only 17 years later, in 2017, at the age of 29. Although the Commission is not entitled to accumulate information about my and my relatives' income and assets beyond the 15-year period, i.e. before 2007, it is clear from the content of the question that the Commission has violated the legal provisions under which it was established by gathering information about my parents well beyond the period permitted by law. [...]*

b. *The Commission is wrongly and illogically assuming that the income earned by my parents for 14 years during the years 2007-2021 could not have been sufficient to purchase agricultural land for 22 years during the years 2000-2022, by asking me for documents confirming my parents' income for the years 2000-2022, which I do not have and in respect of which I cannot even have a legal expectation of having had/applied for/kept them since childhood, when I was 12 years old or even earlier. [...] even if we disregard the deadline of one working day and two working hours provided by the Commission, neither am I entitled to request the production of these documents from the competent bodies, nor do my parents keep documents for such long periods.*

At the same time, [...] the Commission has the necessary powers to request copies of all the documents relating to the transactions in the period 2007-2022 [...] and can identify the value of these transactions and compare them with my parents' income in the same period. It is certain that the Commission cannot conclude the insufficiency of the financial means obtained by my parents for a period shorter than that to which it reports the expenses incurred in the purchase of these assets, nor can it attribute them to ethical or financial breaches admitted by me in the last five years as a judge, which constitutes less than ¼ of the period to which the Commission reports.[70]

4.6 Lack of substance of the candidates' rights of defence

The pre-vetting procedure involves an assessment to check the candidates' ethical and financial integrity. The Pre-Vetting Commission addresses any doubts it considers serious about the integrity of the candidate, while the candidate is obliged to remove these doubts in order to pass the evaluation. When presented with allegations, candidates must be given a reasonable possibility to defend themselves in accordance with their constitutional right.[71]

The conditions of Law 26/2022 on Pre-Vetting deprive the candidates of their right to defence of any content and significance. The right of defence of candidates who wish to assert their ethical and financial integrity cannot be realized when the Law and the Pre-Vetting Commission impose the following duties on them:

- the collective responsibility of the candidates together with a wide circle of persons, considered by law as their "close relatives": spouse, child, cohabitee, dependant, person related by blood or adoption – parent, brother/sister, grandparent, grandchild, uncle/aunt, and person related by affinity – brother-in-law, sister-in-law, father-in-law, mother-in-law, son-in-law, daughter-in-law;

- the responsibility of the candidate for his/her own actions and those of persons considered to have been "close" to him/her for the last 15 years;

- the retroactive imposition of obligations that do not exist in the legislation, such as: the obligation of the candidate and all persons considered to be "close" to him/her to keep records justifying their income, expenses, and assets for the last 15 years, and the obligation to conclude all transactions in writing, even when not required by law, including obligations for candidates from the age when they were children and had limited capacity (i.e., they could not assume and execute civil obligations);

- the obligation to submit financial and asset information about themselves and persons considered to have been "close" to them for the last 15 years within approximately three working days, although the general deadlines for requesting information from the authorities are 5-7 times longer than the deadline granted by the Pre-Vetting Commission (15-20 working days);

- the obligation to produce inaccessible evidence, such as financial and asset information on other persons (those considered to be "close" to them) from the last 15 years, although candidates are not entitled to request such information and the availability of such persons may be different, without any bearing on the integrity of the candidates (including situations of objective impossibility, not attributable to the candidates);

- replacing the constitutional presumption of innocence of the candidate with the presumption of his/her guilt;

- the annulment of the pre-established value of the matter decided by the competent public authorities and of the pre-established value of the *res judicata;*

- the wide margin of discretion for the Pre-Vetting Commission to treat assessed candidates differently; and

- the inefficiency and futility of the procedures for appealing against decisions of the Pre-Vetting Commission.

Law 26/2022 provides for the right of candidates to be assisted by lawyers or trainee lawyers,[72] but the interpretation of this rule by the Pre-Vetting Commission reduces the role of the lawyer to the point of uselessness. During the hearings, the Pre-Voting Commission explained that the right to be assisted by a lawyer does not allow the lawyer to represent the

70 From the answers submitted to the Pre-Vetting Commission by one of the assessed candidates.
71 Article 26 of the Constitution of the Republic of Moldova.
72 Law 26/2022, Art. 12 para. (4) letter b).

candidate, but only the possibility to be present with him/her. However, in order to consult the lawyer during the hearing, the candidate must ask the permission of the Commission, which may interrupt briefly to allow them to communicate.

This interpretation is contrary to the provisions of Law 1260/2002 on the legal profession, which stipulates what the right to qualified legal assistance from a lawyer means: the right to freely choose one's lawyer in order to be consulted and represented by him/her in legal matters, and the right to benefit from the legal assistance of any lawyer on the basis of the agreement of the parties.[73] The kinds of qualified legal assistance of Moldovan lawyers are established by the same law and include giving consultations and explanations; stating conclusions on legal issues; presenting verbal and written information on legislation; drafting legal documents; and representing interests in relations with public authorities, any individual and legal entity, etc.[74]

CASE STUDY 7. The Pre-Vetting Commission considers that the assistance of the lawyer does not allow the representation and consultation of the candidate without the Commission's permission

Hearing during the re-evaluation of candidate Victor Sandu on 15 July 2024 (published on 17 July 2024)[75]

Chair of the Pre-Vetting Commission, Herman von Hebel: "According to Article 12 paragraph (4) letter a) of Law 26/2022, the candidate has the right to be assisted by a lawyer or a trainee lawyer during the evaluation procedure. Law 26/2022 does not provide that the candidate has the right to be represented by a lawyer. Respectively, if during the hearing you wish to consult your lawyer, please inform the Commission and we will briefly interrupt the proceedings to allow you such consultation so that you can answer the Commission's questions or make statements in accordance with Law 26/2022 and the Commission's Rules of Organization and Functioning."

Victor Sandu: "Yet, I would like to enclose the lawyer's mandate for today's meeting. You referred to Article 12 ... of the law "shall be assisted by a lawyer". Well, I ask that he be given the opportunity to provide me with legal services, for which he has been paid, that he be given a computer, that the camera be turned on that he be able to intervene. It is not necessary for us to announce the interruption... He should be present and if needed, he should intervene. This is what assistance and services of a lawyer means under the law of the Republic of Moldova."

Herman von Hebel: "As I mentioned, Mr. Sandu, in my introduction, there is a difference between being assisted and being represented. As I said, you have the right to be assisted, as provided by Law 26/2022, but you cannot be represented. The Commission has determined that the only person who can communicate with the Commission this afternoon is you, because you are the candidate in this evaluation."

Victor Sandu: "I believe that the right to defence is violated, which is provided for by both national and international law."

Herman von Hebel: "Mr. Sandu, if you would like to consult your lawyer, we would appreciate it if you would first ask the Commission's permission to consult him, instead of sending notes, like this, forward – backward".

Victor Sandu: "Do I have the right to defence? From what I understand, the lawyer cannot get involved, he can only be present... I do not wish to consult the lawyer. I want him to be present and active."

4.7 Misunderstanding of the legal framework of the Republic of Moldova by members of the Pre-Vetting Commission

In its work, the members of the Pre-Vetting Commission are to be guided by the Constitution of the Republic of Moldova, Law 26/2022, and other normative acts.[76] However, three out of six members of the Pre-Vetting Commission are foreign citizens, who do not speak the state language, which affects their ability to be guided by the provisions of the legislation in force of the Republic of Moldova, other than Law 26/2022 and some other laws.

Lack of knowledge of national law by international members is a circumstance that cannot be made up for by the expertise of national members or the Commission Secretariat employees, as Moldovan lawyers do not always accompany the members in the evaluation processes. The international members' lack of knowledge of the laws of the Republic of Moldova leads to weaker protection of the rights and guarantees of the subjects of the evaluation. On the other hand, lack of knowledge of the national legal framework and the rights of Moldovan citizens is sometimes erroneously presented as embracing international standards and practices, although in the countries from which these members come, certain practices that the members of the Pre-Vetting Commission develop and apply in practice are prohibited. Or, on the contrary, members are trying to apply procedures that are probably normal in their home jurisdictions but are not applicable in the Republic of Moldova.

CASE STUDY 8. A member of the Pre-Patenting Commission, Victoria Henley, suggests to the candidate-plaintiff that he recuse himself in his own case of challenging the decision of the Commission

Facebook.com, Vitalie Zama, 18 July 2024 (published after Victor Sandu's hearing on 15 July 2024)[77]

"As a lawyer who was "only" "present" in the re-evaluation procedure of my client, a candidate for the position of member of the SCM, I had the opportunity to witness an unbelievable anecdotal legal exposition by one of the international members of the Pre-Vetting Commission, Ms. Victoria Henley, which took place in closed session."

"It is a detail that the candidate mentioned in the closed session after having spoken about it in the open session, namely that the Commission allegedly entrusted all the materials of his assessment to a person, whose relative appeared in a criminal procedural capacity before the candidate in his capacity as a judge, and that this puts his safety and that of his family at risk. In the

73 Law 1260/2002 on Advocacy, Art. 5, paras. (1) and (3).
74 *Ibidem*, Art.8 para. 1) letter a)-e).
75 https://vetting.md/prevetting/en/evaluare-reluata-audierea-publica-a-judecatorului-victor-sandu/
76 Law 26/2022, Art. 4 para. (2).
77 https://www.facebook.com/share/p/e7dz3rtLdSFz5Qiq/

closed session, it was clarified that it was about a representative of the Pre-Vetting Commission, in the context of appealing the Commission's decision to fail the candidate to the positin of Supreme Court judge.

AND NOW – ATTENTION!

To this argument of the candidate, an international member of the Commission, Mrs. Victoria Henley from the USA, asked the candidate why he did not recuse that person during the session of the SCJ?!!! (!!!)

When the candidate explained that you cannot recuse such a participant in court, that member's second question followed, which left me speechless, and I quote: "If there was a situation of incompatibility with that person, why did you not recuse yourself from the trial?" (!!!!)

I don't know, maybe in the US the parties can recuse themselves or each other's lawyers, which is not possible in our system and seems unlikely to be possible in other legal systems. Anyway, let's admit that the first question stems from a lack of understanding of our legal system. But to ask a plaintiff why he didn't recuse himself from his own lawsuit really takes the cake. Perhaps she had in mind that he should have withdrawn his action, so as not to disrupt the process of representing the interests of the Pre-Vetting Commission before the Supreme Court!!!!

But either way, the candidate, having been a plaintiff in the lawsuit, one whose action was admitted and on that basis was remanded to the Commission for re-evaluation, was put in an interesting procedural position by the Commission members. This experience shows us that we always have something new to learn – if not the Commission which seems to know it all, then we should learn from this all-knowing Commission."

4.8 Self-regulation of the Pre-Vetting Commission's activity exceeding legal limits

In addition to the legislation of the Republic of Moldova, the Pre-Vetting Commission can regulate its activity by its own rules of organization and functioning.[78] In the hierarchy of the sources of law applicable in the Republic of Moldova, the Commission's Regulation cannot amend, extend, or abolish provisions of the legislation in force. Such situations were encountered by candidates, however. Many times, during the hearings in which the evaluation subjects invoked the provisions of the Constitution and other laws, the interpretations of the CC and the decisions of the SCJ, the Pre-Vetting Commission applied, by derogation, the provisions of its own organization and functioning regulation. Moreover, the Commission amended its regulations four times within 1.5 years.[79]

For example, Law 26/2022 stipulates, among the obligations of the members of the Pre-Vetting Commission, the requirement to refrain from any activity in the event of a conflict of interest, from any activity that could generate a conflict of interest, and from any actions incompatible with membership of the Commission, and to refrain from actions that could discredit the Commission or cause doubts about the objectivity of its decisions.[80] The Commission's Regulation establishes the procedure for the examination of the recusal of members of the Commission by the subjects of the evaluation. The procedure put in place by the Commission provides for a limited possibility to submit recusals 'as soon as possible' and prescribes that the decision on the recusal shall be taken in the presence of the recused member, and, if a quorum is required, that he/she may even vote on his/her own recusal.[81] However, this is expressly prohibited by Moldovan law, the codes of civil and criminal procedure, the Administrative Code and the CC's interpretation of the rules on recusals, which clearly prohibit a judge from participating in the judgment of his/her own case. Similarly, in the Republic of Moldova, the examination of a case is impossible before the examination of requests for recusal made orally or in writing by the participant in a civil, criminal, or administrative procedure, which can be submitted at any stage before deliberation. Only after the recusal has been examined without the participation of the recused participant and the reasoned solution has been communicated to the participant who has expressed his distrust by recusal may the procedure continue. In pre-vetting proceedings, all these rules have been reversed by the Rules of Organization and Operation of the Pre-Vetting Commission and the practices of the Commission.

CASE STUDY 9. Candidates Marina Rusu and Victor Sandu submitted recusals to the members of the Pre-Vetting Commission, which were examined with the participation of the recused candidates

Hearing in the re-evaluation of candidate Marina Rusu on 1 July 2024[82]

At the beginning of the hearing in the re-evaluation, candidate Marina Rusu verbally declared the recusal of the Chair of the Pre-Vetting Commission, Herman von Hebel, because he had given an interview in the Dutch press, which allegedly showed loyalty and bias towards the ruling party and the country's President, Maia Sandu, when the Commission should be independent. However, the Commission announced that it would continue to hear the candidate despite her request for recusal, with the participation of the Commission member who was requested to recuse for lack of trust. At the same time, the Commission allowed the candidate to submit the request for recusal in writing after the hearing, confirming that the recused member – the Commission's Chair, Herman von Hebel – would also participate in the examination of the request for recusal, as otherwise the Commission would not have a quorum (to be deliberative, the Commission needs at least four members, and two out of six members of the Commission have resigned previously). The candidate criticized the Commission for a lack of ethics in its work and warned that such regulations are contrary to Moldovan law.

Re-evaluation hearing of candidate Victor Sandu on 15 July 2024 (published on 17 July 2024)[83]

Three days before the hearing, the candidate Victor Sandu submitted a written request for recusal to the Pre-Vetting Commission, expressing distrust of the Commission's Chair, Herman von Hebel, for similar reasons to those invoked by the candidate Marina Rusu, related to the interview in the Dutch press, in which Herman von Hebel repeatedly praised the ruling party and,

78 Law 26/2022, Art. 4 para (2).

79 The Rules of Organization and Functioning were adopted at the Commission meeting on 22 April 2022, and amended on 12 May 2022, 11 July 2022, 23 December 2022, and 6 September 2023. See here: https://vetting.md/wp-content/uploads/2023/09/RoP_ROM_amended_09.2023.pdf:

80 Art. 7, lit. d) and e) of Law 26/2022 on Pre-Vetting.

81 Art. 10, points 2 and 3 of the Commission's Rules of Organisation and Functioning.

82 https://vetting.md/en/marina-rusu-candidata-la-functia-de-membra-in-csm-audiere-in-cadrul-evaluarii-reluate/

83 https://vetting.md/prevetting/en/evaluare-reluata-audierea-publica-a-judecatorului-victor-sandu/

personally, the President of the country. The Commission has informed the candidate that his request for recusal has been rejected, but that a reasoned written decision will be sent to him after his hearing. As in the case of the candidate Marina Rusu, the Commission confirmed that the recused member – the Commission's Chair, Herman von Hebel – was also directly present during the examination and vote on the request for recusal, arguing that, in his absence, the Commission would not have had the quorum to vote on the recusal. The candidate reminded him that Moldovan law and good international practice, introduced 400 years ago, exclude the participation of the recused person in the examination of his/her own recusal, as this violates the generally recognized principle that no one can be a judge in his/her own case.

4.9 The illusory nature of the appeal

Law 26/2022 on Pre-Vetting did not foresee any possibility to challenge the actions and acts of the Pre-Vetting Commission issued in the course of the evaluation. Concerning the decisions of the Pre-Vetting Commission, the law provided that the decisions not to pass the evaluation can be appealed by the candidates before the SCJ within five days from the receipt of the reasoned decision. The SCJ is to consider the appeals within 10 days, in accordance with the procedure provided in the Administrative Code. The SCJ, in deciding on the candidates' appeals, may either reject the appeal or admit it and order the Pre-Vetting Commission to resume the candidate's evaluation procedure. In the case of the resumption of the candidate's evaluation procedure by the candidate, the provisions relating to the integrity evaluation procedure apply. Any appeal against the decision of the Pre-Vetting Commission shall not have a suspensive effect on the decisions of the Pre-Vetting Commission, the elections, or the competition in which the candidate is taking part.[84]

Thus, the law describes an illusory appeals procedure, whereby it is impossible to terminate the evaluation process in favour of the candidate as long as the Pre-Vetting Commission does not change its unfavourable assessment of a candidate in the re-evaluation, and the SCJ maintains the favourable assessment of the candidate's integrity after each negative re-evaluation of the candidate by the Commission.

This endless circle of appeals and re-evaluations can only be stopped by the Pre-Vetting Commission's revision of the candidate's evaluation by the Pre-Vetting Commission from negative to positive, by the SCJ's acceptance of the Pre-Vetting Commission's position, or by the candidate himself/herself waiving a positive evaluation. In these circumstances, the last word always rests with the Pre-Vetting Commission and not with the court. The appeal mechanism established by law does not exist as such, as it only secures the will of the Pre-Vetting Commission.

The lack of any intention to create an appeal procedure was directly confirmed by the Speaker of Parliament, Igor Grosu, who stated in a TV programme that, from the beginning, no appeals procedure against the decisions of the Pre-Vetting Commission was envisaged and that they needed to be convinced by the recommendations from abroad to introduce an appeals procedure.

CASE STUDY 10. Parliament's Speaker Igor Grosu: "There should have been no possibility to challenge"

Cutia neagra on TV8, 7 September 2023[85]

Parliament Speaker Igor Grosu: *"There are two components: there is the bureaucratic part [...] And there is the second component, which we call political, in which we have to present arguments why it is necessary – you cannot allow for more time, we would like to give more time for that – and we would like to see changes happen quickly as you know, the system is rigid and it will not give in easily. The Assembly of Prosecutors could not happen at the first attempt, because we were told that there must be an appeal against the Vetting Commission's decisions and this appeal represented the SCJ, which was far from being the most… it is not evaluated, that is the situation, it was a non-evaluated institution, and we know who they are... Someone recommended, of those who are watching and helping us from the outside, that there must be an appeal. We tried to explain to them that we unfortunately do not have an institution to represent this appeal, that we did not succeed physically, because the first experience with the evaluation took quite long. And it is important to explain these things."*[86]

4.10 Depriving the court of the last word

The solutions that the SCJ could adopt when examining the appeals against the decisions of the Pre-Vetting Commission were either to reject the appeal or to admit it and order the Pre-Vetting Commission to resume the procedure of evaluating the candidate. The court was deprived of the possibility of issuing new decisions on the assessment of the candidates and was only required to order the re-evaluation.

On 6 April 2023, the CC ruled on this issue, stating that even if the special panel of the SCJ cannot compel the Pre-Vetting Commission to positively evaluate the candidate, the arguments and conclusions made by this court in the case of the resolution of the appeals remain binding for the Commission.[87] Moreover, the binding nature of final judgments is regulated in Article 120 of the Constitution.

After the annulment of 21 decisions of the Pre-Vetting Commission by the SCJ on 1 and 2 August 2023, Vitalie Miron, the member of the Pre-Vetting Commission from the parliamentary opposition, resigned. The reason for his resignation

84 Art. 14 of Law 26/2022 on Pre-Vetting.

85 https://tv8.md/category/emisiuni/cutia-neagra/presedintele-parlamentului-igor-grosu-este-primul-invitat-din-noul-sezon-al-emisiunii-cutia-neagra-cu-mariana-rata

86 Min: 1:07:20 https://www.facebook.com/cutianeagra.tv8/videos/272520

87 Paragraph 143, Decision of 6 April 2023 of the CC of inadmissibility of petition numbers 75g/2023, 76g/2023, 77g/2023, 86g/2023, 87g/2023, 88g/2023, 89g/2023, 90g/2023, 96g/2023, 101g/2023, and 102g/2023 on the exceptions of unconstitutionality of certain provisions of Law 26/2022 on Pre-Vetting. See here: https: https://www.constcourt.md/public/ccdoc/decizii/d_42_2023_75g_2023_rou.pdf

was related to what Vitalie Miron called "the absurdity of the procedure of appealing the decisions of the Pre-Vetting Commission", as it was not the decisions of the SCJ that were to be ultimately taken into account, but the eventual re-evaluation of the candidates by the Commission.[88]

CASE STUDY 11. Pre-Vetting Commission member Vitalie Miron: "Pre-Vetting has created a legal absurd"

Facebook, Vitalie Miron, 6 October 2023[89]

"I would like to make public a personal decision, which I have been thinking about lately, and circumstances have forced me to take it now. [...] I have done my duty honestly, taking an impartial position in relation to all the candidates, sometimes with separate opinions.

Subsequently, after the SCJ upheld several appeals from candidates who failed the evaluation, the Court ordered the resumption of the evaluation procedure, taking into account the binding findings of the SCJ.

Thus, at this stage, on the one hand, there is the factual situation of the candidates in the decisions of the Pre-Vetting Commission that they fail the evaluation, and on the other hand, the arguments of the Commission were disqualified by the decisions of the SCJ, and the Commission was in fact obliged to positively evaluate the candidates.

Anyone who would get to the essence of things would realize that we are in the presence of a legal absurd, when taking a different decision would mean violating Article 120 of the Constitution of the Republic of Moldova by not executing the decisions of the SCJ, an option that is not admissible for me.

An even more serious circumstance is the fact that we have learned from the public that the Commission has positively evaluated the integrity of people who are currently under criminal prosecution, or who have financial obligations, circumstances hidden by the candidates. Thus, I believe that the legal mechanism has not given the Commission the possibility to objectively and in a multi-faceted manner to assess all candidates. In fact, we limited ourselves to the sincerity of the candidates and of the bodies and institutions that provided us with the information, which turned out to be in bad faith in some cases, for which they were to be disqualified.

Under these circumstances, the only solution that I consider appropriate in order to preserve my impartiality and honesty, in order not to admit the violation of the legal framework and to avoid non-execution of the decisions of the SCJ, is to announce my resignation as a member of the Pre-Vetting Commission as of today.

Thus, I declare that today I have submitted my resignation from the Pre-Vetting Commission to the Parliament of the Republic of Moldova."

The reason presented by Vitalie Miron is convincing only to a point, as he could have remained in the Pre-Vetting Commission and campaigned for a positive re-evaluation of the candidates, in line with his convictions about the binding nature of the SCJ's arguments. His gesture could be interpreted either as a protest against a flawed legislative procedure of appeal in violation of the Moldovan Constitution (but the same procedure existed when he agreed to be part of the Commission and to be part of it), or he decided to leave the Commission in anticipation of the negative re-evaluation solutions that the Commission would repeatedly issue, thus defying the decisions of the SCJ and the provisions of the Moldovan Constitution.

Although the re-evaluation procedures have not yet been completed, the decisions of the Pre-Vetting Commission during the re-evaluation, with one exception, were unfavourable to the candidates.

4.11 Setting unreasonable deadlines for examining appeals and re-evaluating candidates

Contrary to the general rule, which provides for convening the GAJ and GAP at which the members of the respective councils are to be elected at least two months in advance, in the case of the evaluation through pre-vetting, this period has been halved to 35 days, calculated from seven days at the latest from the moment of the issuance by the Pre-Vetting Commission of the evaluation decision of the last candidate for the position of member of the respective Council.[90] It seems illogical, however, to offer a double deadline for convening meetings when candidates do not go through the procedures of evaluation and possible appeal of these evaluations.

Another totally unrealistic deadline set in the law was the 10-day deadline for the examination of appeals by the SCJ but also the effect of a favourable decision for the candidates: the re-evaluation by the Pre-Vetting Commission, for which no deadline applies.

As indicated above, the initial evaluation of the Pre-Vetting Commission lasted around a year, its term of activity being extended several times. The SCJ examined 21 applications in terms of 6-7 months, passing through multiple crises: the resignation of 80-90 per cent of the Court's judges, which made it impossible to form panels, the exponential increase in the workload per judge, recusals, and the raising of exceptions of unconstitutionality in the procedure of appealing the decisions of the Pre-Vetting Commission, etc. Since the resumption of the evaluation procedure, the Pre-Vetting Commission has examined the files of seven candidates in a period of eight months.

If one compares the period of 7 days from the issuance of the last decision by the Pre-Vetting Commission plus 35 days from the convening of the general assemblies to the actual holding of the general assemblies, i.e. 42 days – within which the legislators provided 5 days for the submission of appeals by candidates, 10 days for the examination of appeals by the court, and it is unclear how long for the Pre-Vetting Commission to conduct the re-evaluation – with the actual term of more than a year in which the fate of the re-evaluation of the candidates initially rejected by the Pre-Vetting Commission has not yet been decided, it becomes clear that the setting of such unrealistic deadlines was either a serious miscalculation by the legislator

88 https://www.facebook.com/profile.php?id=61551993095566
89 *Ibidem.*
90 Art. 15 paragraph (7) letters a) and b) of Law 26/2022 on Pre-Vetting.

or was aimed at restricting the access of any other candidate than those initially evaluated positively by the Pre-Vetting Commission (in some cases, also the candidates evaluated positively by the Pre-Vetting Commission after the resumption of the evaluation procedure) to the formation of the self-administrative bodies of judges and prosecutors, respectively.

4.12 The discriminatory effects of the appeals procedure

By the fact that filing an appeal against the decision of the Pre-Vetting Commission does not prevent the election of members in the self-administrative bodies in which the candidates participate,[91] the appeal mechanism generates discrimination, that is an unjustified differentiation, among the candidates who passed the pre-vetting from the outset, compared to those who passed it following the annulment of the decision of non-passing the pre-vetting by the SCJ. Discussions in this regard took place at the General Assemblies of Judges in 2023 and 2024.

CASE STUDY 12. The interim Chair of the SCM, Sergiu Caraman, refuses to resign if other candidates pass the pre-vetting

GAJ, 28 April 2023[92]

Until the GAJ on 28 April 2023, when four members and one substitute member were elected from among the judges of the lower courts out of a total of five candidates who had passed the evaluation, the appeals of 16 candidates from among judges were still pending before the SCJ.

Most of the candidates to be elected at the assembly said that if after their election to the SCM there are other candidates from the same courts who are evaluated positively, they will submit their resignations to allow the GAJ to choose who will represent them in the Council.

GAJ, 1 March 2024[93]

At the GAJ on 1 March 2024, when the appeals of all 16 candidates had been admitted by the SCJ, the interim Chair of the SCM, Sergiu Caraman, was asked whether he would keep his promise to resign made 10 months ago. He said that he does not intend to keep his promise, because the mandate of a member of the SCM can be filled only once, and if he resigns he will not be able to re-enter the competition with those candidates who will eventually pass the re-evaluation of the Pre-Vetting Commission, and this does not seem fair to him.

In practical terms, a candidate is no longer eligible for membership of the self-administrative bodies of judges and prosecutors if the Pre-Vetting Commission has issued an unfavourable decision against him/her. Even if the court succeeds in reviewing and possibly annulling the decision of the Pre-Vetting Commission within the short time limit of only 10 days, the 42-day time limit set by law until the convocation of the General Assembly for the election of the evaluated candidates does not allow the Commission to re-evaluate the candidate sufficiently quickly to allow him/her to be voted in time.

In this sense, only those candidates for whom the Pre-Vetting Commission changes its mind, giving them a favourable re-evaluation, and for whom the seat they are claiming in the self-administrative body continues to be vacant, have a chance of being elected to the self-administrative body. Hence, this is exactly the situation of Aliona Miron, a judge of the SCJ, appointed at the GAJ of 1 March 2024 to the vacant position of a member of the SCM from among judges of the highest court.

Conclusions of Chapter IV. 'Lack of Fair Play'

- The pre-vetting mechanism, set up with the intention of ensuring the integrity of judges and prosecutors in the Republic of Moldova, has been marred by procedural shortcomings and abuses that have affected the fundamental rights of candidates and compromised the evaluation process.
- The impossibility of candiates obtaining the necessary information, the short time frame for providing such information, and the lack of an effective appeals framework have turned pre-vetting into an often arbitrary, discretionary, disproportionate, and discriminatory process.
- Political interventions and the way in which the Commission has applied its own rules have led to discrimination and contradictions, preventing a fair and transparent assessment of candidates.

Lessons learnt

- The "laissez-faire" of reform is preferable to a lack of "fair play". In other words, letting the reform proceed according to the rules initially set would have been preferable to permanent intervention with a view to constantly reducing the guarantees of the assessed individuals.
- Transformations for integrity must only be made in integrity-compatible ways. The judiciary cannot increase its credibility through a reform that is not credible.
- To ensure the credibility and efficiency of the external evaluation mechanism of judicial actors, the evaluation system must be clearly regulated, predictable, and guarantee the right of defence and transparency of procedures.

91 Art. 14 of Law 26/2022 on Pre-Vetting.
92 https://www.privesc.eu/arhiva/102551/Sedinta-Adunarii-Generale-a-Judecatorilor
93 https://www.facebook.com/watch/live/?ref=watch_permalink&v=348667654824372&sw_fnr_id=2466569450&fnr_t=2

5

CHANGING THE RULES DURING THE GAME

Summary: *This chapter analyses the instability and frequent amendments of Law 26/2022, which regulates the pre-vetting process of candidates for the positions of members in the self-administrative bodies of judges and prosecutors of the Republic of Moldova. The law has been amended seven times in less than two years, with amendments aimed at extending the term of activity of the Pre-Vetting Commission, immunizing its members, excluding the evaluation deadlines, and changing the procedures for appealing the Commission's decisions. This legislative instability has created a climate of uncertainty and affected the fairness of the process, as different rules have been applied to candidates at different stages of the procedure.*

The significant changes include the extension of the Commission's mandate, including by increasing the budget, and the introduction of functional immunity for Commission members and Secretariat staff. Clear deadlines for the assessment of candidates were also removed and appeal procedures were narrowed to favour the Pre-Vetting Commission. The legislative changes and regulations have been interpreted not only as a way to protect the Commission, but also as an attempt to influence the legal processes in favour of the Government and dominant political parties, thus affecting the transparency and integrity of the evaluation. In addition, the proposal to destroy the documents collected by the Pre-Vetting Commission at the end of the evaluation process has sparked controversy as it poses a risk of manipulation and covering up of abuses.

The process of evaluating candidates for membership of the self-administrative bodies of judges and prosecutors has taken much longer than advertised. During this period, Law 26/2022 on Pre-Vetting was amended seven times, including two times following the review of the constitutionality of the Law, and one time when it was subject to interpretation by the Parliament.

This frequency of legislative interventions in less than two years was dictated by various fears of the Government and the Parliament that judges and prosecutors would succeed in having the Pre-Vetting Commission's decisions overturned, boycott the general assemblies at which they were to elect the candidates who passed the assessment, or fail to support them in the numbers necessary to ensure their election to office. Other changes were aimed at making the work of the Pre-Vetting Commission more comfortable, such as extending its mandate, changing the rigours of the evaluation, and narrowing the possibilities for judicial review of its work. The interventions created the perception of changing the rules of the game during the game itself, deprived Law 26/2022 of predictability and the security of legal relations, and discriminated against candidates to whom different rules and meanings of the same law were applied at different stages.

5.1 Extension of the Commission's mandate

Initially, the law provided that the work of the Pre-Vetting Commission continues until the evaluation of the last candidate is finalized,[94] but 15 months after the entry into force of the law this provision was repealed.[95] On the other hand, the mandate of the Pre-Vetting Commission derives from the provisions of Law 26/2022 on Pre-Vetting, and the application in time of the law and, implicitly, of the Commission's mandate, was from the outset limited until 31 December 2022.[96]

The nominal composition of the Pre-Vetting Commission was voted by the Parliament on 4 April 2022. Therefore, the mandate of the Commission was initially foreseen to last almost eight months (04 April 2022—31 December 2022). This term was subsequently changed twice, and the term of the mandate of the Pre-Vetting Commission was also changed. Respectively, the maintenance budget of the Pre-Vetting Commission and its Secretariat was increased the first time by 1.75 times, and, after the second extension, by at least three times compared to the initial budget.

On 22 December 2022, the Parliament extended the term of application of the law until 30 June 2023,[97] and, subsequently, on

94 Art. 3(8) in the original version of Law 26/2022 on Pre-Vetting.

95 Art. 25 paragraph (7) item 2 of Law 147/2023 of 9 June 2023 on the Selection and Evaluation of Performance of judges, which abrogated paragraph (8) of Article 3 of the Law 26 of 10 March 2022.

96 Art. 15 paragraph (1) in the original version of Law 26/2022 on Pre-Vetting.

97 Art. I point 6 of Law 354/2022 amending Law 26/2022 on Pre-Vetting.

9 June 2023, the term was once again extended until the completion of the SCJ's examination of the last appeal filed against the Pre-Vetting Commission's decision.[98] Thus, the mandate of the Pre-Vetting Commission was to become 14 months after the first amendment, and at least 24 months after the second amendment.

It is not clear whether the mandate of the Pre-Vetting Commission ended by right, with the expiration of the law on 29 January 2024, when the SCJ examined the last appeal of a candidate,[99] or whether the law is still in force and will end with the examination of the appeals filed, following the re-evaluation of the Commission (in this case, the cycle of the decision of the SCJ – re-evaluation of the Commission may last indefinitely).

However, the law stipulates that, in the case of a resumed evaluation, the provisions of the law on evaluation[100] are to be applied (it is not specified that the provisions on appeals will also be applied), which means that the Commission could also continue to exercise its mandate only as long as the SCJ continues to examine the last appeal of the candidates. In this case, appeals against the decisions of the Pre-Vetting Commission after the resumption of the evaluation could still only be possible on a general basis, under the conditions of Moldovan legislation. Laws have effect only as long as they are in force.[101] Thus, the completion of the SCJ's examination of the last appeal filed against the decision of the Pre-Vetting Commission with the publication of the decision on 29 January 2024 ended the action of Law 26/2022 on Pre-Vetting.[102]

5.2 Immunizing the Pre-Vetting Commission and Secretariat from prosecution

From the outset, Law 26/2022 on Pre-Vetting did not provide immunities for members of the Pre-Vetting Commission and employees of the Secretariat.

On 24 November 2023, the Parliament of the Republic of Moldova amended Law 26/2022 on Pre-Vetting to introduce a provision on the functional immunity of members of the Pre-Vetting Commission and employees of the Secretariat, so that they cannot be held liable for the opinion expressed in the exercise of their mandate and duties. Criminal prosecution against them can only be initiated by the PG with the consent of the Pre-Vetting Commission, and only in the case of a flagrant offence is the consent of the Commission not required.[103]

It is not clear whether there can be a reasonable guarantee for obtaining the agreement of the Pre-Vetting Commission in the event that more than half of its members are involved in the commission of an offence.

How can the consent of the Pre-Vetting Commission be obtained to investigate the allegedly illegal activities of a member of the Commission or an employee of the Secretariat of the Pre-Vetting Commission after the expiry of its term of office, given that the members of the Commission will no longer meet and half of them are foreign citizens who do not reside in Moldova?

In practical terms, the establishment of such a form of immunity is tantamount to full impunity for the members of the Pre-Vetting Commission and the employees of its Secretariat, contrary to the constitutional principle of equality of all before the law and the fundamental duty to exercise their rights in good faith and without infringing the rights of others.[104]

The regulation on the immunity of the Pre-Vetting Commission and the employees of its Secretariat was introduced more than two months after 20 September 2023, when a public scandal broke out over the promotion of the evaluation of a candidate who was listed in a criminal corruption case. In that case, the Pre-Vetting Commission did not request information from prosecutors, and an employee of the Commission's Secretariat allegedly withheld that information.

The information became public after the candidate, Iulian Muntean, was appointed as a member of the SCM, and the employee of the Secretariat of the Pre-Vetting Commission was appointed by the Parliament as a member of the Vetting Commission.

CASE STUDY 13. Former member of the Secretariat of the Pre-Vetting Commission and member of the Vetting Commission, Iurie Gatcan, targeted by a criminal investigation for withholding information about a candidate prosecuted for corruption

ZdG.md, "Who is the employee of the Secretariat of the Pre-Vetting Commission targeted in the criminal case on providing incomplete information on Iulian Muntean? He was appointed by PAS to the Vetting Commission", 26 September 2023[105]

98 Art. 25 paragraph (7) item 4 of Law 147/2023 of 9 June 2023 on the Selection and Performance Evaluation of Judges, which amended para. (1) of Article 15 of Law 26 of 10 March 2022.

99 Decision 3-18/23 in the case of Marina Rusu

100 Art. 14 paragraph (10) of Law 26/2022 on Pre-Vetting: "In the case of resumption of the procedure of evaluation of the candidate by the Evaluation Commission according to paragraph (8) letter b), the provisions of this law on the integrity evaluation procedure shall apply accordingly."

101 Law 100/2017 of 22 December 2017 on Normative Acts, Art. 73 paragraph (3) and paragraph (5) and Art. 74 paragraph (1) lit. c).

102 Art. 15 paragraph (1) of Law 26/2022 on Pre-Vetting: "This law shall enter into force on the date of its publication in the Official Gazette of the Republic of Moldova and shall apply until the completion of the examination by the SCJ of the last appeal filed against the decision of the Evaluation Commission under Art. 14."

103 Art. V, point 2 of Law 353/2023 of 24 November 2023 amending some normative acts.

104 Art. 16 and Art. 55 of the Constitution of the Republic of Moldova.

105 https://www.zdg.md/stiri/stiri-justitie/cine-este-angajatul-din-cadrul-secretariatului-comisiei-pre-vetting-vizat-in-procesul-penal-privind-furnizarea-informatiilor-incomplete-in-privinta-lui-iulian-muntean-a-fost-desemnat-de-pas-in-comisia/

"According to the Ziarul de Garda (ZdG) sources, Iurie Gatcan and Arcadie Rotaru are the two employees of the National Anti-Corruption Centre (NAC) targeted in the criminal trial opened on Tuesday, 26 September, on the alleged illegal actions of some NAC employees responsible for gathering, analysing, and providing information to the Pre-Vetting Commission regarding the candidate for the position of member of the SCM, Iulian Muntean.

More precisely, the head of the Operational Analysis Section of the NAC Analytical Directorate is Iurie Gațcan, who was employed in the Secretariat of the Pre-Vetting Commission, while the current head of the Analytical Directorate is Arcadie Rotaru. [...]

Gatcan was appointed in June as a member of the Vetting Commission for the External Evaluation of the Ethical and Financial Integrity of Judges and Candidates for the SCJ on behalf of PAS.

According to the APO, the suspicions behind the initiation of the criminal proceedings in relation to the concealment of information about Iulian Muntean are that Iurie Gatcan, the NAC employee who in 2018 prepared the operational analysis report, including in relation to Iulian Muntean, is an employee of the Secretariat of the Pre-Vetting Commission, and the head of the NAC's General Analytical Directorate, responsible for conducting both operational analyses (in 2018 and 2023) in relation to Iulian Muntean, is the same person – Arcadie Rotaru. [...]

According to the ex-officio report, on 14 December 2018, at the interpellation of the NAC's criminal prosecution body from 29 October 2018, in the criminal case with the generic name "ASEM", Gatcan conducted the operational analysis regarding three intermediaries, as well as regarding students and professors suspected or accused in the corruption acts, including Professor Iulian Muntean, who at that time had the procedural status of defendant."[106]

5.3 Exclusion of the time limits within which the Pre-Vetting Commission carries out the evaluation of candidates

The law established the obligation of the Pre-Vetting Commission to observe procedural deadlines in gathering and verifying information about the integrity of candidates of no more than 30 days from the receipt of the declarations of assets and personal interests of candidates for the last five years, with the possibility of extending this deadline by 15 days, so in total 45 days.[107]

On 22 December 2022, the stage at which the Pre-Vetting Commission had completed the evaluation of the candidates for judges and started their hearings, the Parliament of the Republic of Moldova cancelled all these deadlines for the Commission. [108]

While no individual or legal entity could refuse to provide the information requested by the Commission, meeting the 45-day deadline for gathering information on candidates proved too difficult for a Commission assisted by a generous Secretariat.

By contrast, the three working days usually given to candidates, during which they had no right to require any non-cooperating individual or legal entity to submit any information, was considered an appropriate deadline by the Pre-Vetting Commission.

After two and a half years of work by the Pre-Vetting Commission, the evaluations of the candidates have not yet been finalized and not all vacancies have been filled in the SCM.

CASE STUDY 14. International anti-corruption expert Tilman Hoppe compares the timeframes of external evaluation in Moldova, based on the example of the Pre-Vetting Commission, with those of the Ukrainian commissions

UNCACcoalition.org, "International integrity vetting of public officials: guest blog", 17 March 2023, updated 9 August 2023[109]

On the page of the Civil Society Coalition for the United Nations Convention against Corruption, an analysis was published in 2023[110] *in which the speed and the human and financial investments made in the Moldovan Pre-Vetting Commission are compared with similar investments for the international vetting of candidates for appointment as judges to the Ukrainian Anti-Corruption Court and for the head of the Ukrainian National Anti-Corruption Bureau. The author, Tilman Hoppe, estimated that in Moldova it took 3-7 times longer to evaluate four times fewer candidates than in Ukraine. Finally, reporting on financial and human resources, he found that in Moldova, the Pre-Vetting Commission spent 7-10 times more man/days/candidate than in Ukraine.*

Given that the Pre-Vetting Commission's mandate continued for at least another 14 months after the publication of the article (more than 300 working days from August 2023-October 2024), the final investment in man/days/candidate could be double the estimated investment in 2023 (271 days by August 2023).

5.4 Secretizing the Secretariat of the Pre-Vetting Commission and concealing political connections

The Pre-Vetting Commission is assisted in its work by a Secretariat, which has an important role in gathering and analysing information on candidates, having access to all information on candidates for processing and preparing materials for the Commission members.[111] According to the rules of this Secretariat, employees are required to duly respect the rules of conduct established for Commission members. Therefore, like the members of the Commission, employees of the Secretariat are obliged to refrain from any activity in the event of a conflict of interest, from any activity that could give rise to a conflict of interest, and from any actions incompatible with membership of the Commission. They are also obliged to refrain from actions

106 https://www.zdg.md/stiri/stiri-justitie/cine-este-angajatul-din-cadrul-secretariatului-comisiei-pre-vetting-vizat-in-procesul-penal-privind-furnizarea-informatiilor-incomplete-in-privinta-lui-iulian-muntean-a-fost-desemnat-de-pas-in-comisia/

107 Art. 10 para. (1) and para. (8) of the initial version of Law 26/2022 on Pre-Vetting.

108 Article I point 5 of Law 354/2022 of 22 December 2022 amending Law 26/2022 on Pre-Vetting.

109 https://uncaccoalition.org/international-integrity-vetting/

110 https://uncaccoalition.org/international-integrity-vetting/

111 Art.21 para. 4 of the Regulation of 22 April 2022 on the organization and functioning of the Independent Commission for the evaluation of the integrity of candidates for the position of member of the self-administration bodies of judges and prosecutors, in compliance with Law 26/2022 on Pre-Vetting.

that could discredit the Evaluation Commission or cast doubt on the objectivity of its decisions.[112]

Although neither the Law nor the Regulations of the Pre-Vetting Commission provide for the secrecy of the Secretariat's employees, it was secretized by the Pre-Vetting Commission, preventing candidates from checking potential bias and from possibly declaring recusals to the Secretariat's employees.

Over the years, the Pre-Vetting Commission members and officials have brought up various arguments as to why the names of the Secretariat employees are not disclosed, including the fact that they were recruited and paid by development partners and that they need to be kept safe and away from any kind of influence. The Chair of the Parliament's Committee on Legal Affairs, Appointments and Immunities, Olesea Stamate, expressed the opinion that this is a protective measure for the members of the Secretariat, that the members of the Secretariat have a very important role, as they are the ones who receive the primary information, analyse it, and propose to the members of the Commission the analytical note on each candidate, and that not making the names of the Secretariat employees public would protect them from attempts to influence them and also from possible mischief by candidates who did not pass the pre-vetting.

However, when asked by journalists whether members of the Secretariat of the Pre-Vetting Commission had complained about intimidation, the Commission denied any such cases.[113]

Although they are supposed to be independent, journalistic investigations have revealed the names of several people within the Secretariat. Some of these people have been found to have political connections in the Parliament, Government, and Presidency, as well as with people affiliated to the main NGOs involved in the processes of promoting and monitoring the pre-vetting process, such as the LRCM and IPRE.

CASE STUDY 15. Member of the Secretariat of the Pre-Vetting Commission, Nadejda Hancu, moved from the Secretariat of the PAS faction to the Secretariat of the Pre-Vetting Commission

tv8.md, Pre-Vetting Secrets. Recent scandal shows evaluations may have flaws in justice reform, 30 October 2023[114]

Pre-Vetting Commission Secretariat members kept top secret

[...] Analyst in the Commission Secretariat is Mihaela Burduja. For the past five years, Burduja has been working at the Soros Moldova Foundation, in charge of human rights. From the asset declaration of her husband Ilie Chirtoaca, President of the Legal Resource Centre, we learn that Burduja earned more than 300 thousand lei from her work in the Pre-Vetting Commission. [...] Cristina Pereteatcu, a human rights expert and former Director of Amnesty International, also worked in the Pre-Vetting Commission. In March 2023, Pereteatcu was appointed Secretary of State at the Ministry of Energy. [...] The Co-Executive Director of the IPRE, Adrian Ermurachi, also provided advice and training at the beginning of the Pre-Vetting Commission's work. Ermurachi served from 2017 to 2021 as Deputy Secretary of the Government. [...]

From the PAS Secretariat to the Secretariat of the Pre-Vetting Commission

The members of the Secretariat also include inexperienced people. [...] Nadejda Hincu graduated from the law faculty in 2021. Hincu was immediately hired as an advisor in the PAS faction in Parliament. In reality, Nadejda Hincu worked more in the Parliamentary Legal Committee. In a decision of the respective Committee dated 5 May 2022, Nadejda Hincu is mentioned as an adviser. She left this position in August 2022 when she was employed in the Secretariat of the Pre-Vetting Commission.

The Chair of the parliamentary committee, Olesea Stamate, was annoyed when lasked if she saw a problem in the fact that a former PAS faction advisor is today a member of the Secretariat. *"And what is the problem? An advisor employed in the faction can be anyone, not just a PAS member. A person who has the necessary qualifications in a particular field. If you are going to ask how many of the fraction advisors are PAS members, you might be surprised that not all of them are PAS members. No offence! Shall we continue? [...]"*, exclaimed Stamate.

Vadim Vieru has a different opinion from the PAS MP. *"A person who works in a Secretariat, in the Parliament, cannot be qualified, directly, as a politically affiliated person, as a party member. However, it doesn't look good, and it can affect the process, the image, but also the trust in the Commission, when in the Secretariat of a Pre-Vetting Commission, which is an important Commission and which must be trusted, a person is employed who previously advised certain politicians"*, Vadim Vieru believes.

Some of the judge candidates evaluated by the Pre-Vetting Commission reported half a year ago that their data in the records of the Public Service Agency had been accessed for the purpose of the pre-vetting evaluation by Parliament employees. According to the information in the virtual private cabinet, the information was accessed by the Parliament's Secretariat, and in an official reply received by one of such judges, Alexei Panis, the Parliament informed him that the accessing of the data was in fact done by the staff of the Evaluation Commission. Apparently, this was someone who worked both in Parliament and in the Pre-Vetting Commission.[115]

CASE STUDY 16. Member of the Secretariat of the Pre-Vetting Commission, Constantin Mitu, who went from being an advisor in the Parliament's Legal Committee and advisor to the President to a member of the Secretariat of the Pre-Vetting Commission

Sppot.md, Pre-Vetting Secrets: the President's person, 6 August 2024[116]

"The situation regarding the delegation of members to the Secretariat of the Pre-Vetting Commission is shrouded in controversy and raises questions about the transparency and integrity of this crucial process in [...] the Republic of Moldova.

112 Art.7 letter d) and e) of Law 26/2022 on Pre-Vetting.

113 https://sppot.md/justitie/secretele-pre-vettingului-omul-presedintelui/

114 https://tv8.md/2023/10/30/video-investigatie-secretele-pre-vettingului-un-scandal-recent-arata-ca-evaluarile-pot-avea-lacune-in-reformarea-justitiei/242883

115 https://tv8.md/2023/30/10/video-investigatie-secretele-pre-vettingului-un-scandal-recent-arata-ca-evaluarile-pot-avea-lacune-in-reformarea-justitiei/242883

116 https://sppot.md/justitie/secretele-pre-vettingului-omul-presedintelui/

Conflicting information

According to sources, the Parliament of the Republic of Moldova, through the Committee on Legal Affairs, Appointments and Immunities, has delegated Nadejda Hincu and Constantin Mittu – both advisors in the Legal Committee – to be part of the Secretariat of the Pre-Vetting Commission.

The information seems to be confirmed by the rush of an amendment registered by Vasile Gradinaru, MP of the PAS faction, on 29 July. [...] Moreover, another aspect that raises suspicions is the involvement of family members in the same Commission. Constantin Mitu's wife, Cristina Mitu, is also employed in the Legal Committee, which may also generate a possible conflict of interests as she is a Senior Consultant on certain projects specifically targeting Law No. 26/2022 on Pre-Vetting. [...]

A new piece of information totally changes the paradigm: Constantin Mitu was delegated, within the Secretariat of the Pre-Vetting Commission, from the Presidencial Office and not from the Parliamentary Committee for Legal Affairs, Appointments and Immunities. The information has been confirmed by three independent sources in the Presidency, who claim that Mitu acted as an advisor there.

A detailed analysis of the asset declaration of Constantin Mitu and his wife Cristina Mitu shows that he was remunerated by the Konrad Adenauer Foundation (KAS). [...] The substantial increase in income and significant asset acquisitions coincides with the period when Constantin Mitu started his work at the KAS Foundation, suggesting a first indication that he would be on the shortlist of presidential advisors/non-tenured.

Connections and friendships

Constantin Mitu, a member of the Secretariat of the Pre-Vetting Commission, has close relations with many high-ranking Moldovan officials, raising suspicions of political influence in the evaluation process.

Among these connections are Olesea Stamate, former presidential adviser and former Chair of the Parliament's Legal Committee, and Sergiu Litvinenco, former Minister of Justice and former Chair of the same parliamentary standing committee.

His involvement in politics dates back to 2016, when he was an assistant to MP Igor Vremea. Incidentally or not, Constantin Mitu also has a friendly relationship on Facebook with Vladislav Gribincea, the founder of the LRCM."

5.5 Convening of General Assemblies of Judges and Prosecutors by the Minister of Justice

As stipulated by Law 26/2022 on Pre-Vetting, the GAJ and the GAP were to be convened by the SCM and the SCP, respectively, within seven days of the Pre-Vetting Commission's decision on the last judge/prosecutor candidate, and within 35 days of the convening.

Thus, on 14 February 2023, the SCM convened the GAJ for 17 March 2023, for the purpose of electing the members of the SCM who had passed the pre-vetting. This assembly was to be the first since the extraordinary General Assemblies of Judges in 2019. In the meantime, the organization of other assemblies was forbidden by the executive under various pretexts (pandemic, extension of the terms of office of the members of the SCM, announcement of the justice reform concept with the evaluation of candidates for the SCM, etc.).

Against the backdrop of fears expressed at the political level that the judiciary might boycott the GAJ and show up in insufficient numbers, meaning that the GAJ would not be deliberative, one day before the date set for the GAJ, on 16 March 2023, the Parliament of the Republic of Moldova voted to introduce changes in the procedure for convening and opening the GAJ and the GAP, as well as regarding the quorum required for the GAJ and the GAP to be deliberative. On the day on which the GAJ was to take place, the amendments came into force, whereby it was established that, in the event that it was impossible to convene the GAJ and the GAP for various reasons, these meetings would be convened by the Minister of Justice, and if the meeting did not take place for lack of quorum, it would be held repeatedly within two weeks at the latest and would be deliberative if more than 1/3 of the sitting judges and prosecutors, respectively, attended.[117] Thus, the politicos made sure that if the judges boycotted the GAJ at which the pre-vetted members of the SCM were to be voted, the Justice Minister would be entitled to convene and open a new assembly in two weeks, and a low attendance of judges of up to 1/3 being sufficient for deliberations.

Contrary to these fears, the overwhelming majority of magistrates showed up at the GAJ of 17 March 2023.

Just days after those changes were introduced, the Group of States against Corruption (GRECO) plenary called the measure "a step in the wrong direction of reform, affecting the implementation of several pending recommendations and potentially reversing other achievements made so far."[118]

The Association of Judges of Moldova also criticized those amendments, pointing out that one of the recommendations of the Venice Commission already transposed into the normative acts referred to the exclusion of the Minister of Justice from the SCM, being illogical to endow the representative of the executive power with the right to convene the GAJ, a body that ensures the practical realization of the principle of judicial self-administration. The Constitution of the Republic of Moldova excludes a priori any interference of the executive power in the work of the judiciary, but this fundamental principle of the rule of law is clearly and arbitrarily violated. The Association warned that delivering quick results and solutions that will work in the short term will not ensure genuine reforms.[119]

5.6 Limit the grounds for rejecting appeals

The procedure for appealing the decisions of the Pre-Vetting Commission was envisaged from the outset in a way that instituted political control over the process, by forming a special panel at the SCJ to examine appeals against unfavourable decisions of the Pre-Vetting Commission.

117 Law 44/2023 of 16 March 2023 on amending some normative acts.

118 Second Interim Report on the Republic of Moldova Adopted by GRECO at Plenary No. 93 of 20-24 March 2023, published on 29 May 2023, see paras. 34 and 76 of the report, source: https: https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680ab41b9

119 https://www.zdg.md/stiri/stiri-justitie/asociatia-judecatorilor-despre-proiectul-de-lege-care-ar-permite-convocarea-adunarii-generale-de-catre-ministrul-justitiei-principiul-fundamental-al-statului-de-drept-este-incalcat-in-mod-v/

Law 26/2022 on Pre-Vetting initially provided for the formation of a special panel of three judges of the SCJ, proposed by the President of the SCJ and confirmed by decree of the President of the Republic of Moldova. However, the President of the Republic of Moldova had the right to refuse the inclusion of the judges proposed to her whenever she wished, which reduced the meaning of those provisions to the direct camouflaged selection by the President of the country of the judges of the special panel of the SCJ.[120]

On 7 April 2022, the CC declared the involvement of the President of the Republic of Moldova in the formation of the special panel for the examination of appeals against unfavourable decisions of the Pre-Vetting Commission to be unconstitutional.[121]

Between 9 December 2022 and 24 January 2023, with some exceptions, the Pre-Vetting Commission issued decisions not to approve the pre-vetting evaluation by the judges. Before the expiry of the time limit for appealing and examining the first appeals (five days for filing the appeal and 10 days for examining it), on 22 December 2022, the Parliament of the Republic of Moldova amended the law to narrow the possibilities of the SCJ to admit candidates' appeals. In the amended wording of the law, the SCJ could not annul the decisions of the Pre-Vetting Commission on the grounds of non-compliance by the Pre-Vetting Commission with the procedure and the rights of the candidates, but only if it found the existence of circumstances that could lead to the candidate passing the evaluation.[122] The Government later explained to the CC that the amendment was necessary in order to ensure that circumstances already assessed by the Commission could not be re-evaluated in the examination of the appeal, and that the special panel of the SCJ would only decide whether new circumstances had arisen that could lead to the candidate passing the evaluation but had not been previously examined in the evaluation process.[123] In other words, not only for procedural, but also for substantive reasons, it was intended that the SCJ would not be able to annul the decisions of the Pre-Vetting Commission, the assessment of the circumstances by the Commission being considered from the outset as definitive, and the only possibility of annulment being the identification of new circumstances not evaluated by the Pre-Vetting Commission.

On 14 February 2023, the CC declared that amendment to be unconstitutional, considering that the legislator had opted for rigid solutions that were insensitive to the rights of the persons concerned, and instructed the Parliament to amend the law so that the grounds on which the SCM could order the re-evaluation of candidates who failed the evaluation were (a) that serious procedural errors were admitted in the evaluation procedure by the Pre-Vetting Commission, which affect the fairness of the evaluation procedure, and (b) that there were circumstances that could lead to the candidate's passing the evaluation.[124] It was not until 9 June 2023 that the Moldovan Parliament amended the law in line with the CC's solution.[125]

On 6 April 2023, the CC declared several exceptions of unconstitutionality raised by the candidates to be inadmissible, including in relation to the outcome of the appeals and the re-assessment by the Pre-Vetting Commission. At the same time, the CC explained that, even if the special panel of the SCJ cannot compel the Pre-Vetting Commission to positively evaluate the candidate, the arguments and conclusions made by the SCJ on thier appeals remain binding for the Commission.[126]

On 1 and 2 August 2023, the SCJ overturned 21 decisions of the Pre-Vetting Commission, finding both serious procedural violations by the Pre-Vetting Commission and circumstances that could have led to all 21 candidates passing the evaluation, and ordered the Pre-Vetting Commission to resume the evaluation.

5.7 Metamorphosis of the status of the Pre-Vetting Commission to avoid the possibility of admitting appeals through the "Saturday Law". The politician-members of the Commission

On 7 July 2023, more than 16 months after the adoption of Law 26/2022 on Pre-Vetting and more than 14 months after the establishment of the Pre-Vetting Commission, during the period of the SCJ's examination of the candidates' appeals, the Parliament urgently adopted a law interpreting Law 26/2022 on Pre-Vetting, which it published the next day in the Official Gazette, on an official day off.[127]

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120 Art. 14 paras. (2) and (3) of the initial version of Law 26/2022 on Pre-Vetting.

121 Decision of the CC No. HCC9/2022 of 7 April 2022 on the constitutionality of Law No. 26 of 10 March 2022 (complaint no. 43a/2022). https://www.constcourt.md/ccdocview.php?tip=hotariri&docid=805&l=ro

122 Law 354/2022 of 22 December 2022 amending Law 26/2022 on Pre-Vetting.

123 Para. 59 of CC Decision No. HCC5/2023 of 14 February 2023 on the constitutionality of Law No. 26 of 10 March 2022 (Jurisdiction of the SCJ to examine the appeals lodged against the decision of the Evaluation Commission) (Complaints No. 17g/2023, No. 21g/2023, No. 23g/2023, No. 24g/2023, No. 27g/2023, and No. 31g/2023) https://www.constcourt.md/ccdocview.php?tip=hotariri&docid=822&l=ro

124 Para. 85 and the operative part of CC Decision No. HCC5/2023 of 14.02.2023 on the constitutionality of Law No. 26 of 10 March 2022 (Jurisdiction of the SCJ to examine the appeals lodged against the decision of the Evaluation Commission) (Complaints No. 17g/2023, No. 21g/2023, No. 23g/2023, No. 24g/2023, No. 27g/2023 and No. 31g/2023) https://www.constcourt.md/ccdocview.php?tip=hotariri&docid=822&l=ro

125 Art.25 paragraph (7) item 3 of Law 147/2023 of 9 June 2023 on the selection and performance evaluation of judges, which amended Art.14 paragraph (8) letter b) of Law 26/2022 on Pre-Vetting.

126 Para. 143 of CC Decision No. 42 of 6 April 2023 of inadmissibility of the petitions numbers 75g/2023, 76g/2023, 77g/2023, 86g/2023, 87g/2023, 88g/2023, 89g/2023, 90g/2023, 96g/2023, 101g/2023, and 102g/2023 on the exceptions of unconstitutionality of some provisions of Law 26 of 10 March 2022. https://www.constcourt.md/ccdocview.php?tip=decizii&docid=1355&l=ro

127 Law on the interpretation of some provisions of Law No. 26/2022 on some measures related to the selection of candidates for the position of member of the

In judges' circles, this interpretation law has been unofficially dubbed the "Saturday Law".

In its interpretation, the Parliament referred to the legal status of the Pre-Vetting Commission, namely that it is not a public authority within the meaning of the provisions of the Administrative Code, and that the Commission's activity is not public, with the exceptions set by Law 26/2022 on Pre-Vetting.[128]

However, Law 26/2022 on Pre-Vetting expressly provided that the appeals against the decisions of the Pre-Vetting Commission shall be judged in accordance with the procedure provided for in the Administrative Code, which cannot have a suspensive effect on the decisions of the Pre-Vetting Commission, the elections, or the competition in which the candidate participates, and that, by derogation from the provisions of the Administrative Code, the appeals against the decisions of the Pre-Vetting Commission shall be examined within 10 days. Law 26/2022 on Pre-Vetting also stipulated that, during the period of its application, the rules of other normative acts of equal or inferior legal force shall apply to the extent that they do not contradict its provisions.[129]

Therefore, since the law provided from the outset for the applicability of the Administrative Code for the examination of appeals against the decisions of the Pre-Vetting Commission, and the derogations from the Administrative Code were expressly indicated in the text of the law (impossibility of suspending the decisions of the Pre-Vetting Commission/election/contest and examination of appeals within 10 days), how was it to be understood that the provisions of the Administrative Code were not in fact applicable to this Commission? Contrary to the legal rigours concerning the interpretation of laws by the Parliament, neither in the informative note that accompanied the draft Law 26/2022 on Pre-Vetting, nor in other documents that accompanied this draft can the will of the legislator be identified in the sense that the Pre-Vetting Commission is not a public authority under the Administrative Code.[130]

The only logical explanation for such a legislative interpretation is similar to previous attempts to make the decisions of the Pre-Vetting Commission immune from possible annulment by the SCJ on procedural grounds and violation of candidates' rights. Most likely, the Parliament learned from the Pre-Vetting Commission about the grounds for annulment invoked in the candidates' appeals to the SCJ, which resulted in multiple and undeniable violations of the principles of public authorities' work and of the rights of the candidates in the administrative procedure conducted by the Pre-Vetting Commission within the meaning of the Administrative Code. The change in the legal status of the Pre-Vetting Commission while examining the appeals was pending before the SCJ can thus be interpreted as a way of defending the Pre-Vetting Commission by the Parliament. The intervention on the side of the Pre-Vetting Commission was eloquent proof that the Parliament was involved in the litigation of disputes between the candidates and the Pre-Vetting Commission on the side of the Commission. For the Commission, it was a signal that the politically determined rules of the game will always be in their favour and always against the candidates, should they defend themselves. The parties can no longer be considered equal in the process in such cases.

However, Law 100/2017 on normative acts stipulates that the legal interpretation act is not retroactive,[131] and the attempt to "save" the work of the Pre-Vetting Commission from the rigours of the Administrative Code was already overdue. Parliament's involvement denotes not only its close scrutiny of the details of the litigation against the Pre-Vetting Commission, but also the lack of independence of the Pre-Vetting Commission from Parliament, as the Commission's lawyers could obtain legislative interventions that directly benefited them during the court process.

The clear aim pursued by the Parliament to influence the solutions of the SCJ in favour of the Pre-Vetting Commission can be very precisely deduced from the interview of Ilie Chirtoaca, President of the LRCM, an NGO considered close to the Government, whose members are found in multiple positions close to politicians, in the Pre-Vetting Commission and its secret Secretariat, as well as among the candidates proposed by the Parliament for the position of member of the SCM who passed the evaluation. Ilie Chirtoaca explicitly admitted in the interview that the interpretation given by the Parliament was urgent, because it aimed to "facilitate certain processes" (see case study below).

CASE STUDY 17. Ilie Chirtoaca: "The Parliament urgently interpreted the statute of the Pre-Vetting Commission because there was information that the decisions could be overturned by the Supreme Court by applying the Administrative Code"

ZdG.md, Premises are created to transform the Commission into a semi-transparent entity. The Pre-Vetting Commission and its activity are not public, according to a legislative initiative, 31 July 2023[132]

"The Pre-Vetting Commission is not a public authority within the

self-administrative bodies of judges and prosecutors and Law 65/2023 on Vetting, no. 180 of 7 July 2023, published in the Official Gazette no. 234/414 of 8 July 2023.

128 Art. I item 1 of Law 180/2023 of 7 July 2023 on the interpretation of some provisions of Law 26/2022 and Law 65/2023 on the external evaluation of judges and candidates for the position of judge of the SCJ.

129 Art. 14 paras. (6) and (7), and Art. 15 para. (1) of Law 26/2022 on Pre-Vetting.

130 Art. 71 para. (4) of Law 100/2017 of 22 December 2017 on normative acts.

131 Art.72 para. (6) of Law 100/2017 of 22 December 2017 on normative acts.

132 https://www.zdg.md/stiri/stiri-sociale/creeaza-premisele-transformarii-intr-o-entitate-semi-transparenta-comisia-pre-vetting-si-activitatea-aceste-ia-nu-sunt-publice-potrivit-unei-initiative-legislative/

meaning of the provisions of the Administrative Code, nor is its activity public, with some exceptions established by the law by which it was established. This is how a group of MPs interpreted some provisions of Law No. 26/2022 on some measures related to the selection of candidates for the position of member of the self-administrative bodies of judges and prosecutors and Law No. 65/2023 on the external evaluation of judges and candidates for the position of judge of the SCJ."

The interpretation comes more than one year after the entry into force of the law regulating the work of the Pre-Vetting Commission, which was published in the Official Gazette on 8 July.

According to an opinion issued by the Centre for the Analysis and Prevention of Corruption, although the law was passed by the Parliament to provide clarity, it brings more confusion. [...]

Some 'legal acrobatics' found in the Administrative Code

According to Ilie Chirtoaca, the President of the LRCM, an NGO that monitors the external evaluation, the interpretation could be related to the appeals filed by magistrates and prosecutors to the SCJ [...]

"This makes the Administrative Code inapplicable before the Commission. Why is this important? There was information, unconfirmed, that the decisions of the Commission pending before the SCJ were going to be rejected because some 'legal acrobatics' were found in the Administrative Code to annul (the decisions ed.), without having a solid argumentation based on the Pre-Vetting Law, but based on the Administrative Code. We saw that it was a bill passed very quickly, both in the first and second readings, meaning that there was also an urgency. It was also quickly promulgated by the President, within one day, and published in the Official Gazette, which leads me to believe that it was linked to the work of the SCJ [...] Yes, the Commission is not normally created in the way public institutions are. The Secretariat of the Commission is, we understand, supported by development partners. Certainly, we cannot automatically say that the Commission is a public authority; this is not reflected in its acts and statute, and I believe that this was done to facilitate certain processes [...] These procedures make the Commission's work very difficult and I believe that in the end they reduce its efficiency [...]", said Ilie Chirtoaca.

If it is not a public authority, the Commission is unconstitutional and all its acts could be challenged in court

On the other side, Alexandru Arseni, PhD in law and university professor, says the interpretation offered by the draft raises questions about the Commission's constitutionality.

"This interpretation that Parliament has given shows that it is an unconstitutional Parliament in exercising its powers and passing laws, and it is one that violates the dignity and honour of citizens, guaranteed by the Constitution [...]. All the more so, the evaluation is public. [...] If it is not a public authority, the Commission is unconstitutional, and all its acts can be challenged in court, because through these actions the dignity and honour of the office of judge and that of the system as a whole have been damaged [...] They are intended to cover up the activity, [...] to implement, in practice, in the Republic of Moldova, the functioning of the mechanism of secret services [...] This official interpretation denotes that the current Government profanes and discredits the judicial authority in its complexity, magistrates and prosecutors, and brings to zero all decisions, because this is not an official state institution, but a secret institution," said Alexandru Arseni.[133]

Also for unclear reasons, by the same law, the Parliament interpreted that the legal requirements for the members of the Pre-Vetting Commission not to have held the position of MP or Member of the Government and not to have been a member of a political party in the last three years were in fact a restriction valid only with reference to the Parliament, the Government, and political parties of the Republic of Moldova.[134] It would not have been clear how that interpretation was useful more than one year after the appointment of the members of Pre-Vetting Commission, unless some of the international members of the Pre-Vetting Commission has not been a member of the Parliament, the Government, or a political party in his/her country of origin. The situation was clarified after the introduction of other amendments to Law 26/2022 by Law 252/2023, which provided for the transmission of the attributions of the Pre-Vetting Commission to the Evaluation Commission created by Law no. 65/2023 on the external evaluation of judges and candidates for the position of judge of the Supreme Court of Justice (Vetting Commission):[135] two of the three members of the Vetting Commission, Lavly Perling and Scott Bales, were party members in their home states, Estonia and the USA, at the time of their appointment to office on 15 June 2023.

CASE STUDY 18. Members of the Vetting Commission who took over the functions of the Pre-Vetting Commission, Scott Bales and Lavly Perling, appointed in contradiction with the requirement not to be members of political parties

Unimedia.md, "Political Vetting with proper documents". Cristina Ciubotaru: The Chair of the Judicial Evaluation Commission himself is a party member in the USA", 3 August 2024[136]

"The former deputy director of the National Anticorruption Centre, Cristina Ciubotaru, is revolted by the fact that the chairman of the Vetting Commission, which evaluates judges and candidates for the position of judge of the Supreme Court of Justice, the American citizen Scott Bales, is a member of the Democratic Party, from the State of Arizona. "On 15 June 2023, the Parliament appointed the members of the Vetting Commission. Exactly three weeks after they appointed two members of parties from their home countries as Vetting Commission members in Moldova, the Legislature gives an interpretation that, in fact, members of political parties in Moldova cannot be appointed. When will they understand here that the laws are not retroactive...?", emphasized Cristina Ciubotaru.

"The chairman of the Vetting Commission, which evaluates judges and candidates for the position of judge of the Supreme Court of Justice, the American citizen Scott Bales, is a member of the Democratic Party from the State of Arizona. That's what Wikipedia says.

Another member of the Commission is the Estonian citizen Lavly Perling, who has been party president for a year.

Based on Law 65/2023 on the external evaluation of candidates for the position of judge of the Supreme Court of Justice, on 15 June 2023, the Parliament appointed the members of the Vetting Commission.

Art.7 of Law 65/2023 states that a person who has been part of a political party in the last three years cannot be appointed as a member of the Commission. Exactly 3 weeks after they appointed 2 members of parties from their countries to this Commission, the Parliament gives an interpretation

133 https://www.zdg.md/stiri/stiri-sociale/creeaza-premisele-transformarii-intr-o-entitate-semi-transparenta-comisia-pre-vetting-si-activitatea-aceste-ia-nu-sunt-publice-potrivit-unei-initiative-legislative/

134 Art. I item 2 of Law 180/2023 of 7 July 2023 on the interpretation of some provisions of Law 26/2022 on pre-vetting and Law 65/2023 on Vetting.

135 Art. 21 point I and art. 22 paragraph (3) of Law 225/2023 of 17.08.2023 on the external evaluation of judges and prosecutors and amending certain normative acts

136 https://unimedia.info/ro/news/da62153b921ca98e/vetting-politic-cu-acte-in-regula-cristina-ciubotaru-insusi-presedintele-comisiei-de-evaluare-a-judecatorilor-este-membru-de-partid-in-sua.html

that, in fact, these are the members of political parties from Moldova who cannot be appointed (Law 180 of July 7, 2023).

First, they could not even appoint two international members out of three, and when they understood the mistake, they "interpreted" the law that it was possible. Post-factum.

When will they understand in Moldova that the laws are not retroactive?"

The reaction of the Vetting Commission, which took over the functions of the Pre-Vetting Commission, was that members who were not part of political parties in the Republic of Moldova are not in incompatibility, given the interpretation made by Law 180 of 07.07.2023.[137] This explanation, however, does not take into account the fact that Law 180/2023 is subsequent to the appointment of the members in question to the Commission, and the interpretation laws do not apply retroactively.[138]

5.8 Destruction of evaluation materials – intention to cover up politically motivated crimes?

More than two years after the vote on Law 26/2022, on 31 July 2024, the PAS MP Vasile Gradinaru proposed to the Parliament the approval of an amendment, whereby the SCM and the SCP are to destroy all materials gathered by the Pre-Vetting Commission immediately after the completion of the evaluation. The proposal generated jokes and controversy, as it came at a time when new confirmations were obtained that the Secretariat of the Pre-Vetting Commission employs several persons connected to the Parliament, the Government, and the presidency. The impression has been created that the proposed amendment was, in reality, aimed not at protecting the personal data of the subjects of the evaluation but at hiding the traces of possible abuses committed during the evaluation, with the involvement of politicians.

CASE STUDY 19. MP Vasile Gradinaru introduces the amendment on the destruction of the Pre-Vetting Commission's materials, which makes it impossible to verify the correctness and legality of the assessments

Politik.md, "Controversial amendment stipulating the destruction of information accumulated by the Pre-Vetting Commission upon completion of the evaluation process of judges and prosecutors, rejected by Parliament – Vasile Gradinaru: We will return to the topic in the autumn", 31 July 2024[139]

Parliament has made several amendments to the Law on the selection of candidates for membership of judges' and prosecutors' self-administrative bodies and the Law on the external evaluation of judges and prosecutors. The initial version of the draft included an amendment that provoked discussions in the public space, especially among lawyers. The amendment provided for the destruction of all information gathered by the Pre-Vetting Commission upon completion of the external evaluation of judges and prosecutors. However, the proposal was rejected by Parliament.

Even so, the author of the given initiative, Vasile Gradinaru, believes that a legal provision is needed whereby the SCM and the SCP could "destroy" the information submitted by the external evaluation commissions. [...]

The Association of Judges of the Republic of Moldova expressed its deep concern and vehement disagreement with the controversial amendment. The Association described it as "a serious violation of the fundamental principles of the rule of law and transparency in decision-making".

"The erasure and destruction of information gathered during the evaluation process prevents the authenticity of the evidence from being verified and jeopardizes the possibility of investigating abuses and errors committed during the process. The destruction of documents accumulated in the evaluation process prevents access to information that is essential for justice and society, making it impossible to verify the correctness and legality of the evaluations at a later stage," reads a statement by the Judges' Association. The organization underlines that the removal of the documents compromises the right of defence of those evaluated, who will not be able to effectively challenge the decisions of the Evaluation Commission without access to the relevant information.

"The adoption of this amendment sets a dangerous precedent for the manipulation and destruction of evidence in other legal contexts, undermining public confidence in the integrity and impartiality of the judiciary. The amendment contradicts the recommendations of the Venice Commission, which emphasizes the importance of preserving evidence and documents to ensure transparency and accountability in the evaluation and justice processes," the Judges' Association further stresses."[140]

Conclusions of Chapter IV. 'Changing the rules of the game during the game'

- Frequent amendments to Law 26/2022 and changes in the pre-vetting procedure have eroded confidence in the evaluation process, creating an unstable and discriminatory legislative system.
- The legislative changes that favoured the Pre-Vetting Commission had a negative impact on the rights of candidates, who faced changing rules and difficulties in defending their integrity.
- The legislative interventions have not only undermined the principles of the rule of law and transparent decision-making but have also undermined the credibility and objectivity of the whole evaluation mechanism.

Lessons learnt

- A correct and fair process of extraordinary evaluation requires a stable, clear, and predictable legislative framework.
- The legal framework for the evaluation of actors in the field of justice must guarantee the transparency of decision-making, the accountability of the evaluating body, and the fundamental rights of those evaluated.

137 https://realitatea.md/nu-s-a-aflat-la-sefia-unui-partid-din-moldova-comisia-vetting-reactioneaza-la-dezvaluirile-judecatorului-turcan/

138 Art.72 alin.(6) din Legea 100/2017 cu privire la actele normative.

139 https://politik.md/controversatul-amendament-care-prevede-distrugerea-informatiilor-acumulate-de-comisia-pre-vetting-la-finalizarea-procesului-de-evaluare-a-judecatorilor-si-procurorilor-respins-de-parlament/

140 https://politik.md/controversatul-amendament-care-prevede-distrugerea-informatiilor-acumulate-de-comisia-pre-vetting-la-finalizarea-procesului-de-evaluare-a-judecatorilor-si-procurorilor-respins-de-parlament/

6

CIVIL SOCIETY SUPPORT FOR REFORM

Summary: *This chapter explores the active involvement of NGOs in the Republic of Moldova, in particular the LRCM, but also other NGOs, in the process of evaluating candidates for the positions of members of the SCM and SCP. These organizations not only promoted and supported the reform through advocacy campaigns, but also had a direct role in the development and monitoring of the pre-vetting and vetting processes. Members of these organizations and their families were actively involved in collecting and analysing information for the Pre-Vetting Commission, were part of the pre-vetting structures, were the first candidates to be successfully evaluated by the Pre-Vetting Commission, and thereby obtained the most important judicial positions, raising inevitable questions about conflicts of interest.*

Despite their valuable contributions, the involvement of these organizations in the evaluation processes has generated controversy, especially as suspicions of favouritism and vested interests have arisen. The lack of clear conflict of interest regulations has heightened the public perception that these organizations seek personal and organizational benefits from their involvement in the reform process. Illegal access to candidates' personal data has also caused a significant public scandal, raising serious questions about data protection and the abuses allowed in the evaluation processes.

Law 86/2020 on non-commercial organizations obliges members of the management and control bodies of the organization seeking to obtain the status of public benefit to comply with the rules on conflict of interest.[141] Not regulating situations that are expressly considered to be conflicts of interest in NGOs does not prevent public concerns about conflicts of interest. The mismatch in the status of civil society actors allows them to pursue both public interest objectives and personal interests.

6.1 Pre-Vetting development, promotion, and monitoring, trust of politicians, and potential conflicts of interest

Members of civil society organizations, their relatives, and other persons close to them can, in principle, embrace various capacities in the pre-vetting process. There are no restrictions. However, the relationships between NGO members and their close relatives are important, especially if it is because of these relationships that they enhance their chances of success in pre-vetting more than due to other merits. The lack of clear rules on conflicts of interests and pantouflage for members of civil society, on the one hand, and for members of the Pre-Vetting Commission and the Commission Secretariat, on the other, increases the chances of situations that are publicly perceived as conflicts of interest arising without being treated as such by those concerned. For, regardless of the existence of clear rules, the public perceives the pre-vetting process with a dose of scepticism because of suspicions that the favourable path of some individuals is secured through conflicts of interest. When members of the same organizations and people close to them (relatives, spouses, godchildren, godfathers, godmothers, colleagues) meet each other as authors/promoters/monitors of reform processes, including pre-vetting, and as direct beneficiaries of these processes, criticism is inevitable. Doubts about the objectivity of the process undermine confidence in the justice reform process and do not convince the public that the reform is producing the desired integrity-enhancing change.

Normally, the participation of NGOs in reforms should guarantee to the society a better achievement of the public interest. However, when NGO members are suspected of private interests and personal benefits in the reform process, and when evaluation processes with the participation of NGO representatives and their close associates are secretized, they are not as eloquent in safeguarding the public interest.

Two NGOs in the Republic of Moldova most frequently associated with the processes involved in the evaluation of candidates for the positions of members of the SCM and SCP are the LRCM and IPRE.

141 Law 86/2020 of 11 June 2020 on Non-Commercial Organisations, Art. 22 para. (1) letter e).

LRCM

LRCM is the NGO that provides the most extensive public communication in support of external evaluation (pre-vetting and vetting) through various modalities and platforms: statements, publications, posts, opinions, forums, press conferences, etc. On the LRCM website, there are no projects expressly dedicated to the involvement in the extraordinary evaluation processes of this organization. In recent years, the leaders and members of the organization have actively promoted public communication in support of pre-vetting, including before the introduction of these mechanisms, reinforcing the public perception that the author of the reform in question is this organization. The impetus of the LRCM's communications has at times surpassed the Pre-Vetting Commission's communication itself.

There is knowledge in the public space of at least seven persons from the LRCM or their close persons involved in the pre-vetting process in different capacities.

Former Executive Director of the LRCM **Vladislav Gribincea** is the most notorious promoter of pre-vetting of candidates for membership in the SCM and SCP, vetting of judges and prosecutors, and reform of the SCJ. Vlad Gribincea announced his candidacy for the position of judge at the SCJ, passed the vetting and became the first judge of the SCJ appointed as a result of vetting.

Vladislav Gribincea was President of the LRCM from 2010 to 2022. More than half a year after the vote on Law 26/2022, and immediately after the announcement of the reform of the SCJ, in the autumn of 2022, Vladislav Gribincea stepped down as President of his organization. Asked whether he would run for the position of judge of the SCJ in the context of the reform, Vladislav Gribincea initially shied away from giving an straight answer, and later applied for the position. At Vladislav Gribincea's public hearing in March 2024, the Vetting Commission announced that it had no serious doubts about his integrity and did not ask him any questions. During his hearing, Vladislav Gribincea praised the justice reform, pre-vetting, vetting, and the work of the commissions that carry them out.

Vladislav Gribincea is the brother-in-law of the ex-Minister of Justice, Sergiu Litvinenco, during whose time the laws on pre-vetting, the reform of the SCJ, and the vetting of SCJ judges were drafted and promoted. The salaries of the national members of the Pre-Vetting Commission, including two members of the LRCM, were paid from the budget of the Ministry of Justice[142] headed by Vladislav Gribincea's brother-in-law. Similarly, the Ministry of Justice, headed by Vladislav Gribincea's brother-in-law, was responsible for contacting development partners and the Parliament with a view to the latter appointing the members of the Pre-Vetting Commission, as well as for identifying and hiring the persons who would work in the Secretariat of the Pre-Vetting Commission.[143] Litvinenco stepped down as Minister in February 2023. Vladislav Gribincea commented about his brother-in-law leaving because he "got tired", but political actors later claimed that Litvinenco remained in the party and continued to advise the President of the Republic of Moldova on justice reform (as a non-tenured adviser). Gribincea has often been criticized for promoting reforms carried out together with the Minister, his brother-in-law. If Litvinenco had remained as Minister when Gribincea became a judge of the SCJ, by promoting the vetting envisaged by the reform advocated by them being brothers-in-law, the situation would have become even more embarrassing.

Just a few days after Gribincea's hearing by the Vetting Commission, his wife was appointed as a member of the Board of the National Institute of Justice by presidential decree.[144]

The current President of the LRCM, **Ilie Chirtoaca**, has publicly admitted that *his wife, Mihaela Burduja, is part of the secret Secretariat of the Pre-Vetting Commission.*[145] Ilie Chirtoaca and Mihaela Burduja have admitted that they are Vladislav Gribincea's wedding godchildren. Mihaela Burduja could therefore have been identified to become a member of the Secretariat of the Pre-Vetting Commission by the Ministry of Justice, headed by the brother-in-law of her wedding godfather.

The founder and Programme Director of the LRCM, **Nadejda Hriptievschi**, and the ex-Chair of the LRCM Board, **Tatiana Raducanu**, became members of the Pre-Vetting Commission in 2022, at the proposal of the parliamentary majority of the ruling party.

LRCM founder and legal advisor **Ion Guzun** was nominated by the parliamentary majority of the ruling party for the position of SCM member on behalf of civil society representatives. In 2023, Ion Guzun passed the pre-vetting assessment and was among the first members appointed by the Parliament as a member of the SCM.

Elena Prohnitschi and **Cristina Pereteatcu**, members of the Board of the LRCM,[146] *were part of the Secretariat of the Pre-Vetting Commission*. Elena Prohnitschi was the Head of the Secretariat.

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142 Article 15 para. (2) letter a) of Law 26/2022 on Pre-Vetting.
143 Article 15 para. (2) letters b) and c) of Law 26/2022 on Pre-Vetting.
144 https://presedinte.md/app/webroot/Decrete/1384.pdf
145 https://realitatea.md/video-seful-crjm-recunoaste-sotia-mea-lucreaza-in-secretariatul-comisiei-pre-vetting/
146 https://old.crjm.org/en/category/consiliul-de-administrare/

At the same time, the members of this organization enjoy the trust of the President of the Republic of Moldova, being appointed, without any competition, to various positions of trust for the President. Thus, Ion Guzun and Nadejda Hriptievschi were included in the Independent Anti-Corruption Advisory Committee, created by presidential decree in 2021. Ion Guzun combined the position of Director of the Secretariat of this Committee with that of President of the Commission for the pardoning of convicted persons under the President of the Republic of Moldova.[147] Tatiana Raducanu was a member of the Supreme Securty Council (SSC) headed by the President of the Republic of Moldova from 2021 until December 2024, having been appointed in this capacity by presidential decree.[148]

IPRE

IPRE is the non-governmental organization concerned with the European integration process of the Republic of Moldova, including by monitoring the implementation of EU conditionalities. According to the activities described on the website of the organisation, the latter is involved in strengthening pre-vetting and vetting capacities by providing expertise and technical assistance. The nature of several activities published on the website suggests substituting the capacities of these commissions, but also of other institutions in the field of justice and anti-corruption, by contracting institutional communication services, preparing notes/reports/proposals of these institutions in their place, purchasing equipment, software licenses, ensuring connection to external data registers etc. IPRE's interest in the pre-vetting and vetting processes is explicable in the light of the organization's statutory mandate to contribute to the acceleration of the European integration of the Republic of Moldova, given the European Union's conditionality related to the justice reform and the fight against corruption for the opening of accession negotiations.

IPRE Executive Director **Iulian Groza** has been a member of the National Commission for European Integration, established in 2022 by presidential decree, and in the period of 2022-2025 he was a member of the SSC headed by the President of the Republic of Moldova, where he was appointed by presidential decree.[149] Iulian Groza has, on several occasions, been appointed by the President as a member or Chair of the pre-selection commissions for candidates for leading positions in important prosecutor's offices (the APO and the Prosecutor's Office for the Fight against Organized Crime and Special Cases (PCCOCS)), before they could enter the competitions organized by the SCP.

Between October 2021 and February 2022, IPRE Deputy Executive Director **Iulian Rusu** served as State Secretary of the Ministry of Justice, in which position he was in charge of drafting the Pre-Vetting Law. Shortly after his appointment at the Ministry, IPRE started the project 'Strategic Communication and Expertise for the Ministry of Justice', implemented from November 2021 to September 2022 (financially supported by the Embassy of the Kingdom of the Netherlands in the Republic of Moldova within the MATRA programme).

The general objective of the project was to increase the awareness of citizens and actors in the justice sector of the priorities and actions of the Ministry of Justice in the field of justice reform and the fight against high-level corruption, as well as to increase the impact of the participation of the Ministry of Justice in the self-administrative bodies (SCM/SCP). In particular, specific objective no. 2 of the project consisted in increasing the Ministry of Justice's capacity to manage justice through the SCM and SCP. The planned actions were intended to substitute the capacities of the Ministry, namely: the analysis of materials related to the agenda of the SCM and SCP meetings; the preparation of briefing notes on the topics on the agenda of the SCM and SCP; the analysis of systemic problems related to the work of the SCM and SCP and presentation of proposals for their resolution; and the preparation of documents related to the proposals of the Minister of Justice as a member of the SCM and SCP.[150]

After serving as Secretary of State of the Ministry of Justice, without a competition, from February 2022 to October 2023, Iulian Rusu was Director of the NAC. The appointment of Iulian Rusu to this position took place with the vote of the parliamentary majority, shortly after the repealing the provisions on occupying this post on a competitio basis provided for by Law 1104/2002 on the NAC.[151] From the position of Director of the NAC, Iulian Rusu actively cooperated with the Pre-Vetting Commission and its Secretariat, in particular by seconding staff members to the Secretariat and preparing operational analyses of candidates at the request of the Pre-Vetting Commission and the Secretariat.

In parallel with Iulian Rusu's mandate as NAC Director, in the period 2022-2023, IPRE implemented another project, 'Ensuring an Upstanding, Efficient, and Independent Justice System in the Republic of Moldova' (financially supported by the Soros Foundation-Moldova). The aim of this project was to strengthen the integrity, efficiency, and independence of the justice system, and the objectives included supporting the mechanism of extraordinary vetting of justice actors (pre-vetting and vetting) in cooperation with international development partners, developing policies aimed at increasing the efficiency of prosecution of high-level corruption cases, and

147 https://ccia.md/despre-noi/
148 https://presedinte.md/rom/componenta-css
149 https://presedinte.md/rom/componenta-css
150 https://ipre.md/2021/11/09/proiect-comunicare-strategica-si-expertiza-pentru-ministerul-justitiei/
151 https://www.legis.md/cautare/getResults?doc_id=127720&lang=ro#

better channelling efforts with the support of development partners. This was the first project implemented by IPRE on the capacities of law enforcement bodies and prosecution to fight high-level corruption.

To achieve the project objective related to pre-vetting/vetting, IPRE is committed to:

1. preparing four independent reports to check the integrity and lifestyle of the evaluated persons; to contract experts and analysts to prepare these reports, at the direct request of the Ministry of Justice, and the Secretariat of the Extraordinary Evaluation Commission for Judges and Prosecutors (vetting);

2. organizing a workshop for experts/analysts from the Secretariat of the Vetting Commission on integrity and lifestyle checks of judges and prosecutors;

3. preparing legal opinions on the normative acts, working regulations, and other procedural documents necessary for the preparation and implementation of the pre-vetting/vetting mechanism, submitted to the Ministry of Justice, the Government, the Parliament, the Pre-Vetting and Vetting Evaluation Commissions, and other relevant national actors; and

4. providing technical assistance to the Secretariat of the Pre-Vetting/Vetting Commission by covering the costs of access to external data registers for analysts/IT and the licence of a translation software programme for translators of the Secretariat of the Pre-Vetting/Vetting Commission.

According to the information submitted in writing by IPRE, these activities were only planned at the initial stage, but most of them were not carried out. According to IPRE, only 2 activities were carried out: 1) drafting of 2 independent reports on the candidates for judges and prosecutors for the positions of SCM and SCP members, which were published and prepared, contrary to the initial design, in the absence of any request of the Pre-Vetting Commission, the Ministry of Justice or other entities. 2) drafting of independent legal opinions, published and submitted to the public authorities that initiated public consultations. IPRE claims that it did not organize workshops for experts and analysts of the Secretariats of the Pre-Vetting/Vetting Commissions and that it did not provide them with any type of technical assistance.

In order to achieve the objective related to the prosecution of corruption cases, IPRE committed to creating an inter-institutional Working Group (with the participation of national and international experts and civil society) on policy measures to increase efficiency in the prosecution and sanctioning of high-level corruption; conducting a Functional Analysis of the APO; contracting independent technical expertise/analysis at the direct request of the GPO, APO, NAC in the context of investigating high-level corruption cases; and providing technical assistance to the GPO and APO in the process of capacity-building in the field of international cooperation and strategic communication.[152]

Even if, according to IPRE, these activities were not carried out, the very planning of projects aiming at ensuring the access of the Pre-Vetting/Vetting Commission Secretariat to external data registers and at getting involved in the investigation, international cooperation and communication activities of the APO may be deemed as inappropriate areas of activity for civil society organizations, as it involves access to confidential data, associated with the risks of unauthorized access to classified information, protected by law, as well as information leakage.

According to a journalistic investigation, IPRE's Co-Executive Director, **Adrian Ermurachi**, provided advice and training at the start of the Pre-Vetting Commission's work.[153] Ermurachi denied this fact. Previously, from 2017 to 2021, Ermurachi held the post of Deputy Secretary-General of the Government.

Within IPRE, there is a Group of Experts in the Field of Justice (EGJ), which drafts opinions on draft laws and periodically publishes a Justice Monitor. IPRE's EGJ experts include **Ion Guzun**[154] and **Tatiana Ciaglic**,[155] both of whom passed the evaluation and were nominated and subsequently appointed by parliamentary majority as members of the SCM. Another expert from IPRE's EGJ is **Pavel Grecu,**[156] husband of Nadejda Hriptievschi, member of the Pre-Vetting Commission, who was also proposed by parliamentary majority. Pavel Grecu has signed several IPRE opinions on draft laws related to pre-vetting.[157] Previously, Grecu worked at the LRCM and was later appointed as an advisor to the Prime Minister in the field of justice and anti-corruption,[158] the current President of the Republic of Moldova. In August 2024, Pavel Grecu's mother and Nadejda Hriptievschi's mother-in-law, lawyer Viorica Grecu, was appointed Genera State Secretary at the Ministry of Justice.[159]

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152 https://ipre.md/2022/04/01/proiectul-asigurarea-unui-sistem-de-justitie-integru-eficient-si-independent-in-republica-moldova/

153 https://tv8.md/2023/30/10/video-investigatie-secretele-pre-vettingului-un-scandal-recent-arata-ca-evaluarile-pot-avea-lacune-in-reformarea-justitiei/242883

154 https://ipre.md/2021/09/03/ion-guzun-expert-juridic-gej-nu-mai-vrem-ca-politicul-sa-influenteze-justitia-radio-europa-libera/

155 https://ipre.md/2021/12/14/tatiana-ciaglic-membra-gej-emisiunea-spatiul-public-radio-moldova/

156 https://ipre.md/2021/10/20/pavel-grecu-expert-gej-intr-o-tara-democratica-insusi-procurorul-general-ar-fi-interesat-ca-faptele-de-care-este-acuzat-fie-investigate-dar-aici-s-a-depus-atata-efort-pentru-ca-nimic-sa-n/

157 https://ipre.md/2021/11/05/opinie-preliminara-privind-conceptul-mecanismului-de-evaluarea-externa-a-judecatorilor-si-procurorilor/

158 https://www.legis.md/cautare/getResults?doc_id=115181&lang=ro

159 https://tv8.md/2024/08/21/schimbari-la-ministerul-justitiei-viorica-grecu-a-fost-numita-in-functia-de-secretar-genral/263967

IPRE is implementing the project 'Ensuring Integrity, Efficiency, and Independence of the Justice System in Moldova – #Justice4Moldova' (2023-2026), supported by the European Union and the Soros Foundation-Moldova. The objective of the project is to contribute to enhancing the role of civil society and media in strengthening the independence, integrity, efficiency, and accountability of the justice system. It aims to strengthen civil society and policy experts to promote the implementation of transparent and accountable justice sector policies in line with European standards on the rule of law and human rights and with the Association Agreement; to increase the independence, integrity, and efficiency of the judiciary and anti-corruption stakeholders through monitoring and support by civil society, political organizations, and media.[160]

6.2 Substituting the Pre-Vetting Commission's communication

The President of the LRCM, Vladislav Gribincea, adopted a paternalistic attitude towards the justice reform, in particular towards the proces of pre-vetting and vetting of the SCJ. This was somewhat explicable, given that his organization, the LRCM, had long been involved in the justice reform processes. However, before and during the drafting of the law, as well as throughout the whole process, Vladislav Gribincea anticipated the work of the Pre-Vetting Commission, explained it from the perspective of an insider, "reprimanded" the Commission, and sought explanations instead of it for the public.

Gribincea publicly explained in detail the functioning of the Pre-Vetting Commission, going way beyond the legal provisions. He held a press conference dedicated to the work of the Pre-Vetting Commission only three days before the announcement of the Pre-Vetting Commission's first press conference, undermining thus its authority and giving the impression that he was the true leader of the Commission, who is actually in charge of the entire process (details in case study 16 below). When it became clear that all the deadlines initially set for the completion of the evaluation had been exceeded by the Pre-Vetting Commission, Vlad Gribincea "reprimanded" it, explained to the public the difficulties and political pressures on the Ministry of Justice (headed by his brother-in-law) and gave advice to the Ministry of Justice (practically to his brother-in-law) on how to manage the public's deceived expectations.

Vladislav Gribincea also explained the sequence of the reforms as he saw them; this vision coincided with the vision and the sequence followed by the ruling party: pre-vetting of the members of the SCM/SCP; vetting at the SCJ; followed by vetting at the APO and the Courts of Appeal.

Vladislav Gribincea stressed the importance of completing all pre-vetting and vetting procedures during the mandate of the PAS Government. Although the Constitution has not been amended and, in practical terms, there is no guarantee that the pre-vetting and vetting exercise will not be repeated by others in the future, the President of the LRCM emphasized that this exercise must be unique and must therefore be completed during the mandate of the ruling party (of which his brother-in-law is a member).

CASE STUDY 20. President of the LRCM, Vladislav Gribincea, makes public announcements before the Pre-Vetting Commission

Realitatea.md, 10 February 2022, "The Pre-Vetting Law explained for everybody's understanding. Gribincea explains in simple terms how the provisions will be implemented"[161]

Law 26/2022 was passed in the second reading on 10 February 2022, and on 10 March 2022 in the final reading. On the day of the law's adoption in the second reading, the President of the LRCM, Vladislav Gribincea, brother-in-law of the Minister of Justice, explained "in his own words" the whole process that will follow, anticipating the standards that the Commission will apply, the evaluation deadlines, and when the new SCMs and SCPs will start their work: *"The evaluation of each candidate will ake about two months. At the beginning of the assessment, the candidate will finel some declarations about his or her relatives, assets, and expenses over the last five years. The Commission will check these and other data, with direct access to public databases, being able to gather information from any person by itself, including requesting further explanations from the candidate. It is the candidate's responsibility to explain any aspects of the evaluation to the Commission and failure to provide a convincing explanation will result in failing the evaluation. The Pre-Vetting Commission is not bound by the findings of other bodies, and can decide, for example, that professional misconduct has occurred even if disciplinary bodies have previously decided otherwise. [...] The new SCM and SCP should become operational in June." [...]*

The Pre-Vetting Commission issued invitation to its first press conference on 13 June 2022, for 16 June 2022.[162]

IPN.md, press conference on 10 June 2022, "Vladislav Gribincea: The whole process of evaluating judges and prosecutors will take 3-4 years"[163]

Just three days before the announcement of the first press conference by the Pre-Vetting Commission, on 10 June 2022, Vladislav Gribincea gave a press conference to explain, once again, the work of the Pre-Vetting Commission, what it is doing at the moment (June 2022) and what risks resulted from its work.

"There is a risk that the pre-vetting and external evaluation of judges and prosecutors will leave the system without people. This is what the President of the LRCM, Vladislav Gribincea, says, according to whom the whole process of cleaning up the system will take up to four years. **[...]** *The President of the LRCM says that the pre-vetting ... could be finalized by the end of this summer, but the evaluation of judges and prosecutors may take much longer. "The Commission will send to the candidates a request to declare their assets and all expenses for the last five years. Also, the Commission will check the assets of the candidates for the last 15 years. It will also check what kind of rulings these judges have given. The Commission will come up with a decision saying whether the person is worthy to be on the list of candidates or not. At the end of August, it will be clear who has passed and who has failed the pre-vetting. There is a risk that we will not have people to take the place of those who will*

160 https://ipre.md/2023/05/05/asigurarea-integritatii-eficientei-si-independentei-sistemului-de-justitie-din-moldova-justice4moldova/
161 https://realitatea.md/legea-pre-vetting-pe-interesul-tuturor-gribincea-explica-pe-degete-cum-se-vor-implementa-prevederile/
162 https://www.youtube.com/watch?v=GnnM9HGcYxQ
163 https://www.ipn.md/ro/vladislav-gribincea-intregul-proces-al-evaluarii-judecatorilor-si-procurorilor-7965_1090325.html

leave the system and the second risk is that this vetting process will take a long time, I think it will take about 3-4 years," said Vladislav Gribincea."[164]

VoceaBasarabia.md, 16 August 2022 Vladislav Gribincea: "I don't believe that the current Government wants to subjugate the judiciary. They make crooked decisions at times, but with good intentions"[165]

*"**Vladislav Gribincea:** I honestly do not believe that those who are now in Government want to subjugate justice. What I have seen so far is that, yes, certain decisions are taken, sometimes crooked, but with good intentions. They do make mistakes, but these are not the times of Plahotniuc, when a law was adopted, but, in fact, under that law there were schemes designed to ensure that it was not respected. [...] Here, this mechanism that puts them in front of the fait accompli is called vetting, which is now taking place. It takes a bit longer [...] It is dragging on and I am also not happy about this, because we should already have had certain decisions. I have the impression that the Pre-Vetting Commission is working in the European style, that is to say, in the slow manner. I think that the Ministry of Justice could have a very clear discussion, that they are paying the political price for this delay. [...]*

In fact, it's about cleaning the top of the pyramid, because in the prosecution and the judiciary there is someone at the top who decides who gets promoted, who gets in and who gets out. And these are the SCM and the SCP. If they're clean, things down below are simpler. Here, now the process is to check who deserves to be up there. [...]

The law states very clearly that it is not that simple to challenge those decisions in court. The mechanism is as follows: people go through a kind of purgatory, where they are thoroughly checked – what assets they have, how they can justify them, and whether they have made decisions that logically cannot be explained. If they cannot explain these two compartments, they are not allowed to run for these positions, i.e. they are sat out, which means that only people whose integrity and professionalism are not in great doubt will run for these bodies. [...] The second is a profound reform of the SCM and then you will create an impression. They are relatively young judges brought into these positions 4-5 years ago and now I want you to remember what it was 4-5 years ago [...] but according to the law, they are in those positions until they reach the age of 65, which means another 10 years or so. These people cannot be changed so simply, but they have the final say in the most important matters. The second part of this reform, as I see it, is the evaluation of the judges of the SCJ and after that you already move on to the others: anti-corruption prosecutors, chief prosecutors, heads of courts, judges of the Courts of Appeal etc., downward. It is hard to start a mechanism, but if you start it well, it will bear fruit. I just want to say one thing: people who want speed in these processes mean they don't want quality. If you do it in a sloppy way, things will be bad. I understand this can't go on forever.

Jtv.md, 27 July 2023, "Secretele puterii" with Olesea Stamate and Vladislav Gribincea"[166]

Vlad Gribincea says that the process of the extraordinary evaluation of judges and prosecutors must be completed during the mandate of the PAS Government. The evaluation of 500 judges and prosecutors is planned until the 2025 parliamentary elections."[167]

6.3 Assuming the role of verification and database access functions instead of Pre-Vetting Commission

A few months later, several candidates in the pre-vetting procedure, their relatives, as well as people who have no connection with the candidates whatsoever, discovered that their personal data had been accessed by IPRE. Subsequently, it was found that the person who accessed these data was the co-author of the independent evaluation reports of the candidates for the SCM and SCP, Constantin Copaceanu.

In January 2023, a scandal over alleged illegal access to data by IPRE broke out when Eugen Rurac, Acting Head of the General Directorate of Criminal Prosecution of the NAC, then a candidate for Chief Prosecutor of the PCCOCS, filed a criminal complaint against the organization over illegal access to data on his real estate. Rurac said that on 20 January 2023, the Public Service Agency (PSA) notified him that in summer 2022, IPRE accessed information about his apartment. He considered this to be illegal, as he was working in the SIS (secret service) at that time, and, during the competition, in the NAC. Rurac lodged a complaint with the PG's Office on the grounds that IPRE allegedly obtained access to his personal data.

On the same day, IPRE issued a press release condemning what it called "attacks" on the Executive Director, Iulian Groza. IPRE explained that it had inadvertently accessed data on Rurac's real estate holdings while checking candidates for membership of the SCM and SCP. After that incident, Justice Minister and ex officio SCP member Sergiu Litvinenco said that the credibility of the PCCOCS chief contest had been undermined and the contest would be repeated when there was an SCP with a plenipotentiary mandate, after the pre-vetting was concluded.[168]

The leaders of two extra-Parliamentary parties, led by former Prime Minister Ion Chicu[169] and the mayor of the capital, Ion Ceban[170], have accused IPRE of accessing their data at least 4 times (Ion Chicu) and 88 times (Ion Ceban), both announcing their intention to file criminal complaints in this regard. Likewise, the Anti-Corruption prosecutor within the APO, Mihail Ivanov[171], has called for the accountability of the individuals who accessed his personal data. IPRE claims that neither Ion Chicu nor Ion Ceban have filed

164 https://www.ipn.md/ro/vladislav-gribincea-intregul-proces-al-evaluarii-judecatorilor-si-procurorilor-7965_1090325.html

165 https://voceabasarabiei.md/vladislav-gribincea-nu-cred-ca-guvernarea-actuala-vrea-sa-subjuge-justitia-se-iau-pe-alocuri-decizii-strambe-dar-cu-intentii-bune/

166 https://www.youtube.com/watch?v=Fgc_GNrKP8A

167 https://www.ipn.md/ro/olesea-stamate-evaluarea-judecatorilor-si-procurorilor-dureaza-pentru-ca-7965_1098479.html#ixzz8VLu4BSjD

168 https://moldova.europalibera.org/a/scandal-%C3%AEn-jurul-concursului-pentru-func%C8%9Bia-de-%C8%99ef-al-pccocs-/32242464.html

169 https://unimedia.info/ro/news/7739185e2385c836/chicu-cu-plangere-la-procuratura-ipre-a-lui-groza-mi-a-accesat-ilegal-datele-cu-caracter-personal-de-cel-putin-4-ori-anul-trecut-nu-poate-fi-vorba-despre-quot-o-greseala-umana-quot.html

170 https://unimedia.info/ro/news/f716593930549813/ceban-cu-denunt-penal-pe-iulian-groza-ce-ti-a-trebuie-sa-cauti-in-datele-mele-persoanale-de-88-de-ori-intreaba-ma-si-ti-voi-raspunde-voi-cere-sa-fii-pedepsit.html

171 https://unimedia.info/ro/news/7739185e2385c836/chicu-cu-plangere-la-procuratura-ipre-a-lui-groza-mi-a-accesat-ilegal-datele-cu-caracter-personal-de-cel-putin-4-ori-anul-trecut-nu-poate-fi-vorba-despre-quot-o-greseala-umana-quot.html

criminal complaints. Previously, lawyer Iurie Margineanu had accused the Government of political interference, persecution, and violation of judges' rights, both directly and through NGOs, and accused NGOs of acting as the Government's secret police, allegedly present in state structures at all levels, key positions, and commissions.[172]

On 3 May 2023, the Prosecutor's Office of the Chisinau municipality instituted criminal proceedings on suspicions of treason and espionage, following the scandal in which an NGO was accused by politicians, judges, prosecutors, and lawyers of illegally accessing personal data from the Real Estate Register. The prosecutor's order of instituting proceedings was leaked and published. According to it, *"from 25 May 2022 until 15 July 2022, persons unknown to the prosecuting body, in complicity with Constantin Copaceanu, who according to the contract between PSA and IPRE, was the sole user who had access to the Central Database of the Real Estate Register, with the purpose of collecting information, registered with the username and password attributed to Copaceanu, who, at that time, was not even in the country"*. Moreover, Copaceanu and his accomplices made *"network connections using a VPN from 26 IP addresses located in Panama. They accessed information about real estate related to 680 259 cadastral addresses, including information about the buildings of the Presidencial Office, the Government, SIS, the PG's Office, the Interior Ministry, the Ministry of Defense, Chisinau Airport – objectives that are part of the country's critical infrastructure, the destruction of which could negatively affect the safety, security, and well-being of the state."*[173]

According to explanations given to the IPRE complainants, it was about *"a bot which got out of control"*.[174] Apparently, 680,259 cadastral addresses were accessed to assist the Pre-Vetting Commission in evaluating 20 candidates for judges and prosecutors.

Law 26/2022 gives the Pre-Vetting Commission the right to access information systems containing data necessary for the fulfilment of its mandate,[175] but does not provide for such powers for NGOs supporting the Commission's activities. It is not clear, however, whether specific individuals from IPRE have been part of the Commission's Secretariat, apart from the alleged role of IPRE's Co-Executive Director, Adrian Ermurachi, in providing advice and training at the start of the Pre-Vetting Commission's work.

CASE STUDY 21. IPRE Executive Director Iulian Groza apologizes for erroneous download of cadastral data of hundreds of thousands of people

IPRE.md, 26 January 2023, "IPRE condemns any intimidation of Executive Director Iulian Groza and comes up with information on the incident of erroneous access to data on real estate"[176]

During May-August 2022, a team of experts contracted by IPRE conducted research, the subject of which was the independent integrity check of candidates for judges for the position of member of the SCM and prosecutors for the position of member of the SCP, respectively. The purpose of the research was to support the extraordinary evaluation efforts undertaken in accordance with Law No. 26/2022 on some measures related to the selection of candidates for membership in the self-administrative bodies of judges and prosecutors.

As a result of the research, two independent reports have been published on candidates for membership of the SCM and the SCP. ... As part of the research methodology, the experts were to verify the correctness of the declaration of declared real estate assets mentioned in the last five years in the declarations of assets and personal interests of prosecutors and judges subject to evaluation under Law No. 133/2011.

In this context, in order to carry out research in the public interest and taking into account the provisions of Law No. 133/2011 on the protection of personal data (Art. 10, Art. 12 para. (3) and Art. 5 para. (5), lit. e) and f)), IPRE has concluded a contract with the PSA regarding access to the web service of the real estate cadastre. In this context, the responsible person was designated, on the basis of a service provision contract signed with IPRE, as the sole user of the real estate cadastre web service, who was in charge, from June to July 2022, of checking the information on real estate for the verification/confirmation of the real estate owned by the subjects of the assessment.

After finalizing the research and publishing the reports, IPRE found that the expert contracted as the sole user of the web service erroneously accessed during the process the data on real estate that did not concern the subjects of the research. According to the expert's own statement, the expert erroneously accessed the data by entering the data into the search engine of the cadastre web service using an electronic robot application for automatic access. The user stated that the erroneous access was discovered at the end of the work process and all the erroneously accessed information was deleted from the list of accesses without being analysed or processed by the user.

Both IPRE and the single user who directly admitted the erroneous access have provided the National Centre for Personal Data Protection with all the information regarding the circumstances of the incident, in accordance with the rigorous requirements of Law No. 133/2011 on the protection of personal data.

Accordingly, IPRE has taken all internal measures for confidentiality and security in the process of working with the data, and after the incident was detected, IPRE has taken all internal measures to check the single user's work process and to sanction the single user for the incident.

We reiterate that the research carried out by IPRE experts only concerned the candidates of judges and prosecutors who applied for the competition for the position of member of the SCM and the SCP. None of the third-party IPRE members, including the management and the researchers who worked on the independent evaluation reports, had access to the information accessed by the single user, either for the purpose of the research or the data accessed erroneously. The contracted expert was the only person who had access to the cadastral web service.

IPRE regrets and apologizes to those affected by the erroneous access to real estate data.

172 https://unimedia.info/ro/news/9046dca961587923/avocat-un-ong-a-accesat-baza-de-date-a-unor-judecatori-si-avocati-aceste-organizatii-sunt-un-fel-de-politie-secreta-a-guvernarii.html

173 https://unimedia.info/ro/news/40f66e57f0ce78c4/tradare-si-spionaj-cum-un-angajat-ipre-ar-fi-accesat-date-despre-cladirile-presedintiei-guvernului-parlamentului-sis-si-alte-680-mii-de-adrese-de-pe-ip-uri-din-panama

174 *Ibid.*

175 Law 26/2022 on Pre-Vetting, Art. 10 para. (2).

176 https://ipre.md/2023/01/26/ipre-condamna-orice-intimidare-in-privinta-lui-directorului-executiv-iulian-groza-si-vine-cu-informatie-privind-incidentul-de-accesare-eronata-a-datelor-privind-bunurile-imobile/

Further clarifications, Iulian Groza, Executive Director IPRE, 12.02.2025

"Neither IPRE nor the experts contracted by IPRE assumed verification roles on behalf of the Pre-Vetting Commission or other commissions. IPRE did not have access to the databases used by the secretariats of the Pre-Vetting/Vetting Commissions. The only person who had access to the Real Estate Registry web service was the person with whom IPRE had a service contract for data analysis, in order to prepare independent evaluation reports. As I explained previously, this person was designated with access rights based on the information services contract between IPRE and ASP, in accordance with legal provisions. The requested access was strictly limited to verifying the correctness of the information declared by the subjects of the research in relation to the cadastral data. However, as it was later found, the respective person improperly used access to the Real Estate Registry information, which led to an incident of erroneous and multiple access to the cadastral addresses of several people. As soon as IPRE identified the existence of the incident in the summer of 2022, it took all necessary measures to suspend the respective person's access to the Real Estate Registry, provided all the information requested by the persons who submitted requests for clarification and fully collaborated with the competent authorities, including the National Center for Personal Data Protection, judges and prosecutors.

As a result of the investigations, the National Center for Personal Data Protection issued the necessary decisions, finding the respective person's violation of the provisions of the law on the protection of personal data, and court decisions were issued finding that Copaceanu Constantin committed the contravention provided for in art. 74/1 of the Contravention Code (processing of personal data in violation of the legislation). All these decisions are irrevocable. To date, there is no final decision establishing IPRE's culpability in this case.

In this context, there exist sensitive data, taken from sources that do not present the entire context of the case, including developments after the incident was detected, especially since 2023. In addition to the actions to inform all interested parties – people who have filed complaints or requests for information, press statements, communications about the circumstances of the incident and the measures taken by IPRE – IPRE ensured submission of all information requested by the competent authoritie, including the decisions of the National Center for Personal Data Protection."

6.4 Pre-Vetting and the closed loop of justice reform

The justice reform consisted of four elements:

1. a new composition of the SCM and SCP through pre-vetting;

2. a new composition of the SCM and headship of the GPO;

3. a new composition of the Courts of Appeal, PG's Office, APO, and PCCOCS through vetting; and

4. changing the headship of all other courts and prosecutor's offices by vetting.

The sequencing of the stages of the justice reform gives stability and mutual support to the elements of the newly established system. For example, in the judicial system, the new SCM, formed by pre-vetting and overcoming the resistance of the General Assemblies of Judges, ensured the formation of the new [so far reduced] composition of the SCJ. This new composition of the SCJ allows the new SCM to select the other judges of the SCJ, regardless of the Vetting Commission's proposals, as the appeals of the other candidates for the positions of SCJ judges are decided by the new [so far reduced] composition of the SCJ. On the other hand, the new composition of the SCJ has the power to guarantee that the members of the SCM will not be jeopardized in their mandate by candidates for the position of member of the SCM who were repeatedly evaluated and rejected by the Pre-Vetting Commission, after their first appeals were admitted by the previous composition of the SCJ. Subsequently, irrespective of the Vetting Commission's solutions, the SCM members who passed the pre-vetting and the first judges confirmed to the SCJ after the vetting will decide the fate of all other judges of the Courts of Appeal and the headship of all courts, irrespective of the Vetting Commission's solutions.

Furthermore, in the case of the prosecutor's office, in order to appoint SCP members by pre-vetting, it was first necessary to overcome the resistance of the general assemblies of prosecutors to appoint candidates who had passed the pre-vetting before the SCJ could consider the appeals of other candidates. The new SCP organized the competition and elected the PG, after which he should have passed the vetting for prosecutors. In practice, however, the acting PG applied to pass the vetting to become a judge at the SCJ, while at the same time also applying for the competition organized by the SCP for the position of PG. The moment when the acting PG was announced as the winner of the competition for the position of PG coincided with the announcement that he had passed the vetting for the SCJ. Thus, the SCP was able to propose him to the President of the country for appointment as PG by immediate presidential decree.

It will now be up to the new SCP to confirm or deny the results of the vetting of prosecutors from the GPO, APO, and PCCOCS, while the fate of all other prosecutors and candidates who disagree with the SCP's solutions will be left to the new composition to challenge them before the SCJ, which will make the final decisions. The appointment of the heads of the territorial prosecutor's offices will depend on the new SCP's decisions on the evaluation proposals of the Vetting Commission (for prosecutors) and the new composition of the SCJ.

The first members appointed to the new SCM were representatives of civil society: Ion Guzun from the LRCM; Tatiana Ciaglic from IPRE; and Alexandru Postica from Promo-Lex. The first judge of the new SCJ to be appointed was Vladislav Gribincea from the LRCM.

An unusual situation arose during the examination of the appeal of one of the SCJ judges, Anatolie Turcan, who did not pass the vetting process, and the new SCM maintained the proposal of the Vetting Commission. During the examination of the appeal by the SCJ panel, of which Vladislav Gribincea was a member, it was found that the LRCM had presented alternative evaluation reports on the judges of the SCJ, including Anatolie Turcan. However, in parallel with Anatolie Turcan, the evaluation before the same Vetting Commission was also being carried out by Vladislav Gribincea, Justice Programme Director at the time at the LRCM. The latter declared self-recusal from examining this case, but paradoxically argued not why he should be excused, but why he should be allowed to

continue examining the appeals of his counter-candidates for the position of judge of the SCJ, who had been evaluated by his organization, the LRCM.

CASE STUDY 22. The SCJ judge, Vladislav Gribincea, insists on examining cases related to the external evaluation, despite the role of the LRCM in this process and his relationship with the organization

Sppot.md, 13 August 2024, 'The Vetting of the LRCM at the Supreme Court. Gribincea's self-recusal'[177]

"During the examination of the case of Turcanu against the SCM and the Vetting Commission, […] Vladislav Gribincea, a judge of the SCJ panel, stated that he could not continue to participate in the examination, arguing that, "after studying the case materials, I noticed that in the case file there is a letter addressed by an organization, in which I previously participated, regarding the evaluation of Țurcanu. In order not to raise any doubts as to the correctness of the judgment, I have decided to declare self-recusal from the examination of this case, for which I will bring my reasons and forward it to my colleagues for consideration. ..."

"I was aware that the LRCM was planning to prepare such communications on more than 40 subjects who will be evaluated. […] I was only involved in developing the methodology for preparing these communications so that they would be impartial and balanced. […] The LRCM has not pursued a direct personal interest in the communications in question, and my economic interests have not been affected in any way by these communications. As soon as I saw this letter, I declared self-recusal."

"Gribincea recused himself in the hope that his declaration of self-recusal would be rejected so that he could continue to try cases in which the LRCM was involved in the evaluation of candidates. In the same statement in which he recused himself, after explaining that he knew that the LRCM would draw up 40 assessments and that he was the author of the methodology according to which the LRCM assessed his vetting counter-candidates, Vladislav Gribincea states that he believes that these reasons should be the basis for the rejection of his declaration of self-recusal, as subsequently, without him, the SCJ will find it difficult to examine the appeals of other judges and candidates for judges at the SCJ who did not pass the vetting:

"These facts speak against the admission of the plea of self-recusal, and in such circumstances, impartiality must be presumed until proven otherwise. [...] The admission of the declaration of self-recusal in this case should automatically entail my incompatibility to adjudicate in all such litigation in which the LRCM has made similar communications on the subject matter of the assessment. This will reduce to only three the numbers of the SCJ eligible judges to hear appeals filed under Law 65/2023 and 252/2023. Given that these appeals are to be examined in three-judge panels, less stringent approaches may become applicable in order not to block the examination of these cases. [...] However, I have served in the LRCM for 14 years. Until December 2022 I headed this organization."

Chapter VI. 'Civil society support for reform'

– Civil society involvement in the justice reform process in the Republic of Moldova has been complex, and to some extent valuable.

– Although NGOs, such as the LRCM and IPRE, have played a crucial role in advocating and promoting transparency in justice reforms, the emergence of conflicts of interest, conducting selective "parallel" assessments and accessing/ and the unlawful processing of personal data have affected the credibility and legitimacy of the process, generating suspicions of partisanship that may undermine the credibility of the evaluation process.

– Situations such as conflicts of interest and breaches of personal data accessing/ processing rules underline the need for clear regulations and close monitoring of civil society involvement in such processes to ensure that justice reform is carried out in the public interest and not under the influence of private or political interests, capable of affecting the integrity of reform efforts.

– Scandals related to illegal access to personal data highlight vulnerabilities in data protection and the need for a stricter framework for privacy and accountability in data management, especially in sensitive and intrusive assessments.

Lessons learnt

– Legal vagueness about the scope of "conflicts of interest in civil society" does not prevent their harmful effects on the credibility of justice reforms.

– "Wearing various hats" by the same civil society activists in the processes of justice reform creates the perception of capturing the reform processes and subordinating them to the personal and organizational interests of these activists.

– The assumption of different roles by the same organizations in the justice reform and their constant representation in high-level public authorities feed the perception of the "governmentalization" of civil society.

177 https://sppot.md/justitie/doc-vettingul-crjm-la-curtea-suprema-gribincea-se-abtine/

7

THE EVALUATION PROCESS FROM THE CANDIDATES' PERSPECTIVE

Summary: *This chapter analyses the experiences of individuals who underwent the pre-vetting evaluation for membership of the SCM and SCP in the Republic of Moldova, providing a detailed insight into the perceptions and difficulties they encountered during the process. The study included a focus group with judges and prosecutors who had not passed the evaluation, who completed anonymous questionnaires. Candidates discussed problems with the application of the ethical and financial integrity criteria, short deadlines for responses, difficulties in obtaining the information requested by the Commission and conflicting interpretations of their questions. Candidades also raised concerns about limited access to their administrative casefile materials, illegal access to personal data, and perceived humiliating and discriminatory treatment by the Pre-Vetting Commission. In addition, concerns were expressed about political pressure and external influences on the evaluation and appeal processes.*

In contrast to the monitoring exercises of other organizations, as part of the methodology of this study, AJAM also conducted monitoring of the experiences of persons evaluated in the pre-vetting processes in order to understand the situation from the inside, which could not be captured only by attending the public hearings of the candidates by the Pre-Vetting Commission and the SCJ's court hearings where the appeals of those who disagreed with the decisions of the Pre-Vetting Commission on their evaluation were examined.

In December 2023, AJAM organized a focus group with the candidates for SCM and SCP positions among judges and prosecutors who had not passed the pre-vetting process to discuss their experiences, the guarantees they enjoyed or lacked, and the shortcomings of the process from their perspective.

The participants were asked to complete anonymous questionnaires to obtain empirical data about the Pre-Vetting Commission's practices in relation to the subjects of evaluation. Beyond their obvious dissatisfaction, the judge and prosecutor candidates had an excellent understanding of the law and of their own rights and could explain pertinently if and how their rights had been violated. In the focus group, only those candidates for judges and prosecutors who had not passed the pre-vetting process, including those who had not passed because they had withdrawn after the start of the evaluation, were invited to the focus group. Those who had withdrawn during the evaluation completed only the questions to which they could provide an answer.

The sample of those surveyed included 14 out of 23 judges (78 per cent) who had failed the pre-vetting process and 4 out of 10 prosecutors who had failed this evaluation (40 per cent). Thus, the research sample included, on average, 55 per cent of the participants in the pre-vetting procedure who had not passed the evaluation.

The questionnaires were structured to capture the following aspects: application of the ethical integrity assessment criteria; application of the financial integrity assessment criteria; time limits for preparing answers; the gathering of information by candidates and the burden of proof; the interpretation of information by the Commission; access by candidates to administrative file materials; access to personal data; self-recusals and recusals; and appealing the decisions of the Pre-Vetting Commission.

7.1 Application of ethical integrity assessment criteria

For 94 per cent of the candidates interviewed, during their evaluation, the Pre-Vetting Commission found situations that meant that they qualified as not meeting the ethical integrity criteria. Of these, 47 per cent considered that the Pre-Vetting Commission had reproached them for situations that were not entirely their own fault but were imputable also to others; 41 per cent admitted that they had been reproached for situations that were entirely imputable to them; and 12 per cent considered that they had been reproached for situations that were solely imputable to others.

Of all the candidates who admitted that they were found to have failed the ethical integrity criterion during their assessment, the Commission referred to a breach of a specific principle of the Code of Ethics for Judges/Prosecutors in the case of 41 per cent of these candidates, while in the case of the other 59 per cent of candidates, the Commission referred to situations which it did not consider ethical for reasons unrelated to the provisions of the Codes of Ethics for Judges and Prosecutors:

- *"It was insinuated that there were conflicts of interest in my work, indicating, contrary to the law, that a distant relative was, in fact, a close relative of mine."*

- *"Ethical situations have been imputed from the time when I was not in office, on the grounds that past actions (administrative sanctions) are not characteristic of a prosecutor, although I was not a prosecutor back then."*

- *"They referred to my activity on Instagram, which does not fall under the scope of any ethical principle and cannot be imputed to me as such."*

- *"Financial doubts about my husband were imputed to me as ethical doubts."*

- *"Regarding my brother's car, since I was listed in his insurance, they imputed to me that the car belonged to me. In the end, the decision did not mention the car."*

- *"The Commission invented an ethical violation based on the fact that I accepted financial means from my father, even though an asset control by the NIA was still ongoing."*

- *"The Commission held as an ethical violation my active role in the GAJ in October 2019 as an alleged incompatibility with the situation that I was part of the judicial panel that judged the action for enforcement, which ruled on convening the extraordinary GAJ."*

- *"The fact that the candidate benefited from the provisions of the Law on the Prosecutor's Office, in terms of obtaining the right to the service housing space, with its subsequent privatization by family members (not by the candidate), and subsequently obtaining the land for the construction of a house from the local public administration, under the provisions of the Land Code, by the newly created family of the candidate, was assessed as not meeting the professional ethics criterion."*

- *"They referred to a case that took place 16 years ago, that I had violated impartiality, although the ECtHR and the SCJ have ruled that this was not the case."*

Of the candidates in whose cases the Commission referred to the violation of a concrete ethical principle of the Code of Ethics for Judges/Prosecutors, in 20 per cent of cases the Commission referred to the violation of the principle of impartiality; for 50 per cent of cases they referred to the violation of the principle of integrity (gifts, favours, property transactions); and for 10 per cent, they referred to the violation of the principle of professionalism. In another 20 per cent of the cases in which the Commission found a breach of a specific principle of the Code of Ethics, the Commission referred to breaches of the principle of fairness (10 per cent) and of the principle of transparency and confidentiality (10 per cent), even if the situations in question did not fall within the scope of professional duties.

Of the candidates whose situations were assessed by the Commission as not meeting the criteria of ethical integrity, 24 per cent stated that those situations had previously been subject to checks by the NIA, the Judicial Inspection, or the Prosecutors' Inspection, and in all those cases either the Inspection, NIA, or the court (SCJ, ECtHR) found that the candidate had not violated the ethical criteria.

Of all the cases found by the Pre-Vetting Commission to be breaches of ethical integrity, 70 per cent related to situations that occurred while the candidates were judges or prosecutors and that had taken place within the last 15 years (the time frame within which the Commission's scrutiny can be extended); 24 per cent referred to the candidates' situations of 5, 8, 10, and 13 years (on average 9 years) before becoming a judge/ prosecutor, and 6 per cent referred to situations that occurred 16 years ago, when the candidate was working as a judge (the law only allows integrity checks for the last 15 years).

Except for the two candidates who withdrew during the assessment, in the case of all other candidates participating in the survey, the evaluation decisions made by the Pre-Vetting Commission did not take into account the candidates' failure to meet the ethical integrity criterion. In none of these cases did the Commission take into account the candidates' explanations in its decisions not to pass the evaluation on the basis of the ethical integrity criterion.

7.2 Application of financial integrity assessment criteria

In the case of 94 per cent of the candidates interviewed, the Pre-Vetting Commission found situations indicating that they qualified as not meeting the criterion of financial integrity, although 12 per cent considered that these doubts were entirely attributable to other persons, unrelated to the person being assessed.

Of all the cases in which the Pre-Vetting Commission had doubts about candidates' financial integrity, 57 per cent related to situations that occurred while the candidates were judges or prosecutors and 43 per cent related to the candidates' situations of 10, 11, 13, 15, and 20 years (on average 14 years)[178] before becoming judges/ prosecutors.

Of all those about whom the Pre-Vetting Commission identified doubts about financial integrity in the period before they became judges and prosecutors, for 50 per cent of the candidates the Commission's doubts related to the period in which the candidates were children or students; 33 per cent of the candidates and their close persons about whom the Commission raised doubts

178 Some figures are repeated several times in the questionnaires (e.g. the figure of 13 years is given twice), and the average number of years was calculated from the sum of all the years indicated by the candidates and the number of candidates who indicated them.

were employed outside the justice system; and in only 17 per cent of the candidates did the Commission's doubts relate to the period in which they were employed in the justice system in another capacity.

Of the interviewed candidates who did not withdraw during the evaluation, the Commission found in its decisions that 93 per cent did not meet the financial integrity criterion and only 7 per cent of the candidates' explanations were taken into account and did not refer to the non-fulfilment of the financial integrity criterion.

7.3 Deadlines for responses

Of the candidates surveyed, 89 per cent were of the opinion that the time allowed by the Pre-Vetting Commission to prepare answers and submit the required documents and information was not sufficient.

According to the candidates, the Commission offered them, on average, 4.6 calendar days, of which only 2.9 days were working days (between 3 and 7 calendar days, of which between 1 and 5 were working days).

Only 11 per cent of the candidates interviewed were able to take holidays on their own account in order to prepare answers to the Commission's questions. Some 56 per cent of the other candidates did not request leave because they had a lot of work to do and could not afford delays in the examination of files pending before them; 22 per cent were on paid annual leave; 17 per cent were not appointed to the ceiling age; and 5 per cent were suspended in connection with the start of criminal proceedings in the pre-vetting process.[179]

Of the candidates surveyed, 67 per cent believe that had they been given sufficient time to respond to the Commission's questions, this would have enabled them to remove the Commission's doubts about their compliance with the evaluation criteria.

According to the candidates, in order to adequately prepare the answers to the questions and obtain the information requested by the Pre-Vetting Commission, they would have needed 5 times more time on average than what the Commission allowed them, i.e. **22 days** (the lowest number indicated was 10 days and the highest was 90 days).

One of the candidates interviewed indicated the following in his comments: *"The request [by candidates] for documents or information from the authorities, as well as the provision of such documents or information, falls under the Access to Information Law and the Administrative Code. The examination of such requests by the authorities is done within a period of up to 15 days, which can be extended up to 30 days. Under these circumstances, the authorities were examining the candidates' requests of information within the time limits provided for by these laws, but not within the time limits requested by the Commission. In order not to violate the deadline set by the Commission, I was compelled by the situation to call the executors or the heads of the institutions concerned to request the urgent provision of the requested information/documents. The problem of the tight deadlines, which made it impossible to submit the documents/information within the time limit requested by the Commission, was found in the decision of the SCJ dated 1 August 2023 to be a violation of the rights of the candidate."*

Of the candidates interviewed, 71 per cent said that they would not have applied if they had known what would be the deadlines given by the Commission for replying to the Commission's questions and requests for documents and other information.

7.4 Gathering of information by candidates and the burden of proof

Out of all the candidates interviewed, only 6 per cent were able to always obtain the documents and information requested by the Pre-Vetting Commission, while the other 94 per cent were unable to obtain them. One of the candidates commented: *"In some cases the authorities to whom I applied for the issuance of documents or information notified me about the lack of documents, and due to the expiry of the deadlines prescribed by law or departmental orders/regulations, the documents were destroyed"*.

For 81 per cent of the candidates interviewed, the Pre-Vetting Commission requested documents and information in a way that made it clear that the Commission already had those documents and information and that the candidates could not obtain them.

For 89 per cent of the candidates who did not pass the evaluation, the Pre-Vetting Commission asked them to submit documents and information that they did not have (e.g. information about the income of their partner, brothers, sisters, parents, children, sons-in-law, daughters-in-law, etc., including documents whose archiving and preservation periods had expired). One of the candidates commented: *"Despite the fact that the Commission was informed about the impossibility of submitting the requested documents (evidence to this effect was provided – the authorities' replies confirming that the documents were not kept), in the rejection decisions, it was stated that the candidate had not submitted the documents/information, thus putting the matter in the candidate's charge and arguing it against him/her."*

The reasons for which the Commission asked candidates to provide documents and information that they were unable to provide included the following: [180]

- 94 per cent – requesting documents that the candidate once held, but no longer kept and was under no legal obligation to keep;

179 Criminal prosecution was initiated during the pre-vetting process against this candidate, who was later acquitted by the court..

180 Candidates were able to tick multiple answers to this question in the questionnaire, because it was not possible to provide different documents and information, for different reasons. Thus, the sum of the percentages for this question cannot equal 100 per cent.

- 81 per cent – requesting documents held by state institutions (e.g. Public Service –Agency), which were previously related to the candidate's person, but which were no longer related to his/her person and could not be issued to him/her for this reason (real estate, vehicles alienated to other persons, etc.);

- 69 per cent – requesting documents and information about other persons with whom the candidate does not communicate or who are already deceased, concerning information that state institutions are not entitled to release as it does not refer to the candidate;

- 50 per cent – requesting documents and information about other persons from whom the candidate cannot reasonably request them due to the nature of the specific relationship with those persons (e.g. divorced partner, a relative with whom he/she is not in good relation or who is abroad, etc.).

In 100 per cent of the cases in which the candidates were objectively unable to produce the requested documents and information, they explained to the Pre-Vetting Commission that they were limited in their ability to produce the documents and information for reasons beyond their control. In 100 per cent of the cases in which they did so, the candidates suggested to the Commission that it requested the information and documents directly from the holders, as the Commission is empowered by law to obtain any information from any person, including information the submission of which is beyond the candidates 's control. According to the candidates, only in half of the cases (50 per cent) did the Commission ask for those documents and information afterwards.

In the case of 92 per cent of the candidates interviewed from whom the Commission requested documents and information that the candidates did not have and could not obtain, the Commission subsequently noted in its decisions that they failed to remove serious doubts regarding their fulfilment of the assessment criteria, even though obtaining the information/documents in question did not depend on them.

Among the information and documents requested by the Pre-Vetting Commission that was difficult or impossible to obtain or difficult for candidates to understand, the candidates interviewed gave the following examples:

- *"Proof of the legality of the money my father made throughout his lifetime."*

- *"Presenting information about the employment of my concubine's mother, who lives and works in the Hellenic Republic."*

- *"Submission of information concerning the date, time and place that my cohabitation with my concubine has started!!!"*

- *"I've been asked for documents I don't usually keep."*

- *"I was asked for information about my mother-in-law's pension, the personal code of my former brother-in-law, the source of income of a Ltd company from which I borrowed a sum of money, to submit documents confirming that I received social payments in 2020 (child allowances) and to explain their purpose."*

- *"The Commission asked me in what year and at what price my mother sold the agricultural land and what was the cadastral value of the land at that time. My mother died in 2017."*

- *"I was asked to submit documents certifying the expenses incurred for the construction of the house, after having built it for 8 years!"*

- *"I had to submit the photo of the gazebo in the backyard. It's not difficult to present, but it was ridiculous."*

- *"I was told to submit documents on certain real estate that belonged to my wife many years before we met and married."*

- *"I was asked for the paperwork on a criminal case I once handled, which was already in my evaluation materials, as a result of the Commission's request from the District Prosecutor's Office."*

- *"The Commission has requested information about the income of my former parents-in-laws, with whom I am currently no longer communicating because I have remarried."*

- *"The Commission considered that I have to present documents about a truck from a person who sold that truck to my husband in 2018, a truck manufactured in 1997; they asked me for documents from my husband from the period when we did not know each other, when he was still a student and went to the USA on a Work&Travel Programme."*

- *"I was told to provide evidence that my father, since 2016, when he returned from abroad, had 5-6 thousand euros with him, when the legislation allows the introduction on the territory of the Republic of Moldova of sums up to 10,000 euros without declaring."*

- *"The Commission requested to present documents held by PSA, which I did not have and could not request, but refused to request them directly from PSA, and then withheld in the decision, to my detriment, the absence of those documents."*

- *"The Commission requested records of my parents' transactions from 22 years ago, when I was only 12 years old. I became a judge more than 17 years after the time to which the Commission's question referred."*

- *"The Commission requested a list of my wedding guests, their personal identification codes, home addresses, and the amounts donated by each guest."*

- *"The Commission asked me for information about other people held by institutions in another country."*

- *"I have been asked for documents and records made by my mother about 7-15 years ago, when she was working on a patent and was not obliged to keep such written records. Now her health is poor and I cannot get this information from her."*

Of the candidates interviewed, 77 per cent said that they would not have applied if they had known that their failure to provide documents and information that they were not responsible for obtaining would be considered as a serious doubt of not meeting the integrity evaluation criteria.

7.5 Interpretation of the information by the Commission

Three-quarters of the candidates interviewed (75 per cent) are of the opinion that the way in which the questions were formulated by the Pre-Vetting Commission resulted in interpretations contrary to the legal framework of the Republic of Moldova. For example:

- *"The questions were phrased as accusations or findings of lack of integrity, and finally contained the phrase 'Why didn't you declare...?', although what I was accused of was not to be declared; for example, why I did not declare to the tax authorities as a taxable source of income the money my husband transferred on my card (whereas my husband declared to the tax authorities and paid income tax on those sums which, according to the law, is joint property, and does not have to be declared for taxation purposes by the second spouse)."*

- *"I was asked about the disciplinary procedure on which there is already an irrevocable favourable court decision and, according to Article 120 of the Constitution, this situation cannot be questioned, especially since the statute of limitations for disciplinary proceedings has passed."*

- *"The Commission has invented non-existent obligations, such as the judge's obligation to keep all papers and documents related to past transactions. The Commission invented the obligation to conclude contracts only in written form and also invented the obligation to inlcude certain assets in asset declarations contrary to legal requirements."*

- *"Submission of information on the identity data of uncles and aunts, financial statements of uncles totally unrelated to the case".*

- *"I was asked about the motivation for some people's actions in relation to other people. Not about my actions and not in relation to me. For example, I was asked why my brother and aunt did not transfer money to my mother from abroad through banking institutions?"*

- *"The Commission has asked me why I used my right granted by the law and added more specific information to my asset declaration within 30 days since initial submission, even though this right is expressly regulated."*

From the way in which the Pre-Vetting Commission formulated the questions to the candidates interviewed, 83 per cent were of the opinion that the Commission used biased interpretations of aspects of their private life. Similarly, 83 per cent considered that the Commission's questions resulted in biased interpretations of aspects of the private lives of their relatives and entourage. Examples mentioned by candidates in the questionnaires included the following:

- *"I have been asked to inform the Commission of the specific periods of time I have been cohabiting with my current partner."*

- *"I was asked what was the need to improve my living conditions."*

- *"I was asked when and how the relations with my wife began."*

- *"Questions have been raised about the Commission's suspicion that there are discrepancies between my income and expenditure, where the Commission has estimated the expenditure for the minimum consumption basket for my five minor children, the method of calculation of which includes expenditure on tobacco products and alcohol."*

- *"The Commission was trying to get evidence of how we spent the money we legally held."*

- *"The Commission requested pictures of my yard and inside my house."*

- *"I was asked about shopping in a particular place."*

- *"I have been asked to explain my reasons for living mainly in my mother's home, as my mother is very ill and I cannot discuss her diagnosis."*

- *"I've been asked questions about crossing the state border with close friends and colleagues."*

- *"I have been asked why my son, who is an adult and lives separately, when buying the car and the apartment, indicated a price in the contracts of sale, which the Commission considers to be low and unrealistic."*

- *"I was asked where my wife got the money to buy an apartment before we got married."*

- *"They asked me why my mum needed a car."*

- *"They made me answer why my brother lived separately from his family for a while and now doesn't."*

- *"Contrary to the provisions of Law No. 26/2022, the Commission analysed the transactions of my parents from 22 years before the evaluation."*

- *"I am aware that the data of persons who have interacted with me (border crossings in particular), including their close*

persons, have been accessed through the Public Services Agency Registers by IPRE and AGER."[181]

7.6 Candidates' experiences perceived as humiliation, harassment and discrimination by the Commission

Of all the candidates who did not pass the evaluation and were surveyed, 73 per cent felt humiliated, offended, or demeaned.

Of those who admitted that they felt humiliated, offended, or demeaned in the evaluation, 36 per cent said that they felt this way in their capacity of son or daughter (the majority being men); 27 per cent as a mother or father (the majority being women); 18 per cent as a spouse; 18 per cent as a sister or brother; 9 per cent as a son-in-law or daughter-in-law; and 18 per cent as a human, person, or judge. Of the candidates surveyed, 80 per cent said they felt discriminated against, harassed, or victimized. Some of the examples given by the candidates in the questionnaires to exemplify why they felt humiliated, offended, demeaned, discriminated, harassed, or victimized were as follows:

– *"I was harassed by Commission member Hriptievschi, who, for almost 30 minutes, asked me questions about the videos I published on Instagram as part of the project called "Ping-Pong", dedicated to raising awareness about cases of domestic violence, in which I explained notions from psychology, such as Carpman's triangle, including about the expression of femininity and sexuality and why they do not justify aggression towards women and girls. Hence, as a judge who has worked in cases of domestic violence, including against children, and who also has a master's degree in psychology, I have studied the psychology of this category of victims and I wanted to share my knowledge publicly in order to prevent cases of domestic violence and to encourage frightened victims to resist, oppose, and report. Seeking to create a negative opinion in society about me, Ms Hriptievschi asked me questions that were not asked before the hearing and were not ultimately reflected in the Pre-Vetting Commission's decision. The information about this activity of mine was provided in a letter from the SCM to the Commission, in which it was indicated that I would be "teaching women how to receive pleasure from intimate life", which is not true. During the hearing, I asked Ms Hriptievschi whether she had watched the videos of my project on Instagram, which she denied with a contemptuous smile on her face. I asked her to close the Commission meeting so that I could relate sensitive aspects of my private life, which would have explained my personal motivation for this Instagram project to protect victims of violence. However, Ms Hriptievschi refused this request, stifling her laughter and assuring me that the Commission members did not want to know about my personal life. If they had satisfied my request during the hearing, the Commission would have been able to find out the reasons for the degrading attitude of the Chair of the SCM, Dorel Musteata, towards me. However, unwilling to find out the reasons, which I could not give in a public hearing, Ms Hriptievschi instead subjected me to repeated humiliation, harassment, and victimization, as a judge whose social initiatives do not matter, and as a woman, after the same thing had been done previously by the Chair of the SCM, Dorel Musteata. Thus, the Commission sided with an aggressor and harasser, humiliating and mocking a victim of his."*

– *"I felt humiliated as a father to my daughter from my first marriage."*

– *"I felt used by politicians to achieve their political interests!!!"*

– *"I felt humiliated when they asked me about situations from 16 years ago that I couldn't answer for the simple reason that I couldn't remember, but the Commission decided I couldn't remove the doubts about myself."*

– *"I was asked the same questions, just rephrased, over and over again. I understood that they were trying to 'catch me in lies', to force me to incriminate myself, and this was very humiliating, because I was only telling what I knew."*

– *"I felt humiliated as a husband, because I was getting the message that, look, your wife has done so many illegal things."*

– *"I felt humiliated in front of my wife and mother-in-law when I had to ask my mother-in-law to show me documents proving her income."*

– *"I felt discriminated against by the biased application of the evaluation criteria in relation to other candidates. During the hearing (in closed session), the member of the Commission, Tatiana Raducanu, showed her open antipathy towards me through gestures. She accused me of violating the provisions of the European Convention on Human Rights (ECHR) and that I did not want to admit it."*

– *"I felt discriminated against on the maternity criterion, as I was the only candidate who was checked (through the minimum consumption basket) as to the income I fed my children on, as I have several children."*

– *"I was discriminated against because there were already promotion decisions on issues that were charged by the Commission as violations that were disproportionate to me."*

– *"The Commission's questions to the PAS-endorsed candidates were much more modest. The Commission has held against me circumstances that it did not hold against other candidates."*

– *"The Commission's questions were put to me in such a way that I had the impression that I was being accused of wrongdoing, even though I have never been held to account, not even disciplinary."*

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181 AGER is the abbreviation for the NGO 'Association for Efficient and Responsible Governance', founded and led by Olesea Stamate, Vice-Chair of the ruling PAS party and former Chair of the Legal Commission for Appointments and Immunities of the Republic of Moldova, before she entered public office.

– *"I felt harassed as a judge who participated in the issuing of a judgment in the exercise of my duties as a judge, I was discriminated against for an opinion publicly expressed at the extraordinary GAJ in October 2019."*

7.7 Candidates' access to administrative file materials

During the pre-vetting procedure, 81 per cent of the candidates interviewed, who had not withdrawn from the evaluation, claimed that they requested to be given access to some of the material the Commission had accumulated on them in order to be able to answer the Commission's questions, given the impossibility of obtaining more information and documents that the Commission could have obtained.

– *"I requested to be shown the original administrative casefile, but I was only shown some copies of the materials in my file, in which some of the information was hidden, having been black-hatched."*

– *"The questions posed implied that the Commission could obtain the data without the effort of the candidate."*

– *"I requested access to the entire administrative casefile and was refused. The Secretariat only showed me the materials they considered relevant. Both the Head of the Secretariat and the representatives of the Commission at the hearing told me about this."*

Of all the candidates who requested access to the evaluation materials, 92 per cent were not given access to the administrative file/requested materials by the Commission during the question rounds in order to analyse them and be able to provide them with an answer during the question rounds.

Before the hearings, however, 47 per cent of the candidates surveyed said they were given access to their evaluation materials, while 53 per cent said they were not given access to the materials even before the hearings.

Of all those who stated that they were given access to their evaluation materials, 8 per cent claimed that they had access to all the materials in their evaluation file, while 92 per cent said that they had access to only some of the materials. Of these, 22 per cent said that they were only given access to the materials in their file that they also submitted to the Commission during the evaluation, and the others said that they only had access to some of the materials accumulated by the Commission.

After appealing the decision of the Pre-Vetting Commission to not pass the evaluation, 59 per cent of the candidates surveyed managed to get access to their evaluation materials, after the Commission was obliged by the Supreme Court to give candidates access to the materials. Even so, the Commission, obliged by the court, only gave candidates access to part of their evaluation materials. On the basis of the Supreme Court's ruling, the Pre-Vetting Commission eventually provided 19 per cent of the candidates with access to all the materials in their evaluation files, while the others were not sure whether the Pre-Vetting Commission provided them with all the materials concerning their evaluation.

Of the candidates surveyed who insisted and obtained through the court greater disclosure of their evaluation materials, 57 per cent said that the previously undisclosed information was useful to them in their appeal, while the remainder felt that it could have been useful if it had been presented earlier.

All of the interviewed candidates stated that the limited access to the materials of the administrative casefile limited their possibilities for an effective defence.

Of the candidates surveyed, 81 per cent said that they would not have agreed to apply if they had known that their access to administrative casefile materials would be restricted during the assessment.

7.8 Access to personal data

All of the interviewed candidates were aware that their personal data had been accessed for the purpose of the evaluation; this includes both their data and the data of their close persons, relatives, colleagues, and friends.

Of those surveyed, only 14 per cent said that their personal data were accessed by the Secretariat of the Pre-Vetting Commission. Half of them were of the opinion that this was carried out within the legal framework, while the other half think that it involved some infringements of this framework.

On the other hand, 86 per cent of those surveyed claimed that, apart from the Secretariat of the Pre-Vetting Commission, their personal data had been excessively accessed by people outside the Secretariat:

– *"They were accessed by PSA, NAC, NIA, and other state institutions."*

– *"Personal data were accessed 17 times without legal cover."*

– *"IPRE has accessed my data numerous times, including twice at night."*

– *"My personal data was accessed from the Ministry of Justice."*

– *"My data have been accessed by the NAC, data on the banks, all the neighbours in the house where I live, the company where my husband works, all bank accounts and so on."*

– *"IPRE and the Secretariat of the Moldovan Parliament have accessed my personal data."*

– *"For example, IPRE has accessed multiple data of people close to me with whom I have interacted directly or indirectly, but these people have no connection with me and my activity, including for the purposes of Law 133/2016 on the declaration of personal assets and interests."*

Despite unforeseen access to personal data by other bodies, institutions, and organizations, only 25 per cent of the interviewed candidates asked the Pre-Vetting Commission for explanations regarding the access to their data and that of their close persons, relatives, and friends, in the framework of the evaluation, in violation of the law.

According to the questionnaires, 13 per cent of the candidates received apologies and explanations from those who accessed their personal data, contrary to the law. In all these cases, written apologies were provided by the IPRE Executive Director.

One of the interviewed candidates provided a copy of a letter of apology from Iulian Groza, according to which: *"... the data on your real estate were also accessed erroneously. Mr Copaceanu informed me that as soon as he noticed the data access error, he deleted all the information that did not pertain to the subjects of the evaluation without analysing or processing it. He took responsibility for the admitted error, apologizing for not informing in proximate terms about the incident as he was obliged to do. [...] as a result of the internal assessment by the Disciplinary Committee that I convened, Mr Constantin Copaceanu was severely sanctioned for the admitted error and breach of the obligation to notify, and was banned from the cadastre. Please find enclosed for your information a copy of the Order. […] The omission admitted by Mr Copaceanu was not intentional, but rather due to lack of sufficient experience in working with personal data. However, [...] I assure you that I have done my utmost diligence to manage the situation and have consistently undertaken internal efforts to prevent similar situations in the future. Once again, please accept our regret for the inconvenience created and our apologies for the admitted error."*

The majority of the candidates surveyed – 94 per cent– said that they and their family did not feel safe because of unlawful access to their personal data and data of their close persons, relatives, and friends. The fears shared by candidates in this regard included the following:

- *"I don't feel safe because the data in the files, concerning bank accounts, relatives, and home addresses, have been illegally accessed by unidentified persons and I work as a prosecutor and I am vulnerable if such information reaches those under criminal prosecution."*
- *"The data has been accessed by people loyal to the ruling party and an NGO whose leadership is targeted in criminal cases. So, it is normal to feel threatened. Especially as revenge actions against my family are already in full swing."*
- *"My close people and I feel constantly monitored, similar to special investigation work."*
- *"The data of my ex-husband and his parents, with whom I don't communicate much, was accessed and they didn't agree to be checked, which strained our relationship even more."*
- *"After the abusive access to my personal data and that of my close persons, IPRE published a report on its official website in which they made totally unprofessional conclusions that have damaged my image and that of my family. Why have they been given access to sensitive data if they are not a state institution entitled to have access, nor do they possess the necessary analytical skills?"*
- *"After the end of the Commission's evaluation, NIA filed a verification file."*
- *"I'm afraid because my personal data and that of my family became known to third parties and I don't know what else they might use it for."*
- *"I didn't know who was accessing the data and what they could do with it. What will happen if this data gets to those who want to retaliate in connection with the cases examined?"*
- *"I realize now how vulnerable we are as citizens to abuse."*

Of the candidates surveyed, 83 per cent said that they would not have applied if they had known that their personal data and the personal data of their close relatives, friends, and family members would be accessed during their evaluation, in violation of the legal framework.

7.9 Self-recusals and recusals

Of the candidates interviewed, 11 per cent said that they had been informed about self-recusals that had been taken in their case by members of the Pre-Vetting Commission and 12 per cent admitted that they had recused the members of the Commission. All the cases of recusals by candidates were rejected by the Commission and, in all cases, the Commission communicated to the candidates the reasons for the rejection of the recusal. Candidates' comments on this subject were as follows:

- *"My recusal was rejected, but the recusal of the same member on the initiative of the Commission was accepted."*
- *"The Commission formally examined the claims and did not provide arguments to cover my allegations."*
- "*The institution of recusal under Law 26/20122 is totally compromised*".
- *"I have tried to find out the composition of the members of the Secretariat, but I have been constantly refused an answer by the members of the Commission. Correspondingly, I have been unable to recuse the the Secretariat's members or to establish whether there are any conflicts of interest."*

7.10 Secretization of the Secretariat

All of the candidates who were interviewed considered the arguments of secrecy of the members of the Secretariat of the Pre-Vetting Commission to be unfounded. Out of them, 95 per cent are of the opinion that the secrecy of the members of the Secretariat of the Pre-Vetting Commission has in no way protected the work of the Pre-Vetting Commission and the Secretariat from external influences.

Moreover, 89 per cent of the candidates surveyed believe that applying the mechanism of whistleblowing and dealing with improper influence could have protected the work of the Pre-Vetting Commission and the Secretariat from external influence more effectively than secretizing it.

Similarly, 89 per cent of the candidates surveyed believe that the secrecy of the Secretariat of the Pre-Vetting Commission affected their rights of defence and to an objective evaluation.

- *"If I knew the members of the Commission Secretariat at the evaluation stage, who I now know were there, then I would have recused at least four members of the Secretariat."*
- *"I believe that they could have destroyed and blacked out the positive material in the evaluation file and only showed the negative side."*
- *"I found out later that members of the Secretariat had a close connection with the LRCM, with whom I personally have strained relations."*
- *"I consider the work of the Secretariat to be an illegal activity of interested persons."*
- *"At the time I became acquainted with some of the evaluation materials that had been made available to me before, I saw people in the Commission's lobby who had previously had the status of an offender in my lawsuit."*
- *"I know that there are unresolved conflicts of interest in the Commission Secretariat, and I have been executed by people loyal to the Power."*
- *"Some of the members of the Secretariat were employees of the NAC, with whom I have a direct working relationship, and for this reason they should have been recused. But I found this out later."*
- *"The secrecy of the members of the Secretariat of the Commission gave me, personally, the perception that this would help to protect them from any responsibility for any abuses or illegalities committed in their work – which has been fully confirmed in the process."*
- *"Considering that on 9 September 2022, two criminal cases were opened against me, and the criminal case included information accessed by the NAC at the request of the Secretariat of the Commission, I consider that from within this structure or due to the access of information by this entity, the prosecuting body "self-initiated" the criminal prosecution, including on the basis of the operational analysis of the revenues conducted by the NAC, which subsequently prosecuted me."*

7.11 Appealing the decisions of the Pre-Vetting Commission

The majority of the candidates surveyed – 95 per cent – think that the 10-day deadline for examining appeals against the decisions of the Pre-Vetting Commission was not realistically set in the law.

Even so, 22 per cent of the interviewed candidates were of the opinion that if the vetting procedures for SCJ judges had not been launched at the same time as the period for filing and examining appeals against the Pre-Vetting Commission, the 10-day deadline for examining appeals against the decisions of the Pre-Vetting Commission could have been respected, while 78 per cent believe that, regardless of the situation, the 10-day deadline could not have been met.

None of the interviewed candidates considered it right to supplement the number of SCJ judges with judges temporarily transferred from lower courts, including to participate in the proceedings of examining appeals against decisions of the Pre-Vetting Commission. The arguments put forward by the candidates in this regard were:

- *"They are appointed contrary to constitutional provisions, are acting abusively, and are liable to criminal liability."*
- *"It is an unconstitutional transfer." / "It is contrary to constitutional provisions."*
- *"Transfer contrary to Art. 6 of the ECHR does not meet the criterion of 'legally established tribunal'."*
- *"It's not constitutional. If we speak in terms of the ECHR – 'illegally established tribunal'."*
- *"Because they're basically forced by the situation to make a favourable decision to the Commission because they don't have a full mandate."*
- *"Because a judge can only be independent if his or her mandate is for an appropriate term (not six months) and if he or she is provided with guarantees."*
- *"Affecting their impartiality."*
- *"A good number of them are due to be vetted soon."*
- *"We have an illegally constituted SCJ made up of people loyal to the ruling power."*
- *"1. Assumption of decisions by temporarily appointed magistrates. 2. The manner of the temporary appointment of magistrates contravenes the criteria for the selection and appointment of judges to the SCJ."*
- *"The participation of these judges in the judgment of the appeals is clearly illegal; it affects the right to judgment of the case by a competent, legally established Court. Moreover, they do not have the appropriate professional training, having been appointed on political and not professional criteria."*
- *"I don't consider it fair, but I consider it proportionate to overcome the crisis in justice."*

None of the interviewed candidates considered the participation of

the SCJ judges temporarily transferred from lower courts, who are to participate also in the procedures of examining appeals against the decisions of the Pre-Vetting Commission, to be correct, especially if they are also candidates for the position of SCJ judge and are to be subject themselves to the vetting procedure.

At the same time, 61 per cent of the candidates surveyed said that pressure was exerted in the process of examining appeals against the decisions of the Pre-Vetting Commission to uphold the Commission's decisions. Asked by whom and in what way pressure could be exerted, their answers were:

- *"Politics."*
- *"By politicians through the media."*
- *"From politics to TV, the press, and open public statements."*
- *"By the politicians, and their public statements confirm what I have said."*
- *"By high-ranking politicians (the country's President, Prime Minister, Justice Minister) who have publicly exposed that judges have to be careful how they examine these cases, that after that they have to think of how they will be vetted."*
- *"The judges who issued the decisions are now subject to disciplinary proceedings because they issued those decisions."*
- *"Public pressure was made by the President of the Republic of Moldova; the representatives of the ruling power were threatening the judges, even after a decision was issued."*
- *"It is obvious, including a political involvement through certain people, including members of the Commission, but I can't comment on this more specifically, for lack of concrete data."*

None of the interviewed candidates considered the formation of the SCM/SCP before the final outcome of the examination of the appeals against the decisions of the Pre-Vetting Commission to be known.

In relation to the alleged disciplinary misconduct of the SCJ judges who admitted the candidates' appeals against the Pre-Vetting Commission, all the candidates interviewed considered that the SCM had a conflict of interest to examine the alleged disciplinary misconduct, because their maintenance in office could depend on compromising these magistrates and their decisions by imposing sanctions. One of the candidates said, *"In general, I consider it absurd to initiate disciplinary proceedings against SCJ judges, as these proceedings are politically influenced, in my view."*

Out of the candidates interviewed, 64 per cent said that they would not have agreed to apply if they had known that, in the framework of the evaluation, the admission of appeals against the decisions of the Pre-Vetting Commission would have been subject to disciplinary sanction of the judges by the SCM established before the appeals were finalized.

Conclusions of Chapter VII. 'The Evaluation Process from the Candidates' Perspective'

- Surveying the candidates who did not pass the pre-vetting procedure before the Pre-Vetting Commission allowed us to understand the experience they had been through, and the irregularities and abuses to which they were subjected during the evaluation.
- The candidates highlighted shortcomings in the process, such as unreasonably short deadlines for responses, limited access to information necessary for the defence, and difficulties in obtaining documents requested by the Pre-Vetting Commission. There were complaints of biased interpretations of the questions asked and of discriminatory and humiliating treatment. Unlawful access to personal data, including information about their families, was another major concern, with candidates feeling that their fundamental rights had been violated and that a climate of insecurity and fear for their physical integrity and that of their families had been created.
- The evaluation process was flawed by elements unforeseeable for the candidates, such as the secrecy of the Secretariat of the Pre-Vetting Commission, the failure to grant candidates full access to the information gathered by the Commission, the involvement in the examination of their appeals of judges temporarily transferred from the lower courts, and the admonishment of judges who had ruled in their favour in the examination of their appeals.
- At least 2/3 of the candidates said that if they had known in advance about the conditions of the evaluation (which could not be deduced from the law), they would not have agreed to apply.

Lessons learnt

- The limit of intrusion into the private life of judicial actors during extraordinary evaluations must be expressly regulated by law, and given the status of the subjects, the guarantees must be enshrined in the Constitution.
- Pre-Vetting is fundamentally different from vetting, because applying for a procedure that is avoidable without leaving office requires more courage than remaining in office in the face of an inevitable procedure everybody's expected to pass.
- The pre-vetting process shed light on judges and prosecutors who are courageous and determined to engage in the processes of self-administration of the justice system. With small exceptions, the pre-vetting process did not select the most vocal and visible among them. They have, however, come to be known to the public from a positive perspective.
- To improve the extraordinary evaluation mechanisms and to prevent possible abuses in other evaluation processes, the negative experience of the judicial actors who have voluntarily signed up to pass this integrity filter needs to be studied very carefully.

8

INTEGRITY DOUBTS REGARDING THE MEMBERS OF THE PRE-VETTING COMMISSION

Summary: *This chapter analyses the serious concerns about the integrity of the Pre-Vetting Commission, the body responsible for checking the integrity of candidates for the positions of magistrates and prosecutors. Law 26/2022 imposes strict criteria for the appointment of the Commission members, but there is evidence that these criteria have not been adequately respected. In addition, the mechanism for removing members who do not meet these requirements has not worked effectively. Moreover, there is suspicion and evidence of incompatibility and conflicts of interest, which have been ignored by the Commission, thus compromising the evaluation process and undermining its credibility. Various cases of integrity of Commission members, such as Tatiana Raducanu, Herman von Hebel, and others, have been published in the media and have raised questions about the fairness of the evaluation process. The Commission has also failed to react to the information questioning the integrity of some members and has not implemented measures to restore public confidence.*

The integrity of the bodies appointed to check the integrity of other persons must be beyond doubt. Otherwise, integrity checks lack public credibility.

Law 26/2022 stipulates that, in order to be appointed, the members of the Pre-Vetting Commission must meet certain criteria.[182] These criteria have apparently not been rigorously checked. The law also provides for incompatibilities of members of the Commission. Failure to meet the requirements for appointment and violation of the incompatibilities regime in the work of the members of the Pre-Vetting Commission will result in the termination of the mandate of the members concerned.[183]

The mechanism for removing members of the Commission who did not meet the criteria for appointment or who violated incompatibilities was to be implemented by the other members of the Commission. Designed to funciton in conflict of interest, where some members had to remove their colleagues, this mechanism did not work. When biographical details became known that disqualified some members from holding these positions, neither the Parliament nor the other members of the Commission applied the consequences provided for by law to maintain society's confidence in the integrity of the evaluation process they were carrying out.

What would have happened if this mechanism had worked and some members of the Pre-Vetting Commission had been removed? Law 26/2022 stipulates that if fewer than four members remained and thus affected the quorum of the Commission, the selection of a new member is required.[184] However, what was supposed to happen in such cases after the appointment of other members? Would the new members continue the work of the Pre-Vetting Commission, would they resume the pending evaluations in which the ousted members were participating, or would the Commission resume its work from the beginning? Would they review the outcome of previous votes of the Commission, considering that the proceedings with the participation of the removed members were flawed? Would the votes of ousted members be considered null and void and only the result of the votes recalculated?

According to the legislation of the Republic of Moldova, the legal acts, administrative acts of a normative nature issued in violation of the law are null and void and do not produce legal effects from the moment of issuance. Regardless of whether the Parliament or the Pre-Vetting Commission admit or not the non-fulfilment of the requirements for the appointment of some members of the Commission, the nullity of the appointment of the given members can be invoked at any time and the acts issued by it would be null and void. Candidates who did not pass the pre-vetting process could consider the whole process of their evaluation to be flawed because it involved persons who did not meet the requirements for membership of the Pre-Vetting Commission. On the other hand, the term of office of the members of the SCM who passed the evaluation with the vote of the members of the Pre-Vetting Commission who did not meet the requirements for appointment could be threatened.

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182 Law 26/2022, Art. 5 para. (8).
183 *Ibid,* Art. 5 para. (10).
184 *Ibid,* Art. 5 para. (12).

What would be the consequences for the Republic of Moldova's relations with development partners, given that they have politically and financially supported a null and void effort? Who would take responsibility for the work of the members of the Pre-Vetting Commission who did not meet the requirements for appointment – those who proposed them without verifying that they met the criteria for appointment or those who appointed them without carrying out this verification?

8.1 Review of the requirements for the appointment of members of the Pre-Vetting Commission

In order to be appointed by Parliament, the six members of the Pre-Vetting Commission – three national and three international – had to meet several requirements, including having an impeccable reputation.[185] One of the grounds for termination of membership of the Commission is the withdrawal of membership by reasoned decision, taken by the secret vote of the other members of the Commission, on the occurrence of circumstances of non-compliance with the requirements for appointment to the Commission.[186]

In the case of two members, the failure to meet the requirement of impeccable reputation was publicly questioned.

National member of the Pre-Vetting Commission, Tatiana Raducanu

The Moldovan media has carried out several investigations into Pre-Vetting Commission member Tatiana Raducanu, in particular concerning her assets, her links to the main PAS party financiers, and the fact that she was targeted in multiple convictions of the Republic of Moldova at the ECtHR.[187] In 2019, the Justice Minister at the time, Olesea Stamati, opposed Tatiana Raducanu's appointment as a judge at the CC because of her judgments led to convictions of the Republic of Moldova by the ECtHR.[188] Raducanu briefly explained then why she was not responsible for any of those convictions.

Before she was appointed to the Pre-Vetting Commission in 2022, when asked by journalists how she would comment on her change of heart about the candidacy of Tatiana Raducanu for the Pre-Vetting Commission, Olesea Stamati, who had in the meantime been appointed Chair of the Parliament's Legal Committee on Appointments and Immunities, referred to Raducanu's explanations, saying that they were convincing. Information about her luxury house and close ties with the ruling party's main supporters was hushed up.

CASE STUDY 23. Pre-Vetting Commission member Tatiana Raducanu: assets and convictions at the ECtHR

ZdG.md, 20 September 2021, 'Candidates for the post of judge at the CC: some with criminal records, others with cases lost at the ECtHR'[189]

*"**Tatiana Raducanu** is a former judge, who honourably resigned in 2016. She worked as a judge at the Chisinau Court of Appeal, Riscani branch, [...] was promoted as a judge at the Court of Appeal [...], was promoted to the SCJ [...] In November 2016, she left the judiciary on her own initiative. [...] At the beginning of the same year, the SCM rejected her candidacy for the position of Vice-President of the SCJ [...] At the 2016 GAJ, Raducanu gave a critical speech, stating that "the authority of the judiciary is at rock bottom". [...] Since June 2018, she has been the Chair of the Board of the Public Association the LRCM. In January 2021, she was appointed member of the SSC by President Maia Sandu.*

Judge's nephew, generous sponsor of Maia Sandu

ZdG previously wrote about the house where Tatiana Raducanu lives. She is a neighbour of [...] current Minister of Infrastructure Andrei Spinu. [...] The magistrate's family lives in a two-storey house with an attic, in a luxurious neighbourhood in the Riscani sector of the capital. The magistrate's house was estimated at the time at 6 million lei. ZdG also discovered that in July 2013, the judge received €10,000 in dividends for half a million euros she had invested in the 'Starnet' company run by her nephew Alexandru Machedon. The businessman was one of Maia Sandu's most generous donors in the 2016 and 2020 presidential campaigns.

Tatiana Raducanu applied in 2019 for the position of judge at the CC, but failed to win the competition. At the time, Olesea Stamate, Minister of Justice in the Sandu Government and current MP, said that Raducanu should not be elected to this position "considering the multiple convictions of the Republic of Moldova at the ECtHR". According to information posted on the official website of the Ministry of Justice, no fewer than nine judgments of the panel of judges in which Judge Tatiana Raducanu sat have been examined by the ECtHR, including for violations of various seriousness. [...]

In August 2019, after the competition for the selection of two judges to the CC by the SCM, Raducanu came out with a comment on the role of the ECtHR judgments in judge's evaluation. [...] "The analysis of the cases imputed to me as a judge do not constitute abusive or arbitrary decisions, but relate to the assessment of evidence, the interpretation of the law, which cannot be the fault of an independent judge who is free to make such assessments and interpretations. [...] I consider that these convictions have in no way affected either my professionalism or my integrity".

Subsequently, in November 2023, the Moldovan Parliament appointed Tatiana Raducanu as a member of the Vetting Commission for Prosecutors.[190] In May 2024, Raducanu submitted her resignation from the Pre-Vetting Commission and the Vetting Commission for Prosecutors due to other information made public that called into question her integrity.

The Pre-Vetting Commission has not taken steps to implement a mechanism of securing within the Commission.

International Member and Chair of the Pre-Vetting Committee, Herman von Hebel

Two years after the creation of the Pre-Vetting Commission, a journalistic investigation has revealed that the integrity and compliance of the Chair of the Pre-Vetting Commission and the international members with the criteria of impeccable reputation

185 *Ibidem,* Art. 5 para. (8) letter b).
186 *Ibidem,* Art. 5 para. (10) item 3) letter a) and para. (11).
187 More journalistic investigations on Tatiana Raducanu from 2014-2016 can be found here: http: http://www.avere.md/raducanu-tatiana/
188 https://www.facebook.com/permalink.php?story_fbid=2320118524916517&id=2300751750186528&ref=embed_post
189 https://www.zdg.md/importante/pretendentii-la-functia-de-judecator-la-curtea-constitutionala-unii-cu-dosare-penale-altii-cu-dosare-pierdute-la-ctedo/
190 https://multimedia.parlament.md/parlamentul-a-numit-doi-membri-in-comisia-de-evaluare-externa-a-procurorilor/

has not been verified by anyone. Although Law 26/2022 stipulates that international members are proposed by development partners, some information suggests that things could have been different. Some of the international members could have been identified and suggested by Moldovan politicians following their own research among known foreign experts. This emerges from a discussion of the Chair of the Legal Committee on Appointments and Immunities of the Parliament of the Republic of Moldova with a journalist, in which the MP admits that the international members of the Pre-Vetting Commission were identified by directly calling known foreign experts and that the MPs relied on the fact that these persons come from states where they have assumed that certain rules were respected.

CASE STUDY 24. The Chair of the Pre-Vetting Commission, Herman von Hebel, with a dubious reputation, who was not checked by the Parliament before his appointment

Anticoruptie.md, 25 March 2024, 'Herman von Hebel's hybrid integrity'[191]

"13 March 2018 – Herman von Hebel, who in five years was to become Chair of the Pre-Vetting Commission in the Republic of Moldova, which checks the integrity of magistrates, withdraws from the competition for a new five-year term as Registrar of the International Criminal Court in the Hague.

The Registrar's withdrawal from the race was prompted by admitted illegalities in a reform, the Dutch press reports. "Von Hebel in the Netherlands had been harshly criticized for his management of the Court, especially in the context of the ReVision reform plan, aspects of which were deemed illegal by the Administrative Tribunal of the International Labour Organization […]," wrote the legal publication www.justiceinfo.net, in an article published on 15 March 2018.

This was in the midst of a scandal in which The Hague Court had been heavily criticized for internal mismanagement, resulting in several people being harmed due to illegalities, admittedly in the implementation of a reform plan, called ReVision, initiated by Herman von Hebel during his time as head of the Court's Registry from 2013 to 2018. [...] In 2016, an audit report *found that [...] the Registrar's actions were in contradiction with the Court's Rules of Procedure, namely the requirements of Article 44.2 of the Rome Statute, which required the application of "the highest standards of efficiency, competence and integrity".*

The Dutch press wrote on 26 February 2018 about six judgments of the Administrative Court of the International Labour Organization, which were officially handed at the end of January 2018. Because of the decisions, described as unlawful, taken by the Registrar von Hebel, the International Criminal Court was ordered by the Administrative Court to pay damages totalling 660,000 euros and to additionally bear at least 100,000 euros in administrative costs of representation in the lawsuits it lost. The Hague correspondent for the JusticeInfo portal, Stephanie Maupas, entitled her article on the work of Herman von Hebel ***'ICC under fire for internal mismanagement'."*** *[...]*

"Italian judge Cuno Tarfusser, formerly Vice-President of the International Criminal Court (2012-2015), accused [...] the marginalization of judges challenging the legality of the process, methods, and costs, asking: "Who will take administrative and financial responsibility for what happened?" [...] Herman von Hebel sent another email to his subordinates asking for legal advice [...] Judge Tarfusser [...] asked him, "Don't you think you are wasting public money?". Judge Tarfusser is one of those who asked Herman van Hebel to resign." [...]

"A former judge of the Court, Sir Adrian Fulford [...], who has since become a judge of the Court of Appeal for England and Wales, commented for the famous British newspaper ***The Guardian*** *in November 2014 on the reform initiated by Herman von Hebel [...], criticized the reform in strong terms and said that the plan of the Registrar von Hebel would compromise the judicial fairness of the Court." [...]*

"After Herman von Hebel's departure from the International Criminal Court Registry, the American newspaper ***The New York Times*** *wrote that the Court had become entangled in as many lawsuits as current and former employees had filed [...] According to lawyers, the Court has paid nearly $1 million in damages, and several cases are pending. [...] "The Court is in danger of spending more money on domestic litigation, including salary disputes, than on victims [...] These will in no way help to improve the reputation of the Court outside its walls" [...] mentioned Andrew Murdoch from the UK at the annual meeting of the 123 member states of the International Criminal Court in December 2018." [...]*

"Who checked the integrity of the candidates for the Pre-Vetting Commission?

[...] The PAS MP, former Chair of the Committee on Legal Affairs, Appointments and Immunities, Olesea Stamate, who drafted the report that the members of the Pre-Vetting Commission presented to the plenary of the Parliament for voting: "The candidates from abroad were proposed by development partners, countries that have a very good level of expertise in the field of justice reforms. We checked their professional careers. We had no knowledge of reprehensible details from the past careers of some of the candidates", said the MP. [...]

"In the case of Herman von Hebel, there was no information indicating certain problems of reputation and integrity. It was only when he was already in office that the Committee received information about certain problems related to his work in a Pre-Vetting Commission in Albania, but it was already late," said Olesea Stamate."

Anticoruptie.md, 2 April 2024, 'AUDIO PROOF // MP Olesea Stamate: "This Herman has really caused us problems..."[192]

"They have been selected by the development partners, several candidates have been presented to us, from which we have selected. What we have been able to do is to ask the experts whom we knew from European Union countries [...], other experts known to us to enquire about their performance rather than where they have worked before and what the opinions about them are... Basically, you are counting on the aspect that in the countries they come from the rules are observed. [...]

We found out some things about his work in Albania, post factum, i.e. after he had already been appointed. [...] What we found out afterwards, because the information is not public and has not been written anywhere, is that he was in Albania, employed as an expert, and was also involved in something related to... I don't know... vetting.... something like that, more on the monitoring side. Someone told us that he... I mean, he was not fired, but his contract was not extended. We found out, unfortunately, post factum. As to the information regarding the Court, I'm hearing about it now. [...]

He was the person in this Commission who slowed things down so much [...] We were very unhappy with him, we can't wait to get rid of him. [...] But now... you realize... you're going to write as you know best... Investigations are investigations, but you should understand that the vetting, pre-vetting is not exactly in our interest to look bad. This exercise is very much under attack already. (...) This Herman has really caused us problems."

The Pre-Vetting Commission's reaction to these investigations came two days later in a press release, which described the accusations against the Commission Chair as unfounded. The Commission statement did not deny the multiple accusations against von Hebel's integrity in the Dutch, British, and American international press. The Commission confirmed von Hebel's

191 https://anticoruptie.md/ro/investigatii/integritate/integritatea-hibrida-a-lui-herman-von-hebel
192 https://anticoruptie.md/ro/stiri/proba-audio-deputata-olesea-stamate-chiar-ne-am-fript-cu-herman-asta

work between 2013 and 2018 as Registrar of the International Criminal Court and his work to reorganize the Registry, and noted that the 2016 external audit report found that the reorganization of the Registry was justified and that it allowed it to function better.[193]

The official reaction of the Pre-Vetting Commission confirmed not so much the impeccable reputation of its Chair Herman von Hebel as the non-application and inefficiency of the Commission's own integrity mechanism, which provided for the withdrawal and termination of Herman von Hebel's membership of the Commission by the other members. Although the journalistic investigation referred to only one member of the Commission, the lenient attitude of the other members of the Commission extended the doubts concerning the lack of integrity to all members of the Commission.

8.2 Lack of reaction to members' actions that compromise the Pre-Vetting Commission's image

Membership of the Pre-Vetting Commission is incompatible with any public office. Incompatibilities of Commission members shall be resolved within 10 days from the date of their occurrence.[194] Members of the Commission are required to refrain from any activity in the event of a conflict of interest, from any activity that could give rise to a conflict of interest, or from any action incompatible with membership of the Commission. They are also required to refrain from any action that could bring the Evaluation [Pre-Vetting] Commission into disrepute or cast doubt on the objectivity of its decisions. [195]

The membership of the Pre-Vetting Commission may also cease if it is withdrawn by the other members of the Commission, in connection with the occurrence of circumstances of incompatibility and wilful violation of the provisions of Law 26/2022 and the Regulation of the Commission.[196]

The journalistic investigations have also uncovered incompatibilities in the position of the Commission Chair Herman von Hebel, namely that while he was a member and Chair of the Pre-Vetting Commission, he was also acting as a judge in a Dutch court.

The Pre-Vetting Commission confirmed the incompatibility situation in a communiqué, explaining that it lasted only five days.

CASE STUDY 25. Chair of the Pre-Vetting Commission, Herman von Hebel – incompatibility as member of the Pre-Vetting Commission and defiant refusal to resign on this ground

Anticoruptie.md, 25 March 2024, 'Herman von Hebel's hybrid integrity'[197]

"We obtained Herman von Hebel's CV from sources in Parliament. From this CV, I found out that Herman von Hebel became a part-time criminal judge at the Dutch Court of Appeal in Den Bosch [...].

Den Bosch Court of Appeals confirmed for the anticorruptie.md different information from that indicated by Herman von Hebel in his CV, namely that he has been a judge at their court since May 2020 and continues to serve there until today. This contradicts the legal provisions, which do not allow members of the Pre-Vetting Commission to concurrently serve in any other public office."

Vetting.md, 27 March 2024, 'Press statement on the unfounded accusations against the Chair of the Commission'[198]

"In May 2020, Herman von Hebel was appointed as a part-time judge ("substitute judge") at the Court of Criminal Appeals in Den Bosch. Since September 2020, when he was formally sworn in, he has occasionally judged whenever other activities allowed him to do so.

Since the beginning of his work as Chair of the Pre-Vetting Commission in April 2022, Herman von Hebel has worked a total of five days at the Court of Appeal in Den Bosch. For each day of sitting in court, Herman von Hebel received a daily allowance from the Dutch Court of Appeal, the position not conferring any other benefits."

Immediately after the Pre-Vetting Commission's statements in his defence, the Chair of the Pre-Vetting Commission, Herman von Hebel, appeared on the *Jurnal TV station* with the Minister of Justice. When asked by the journalist whether he would resign as a result of the incompatibility situation uncovered by the press, von Hebel burst out laughing, and laughingly replied that he had no intention of resigning.

The situation sparked angry reactions from several opposition political leaders, who immediately demanded Herman von Hebel's dismissal as member and Chair of the Pre-Vetting Commission.

The former Chair of the CC, Alexandru Tanase, made a critical statement on this issue, which was picked up by several media sources.

Anticoruptie.md, 29 March 2024, 'Alexandru Tanase: "Who will pay the political bill for the mocking smile of Mr Herman von Hebel?"'[199]

"In a post entitled Who will pay the political bill for the mocking smile of Mr Herman von Hebel?*, the former Chair of the CC, Alexandru Tanase, commented on the reactions following the publication of the investigation [...].*

Tanase commented on the reaction of the Chair of the Extraordinary Evaluation Commission, Herman von Hebel, to the question of whether or not he will resign, on the Jurnal TV.

"Mr von Hebel's dismissive smile in the face of a natural question, whether he will resign or not, only further undermines the credibility of both the extraordinary evaluation procedure and the current political leadership. It is obvious that he will not resign voluntarily. His contemptuous smile (not to call it mocking) and the self-sufficiency with which he reacted to a legitimate question from a journalist speak volumes about his attitudes. A European missionary that came to the jungle to civilize savage tribes, is not obliged to show respect for the aborigines, much less is he obliged to resign because of the moral turmoil of the jungle. Moreover, given that two or three years of 'civilizing the aborigines' can considerably pad the missionary's accounts, the chances of a voluntary resignation are almost non-existent," Tanase believes."

193 https://vetting.md/declaratie-de-presa-2/
194 Law 26/2022, Art. 5 para. (9).
195 *Ibidem,* Art. 7 letters d) and e).
196 *Ibidem,* Art. 5 para. (10) item 3) letters a) and b), para. (11).
197 https://anticoruptie.md/ro/investigatii/integritate/integritatea-hibrida-a-lui-herman-von-hebel
198 https://vetting.md/declaratie-de-presa-2/
199 https://anticoruptie.md/ro/stiri/alexandru-tanase-cine-va-plati-factura-politica-pentru-zambetul-batjocoritor-al-domnului-herman-von-hebel

The Commission did not provide information about the summoning of the other members to decide on the incompatibility situation that arose after Herman von Hebel's appointment, did not elucidate the reasons why he did not resolve it within 10 days, and did not explain why he did not refrain from actions incompatible with his membership of the Commission, thus discrediting and causing doubts about the objectivity of the Pre-Vetting Commission's decisions.

As a result, instead of applying the integrity rigours of Commission members, the other members sympathized with the breach of duty of the Commission member and their Chair and jumped to his defence.

Another situation in which the Pre-Vetting Commission did not react to affirm the integrity of its members concerns the case of member Tatiana Raducanu. In May 2024, the APO launched an investigation into Tatiana Raducanu after it obtained information that cast doubt on her integrity and professional qualities. The matter concerns hundreds of text messages sent over several years between controversial businessman and fugitive Veaceslav Platon and the lawyer of another fugitive, Ilan Shor. The conversations between them were targeted at magistrate Tatiana Raducanu, whom the two considered "our person 100 per cent" and "ready to work". The APO informed all the candidates for judges and prosecutors who did not pass the pre-vetting about the criminal case against Tatiana Raducanu. The prosecutors informed them that they had information that Raducanu could represent the interests of fugitives Veaceslav Platon and Ilan Shor in the Pre-Vetting Commission, and that the decisions to fail the evaluation of the candidates could be influenced by Platon or Shor through Tatiana Raducan. Two days after the publication of this information, Tatiana Raducanu submitted her resignation from the Pre-Vetting and Vetting Commissions to the Parliament, saying that the information published about her was not true, but that her decision to resign was aimed at maintaining confidence in the process of evaluating judges and prosecutors.[200]

CASE STUDY 26. Pre-Vetting Commission member Tatiana Raducanu resigns because of links with fugitive oligarchs Shor and Platon, invoked by the APO

TV8.md, 14 May 2024, /DOC/ Raducanu – Platon and Shor's person? Messages between the controversial businessman and a lawyer of Shor, which compromise her[201]

"According to a letter delivered by the head of the APO, Veronica Dragalin, to several state institutions, the preliminary findings of an investigation started in April 2024, show a high risk that Tatiana Raducanu would have become a trusted person of the criminal fugitives Veaceslav Platon and Ilan Shor, promoting their interests and ensuring that persons loyal to them will be promoted to key positions in the justice system, and those who represent a danger will be removed from the system.

The document also refers to an exchange of messages in November 2013 between Veaceslav Platon and Aureliu Colenco. Then, Shor's lawyer allegedly wrote to Platon the message "I won't let you down, thank you" and then informed him that he was having lunch with "a crazy woman" (a phrase repeated several times by the two when referring to Tatiana Raducanu) and asked if Platon needed anything in particular. A few minutes later, Colenco wrote to Platon "I am with Raducan / Greetings from Tatiana Gheorghevna". Platon replied "Thank you very much! I am very happy that she hasn't forgotten about us". A few minutes later, Colenco wrote "Our person 100 per cent", to which Platon replied "Great" (the original conversations were in Russian and translated into Romanian with Google Translate)," reads the letter signed by Veronica Dragalin on 14 May 2024.

Also, in the same conversation, Aureliu Colenco allegedly explained that Tatiana Raducanu wants to become Chair of the SCM, confirming to Veaceslav Platon "She is our person. I told her that you gave me two tasks, that everyone abandoned me and so on. She is very happy. We talked a lot. / Ready to work." To this information, Platon replied "Great," the letter added.

The letter also sheds light on the dubious purchase of the SCM office under dubious circumstances, through Aureliu Colenco and Tatiana Raducanu, who allegedly helped controversial businessman Veaceslav Platon "to get rid of a useless real estate" at an artificial price.

The head of the APO, Veronica Dragalin emphasizes that she considers it necessary to inform the judges, prosecutors and members of civil society who were evaluated and failed by the Pre-Vetting Commission with the participation of Tatiana Raducanu [...], considering that there is a possibility that their fundamental right to a fair trial before an independent and impartial court, established in advance by law, guaranteed by Article 6 ECHR, has been violated.

"The extraordinary evaluation of prosecutors and judges by Tatiana Raducanu poses an inadmissible risk and danger to the cases and the work of the Prosecutor's Office and the justice system. From the circumstances reported above, there are suspicions that Veaceslav Platon and Ilan Shor have hatched a plan to infiltrate "their 100 per cent person" into the bodies responsible for the extraordinary evaluation of prosecutors and judges, thus ensuring that persons loyal to them will be advanced to key positions and those prosecutors and judges who are a danger to them will be removed from the system. The criminal trial recently concluded by the APO proved that a prosecutor with links to Ilan Shor passed the pre-vetting procedure with the participation of Tatiana Raducanu in the Pre-Vetting Commission, reached the SCP and manipulated and vitiated the competition for the position of PG of the Republic of Moldova.

In light of the above, I bring to your attention the information reported above, which establishes that there are indications that the pre-vetting and vetting procedures have been compromised and vitiated by criminal groups associated with Veaceslav Platon and Ilan Shor and that the fundamental rights of candidates to a fair trial have possibly been affected, which together present a risk of jeopardizing the justice system further," the letter from Veronica Dragalin reads."

The Pre-Vetting Commission reacted two days after the media scandal broke out, stating that it *"took note of the recent public statements of the APO regarding Tatiana Raducanu, a member of the Commission [...] took note of the intention expressed by Tatiana Raducanu to resign from her position as member of the Commission in the context of the mentioned statements. It is for the Parliament of the Republic of Moldova to decide on Tatiana Raducanu's request to resign. The Pre-Vetting Commission expresses its hope and expectation that the allegations against Tatiana Raducanu will be thoroughly investigated by the competent national authorities in full compliance with the principles of due process, including the presumption of innocence, as laid down both in the law of the Republic of Moldova and in international human rights standards."*

200 https://moldova.europalibera.org/a/membra-comisiilor-vetting-si-pre-vetting-demisioneaza-din-ambele-functii-in-urma-unei-scrisori/32947078.html

201 https://tv8.md/2024/05/14/doc-raducanu-omul-lui-platon-si-sor-mesajele-dintre-controversatul-afacerist-si-un-avocat-al-lui-sor-care-ar-compromite-o/257477

The Commission did not comment at all on the APO concerns that *"there are indications that the pre-vetting procedure has been compromised and vitiated by criminal groups associated with Veaceslav Platon and Ilan Shor and that the fundamental rights of candidates to a fair trial have possibly been affected, which together pose a risk of jeopardizing the justice system further"*. Likewise, the Commission left without attention the accusation that *"a prosecutor with links to Ilan Shor passed the pre-vetting procedure with the participation of Tatiana Raducanu in the Pre-Vetting Commission, got to the SCP, and manipulated and vitiated the competition for the position of PG of the Republic of Moldova"*.

Therefore, even this time, the Pre-Vetting Commission was not concerned by the scandal related to the alleged lack of integrity of one of the members of the Commission and did not publicly explain why for two days it did not meet urgently to decide on the application of the integrity mechanism provided by law in case it was later found that a member did not meet the requirement of irreproachable reputation at the time of appointment, and the subsequent finding out of these circumstances discredited and caused doubts about the objectivity of the decisions of the Pre-Vetting Commission.

8.3 Low duration of integrity of some members of the SCM and SCP, positively assessed by the Commission

Integrity incidents of some members of the SCM and SCP, previously positively assessed by the Commission, have also indirectly affected the reputation and credibility of the Commission's work.

In one case, the SCM member Iulian Muntean, who successfully passed the pre-vetting procedure,[202] was found to be involved in a criminal corruption case. The evaluation methodology of this candidate was different from that of other candidates, and the Pre-Vetting Commission failed to request information about him from the prosecutor's office. The NAC presented the Commission with false information that the person had no status in corruption cases. In reality, the candidate was accused in such a case.

The APO has opened a criminal investigation to determine which NAC employees lied to the Pre-Vetting Commission by providing erroneous information. The APO announced that one of the employees of the Secretariat of the Pre-Vetting Commission had previously participated in the criminal investigation of that candidate by the NAC and therefore could have informed the Commission.

The SCM member accused of corruption has resigned.

Parliament and Presidency officials threw the blame entirely on the APO, which made public the error in the Pre-Vetting Commission's evaluation of Iulian Muntean's integrity.

The member of the Secretariat of the Pre-Vetting Commission who allegedly withheld information about the candidate's criminal record and who may have been involved in the deviation from the Commission's methodology of gathering information was promoted by the Parliament to the position of member of the Vetting Commission for the evaluation of SCJ judges.[203]

CASE STUDY 27. The SCM member Iulian Muntean, two weeks between appointment and resignation with scandal, corruption allegations, APO's investigations on incomplete information provided to the Pre-Vetting Commission and the politicians' attack on prosecutors

Realitatea.md, 20 September 2023, 'EXCLUSIVE! Newly appointed member of the SCM who passed the pre-vetting, accused in a corruption case'[204]

"Iulian Muntean, the newly appointed member of the Supreme Council of Magistracy, having been delegated by the Parliament, is an accused in a corruption case. The case is a high-profile one, dating back to 2018, when several employees of the Academy of Economic Studies (ASEM) were detained for allegedly taking bribes.

In a response submitted to the Realitatea, the APO has announced that on 5 June 2018, searches were carried out at the home and in the car of Iulian Muntean. On 3 September 2018, being a lecturer at the Academy of Economic Studies, jointly with other persons, he allegedly evaluated students with high marks in several subjects and received financial means in exchange. "A judgment on the accused Iulian Munteanu, at the moment, is not adopted. The criminal case in which Iulian Munteanu is accused is being investigated the NAC's criminal investigation body, and the criminal investigation is ongoing," the APO informed. [...]

In 2018, the NAC raided six teachers and three intermediaries who favoured students in exams, practice and thesis. The sums claimed for such "services" amounted to €550.

Iulian Muntean is part of the second group of non-judicial candidates nominated by the Parliament for the SCM in May 2023. He was heard by the Pre-Vetting Commission in the context of the process of assessing the financial and ethical integrity of the SCM candidates. [...]"

Vetting.md, 21 September 2023, 'Press statement [of the Pre-Vetting Commission]'[205]

"In the context of the information [...] concerning Iulian Muntean, a candidate for the position of member of the SCM, who passed the extraordinary evaluation on 14 August 2023, and was appointed by the Parliament in the SCM on 7 September 2023, in the sense that he is allegedly accused in a criminal corruption investigation dating back to 2019, the Pre-Vetting Commission comes with the following clarifications:

Throughout the evaluation process, the Commission has not been informed of any criminal investigations or proceedings against Iulian Muntean.

In order to assess the financial and ethical integrity of candidates, the Commission, by law, collects data from numerous public and private sources, including, for example, from the NAC and the SIS. In none of the information provided to the Commission was any reference made to any criminal investigation of the candidate or to the candidate's status as an accused in criminal proceedings.

The fact that Iulian Muntean was on the list of candidates for the SCM was public knowledge. Thus, nothing prevented the APO or other public institutions and individuals from informing the Commission during the evaluation process about ongoing proceedings in which the candidate was allegedly involved. As of 21 September 2023, the APO has not provided any information in this regard. [...]

202 https://vetting.md/wp-content/uploads/2023/08/Decizie-MUNTEAN.pdf
203 https://moldova.europalibera.org/a/cine-sunt-membrii-comisiei-care-va-verifica-averile-si-interesele-judecatorilor-csj/32460321.html
204 https://realitatea.md/exclusiv-membru-proaspat-numit-la-csm-si-trecut-de-pre-vetting-invinuit-intr-un-dosar-de-coruptie/
205 https://vetting.md/declaratie-de-presa/

The Commission will refer the apparent failure to provide information on the pending criminal proceedings against candidate Muntean to the responsible authorities in order to clarify the cause of the lack of such data. It should be noted that the NAC has already provided information to the Commission on this matter."

Facebook, NAC, 21 September 2023, "NAC Statement"[206]

"As a result of the additional verification of non-judicial candidates for the position of members of the SCM, the NAC immediately informed the Pre-Vetting Commission about those additional data that became known on 19 September 2023.

In this context, the NAC confirmed to the Pre-Vetting Commission the defendant status of the SCM member Iulian Muntean in the criminal case, including the fact that these data could not be identified previously due to the lack of registration of this order in the Register of Forensic and Criminological Information of the Information Technology Service of the Ministry of Interior.

Europalibera.org, 21 September 2023, 'How a jurist with a criminal record passed the pre-vetting and was appointed by the Parliament as a member of the SCM'[207]

"Asked by Free Europe, the APO said that the institution "has not been requested by the Pre-Vetting Commission to provide information on Iulian Muntean, as it has done in the case of other candidates. [...]

The news about Muntean's file has sparked a wave of critical reactions in the legal circles [...] Iulian Muntean should resign for the fact that he withheld this information from the Commission. [...] the incident affects the image of the new CSM. "I don't find the defendant status so serious, [...] but it is more serious if this information was not communicated by the NAC to the Commission or was hidden by the current member of the SCM," [lawyer Vadim Vieru] wrote.

Also, the Chair of the Parliament's Legal Committee, PAS MP Olesea Stamate [...] says that the people in the state institutions who kept this secret "must be held accountable".

On 25 September 2023, the Committee on Legal Affairs, Appointments and Immunities held hearings to clarify why the authorities did not provide the Pre-Vetting Commission with correct information about the candidate who became a member of the SCM. Surprisingly, during the hearing, the ruling party's MPs did not question the Director of the NAC (who provided misinformation about a file he is handling), did not ask for explanations from the Pre-Vetting Commission (which did not send requests for information to the prosecutor's office, as it did in other cases), and did not even ask the SCM member in question, Iulian Muntean, why he did not indicate in the questionnaire received from the Commission that he was an accused in a criminal case for corruption. The only authority vehemently attacked at the Parliament hearings was the APO –- an institution that the Pre-Vetting Commission did not even ask to provide information.

Multimedia.parlament.md, 25 September 2023, 'The Committee for Legal Affairs, Appointments and Immunities organized public hearings on the procedure for appointing Iulian Muntean as a member of the SCM'[208]

"The meeting was attended by MPs, representatives of the Independent Commission for the Evaluation of the Integrity of Candidates for the Position of Members of the Self-Administrative Bodies of Judges and Prosecutors (Pre-Vetting Commission), the NAC, the GPO, and the APO. Other persons were also present at the meeting [...] as well as representatives of the SCM. [...]

On the basis of what was discussed, the members of the Legal Committee made a series of recommendations so that such situations can be prevented and avoided. "These include the need for an audit to be carried out by the GPO on the completion of this register with charge sheets. The GPO, the APO, and the NAC should also report [...] on files that are several years old. We also recommend that the Pre-Vetting Commission request information on candidates from the PG, APO, and the NAC."

On 26 September 2024, the APO opened a criminal case on the fact of providing incomplete information by the NAC to the Pre-Vetting Commission. Iurie Gatcan, a senior analyst of the Pre-Vetting Commission who checked Iulian Muntean, is the NAC employee who had prepared the operational analysis on the accused Iulian Muntean in the criminal case investigated by the NAC.[209] During the Pre-Vetting Commission's checks, Iurie Gatcan did not reveal the status of accused of Iulian Muntean.

On 26 September 2024, Iulian Muntean resigned from the SMM. The Moldovan President criticized the APO prosecutors.

Procuratura.md, 26 September 2023, 'Investigation initiated on the provision of incomplete information to the Pre-Vetting Commission's regarding candidate Iulian Muntean'[210]

"The APO has announced that it has opened today a criminal case on the alleged illegal actions of some employees of the NAC, responsible for gathering, analysing, and providing information to the Pre-Vetting Commission, regarding the candidate for the position of member of the SCM, Iulian Muntean.

[...] on 14 December 2018, the head of the Operational Analysis Section of the Analytical Directorate, NAC [...] conducted the operational analysis of three intermediaries, as well as of the suspected students and teachers, accused of corruption acts, including Professor Iulian Muntean, who at that time had the procedural status of accused.

[...] According to the statements of the NAC Director during the public hearings of 25 September 2023, held in the Parliament's office, the verification of Iulian Munteanu took place by consulting the register of operational analysis reports. Also, according to the statements of the NAC Director, during the public hearing, at the request of the Pre-Vetting Commission, the operational analysis was carried out on the candidate Iulian Munteanu.

The suspicions at the basis of the initiation of the criminal proceedings related to the concealment of information about Iulian Muntean consist in the fact that the NAC employee who in 2018 prepared the operational analysis report, including regarding Iulian Muntean, is a former employee of the Secretariat of the Pre-Vetting Commission [...].

Ziarulnational.md, 26 September 2023, 'President Maia Sandu, attack on prosecutors in the case of Iulian Muntean: "I will insist on an electronic register. That means prosecutors can open the case, they cannot close it for ten years, they can blackmail"'[211]

"President Maia Sandu points the finger at prosecutors in the case of Iulian Muntean, the candidate who passed the pre-vetting and was voted by the Parliament as a member of the SCM, although he has a criminal case for corruption going five years back.

The Head of State argues that if in Muntean's case the case has not been entered into the database, it means that there are other such cases, and prosecutors could play with the files and blackmail the accused or suspected persons. Maia Sandu has announced that she will insist on the creation of a common electronic register of cases with the APO and the NAC."

206 https://www.facebook.com/story.php?story_fbid=pfbid0a4JFsTtj6zS77UeqdBHCAgu7vjtHrQi2yk7sxvzDpwVwqP4BadqouiSCrFUS-8pbXl&id=100066675431823&mibextid=Nif5oz&paipv=0&eav=AfYz4KnWmh3fXBv5iwH5swFDYQOWTfTgPLQVT2gFineQXSYhLF0kuRXDgIBYDDngxIk&_rdr

207 https://moldova.europalibera.org/a/cum-un-jurist-cu-dosar-penal-a-trecut-pre-vettingul-si-a-fost-numit-de-parlament-membru-in-csm/32602657.html

208 https://multimedia.parlament.md/comisia-juridica-numiri-si-imunitati-a-organizat-audieri-publice-privind-procedura-de-numire-a-lui-iulian-muntean-in-functia-de-membru-al-csm/

209 https://tv8.md/2023/10/30/video-investigatie-secretele-pre-vettingului-un-scandal-recent-arata-ca-evaluarile-pot-avea-lacune-in-reformarea-justitiei/242883

210 https://procuratura.md/anticoruptie/comunicate/noutati/investigatie-initiata-pe-furnizarea-adresa-comisiei-pre-vetting-informatiilor

211 https://www.ziarulnational.md/presedinta-maia-sandu-atac-la-procurori-in-cazul-lui-iulian-muntean-voi-insista-asupra-unui-registru-electronic-asta-in-seamna-ca-procurorii-pot-deschide-dosarul-pot-sa-nu-l-inchida-zece-ani-ei-pot-santaja/

In another case, the SCP member Olesea Virlan was suspected of rigging the competition for the appointment of the PG. Earlier, in June 2023, Olesea Virlan had successfully passed the pre-vetting procedure,[212] and was appointed as SCP member on 22 December 2023. The newly sworn-in SCP announced and held the competition for the position of PG two months later, on 22 February, during which Olesea Virlan gave considerably low scores to one of the participants.

The APO opened a criminal case on this fact. Olesea Virlan, having been sanctioned for abuse of power, resigned from the SCP and from the position of prosecutor.

The Prosecutor's Office has notified the Pre-Vetting Commission that Olesa Virlan's integrity is to be re-evaluated, as her passing the integrity evaluation discredits the vetting procedure. The complaint has been published. In Olesa Virlan's case, the Pre-Vetting Commission did not release any press statements.

CASE STUDY 28. The SCP member Olesea Virlan, three months between appointment and resignation through scandal, criminal investigation by the APO, rigging of the competition for the position of PG, and annulment of the competition

Europalibera.org, 28 February 2024, 'Competition for PG annulled'[213]

"In a surprising decision, the SCP has annulled the results of the competition for the post of PG [...]. The SCP now says it will organize a new competition.

The SCP members met on 28 February to validate the results of the competition for the post of PG, which took place on 22 February [...]. After about three hours of deliberations, however, Dumitru Obada, the Head of the SCP, announced the annulment of the competition, saying that "a major discrepancy in the scores was found, which was not substantiated".

Csp.md, 29 February 2024, 'The position of the member-prosecutor of the SCP, Olesea Virlan, regarding the competition for the post of PG'[214]

"I would like to make the following clarifications in relation to what has appeared in the press regarding the evaluation of candidates for the position of PG.

All possible mistakes occur in any calculation. Any evaluation has a dose of subjectivism. Any error in the legal field can be corrected by legal means. [...] I am not happy that some mistakes have slipped in my evaluation. This time the evaluation items showed confusing content. [...] That is what I can tell you. That's why I also voted to revoke the decision and terminate the competition. [...]"

Newsmaker.md, 1 March 2024, 'Criminal investigation after the annulment of the contest for PG. Dragalin: I undertake this investigation'[215]

"The APO is initiating criminal proceedings after the SCP annulled the competition for the post of PG. The announcement was made by APO chief Veronica Dragalin on 1 March. [...] "We have currently registered and started a criminal investigation. It is not a criminal case, it is an initial phase of investigation, before a criminal case is started [...] The PA chief announced that she had decided to personally take on this investigation.

"I don't want my subordinates to investigate such a sensitive case. This criminal investigation could target members of the SCP; it may be necessary to interview these members, but also the candidates in the competition." [...]

The head of the APO made it clear that the criminal investigation was initiated by her personally, after she had taken notice of it. [...]

The APO chief says she has 45 days by law to investigate the case. She has promised to publicize the decision "even if this is out of the ordinary".

Procuratura.md, 15 April 2024, 'APO has completed the examination of the criminal case regarding the SCP competition for the post of PG '[216]

"The criminal proceedings were initiated on 1 March 2024 by the APO ex officio.

According to the evidence administered in the criminal trial, the prosecutor found that Olesea Virlan intentionally used her position as a member of the SCP, manifested in the bad faith evaluation, arbitrary depreciation, failure to ensure equal opportunities, subjective examination, and application of evaluation criteria, in relation to the career and candidacy of Ion Munteanu for the position of PG.

The evidence accumulated in the criminal proceedings raises a reasonable suspicion that, in awarding an arbitrary and objectively and meritocratically biased score of 3.5 to the candidate Ion Munteanu, Olesea Virlan acted in the interest of a third person, [...] who left on 28 February 2024 on the basis of the resignation request. [...]

The law obliges the prosecutor to notify the competent body if it is found that there are causes and conditions that contributed to the commission of offences or cases of violation of the legislation in force or human rights and freedoms, in order to take measures to eliminate these conditions in the future.

Thus, the APO notified the Parliament, the Ministry of Justice, the SCP, and the Pre-Vetting Commission, in accordance with the legal provisions (see the notifications below). [...]"

Prosecutor's Office.md, 15 April 2024, Notification of 12 April 2024 on the removal of causes and conditions that contributed to the commission of a contravention and cases of violation of the legislation in force[217]

"It should be noted that the passing by Olesea Virlan of the integrity check and the failure of the Pre-Vetting Commission to recognize the above-mentioned circumstances, created the conditions that contributed to the commission of the offence of abuse of power and resulted in the vitiation of the competition for the position of PG, the annulment of this competition, as well as the discrediting of the vetting procedure itself. Additionally, during the criminal proceedings, circumstances were established that did not exist at the time of the evaluation and which cast serious doubts on the financial and ethical integrity of Olesea Virlan, manifested in the commission of the contraventional abuse of power, in her capacity of member of the SCP, when evaluating candidates for the position of PG, which constitutes corruption within the meaning of Article 3 of Integrity Law No. 82 of 25 May 2017."

212 https://vetting.md/wp-content/uploads/2023/07/Decizie-VIRLAN.pdf
213 https://moldova.europalibera.org/a/concursul-pentru-functia-de-procuror-general-anulat-/32840598.html
214 https://csp.md/pozitia-membrului-procuror-al-csp-olesea-virlan-privind-concursul-la-functia-de-procuror-general
215 https://newsmaker.md/ro/proces-penal-dupa-anularea-concursului-pentru-functia-de-procuror-general-dragalin-eu-imi-asum-aceasta-investigatie/
216 https://www.procuratura.md/anticoruptie/comunicate/comunicate-de-presa/procuratura-anticoruptie-finalizat-examinarea-procesului-penal
217 https://www.procuratura.md/anticoruptie/sites/procuratura.md.anticoruptie/files/2024-04/sesizare-comisia-pre-vetting.signed.pdf

unimedia.md, 17 April 2024, 'She passed the pre-vetting successfully, gave grades that annulled the PG competition, then quit the system: Olesea Virlan also resigned as prosecutor'[218]

"Olesea Virlan has resigned not only as a member of the SCP, but also as a prosecutor, after the scandal over the competition for the post of PG broke. The announcement was made by the Minister of Justice, Veronica Mihailov-Moraru [...] As far as this member of the SCP is concerned (editor's note: Olesea Virlan), she has already submitted her resignation request from the position of SCP member, but also from the position of prosecutor. She submitted an application on 21 March, if I am not mistaken. She is no longer in the prosecution system," said Veronica Mihailov-Moraru." [...]

The Pre-Vetting Commission has not reacted to any of the situations in which the integrity and competences of the rigorous Commission evaluating integrity have been put to the test in connection with the rapid failure of the alleged integrity of members of the SCM and SCP, amid corruption scandals resulting in criminal investigations and sanctions.

The Pre-Vetting Commission did not explain why it assessed Iulian Muntean according to a methodology distinct from other candidates and did not request information about the candidate from prosecutors. The Commission did not explain whether it checked for incompatibilities and conflicts of interest within the Commission's Secretariat when it became known that one of the Commission Secretariat's senior analysts, Iurie Gatcan, had participated in the NAC's criminal investigation of Muntean five years earlier. The Commission did not inform the public as to why the member of the Commission Secretariat, Iurie Gatcan, who had gathered and analysed the information in the framework of the integrity evaluation of Iulian Muntean, withheld the information about the criminal case of Iulian Muntean. The Commission did not explain why Gatcan was not sanctioned for seriously compromising the Commission's image in the scandal of Iulian Muntean's criminal corruption case, but ended up being promoted to the position of a member of the Vetting Commission for judges of the SCJ. However, doubts about the integrity of the Pre-Vetting processes with Gactcan's participation were respectively passed to the Vetting Commission for judges of the SCJ.

While the SCM reviewed some unfavourable decisions, issued with the participation of Iulian Muntean after his resignation from the SCM, the Pre-Vetting Commission did not announce the review of the evaluations with the participation of the resigned Commission member Tatiana Raducan, nor of those with the participation of the Secretariat member Iurie Gatcan.

The Pre-Vetting Commission did not respond to the public complaint by the APO, which accused the Commission of compromising the vetting and important competitions held after the positive evaluation of Olesa Virlan, who was sanctioned by administrative law norms for abuse of power.

The Pre-Vetting Commission did not dissociate itself from members of the Commission or the Commission's Secretariat who had become the target of criminal investigations by the APO and did not give public assurances that it does not tolerate situations that cast a shadow on the integrity of the Commission.

Conclusions of Chapter VIII. 'Integrity Doubts regarding the Members of the Pre-Vetting Commission'

- The integrity of Pre-Vetting Commission members was not a clearly articulated requirement in Law 26/2022. The discrepancy between the ethical and financial integrity requirements of candidates for membership in the SCM and SCP and the integrity of the members of the Commission and its Secretariat was huge.
- The integrity of the Pre-Vetting Commission was seriously undermined by the failure to comply with the legal criteria for appointment and the tolerance of conflicts of interest and incompatibilities of its members that were revealed in the public space.
- A lack of adequate responsiveness and low transparency in the handling of integrity incidents within the Pre-Vetting Commission compromised the evaluation process of candidates.

Lessons learnt

- Ignoring the integrity requirements and failing to sanction violations of integrity requirements by members of the mechanism designed to improve justice reform only worsens the public perception of the authorities implementing the justice reform.
- The participation of international members in the mechanism to improve justice reform is not sufficient to guarantee the integrity of that mechanism.
- The credibility of judicial reforms is ensured by serious mechanisms to verify the integrity of reformers and evaluators, not by the mere participation of foreign citizens.
- The consequences of the integrity deficiencies of the members of the judicial integrity review mechanism are diverse and include significant risks concerning public confidence in the reform process and in the judicial system, but especially concerning the Republic of Moldova's relations with development partners, which have financially supported the work of the members of this mechanism (Pre-Vetting Commission).

218 https://unimedia.info/ro/news/3dde5379ee931850/a-trecut-cu-brio-pre-vettingul-a-pus-o-nota-ce-a-anulat-concursul-pg-apoi-a-plecat-din-sistem-olesea-virlan-si-a-dat-demisia-si-din-functia-de-procuror.html

9

THE UNLIMITED POSSIBILITIES OF THE PRE-VETTING COMMISSION

Summary: *The Pre-Vetting Commission's procedure for evaluating candidates for positions in the self-administrative bodies of judges and prosecutors created a system of unlimited and unsupervised power. Commission members were entrusted with minimal duties, with no consequences for non-compliance, and were free to set their own rules, exceeding constitutional and legal provisions. Although they had the authority to assess the integrity of candidates, Commission members were exempted from declaring personal assets and did not comply with the transparency regime and incompatibilities imposed on them. The Commission carried out secret checks and requested special investigative measures, often treating candidates in a discriminatory and humiliating manner. Political influence over the Commission, notably through public statements by its Chair, increased suspicions of political dependence. The lack of rigorous control allowed Commission decisions to be arbitrary and inconsistent, favouring candidates with serious misconduct, while other, minor decisions resulted in candidates not passing the evaluation. The Commission also exceeded its legal limits, ignoring court decisions and constitutional rules, thus creating a climate of distrust in the evaluation process of candidates for the SCM and SCP.*

The procedure of the external evaluation of candidates for membership of the self-administrative bodies of judges and prosecutors offered unlimited possibilities to the Pre-Vetting Commission. Minimum obligations were imposed on the members of the Commission, with no consequences for non-compliance; they were also entrusted with establishing non-compliance. Members of the Commission were prescribed rudimentary integrity requirements, with the freedom not to apply them. In none of the cases did the members of the Commission find that any of them had breached their obligations under the law. Members of the Commission were not obliged to declare their assets, although they were verifying the candidates' declarations of assets. Members of the Commission did not comply with the incompatibilities regime, although they ordered not passing of the integrity evaluation of candidates for the same reasons (sometimes because of alleged incompatibilities of relatives).

The members of the Commission provided that they could participate in the examination of their own recusals, but noted the lack of integrity of candidates who, in the Commission's opinion, had not recused themselves in some cases. The Commission was implicitly allowed not to respect the provisions of the Constitution of the Republic of Moldova and explicitly not to respect the provisions of the Administrative Code. The Commission was allowed to develop its own rules and to determine the extent of their application on its own, going beyond the framework of Law 26/2022 and contradicting the provisions of other laws. The members of the Commission and the Secretariat were immunized from criminal liability, which can intervene only with the unlikely consent of the other members. And in the event of dissolution of the Commission at the end of its mandate, it is not clear how the immunity of the Commission and its Secretariat can be lifted. The Commission has been given the possibility to transform any decision favourable to the candidate, previously taken by the competent public authorities, into a decision unfavourable to the candidate and vice versa, depending on the interest pursued. The Commission was allowed to disregard the control exercised by the SCJ over decisions of failing the evaluaiton of candidates and had the possibility to re-evaluate candidates without complying with the observations of the Supreme Court, the obligation of which was expressly prescribed by the CC.

Even so, the mechanism of unlimited possibilities of the Pre-Vetting Commission, however, did not guarantee the integrity of the few candidates who passed the pre-vetting procedure, after their appointment to the SCM and SCP. The lack of any possibilities to limit the abuses of the Pre-Vetting Commission made it possible for a number of unthinkable situations, such as secret evaluations, special investigative measures, the discrimination of candidates, exceeding the limits of re-evaluation, the humiliation of candidates, and the demonstration of an open relationship of dependence of the Commission on the political factor.

9.1 Secret evaluations and special investigative measures requested by the Commission

Law 26/2022 gives the Pre-Vetting Commission the right to request any information from any public or private person in possession of it, and failure to submit the requested

information within 10 days is penalized.[219] It follows from this provision, however, that the information gathered in this way by the Commission must be substantiated. Thus, operational information held by the security and law enforcement agencies could also be obtained by the Commission, without it being clear what weight such information is given by the Commission, especially since the Commission assesses the material gathered according to its own personal conviction.[220] Unverified information or information not corroborated by evidence in criminal proceedings should not normally be withheld by the Commission. In this regard, Law 26/2022 provides that in the exercise of its functions, the Commission has the power to collect and verify any data relevant to the assessment of candidates.[221] However, the power to verify the data collected does not impose an obligation to do so, just as it does not impose the obligation to accept them automatically, without any critical assessment of their admissibility, relevance and conclusiveness.

Memos of the SIS

Opinion No. 21 (2018) on the prevention of corruption among judges, adopted by the Consultative Council of European Judges,[222] includes strong recommendations regarding the involvement of security services in proceedings concerning the integrity of magistrates. This opinion, which, according to its preamble, is based in particular on the findings and recommendations of the Council of Europe's GRECO,[223] provides for the following standards:

– that checks through the security services may not target sitting judges; and

– that under no circumstances should the fight against corruption among judges lead to the interference of a secret service in the judiciary.[224]

The involvement of secret services in assessing the integrity of judges, even in the process of combating corruption offences, is inadmissible, because the independence and irremovability of magistrates are protected by special rules, and the use of information provided by these services provides a wide ground for speculative interpretations of unproven operational information.

During the pre-vetting process, there have been situations where candidates have found that such information has been accumulated about them without being made available to them. The Pre-Vetting Commission claimed that it only gave the candiates access to those materials it considered relevant.

However, the information gathered from the SIS was not given to the candidates by the Commission for them to familiarize themselves with it, even though this formed the basis of their assessment and contributed to the negative perception of members of the Commission about the candidates, as the members of the Commission judge the information gathered on the basis of their own personal convictions.

CASE STUDY 29. Candidate Victor Sandu assessed negatively on the basis of the information submitted to the Pre-Vetting Commission by the SIS, in the absence of evidence that could confirm it

Decision 18 of 18 January 2023 on Victor Sandu, candidate for the position of member of the SCM, adopted by the Pre-Vetting Commission (unpublished)[225]

"According to the available information, in order to cover up the case in question, the defendants allegedly provided the judge and the prosecutor in the case with financial means amounting to approximately EUR 80,000 [...].

At the same time, according to some data, on the evening of 2 April 2018, Judge Victor Sandu, together with the judges of the panel that heard the case [...] would have met in the office of Nicolae Chitoroaga [...]".

In the process of examining the appeal to the SCJ, the Pre-Vetting Commission presented the memos received from the SIS. The SIS memos showed that they had specific information that the judge had received the sum of EUR 80,000 in connection with the decision in a case. Another piece of information presented by the SIS was that the judge had been in the building of the PCCOCS on 2 April 2018, where, in the context of a case pending before him, he had met with the head of this Prosecutor's Office (Nicolae Chitoroaga).

Judge Victor Sandu asked the SIS to inform him whether the SIS later confirmed this information, which he denies, stating that he was never in the premises of that prosecutor's office, that he had never met with that prosecutor, and also providing evidence in this regard – the confirmation from the prosecutor's office that the judge had never been seen entering the building. The judge also denied that he had ever taken any money in the cases, claiming that if there were clear indications, the SIS would have im

219 Law 26/2022, Art. 10 para. (3).

220 Law 26/2022, Art. 10 para. (9).

221 Law 26/2022, Art. 6 lit. c).

222 https://rm.coe.int/avis-no-21-du-ccje-en-roumain/168093ed29

223 Including GRECO's report on 'Preventing Corruption in relation to members of Parliament, judges and prosecutors. Conclusions and Trends' (GRECO Fourth Evaluation Round).

224 Paras. 26 and 27 of Opinion No. 21 (2018) on the prevention of corruption among judges, adopted by the Consultative Council of European Judges (CCJE), state:

"26. The CCJE strongly advises against background checks that go beyond the generally accepted checks of a candidate's criminal record and financial situation. Nevertheless, some countries carry out very thorough background integrity checks which include the personal, family and social background of the candidate. These checks are usually carried out by the security services. In countries where such checks occur, they should be made according to criteria that can be objectively assessed. Candidates should have the right to have access to any information obtained. A candidate who is rejected on the basis of such a control must have the right to appeal to an independent body and, to this end, have access to the results of such control. 27. A distinction should be made between candidate judges entering the judiciary and serving judges. In no circumstances should the fight against corruption of judges lead to the interference by secret services in the administration of justice. Corruption of judges is an offence and should therefore be tackled within the framework of established legislation."

225 Decision No. 18 of 18 January 2023 of the Pre-Vetting Committee was provided by the candidate Victor Sandu for use in this study.

mediately referred the matter to the prosecutor's office so that the information could be verified in a criminal investigation.

As part of the survey for the study, the judge forwarded copies of the answers received from the SIS.

SIS reply no. 20-S-445/24 of 29 April 2024 for Judge Victor Sandu

"The information presented by the SIS in the informative memo on the transfer and receipt of an undue sum, valued at approximately EUR 80,000, was only a primary information. At the same time, it was subsequently no longer possible to establish the specific recipients of the sum and to prove the actions taken. In view of the lack of confirmatory data on the existence of a reasonable suspicion of the commission of the offence, the Public Prosecutor's Office was not notified."

SIS reply no. 20-S-534/24 of 31 May 2024 for Judge Victor Sandu

"The information presented by the SIS at the request of the Independent Commission for the Integrity Assessment of Candidates for the Office of the Prosecutor's Office for the Fight against Organized Crime and Special Cases on the possible meeting on 2 April 2018 between you and Nicolae Chitoroaga at the headquarters of the PCCOCS, was of the nature of primary information. The Service does not have evidence that would confirm the given facts. Being aware of the diversity of perceptions, we would like to point out that the Service has expressly indicated that some of the information presented is of an exclusively informative nature; the accumulated material will be assessed following a multispectral, complete, and objective research of the information."

Operational analyses of the NAC

The power of the Pre-Vetting Commission to request any information held by state authorities refers to the submission of data already held and does not imply the accumulation and processing of information by the requested authorities. Thus, law enforcement bodies such as the NAC could have informed the Commission about pending criminal trials and cases on candidates. However, the NAC carried out an operational analysis on the candidates on whom the Pre-Vetting Commission asked it confirm whether it had any information, and, as a result, the NAC generated data it did not have before the Commission's request.

Operational analysis is a specific analytical activity of the NAC, considered as a special investigative measure through intelligence gathering.[226] Such measures can only be carried out in the framework of criminal investigation and prosecution. Thus, in order to carry out operational analysis, the NAC must be notified of indications of the possible involvement of the person in the criminal activity falling within the NAC's competence.[227] However, the Commission's request to submit the information held by the NAC on the candidates for the position of member of the SCM or SCP is not an act of notification about a criminal offence, and the NAC management's order to conduct operational analysis by the NAC on these candidates could amount to overstepping its functional duties.

Within the framework of the evaluation carried out by the Pre-Vetting Commission, after one of the operational analyses undertaken by the NAC, a criminal prosecution was initiated against a judge, which did not result in any criminal proceedings in which the judge was found guilty.

This judge, however, did not pass the evaluation, for reasons related to the circumstances that were never corroborated in the following criminal proceedings.

CASE STUDY 30. Candidate Aureliu Postica prosecuted after the operational analysis was carried out by the NAC, at the request of the Pre-Vetting Commission, and the facts were not confirmed

Regarding the candidate Aureliu Postica, the NAC conducted an operational analysis at the request of the Pre-Vetting Commission, on the basis of which, on 9 September 2022, it initiated criminal proceedings for alleged illicit enrichment and false declaration of assets and personal interests. On the first charge, relating to illicit enrichment, the prosecutor's office dismissed the criminal case six months later because the facts were not confirmed, while on the second charge, relating to false declaration, the judge was acquitted almost two years later. According to Judge Postica, the initiation of the criminal proceedings against him was orchestrated by the then interim Chair of the SCM, Dorel Musteața, in order to take revenge on Aureliu Postica for his active participation in the two extraordinary general assemblies of judges held with the aim of dismissing the members of the SCM.[228] To this end, Musteața allegedly used the occasion of the evaluation by exerting influence within the NAC in order to initiate criminal proceedings.

According to the written explanations of the judge, submitted during the survey in the course of the study, in order to justify the initiation of criminal proceedings, a false complaint was registered at the NAC by a person unknown to him. According to the magistrate, the operational analysis at the NAC was carried out with the involvement of the member of the Secretariat of the Pre-Vetting Commission, Iurie Gatcan, seconded from the NAC, where the latter was head of the operational analysis subdivision within the analytical directorate of the NAC. The judge expressed his distrust of all members of the Pre-Vetting Commission.

"Arguments on the legality and correctness of the pre-vetting exercise:

- The criminal case of 9 September 2022, started in the middle of my evaluation procedure, with the synchronization of the actions of the NAC with those of the Pre-Vetting Commission Secretariat, in the person of Iurie Gatcan, a person seconded to the Secretariat from the NAC, in order to facilitate the operational analysis by the NAC of the assets of candidates for the positions of members of the SCM. The criminal case was subsequently based on the false complaint of the person "S.R.".

- Initiation of criminal prosecution as revenge on the part of some former and current members of the SCM for the civic activism in the initiative to free the judiciary from the capture of the system by the notorious nomenclaturalists of the system, headed by Musteata, Micu, and others.

- Synchronization of the NAC-Pre-Vetting Commission actions. [...]

I have serious doubts as to the legitimacy and moral and ethical integrity of the members of the Commission, given that the entire activity is coordinated and controlled by the Secretariat, under the patronage of advisors of at least two NGOs – the LRCM and IPRE – headed by Gribincea, Guzun, and Groza, who, through this instrument, not only select and promote in the structures of justice their own people from their entourage, including sympathizers, but also take revenge on vocal and independent judges, towards whom they show their resentment and hostile attitude, labelling them in their narrow circles as compromised, hybrid, and lacking integrity judges."

226 Law 59/2012 on special investigative activity, Art. 364.
227 Law 1104/2022 on the National Anti-Corruption Centre, Art. 5 para. (1) letter c), Art. 51 letter j).
228 https://anticoruptie.md/ro/dosare-de-coruptie/doc-o-alta-invinuire-anulata-judecatorul-aureliu-postica-scapa-de-acuzatia-de-fals-in-declaratii

Information allegedly falsified with the involvement of the NAC and the Moldovan Presidential Office

In the case of another candidate for SCM member, Alexei Panis, the NAC first carried out an operational analysis of his assets as part of a criminal case, which was initiated on the basis of a referral from the SIS. In the meantime, the SIS collaborator who made the referral became the head of the NAC's criminal investigation subdivision. The complaint concerned the annulment of a presidential decree by a judge, which the author of the complainant described as abusive.[229] During the criminal proceedings, the judge's assets were examined by the analytical subdivision of the NAC, which concluded on the legality of the judge's assets, which was reflected in the prosecutor's order to not initiate criminal proceedings.

The judge, who was to be appointed by the President of the Republic of Moldova to the ceiling age, learned from a letter from the President of the Republic of Moldova that the refusal of his appointment was based on information about his assets that were not in line with his legal income, which was transmitted by the NAC to the Presidency of the Republic of Moldova in a secret letter.

Similarly, the NAC submitted an operational analysis carried out at the request of the Pre-Vetting Commission, which revealed doubts about the assets he had acquired, and which differed from the content of the operational analysis drafted in the criminal investigation, when it was found that there were no discrepancies in the structure of the magistrate's assets. The judge Alexei Panis filed a complaint with the APO on the possible falsification by the NAC of information submitted to the President of the Republic of Moldova in the process of his confirmation to the ceiling age, as well as submitted to the Pre-Vetting Commission, which, in this case, would operate with falsified information about the judge. In February 2024, the APO initiated criminal proceeding for falsification of documents against a judge.

CASE STUDY 31. Presidency of the Republic of Moldova, prosecution on falsifications in the interest of a criminal group carried out against candidate Alexei Panis, concealed by the Pre-Vetting Commission

N4.md, 15 February 2024, APO initiated a criminal case. CNA accused of falsifying documents against a judge[230]

"The APO has opened a criminal case after Judge Alexei Panis filed a complaint with this institution. Thus, the APO is investigating the allegedly illegal actions of the NAC – of committing the crime of forgery of public documents in the interests of an organized criminal group, as well as the illegal performance by the NAC of special investigative measures against the magistrate, requested by the Pre-Vetting Commission and concealed by it.

On 8 November 2022, Moldovan President Maia Sandu refused to appoint judge Alexei Panis to the ceiling age. The President based her refusal on information received from the NAC. Contrary to the reason given in the President's refusal, the NAC presented the magistrate and the SCM with completely opposite information, which made the judge suspect that the information in the NAC's correspondence to the President of the Republic of Moldova had been falsified to prevent his appointment to the ceiling age.

Magistrate Alexei Panis believes that the prosecutors are to establish whether the actions of the NAC officers assigned to the Secretariat of the Pre-Vetting Commission were concerted with those of the NAC management and employees who sent allegedly falsified information to the Moldovan Presidency, so that he is not appointed until he reaches the age limit, and whether other persons, including from the Presidency, were involved in this process."

9.2 Pre-Vetting Commission's double standards in assessing candidates' integrity

In the evaluation process, the Pre-Vetting Commission did not develop a uniform practice of interpreting candidates' situations. The Pre-Vetting Commission gave different assessments to similar situations of candidates. Sometimes, the Commission gave a more favourable assessment to more serious situations of candidates, and vice versa.

In the majority of cases in which the evaluation was passed, the Pre-Vetting Commission did not find any doubts relating to integrity that it found in the case of candidates who did not pass the evaluation. The main differences concerned:

- buying housig space at a preferential price;
- the actual amounts of real estate purchase and alienation transactions;
- the actual amounts of car purchase and alienation transactions;
- estimating expenditures;
- the source of funds;
- failure to file declarations of assets and personal interests;
- omissions in the declarations of assets and personal interests; and
- disciplinary proceedings.

Below, we give examples of each of the situations listed above.

Buying housing space at a preferential price

*In Decision No. 19 of 20 January 2023 regarding the SCM candidate Ion Chirtoaca, the Commission **had doubts**:*

The Commission found that, on 21 June 2017, the candidate applied to benefit from an apartment at a preferential price under a programme to improve living conditions

229 https://www.zdg.md/stiri/stiri-justitie/doc-sis-vine-cu-o-noua-sesizare-in-care-invoca-faptul-ca-magistratul-alexei-panis-care-a-dispus-repunerea-lui-vladislav-clima-in-functia-de-presedinte-al-ca-chisinau-s-ar-afla-in-conflict-de-interes/

230 https://n4.md/procuratura-anticoruptie-a-initiat-un-dosar-penal-cna-acuzat-ca-a-falsificat-acte-in-privinta-unui-judecator/

for judges, implemented by the SCM. The Commission established that, at the time of submission of the application by the candiate, according to the Regulation for the selection of candidate included in the list of employees of the judiciary in need of improvement in their living conditions, the following employees of the judiciary were eligible as applicants: judges of the courts from the municipality of Chisinau, who do not have housing or have insufficient living space within the Chisinau limits. Even though the Commission established that at the time of the application the candidate met the eligibility criteria, the Commission noted that obtaining an apartment at a preferential price in order to improve living conditions, in a situation where the candidat at the time of the application had an apartment with a surface area of 38.4 m², did not meet the expectations from the judiciary, and after the application was submitted by the candidat, the Regulation was amended. As a result of the amendments made, the possibility for judges of the courts of the municipality of Chisinau with insufficient living space to make an application was excluded. The Commission also established that, in 2021, immediately after the applicant was selected as the beneficiary of the apartment of 68.42 m², he sold the apartment of 38.42 m² in order to pay an instalment on the apartment obtained at a preferential price.

*In Decision No.15 of 11 January 2023 regarding the CSM candidate Aliona Miron, the Commission **had no doubts**:*

The Commission established that, in 2018, the candidate obtained from her parents a house with a surface area of 190 m². Likewise, the Commission established that, in 2015, the candidate applied to obtain an apartment at a preferential price through the programme for judges at Riscani Court, which was received by the candidate in 2019. The candidate was also the owner of a 140 m² apartment located in the municipality of Chisinau, which the candidate still owns. Even if, at the time of obtaining the apartment at a preferential price in 2019, the candidate owned by right of ownership on a housing space that did not justify the need to improve living conditions, the Commission did not question this aspect and did not analyse whether the candidate's actions corresponded to the expectations from judges, as it held in Decision No. 19 of 20 January 2023, in the case of Magistrate Chirtoaca.

The actual amounts of real estate purchase and alienation transactions

*In Decision No. 27 of 21 March 2023, regarding the CSM candidate Angela Popil, the Commission **had doubts***:

The Commission found that a candidate bought a property in 2012, with the price indicated in the contract being EUR 55,905, while the actual price paid was EUR 65,000, approximately EUR 10,000 more than the actual price paid. Although the situation in question did not give rise to any tax liability of the candidate for the capital increase, the Commission held to the detriment of the candidate the assistance in avoiding the payment of such an amount by the seller, not having analysed whether the seller was liable to pay such an amount in accordance with the provisions of the tax legislation.

*In Decision No. 42 of 12 June 2023, regarding the CSP candidate Aliona Nesterov, the Commission **had no doubts**:*

Contrary to the approach outlined in Decision No. 27 of 21 March 2023, the Commission found that the candidate entered into a transaction whereby she purchased real estate at the contractual price of EUR 13,441, the actual price being EUR 31,000, but did not hold the candidate responsible for assisting the seller in avoiding the payment of the amount related to the capital increase, on the grounds that the seller was not under the given obligation, as the apartment sold was the seller's main residence. The Commission considered only that it was unethical for the candiate to not include the actual transaction price and that the transaction did not provide the candidate with any financial benefit.

*In Decision No. 3 of 26 October 2022, regarding the SCM candidate Ioana Chironeț, the Commission **had no doubts**:*

The Commission found that a candidate sold real estate (house, land, and accessory building) at a price of EUR 6,000 (MDL 123,409), but for this transaction she received MDL 205,000. The amount was deposited in the candidate's bank account and withdrawn the same day. The candidate kept the amount of MDL 123,409 (the cost of the property) while the difference was returned to the buyer, with the explanation being that she accepted a higher amount than the real one because the new buyers needed a larger loan, which the bank agreed to provide. The Commission held that the bank had financed a larger loan for the buyers and the candidate had no intention to withhold income, although the candidate's action resulted in obtaining a bank loan that most likely could not have been obtained under the same conditions if the actual data had been presented – the transaction amount of MDL 123,409.

*In Decision No. 39 of 9 June 2023, regarding the CSP candidate Yuri Lealin, the Commission **had no doubts**:*

The Commission notes that the candidate purchased an apartment in 2014 at the price of MDL 165,488 (estimated EUR 8,883), which was the cadastral value and not the real value of MDL 503,010 or EUR 27,000. In 2014, the candidate sold this apartment for the price of EUR 27,000, indicating in the contract the amount of MDL 165,488 (estimated EUR 8,883). The Commission did not hold the candidate liable for evading the increase in capital, as the candidate sold the property at the price at which it was purchased, but the Commission avoided analysing the candidate's assistance to the seller in evading the tax liabilities arising from the capital increase or taxes in connection with the seller's alienation of the property in 2014 at a much lower price than the actual price, as analysed in Decision No. 27 of 21 March 2023.

The actual amounts of car purchase and alienation transactions

In Decision No. 21 of 24 January 2023, regarding the SCM candidate Alexei Panis, the Commission ***had doubts****:*

The Commission held to the candidate's detriment the failure to submit a written sale and purchase agreement for the car and the absence of any supporting documents to justify the payment, circumstances which made it impossible to establish the veracity of the sale price of the car and to comply with tax obligations, although the given transaction had taken place in 2017. The Commission ignored the candidate's requests to analyse the information on the price of similar cars on specialized portals, although in Decision No. 4 of 9 December 2022 the Commission justified its doubts as to the real purchase price of the car by referring to the information on the prices of similar cars on the specialized portals www.999.md, www.makler.md, and www.interauto.md.

In Decision No. 40 of 9 June 2023, regarding the SCP candidate Olesea Virlan, the Commission ***had no doubts****:*

The Commission found that, in 2018, the candidate became the owner of a Toyota Aygo model car, with the year of manufacture 2007, which she purchased for MDL 60,000, the price indicated in the sales and purchase agreement being MDL 8,000. The Commission held that it is unethical to include a price that is not real in the sales and purchase agreement, but this violation did not constitute a breach of the criteria of ethical integrity, although the Commission did not analyse the assistance given to the seller in evading tax obligations.

In Decision No. 26 of 13 March 2023, regarding the SCM candidate Alexandru Postica, the Commission ***had no doubts****:*

Analysing the details of the exchange transaction in 2020, in which the candidate obtained the ownership of a car at a price of approximately EUR 9,000 more than the price offered for an exchange, and where this difference was covered by a donation from a friend, the Commission consulted *ex officio the* prices that can be found on specialized portals such as www.999.md in order to establish the veracity of the price claimed by the candidate.

In Decision No. 39 of 9 June 2023, regarding the SCP candidate Yuri Lealin, the Commission ***had no doubts****:*

The Commission found that, in 2018, a candidate purchased a Lexus 400H car model, with the year of manufacture 2008, at a price of MDL 50,000 (estimated at EUR 2,520), for which import duties amounting to MDL 98,689 were paid. When importing the car from Switzerland, the Customs Service established the value of the car at MDL 200,000, excluding customs duties. These circumstances did not raise doubts in the Commission as to the veracity of the transaction price; no specialized portals were consulted and pictures were unequivocally accepted before and after the car had been repaired, the cost of the works being less than EUR 1,000.

In Decision No. 41 of 9 June 2023, regarding the SCP candidate Elena Rosior, the Commission ***had no doubts****:*

In her declaration of assets and personal interests, the candidate indicated a Dacia Logan car model, year of manufacture 2008, purchased by her husband in 2014 at the price of MDL 2,000 (approximately EUR 100) and a Dacia Logan car model, year of manufacture 2005, purchased by her husband in 2007 at the price of MDL 5,000 (approximately EUR 220). The Commission established ex officio that, in April 2023, on the www.999.md platform, the market value of similar cars in 2023 ranged from EUR 2,200 (MDL 44,396) to EUR 4,999 (MDL 100,879). The Commission took into account the candidate's credible and consistent explanations regarding the technical condition of the cars and their purchase conditions. The Commission took into account that the cars in question are not luxury cars.

Estimating expenditures

In Decision No. 21 of 24 January 2023, regarding the SCM candidate Alexei Panis, the Commission ***had doubts****:*

The Commission has doubts about cash expenses in the amount of MDL 300,000, as the non-submission of confirming documents made it impossible for the Commission to verify the veracity of the expenses and the Commission could not establish that the amount of MDL 300,000 was indeed spent in the period January-March 2019. The Commission did not accept the explanations that, in the period 2018-2021, the candidate invested financial means in the construction of the residential house indicated in his declaration of assets and personal interests, and that, in his declaration for the last five years submitted to the Commission, the candidate indicated expenses for the period 2018-2021 totalling MDL 2,200,000 for the construction of the residential house. The candidate has submitted to the Commission all the documents permitting the carrying out of the construction works (authorization for the dismantling of the building/planning certificate for the design/building permit/final acceptance report of the residential house). The Commission has established that keeping financial records is important in order to comply with the legal regime of the declaration of assets and personal interests.

In Decision No. 26 of 13 March 2023, regarding the SCM candidate Alexandru Postica, the Commission ***had no doubts****:*

The Commission determined that most of the construction work on the guest house took place in 2017-2018 and retained the copy of the final acceptance report dated 10 November 2018 as the document demonstrating the status after all the construction work. The Commission took note of the candidate's explanation that, by the end of 2020, the immovable assets – the land plot, the guesthouse of 555.9 m^2, and the auxiliary building of 11 m^2 – could be put into use. The Commission retained as supporting documents: the 2006 sales and purchase agreement for the real estate; a copy of the building permit; and a detailed presentation of the costs of the building materials. The Commission did not discuss the keeping of financial records in relation to the construction

of the 555.9 m^2 building, but unequivocally accepted the detailed presentation of the costs of construction materials.

The source of funds

In Decision No. 19 of 20 January 2023, regarding the SCM candidate Ion Chirtoaca, the Commission ***had doubts****:*

The Commission noted that between 2009 and 2015, according to the bank statements, the candidate's parents paid EUR 107,810 into his bank account. The Commission noted that, during the evaluation process, the candidate submitted supporting documents issued by the authorities of one of the European countries attesting the taxable income received by his parents. Documents were submitted for the mother's income since 2009, but no documents were submitted for the father's income in the period 2009-2013, when the candidate's father was also abroad and allegedly working unofficially. Although the Commission noted that the documents showed that the candidate's parents had worked abroad and that in the period 2009-2021 they had an official income of EUR 243,000, the Commission established that there were no supporting documents on the source of income for the bank transfers made in 2012-2014, and that the amount of the transfers exceeded the amount of the parents' income in that period by 10,553 euro. The Commission also indicated that the candidate's parents would have had to bear substantial living and maintenance expenses.

In Decision No. 39 of 9 June 2023, regarding the SCP candidate Yuri Lealin, the Commission ***had no doubts****:*

In 2013 and 2016, the candidate received donations from his mother, estimated at MDL 200,000, and from his parents-in-laws, estimated at MDL 400,000. The Commission established that in 2007-2016 the income and pension of the candidate's mother amounted to MDL 549,026. As regards the candidate's parents-in-laws, who live in the Transnistrian region, the candidate submitted documents proving only that his mother-in-law worked in the Transnistrian region in the years 1986-2018 and that his father-in-law had started working officially in the Russian Federation in 1996. The candidate also submitted documents proving that his father-in-law had transferred the amount of MDL 382,557 between 2008 and 2014. The Commission unequivocally accepted the candidate's explanations and did not analyse in detail the income of the candidate's mother and in-laws during the period in which the donations were made, nor the fact that the latter would have had to bear substantial living and maintenance expenses.

In Decision No. 41 of 9 June 2023, regarding the SCP candidate Elena Rosior, the Commission ***had no doubts****:*

In the period 2009-2016, the candidate indicated in her declarations of assets and personal interests financial means on the candidate's accounts amounting to approximately EUR 34,500 (USD 10,000, MDL 300,000, and EUR 12,000). The candidate explained that the source of funds for those deposits was money earned by her husband in Greece, in the period before the marriage, where he worked throughout 1997-1999 and 2001-2003. The candidate claimed that in the period of1997-1999, her husband had been working unofficially. The candidate submitted to the Commission two certificates signed by a person in Greece on 24 November 2022, who is her husband's former employer, certifying that her husband worked at the construction company of the person in question, even during the period when he was working unofficially. The candidate did not submit any official documents. The Commission concluded that the doubts were mitigated by the candidate.

Failure to file declarations of assets and personal interests

In Decision No. 47 of 31 July 2023, regarding the CSM candidate Ana Tipa, the Commission ***had doubts****:*

The Commission found that for the years 2014-2016, the period during which the candidate was on maternity leave and childcare leave, the candidate did not submit her declarations of assets and personal interests, although she was obliged to submit them within 30 days of her return from childcare leave. After her return to her post as court clerk, the candidate submitted the declaration of assets and personal interests for the year 2017, but the Commission found serious doubts as to her financial and ethical integrity with reference to the failure to submit the declarations of assets and personal interests for the period of her leave of absence in 2014-2016.

In Decision No. 38 of 8 June 2023, regarding the SCP candidate Mariana Cherpec, the Commission ***had no doubts****:*

The candidate admitted that she did not submit her declarations of assets and personal interests for the years 2010 and 2011, when she was prosecutor. The Commission noted that it was clear from Order of the PG No. 303/35 of 27 December 2007 that the candidate was required to submit annual declarations before 2012, before the issuance of the Order of the PG of 19 March 2012. While the Commission admitted that the failure to submit two annual declarations constitutes a breach of the legal regime of the declaration of personal assets and interests and therefore affects the ethical and financial integrity of the candidate, the Commission concluded that this breach does not reach the level of seriousness required to amount to the candidate's failure to comply with the criteria of ethical and financial integrity.

Omissions in declarations of assets and personal interests

In Decision No.19 of 20 January 2023, regarding the SCM candidate Ion Chirtoaca, the Commission ***had doubts****:*

The Commission noted that, in the period 2012-2015, the candidate did not declare a bank account in euro, which the candidate started to declare from the moment he became a judge. The Commission noted that, in 2016, the candidate started to declare all bank accounts, including this account, but the Commission did not accept the candidate's explanations that he had familiarized himself with

the legal provisions on the declaration of personal assets and interests upon becoming a judge and only then understood his earlier failure to declare that account.

In Decision No. 11 of 5 January 2023, regarding the SCM candidate Vasile Șchiopu, the Commission ***had no doubts****:*

The Commission found that a bank account was used for the receipt and repayment of a loan of USD 16,000, which was used between 2013 and 2016, and which was not declared by the candidate, a judge, in his declarations of assets and personal interests for the years 2013, 2014, and 2015. The Commission found that there were no suspicious transactions on this account, that the non-declaration was an omission, and that no benefit was found as a result of the non-declaration of the account.

In Decision No. 25 of 10 March 2023, regarding the CSM candidate Ion Guzun, the Commission ***had no doubts****:*

The candidate did not indicate in his declaration for 2019 the amount of MDL 90,531 received as dividends. The Commission considered the candidate's omission as an unintentional error. Moreover, the candidate did not indicate in his declaration of assets and personal interests eight bank accounts held by him and his wife. The Commission established that a bank account in his wife's name should have been declared in the declaration of assets and personal interests for 2021. The Commission established that the income deposited in three bank accounts amounted to MDL 827,143. The Commission noted that the declaration of the bank accounts took place in a single year and the Commission did not find any intention to conceal those accounts. The Commission appreciated the direct admission of the omissions by the candidate.

Disciplinary procedures

In Decision No. 21 of 24 January 2023, regarding the SCM candidate Alexei Panis, the Commission ***had doubts****:*

The Commission found that the candidate's statement to a news portal on the criminal allegations made against the candidate and launched in the public space by a representative of a public authority constituted a broad attack on the author of these allegations and that the scope, tone, and basis of the remarks evoked by the candidate about individuals were ethically problematic. The Commission also noted that the candidate's remarks about the usurpation of power by a judge conflicted with the provisions of the Code of Ethics and Professional Conduct for Judges. The Commission also noted that, by the Disciplinary Board's decision, the candidate was sanctioned with a warning for this conduct, and the findings made by the Disciplinary Board reinforce the Commission's serious doubts, even though the appeal against the Disciplinary Board's decision was pending.

In Decision No. 38 of 8 June 2023, regarding the SCP candidate Mariana Cherpec, the Commission ***had no doubts****:*

Between 2014 and 2016, while working at the Prosecutor's Office of the Centre district, Chisinau municipality, three disciplinary proceedings were initiated against the candidate, which resulted in sanctions in the form of a warning and two reprimands. The disciplinary proceedings concerned allegations related to the failure to properly fulfil the service duties. The candidate admitted before the Commission that, in the cases covered by the disciplinary proceedings, there were some delays in some cases and that sometimes deadlines were not respected, but she explained that those disciplinary proceedings were the result of a difficult relationship between the candidate and the Chief Prosecutor of the Prosecutor's Office of the Centre District, Chisinau municipality. The candidate admitted that she did not appeal the decisions of the Disciplinary College, which were confirmed by the SCP. The Commission established that, after 2016, the candidate was not targeted in any other disciplinary proceedings under a different management, and the Commission concluded that the doubts were mitigated by the candidate. The three disciplinary proceedings and three disciplinary sanctions did not fortify the Commission's doubts about the candidate's ethics and integrity.

9.3 Exceeding the limits for the re-evaluation of candidates by the Pre-Vetting Commission

As mentioned above, Law 26/2022 was amended so that the SCJ does not have the final say in the positive evaluation of candidates for the position of member of the SCM and SCP, but can only order their re-evaluation by the Commission. In April 2023, the CC ruled that even if the special panel of the SCJ cannot compel the Pre-Vetting Commission to positively evaluate the candidate, the arguments and conclusions made by this court in the case of the resolution of the appeals remain binding for the Commission,[231] the binding nature of final court decisions being also regulated by Article 120 of the Constitution. After sending most of the cases of candidates negatively evaluated by the Commission for re-evaluation, one of the members of the Pre-Vetting Commission resigned, implying that the Commission's intentions in the re-evaluation would not to comply with the CC's decision and the SCJ's assessments of the initial evaluations of the candidates, while the resigning member did not agree to willingly violate Article 120 of the Constitution.[232]

The predictions came true as, in the majority of cases, the Pre-Vetting Committee re-examined exactly the same issues

231 Para. 143, Decision of 6 April 2023 of the CC of the inadmissibility of the petitions numbers 75g/2023, 76g/2023, 77g/2023, 86g/2023, 87g/2023, 88g/2023, 89g/2023, 90g/2023, 96g/2023, 101g/2023, and 102g/2023 on exceptions of unconstitutionality of some provisions of Law 26/2022 on Pre-Vetting, see here: https: https://www.constcourt.md/public/ccdoc/decizii/d_42_2023_75g_2023_rou.pdf

232 See Section 4.10 of this study and Case Study 11.

to which the SCJ had given clear and definitive judgments, which showed that they could not lead to the candidates' non-passing of the evaluation. During the re-evaluation, the candidates drew the Pre-Vetting Commission's attention to the obligation to respect the Constitution, the rulings of the CC, and the assessments made by the SCJ in their cases, explaining that the Commission's actions clearly exceeded the limits of its powers. This was all the more true as the practice developed by the Pre-Vetting Commission was far from uniform, as shown in the previous section; some similar or apparently more serious violations by some candidates were considered as not being an obstacle to passing the evaluation, while other minor violations were seen as incompatible with passing it. With only one exception, the Pre-Vetting Commission maintained the solutions given in the initial evaluations, thus operating in a manner contrary to Article 120 of the Constitution, the decision of the CC, and the rulings of the SCJ, as well as its own practice of passing other candidates.

It is also curious that some judges temporarily delegated/transferred to the SCJ from the lower courts by the SCM, composed of members who had passed the pre-vetting procedure, had separate opinions, disagreeing with the solution of sending the Commission's decisions for re-evaluation. The judges thus transferred, in some cases, based their opinions on unconstitutional provisions of Law 26/2022, which limited the possibilities for a judicial review of the Commission's decisions.[233] It should be recalled that all of the candidates interviewed for this study considered to be unconstitutional and, contrary to Article 6 of the ECHR (the right to a legally established court), to supplement the number of SCJ judges with judges temporarily transferred from the lower courts, who participate in the proceedings of the examination of appeals against the decisions of the Pre-Vetting Commission.

CASE STUDY 32. Candidate Cristina Gladcov on the limited role of the Pre-Vetting Commission in the re-evaluation

Online hearing in the re-evaluation of Cristina Gladcov on 4 November 2023[234]

Minute 35:00-39:00: *"Although the Commission is somehow a newly formed body, the Commission's activity is somehow new for everyone, new levers, but compliance with the provisions of the law of the Republic of Moldova is mandatory. It is more importan1t, therefore, to respect* ***a decision of the CC in compliance with Article 120 of the Constitution of the Republic of Moldova. More important is that the CC's decision, which vehemently obliged the Commission to accept those conclusions [of the SCJ], is also binding. I would like to reiterate that the opinion of the Venice Commission was also recently set out on this issue, and it is binding for the State of the Republic of Moldova, that the decisions of the SCJ are binding****. Moreover, I would like to reiterate the practice, if we speak about the re-evaluation practice which the Commission has exposed, the evaluation practice [...] so the practice that the Pre-Vetting Commission itself initiated and here are a number of decisions to pass candidates, whereby fiscal violations are not [...], were considered as non-essential. And in my case, there are violations which, in relation with the seriousness of the violation that the Commission considers as reasonable doubt of non-payment of EUR 10-20 tax, in relation with Decision No. 38, the obligation of the person to submit a declaration, the person did not submit it and you considered it was not a violation. In the case of violation of the legal regime of declaration of assets and personal interests – you considered that it does not reach the degree of severity for the person not to be admitted. In some cases, income from three sources was not declared (it is another decision to evaluate positively the candidate). And there is another situation, even more interesting and even more complicated, where EUR 12,000 of income has not been declared, seven plots of land have not been declared, and you consider that the situation corresponds to the degree of complexity of evaluating positively the candidate. So, in this case, for the tax of EUR 20-30 [...] you consider that it is a serious financial and ethical violation.* ***I'm asking that the irrevocable decision of the Supreme Court and the practice of uniform application in all cases, and not disproportionate to a candidate, be respected. That is all."***

Minute 01:45-01:48 *"Taking into consideration the practice of the Commission, taking into consideration the obligation to apply a final and irrevocable decision and all the findings on all the issues;* ***taking into consideration that other issues have not been found, addressed, established; taking into consideration that although in the court only copies were submitted and as a result of a request to compel, several more volumes were submitted – if I am not mistaken, two –, which confirm my ethical and financial integrity*** *[...]. Although the ruling of the SCJ also* ***had a separate opinion by a judge delegated to participate****, I again want to sensitize in particular the international members of the Pre-Vetting Commission, that the* ***dissenting opinion was issued on 1 August 2023, whereby the judge based his opinion on the provisions of the law, namely, "Respectively, I conclude, that from the arguments of the candidate made in the appeal, it is not found that there are circumstances that could lead to not passing the evaluation before the Commission and that would justify the resumption of the proceedings." I would like to mention that its Decision No. 5 of 14 February 2023, which is binding for all and which has priority, which in paragraph 2 included the wording "if it finds the existence of circumstances that could have led to the candidate's passing the evaluation", is declared unconstitutional. Respectively, the dissenting opinion in question itself contains a provision deemed unconstitutional since February 2023. So, just to set the timeline, first in February 2023 it is declared unconstitutional and on 1 August the dissenting opinion is issued that relies on it. An unconstitutional provision cannot be enforced and is deemed inexistent."***

9.4 Non-signing of the Pre-Vetting Commission decisions

During the hearings and the examination of the appeals against the decisions of the Pre-Vetting Commission on some candidates not to pass the evaluation, it became known that the Commission's decisions were presented to the candidates unsigned or signed in a manner not admitted by the legislation of the Republic of Moldova. From the point of view of the Law, the validity of the legal act is conditional on its signature with the original handwritten signature or with the electronic signature of the chair of the collegial body or by the person authorized by him/her; otherwise, the act is not considered signed and does not produce legal effects.

Law 26/2022 and the Commission Regulation do not provide details on the formalities for signing decisions, and in the absence of special rules for signing Commission decisions, the rigours of the Administrative Code apply.[235]

233 See Section 5.7 of this study.

234 https://www.youtube.com/watch?v=1Kx0hKeeiNw

235 Administrative Code, Article 121, stipulates: «*Article 121. Signing. (1) Individual administrative acts shall be signed by the head of the public authority or by*

The decisions not to pass the candidates in the re-evaluation carried out by the Pre-Vetting Commission were appealed to the SCJ. In contrast to the composition of the special panels of the SCJ that examined the initial evaluation decisions of the candidates, all the judges of the special panel of the SCJ that examined the appeals of the candidates after the re-evaluation of the Commission were judges temporarily transferred from the lower courts (courts of first instance).

This panel held that the signature on the decisions of the Pre-Vetting Commission is not an end in itself; and that the provisions of the Administrative Code relating to the signing of the administrative act are not applicable, as they would be contrary to the "spirit" of Law 26/2022. However, the Administrative Code does not contradict the provisions of Law 26/2022 or the Commission Regulation. The special panel of the SCJ also explained a paradoxical fact: in the hierarchy of the sources of law with which the Commission operates, the Regulation approved by the Commission by internal administrative act has a higher legal value than the provisions of the Administrative Code. Following this strange legal analysis, the judges from the special panel of the SCJ, temporarily transferred to the latter, explained to the candidates that the Commission is entitled to sign its decisions even *"by placing a signature in the form of a cross."*

CASE STUDY 33. SCJ, explaining to candidates that the Pre-Vetting Commission can sign its decisions even with the sign of the cross

Case No. 3-31/23, candidate Vitalie Codreanu, Decision of 8 February 2024, Special Panel of the SCJ, set up to examine the appeals against the decisions of the Independent Commission for the evaluation of the integrity of candidates for the position of member of the self-administrative bodies of judges and prosecutors, composed of: Chair of the sitting, Judge Ion Malanciuc, and Judges Oxana Parfeni and Aliona Donos

"The signature on a document is not an end in itself. The signature is normally necessary to certify that the document originates from the person/authority named in its contents, just as it is normally necessary to verify that the author of the document has the authority to draw up the document. The question of signature forgery arises where there is doubt that the document is signed by a person other than the person named as its author.

With regards to the case before the Court, the special panel of the SCJ reveals once again that the provisions of the Administrative Code apply insofar as they do not contravene the spirit of Law No. 26/2022. The activity of the Independent Evaluation Commission is fully regulated by the Regulation of Organization and Functioning of the Independent Commission for the Integrity Evaluation of Candidates for the Position of Member of the Self-Administrative Bodies of Judges and Prosecutors, in accordance with Law No. 26/2022, including the manner of adopting and signing some decisions. It is obvious that Art. 121 of the Administrative Code in this regard is inapplicable, and the provisions of the above-mentioned Regulation do not provide for any form requirement for the signature on the decision, as well as possible consequences in case of failure to comply with that form that is not provided for.

Taking into account the specifics of the way in which the Commission works, including the fact that the meetings can be organized online, without members being present in the country, they are entirely free to decide how the act representing the materialized result of their will is to be signed: be it by handwritten signature, electronic signature, facsimile signature, electronic message expressing that the act is signed, or a signature in the form of a cross, etc."

9.5 Humiliation and degrading treatment of candidates and their family members by the Pre-Vetting Commission

The procedure of the evaluation the candidates before the Pre-Vetting Commission sometimes involved public humiliation of candidates and their relatives, which displeased not only the candidates but also the public.

Of all the candidates who did not pass the evaluation and responded to the questionnaires, 73 per cent felt humiliated, offended, and demeaned, while 80 per cent said they felt discriminated against, harassed, and maltreated.[236]

Some candidates were put in the position of having to prove to the Commission that they were able to support themselves financially, even though the Commission found that they had a humble and modest lifestyle.

CASE STUDY 34. Candidate Marina Rusu, mother of six children, forced to prove that she can support herself on state payments

The candidate for the position of member of the SCM, Marina Rusu, a judge, who is now a mother of seven children (pregnant mother of six at the time of evaluation), did not pass the evaluation, including for the reason that the Commission did not consider that her salary as a judge was sufficient to support her children. The SCJ found that this candidate was put in the embarrassing situation of having to prove that her salary and social payments from the state were sufficient for sustenance, since she did not have any expenses other than the bare necessities.

Case No. 3-18/23, candidate Marina Russu, Decision of 29 January 2024, special panel of the SCJ, set up to examine the appeals against the decisions of the Independent Commission for the evaluation of the integrity of candidates for the position of members of the self-administration bodies of judges and prosecutors, composed of: Chairman of the Sitting, Judge Ion Malanciuc, and Judges Oxana Parfeni and Aliona Donos [237]

"An independent judiciary does not exist without an independent judge. A judge is independent only if all three elements of independence are assured: institutional, functional, and financial.

The financial independence of a judge implies that the state, through its salary policy, ensures a decent living, that he/she (the judge) has access to all the ba-

the person authorized by him/her, unless otherwise provided by law, with a hand-written signature or an electronic signature. (2) In the case of collegial bodies, the person competent to sign the individual administrative act shall be the president of the collegial body or, as the case may be, the person designated in accordance with the rules of organization and functioning of the collegial body. (3) The refusal of a competent person to sign the individual administrative act validly issued by a collegial body may be covered by the signing of the act by persons established by law or designated by the collegial governing body itself and shall entail the liability of the guilty persons. (4) An unsigned individual administrative act is void."

236 See Section 7.6 of the study for more details.

237 https://jurisprudenta.csj.md/search_col_civil.php?id=73513

sic comforts of life: food, clothing, a place to live, however modest, a means of transportation, even if not a luxury one, the possibility to rest, however modest, etc. The concept of the "financial independence of a judge" is worth much more than the "subsistence minimum".

The position of the Independent Evaluation Commission that the State of the Republic of Moldova, through its salary policy, is not able to provide a judge, even if he/she is on childcare leave, with a "subsistence minimum", not to mention a decent living, is equal to a finding that the Republic of Moldova is a bankrupt state. Clearly, the special panel cannot accept this approach and, in its view, it is completely unfair to require a judge to justify that the payments provided by the State are sufficient to ensure a "subsistence minimum". It is common sense to accept as a matter of principle that the payments provided by the State to the judge are sufficient to ensure at least a "subsistence minimum", without requiring that the judge prove anything else.

The special panel accepts that, when, in addition to what is absolutely necessary for life (food, clothing, etc.), a judge also acquires other utilities (goods, services), it is justified to take into account that "subsistence minimum" in the presumptive calculation of expenses, according to the formula: '"subsistence minimum" + utilities, in order to be able to verify whether the payments from the State justify the judge's expenses. However, in a situation where there is no evidence that the judge had any expenses other than the bare necessities, and in the case of Marina Rusu the contrary has not been established, in the opinion of the special panel it is unfair to subject the judge to the absolutely ungracious state of trying to prove that her way of life allows her to provide for herself from the payments provided by the State.

In the light of the above, the special panel notes that Marina Rusu, although she was in a rather embarrassing situation, tried to justify her income during the period when she was on childcare leave. She even referred to the childcare allowance, and to the salary her husband received during the reference period, which, although quite modest, was in any case a surplus to the social security payments granted by the State."

The procedure for evaluating the candidates before the Pre-Vetting Commission sometimes involved public humiliation of their relatives.

CASE STUDY 35. Parents of the candidate Ion Chirtoaca, unofficial work abroad of the parents to support their son during his studies considered a serious doubt concerning the lack of integrity of the son

In conditions of widespread poverty in the Republic of Moldova, the vast majority of citizens are helped to survive by relatives who work abroad. Judge Ion Chirtoaca, a candidate for the position of member of the SCM, failed the evaluation because he was assisted by his parents, who have been working abroad for many years and for a number of years worked outside of formalized employment relationships. The candidate is the only child and his parents went to Italy to support him as a minor and later as a student. Having no other way to prove that his parents worked for the money on which he was helped to survive, the candidate requested a hearing of his parents by the Pre-Vetting Commission. The candidate was visibly emotional when asked to question the parents in front of the Commission, barely holding back tears, apologizing that he never expected that he would ever have to question his own parents. When the Commission members questioned the candidate's parents, the candidate looked visibly ashamed and humiliated that his parents had to answer questions about the money they had earned in Italy, transferred to their only son to help sustain himself.

Public hearing of parents of the CSM candidate Ion Chirtoaca, 14 March 2024[238]

The Chair of the Pre-Vetting Commission, Herman von Hebel, asked the candidate's mother a question about the persons, Moldovan and Italian citizens, who had made statements before an Italian notary about the work done by the candidate's mother and father in Italy when they worked outside an official employment contract. The question was about how the candidate's mother met the persons who made those statements, which were previously submitted to the Commission and which the Commission did not find convincing.

Minute 01:46-01:51: *"We used to go to the park when we were free. There was a lot of longing there. You missed your language, the language you speak. And there were a lot of carers there. When we were free, we would meet and talk to each other. And we got to know each other. We were from Romania and Moldova. I wanted to speak mostly in my own language. I really missed that. When I was in the country, I worked at school, I spoke six hours a day, but in Italy I felt my vocal cords closing up. I spoke, I communicated very little in Italy. The old lady I was working with could understand almost nothing. She was sick. So much so that I had to work with her, she couldn't be left alone for long. For a while it was possible, but then my husband would come and there were other people, and she couldn't be left alone at all. In their houses you can't solve the problem the way you want. In their houses we put our heads down. We were grateful to the Italian people. Thanks to them we changed our material life. They understood me quite well, even with this pre-vetting situation. They gave me information and even recognized me in front of the notary. They fear the law too. And you can't, you understand; the person got you out of need, took you into his home, and then you go and report on him. That's not humane. The law was made on the basis of humanity. We have to recognize these things. Something's coming from inside, that you shouldn't do wrong. Evil is done at any moment. But we have to keep on doing good. When we are wrong – we are wrong, when we are not wrong – we are not wrong. We have to admit it in front of God. [...]*

Each one of us there told our story: this is what we left at home; this is our relationship with our family, our husband, our children. There were women crying. They sent money to the children and with money they did nothing, they did other things. I was happy when I came home after three years and eight months. When I left for Italy, he [my son] was in the first year of his studies at the Police Academy and when I came and saw that he was studying and doing well, I was happy. All we wanted was to bring up our children properly. We thought about it and we had... it gave me a lot of satisfaction, and that satisfaction gave me the strength to work harder and I saw that I was not working for nothing. There is also when you work and there are no results – you get discouraged and you can't work. But I was encouraged by my son, I was working as I could see it was worthwhile."

Unimedia.md, 15 March 2024, "This is unacceptable!" The Voice of Justice Association, worried after the hearing of the parents of Ion Chirtoaca: "A dangerous precedent for the future of justice"[239]

"The Association of Judges 'Voice of Justice' expresses its "deep concern about the abuses found during the evaluation procedure of candidates for the SCM". "In particular, we refer to the recent hearing by the Pre-Vetting Commission of the parents of magistrate Ion Chirtoaca, regarding the source of their income for a period of more than 20 years ago, during the magistrate's studies," reads a statement made public.

"We believe that this type of investigation, which extends over such a long period of time and involves family members of a candidate, is ethically and legally unacceptable. In a democratic and human rights-respecting society, judges and candidates for high positions in the judiciary should be evaluated on the basis of their professional merits, integrity, and competence, not on the basis of the actions or alleged actions of their relatives.

These practices only undermine the independence and integrity of the judiciary and set a dangerous precedent for the future of justice in our country. We call on the competent authorities to respect the principles of the rule of law and to ensure that the evaluation process of candidates is fair, transparent, and equitable."

238 https://www.youtube.com/watch?v=ZaYwpDcrg5k

239 https://unimedia.info/ro/news/63dc89e9dbdd6ba5/este-inacceptabil-asociatia-vocea-justitiei-ingrijorata-dupa-audierea-parintilor-lui-ion-chirtoaca-un-precedent-periculos-pentru-viitorul-justitiei.html?utm_source=Site%20Widgets&utm_medium=Trend%20News%20Widget&utm_campaign=Trend%20News%20Widget

The Commission did not retain the statements of persons confirming the extra-contractual activity of the parents of magistrate Ion Chirtoaca even after the hearing of the candidate's parents, maintaining the solution of non-passing the evaluation by the candidate in the reopened procedure.

A candidate was asked to talk about the income of her son, who had passed away shortly before the start of the evaluation, which caused the candidate to provide explanation while crying in front of the Commission. The candidate did not mention why the questions about her son made her cry.

CASE STUDY 36. Candidate Veronica Cupcea, answers given through tears when asked by the Pre-Vetting Commission about the son who died shortly before the start of the evaluation

The son of SCM candidate Judge Veronica Cupcea was working in the USA. He periodically returned to his parents' home in Moldova and deposited part of his savings accumulated in the USA in his room in his parents' house. The candidate claimed that her son came home each time with a sum of money, which did not exceed the limit of USD 10,000 that is declared upon entry into the country. The candidate, together with her husband, had taken a loan of MDL 265,000 from the bank, which they paid off early, with the help of their son, who allowed them to take the equivalent of MDL 150,000 from his savings that he kept in his parents' house. The candiate's son tragically died in the USA shortly before the pre-vetting procedure began. This detail, known to the members of the Commission, was not exposed at the candidate's public hearing, her reaction of bursting into tears when her son's help was mentioned remaining not understood by the public.

Unimedia.md, 19 March 2024, '(video) Judge Cupcea, in tears at the hearings of the Pre-Vetting Commission: the question that made her cry'[240]

"Magistrate Cupcea Veronica from the Orhei Court, a candidate for the position of member of the SCM, burst into tears at the repeated hearings by the Pre-Vetting Commission, which took place three days ago. The question to which the judge could not keep her emotions was about a donation of MDL 150,000 by her son.

The repeated evaluation took place after the SCJ, on 1 August 2023, upheld the magistrate's appeal.

The judge was asked several questions, based on the suspicions of the Commission members, and she had to come up with arguments and explanations.

"The amount of the contributions from your son to repay the loan was MDL 150,000, out of the MDL 265,000 paid in the period from September to October 2020. During the initial evaluation, you only mentioned that you received MDL 150,000 in 2020 from your son. Correct? Was that so?" she was asked.

"We didn't. We took it ourselves when we needed it. He kept his money with us all the time and allowed us to take it when we needed it," the magistrate replied, bursting into tears.

"The husband was responsible for the loans, I had no idea what bank it was and what the amounts were; I was a guarantor, but he took care of it. When I asked him about these three large instalments, how to explain them, he told me that he got them from our son and it was not a problem. The son told us: 'Take when you need, I know that when I need it, you will give it to me'," Cupcea added.

Public hearing of the CSM candidate Veronica Cupcea, 14 March 2024[241]

Minute 53: answer to the question of the member of the Pre-Vetting Commission, Tatiana Raducan, about the reason why the candidate did not provide the same clarifications, during the initial evaluation, about the MDL 150,000 received from her son, as during the resumed evaluation: *"Being in the state I am in... Excuse me... And then it was even closer to..."* (the candidate speaks with difficulty, is distraught, crying, implying the event of the tragic death of her son, but unable to speak of it).

9.6 The Pre-Vetting Commission's dependence on the political factor

Throughout the work of the Pre-Vetting Commission, there were many suspicions of political involvement in its work. Statements by members of the Pre-Vetting Commission and the actions of its Secretariat have reinforced suspicions of political interference and dependence of the Commission. For example, the Chair of the Pre-Vetting Commission, Herman von Hebel, gave an interview to the Dutch press in which he praised the ruling party and the President of the country for the justice reform. This interview served as the basis for several appeals of Herman von Hebel by candidates.

CASE STUDY 37. Chair of the Pre-Vetting Commission, Herman von Hebel, support for the ruling party and the country's President expressed in interviews for the Dutch press

PulsMedia.md, 26 June 2024, Von Hebel to the Dutch press: "I am recognized on the streets of Chisinau. The Dutch promote the rule of law. Moldova is still far from being ready for the European Union."[242]

"Magistrate Marina Rusu published yesterday on social networks an interview with Herman von Hebel, Chair of the Pre-Vetting Commission, with journalist Ria Cats for the fd.nl *portal, published on 8 November2023. [...]*

The Dutch judge Herman von Hebel claims he is already recognized on the streets of the Moldovan capital Chisinau. The hearing sessions, in which he and other members of the Pre-Vetting Commission subjected dozens of Moldovan judges to intense questioning, are posted on YouTube. Citizens who have watched them sometimes stop von Hebel and encourage him. "Bravo, keep it up," they tell him. "We need this. Finally, something is changing in Moldova."

The Secretariat of the Pre-Vetting Commission is extremely proud. Its employees accumulate bank statements and other documents on the assets of Moldovan judges so that the Commission can assess possible integrity issues. "Thirty years from now, I will be able to tell my children that I contributed to this," say our employees.

Not everyone shares this view, admits von Hebel in a video conversation from Chisinau. "There is opposition. The fight is fierce. There are very upright judges here, but there are also individuals who put their own interests before fighting crime and the quality of justice. Fortunately, President Maia Sandu and the Ministry of Justice are highly motivated to continue strengthening the rule of law."

240 https://unimedia.info/ro/news/b72523276fe91940/video-judecatoarea-cupcea-in-lacrimi-la-audierile-comisiei-pre-vetting-intrebarea-care-a-facut-o-sa-planga.html

241 https://www.youtube.com/watch?v=Ow4JA0if6-k&t=3207s

242 https://pulsmedia.md/article/74904f67c8c50b36/von-hebel-pentru-presa-olandeza-sunt-recunoscut-pe-strazile-chisinaului-olandezii-promoveaza-statul-de-drept-moldova-este-inca-departe-de-a-fi-pregatita-pentru-ue.html

The article also says that Maia Sandu's pro-western and reformist Government must do so. The country is eager to become a member of the European Union. It will only succeed in doing so if the judiciary and the prosecutor's office are independent and as 'clean' as possible. "Moldova has a long way to go in this area, just like other candidate countries," von Hebel believes."

The evaluation of some candidates started with accessing their personal data from the premises of public political institutions such as the Parliament of the Republic of Moldova and the Ministry of Justice, although both the Pre-Vetting Commission and the Secretariat must be independent from the public authorities and politicians of the Republic of Moldova.

CASE STUDY 38. Employees of the Parliament and the Ministry of Justice accessing candidates' personal data during the evaluation

Unimedia.md, 18 April 2024, (video) Panis: Olesea Stamate's advisor accessed my personal data. This pre-vetting will go down in history with the Iulian Muntean case and the hearing of Ion Chirtoaca's parents[243]

"Judge Alexei Panis reiterated during his repeated evaluation before the Pre-Vetting Commission that he has official information that his personal data were accessed by the advisor of the former Chair of the Parliamentary Legal Committee, Olesea Stamate. The Regulation adopted by the Committee provides for the possibility of submitting requests for recusal in respect of members of the Secretariat and I do not know who those members are. If I did, my personal data would not be allowed to be accessed from Parliament's Secretariat," Paniș stressed. Nadeja Hriptievschi, a member of the Pre-Vetting Commission, denies that anyone from the Parliament's representatives accessed the judge's data for the purpose of the Commission. [...]

Thanks to a TV investigation, I found out who the members of the Secretariat of the Vetting Commission are and who the person is that directly accessed my personal data in the Moldovan Parliament. She was an advisor to the former Chair of the Legal Affairs Committee, Olesea Stamate, a person who directly worked [. . .]", said Alexei Panis.

The judge was, however, interrupted by Pre-Vetting Commission member Nadejda Hriptievschi: "Mr Panis, please refer exclusively to the doubts and I would like to remind you that the decision is exclusively the decision of the Commission, not of the Secretariat. You are also a sitting judge, i.e. if you can observe ethics without offending other people".

"If you consider that my actions are not in line with judicial ethics, you can lodge a complaint with the SCM. The Regulation adopted by the Commission provides for the possibility of submitting a request for recusal for members of the Secretariat and I do not know who those members are. If I did, my personal data would not be allowed to be accessed from Parliament's Secretariat", Panis concluded.

"Mr Panis, I am sorry that you continue to operate with this information; you have received a reply from the Commission – it also made a statement, the data of the candidates evaluated by the Pre-Vetting Commission were accessed by the staff, the Secretariat of the Commission, not by the Parliament's Secretariat. This was a mistake, a technical error in the way it was displayed, so for clarity, this information is completely erroneous," said Nadejda Hriptievschi.

"I have a bailiff's report confirming this," Paniș replied.

"And you also have the official answer, which explains the given situation: they were not accessed by the Parliament's Secretariat for the Pre-Vetting Commission. If they were accessed in another context, it is something else," Hriptievschi replied.

"After dozens of emails in which I tried to find out who was part of that Secretariat and failed, it was only after the appearance of a TV report that I understood where the guidelines in this process came from. Regardless of the image, rank, or reputation of the politicians or ambassadors who will praise the success of this evaluation, this pre-vetting process will forever be characterized by two symbols: the Iulian Muntean case, which shows a perfect symbiosis between politicians, NGOs, and special services, and the case of the hearing of the parents of judge Ion Chirtoaca," Alexei Panis concluded."

Questionnaires for candidates who failed the pre-vetting

When surveying candidates who did not pass the evaluation, candidate Aurel Postica admitted that his personal data had been accessed from the Ministry of Justice building.[244]

The political dependence of the Pre-Vetting Commission was also captured in the statements of high-ranking politicians of the Republic of Moldova, anticipating and promising solutions on behalf of the extraordinary justice evaluation bodies (details in Section 9.5 below). For these statements, the Organization of European Magistrates for Democracy and Freedoms (MEDEL) issued a communiqué warning against political attacks on justice carried out through the external evaluation.

CASE STUDY 39. MEDEL on political attacks on the judiciary and threats to purge judges by external evaluation

Ajm.md, 5 June 2024, MEDEL statement on the attacks on the judiciary in Moldova[245]

"The Association of Judges of the Republic of Moldova informs the public opinion about the MEDEL statement:

MEDEL wishes to express its serious concern over the reported developments in Moldova, concerning attacks on individual judges, who have been publicly accused by key political actors of corruption and labelled as examples of a judicial system that needs to be 'cleansed', solely due to the content of their decisions.

As a key component of the Rule of Law, the independence of the judiciary requires that criticism towards judicial decisions, especially when expressed by representatives of the legislative or executive powers, does not turn into a delegitimization of the judicial function or of individual judges.

"Naming and shaming judges" while they are exercising their functions represents a serious obstacle to the correct fulfilment of their role, due to the intimidating effect and the erosion of public confidence in the justice system.

The executive and legislative powers are under a duty to provide all necessary and adequate protection where the functions of the courts are endangered by attacks or intimidations directed at members of the judiciary.

Political attacks on the judiciary and unbalanced criticisms by representatives of the executive or legislative powers amount to a threat to the constitutional balance in a democratic state.

MEDEL urges the Government of the Republic of Moldova to refrain from any actions that would constitute an attempt against the independence of justice.

MEDEL recalls that it is the obligation and duty of the SCM to act whenever individual judges are subject to declarations by political actors that may undermine their authority and independence and calls on the Moldovan SCM to comply with this important role.

MEDEL will keep following closely the evolution of the debate and reiterates its full support and solidarity to all intimidated Moldovan judges and their Association."

243 https://unimedia.info/ro/news/69c37a4c82cf499d/video-panis-consiliera-olesei-stamate-mi-a-accesat-datele-cu-caracter-personal-acest-prevetting-va-ramane-in-istorie-prin-cazul-iulian-muntean-si-audierea-parintilor-lui-ion-chirtoaca.html

244 For more details, see Section 7.8 of the study.

245 https://ajm.md/declaratia-medel-despre-atacurile-asupra-sistemului-judiciar-din-moldova/ and https://medelnet.eu/medel-statement-about-the-attacks-on-the-jud

Conclusions of Chapter IX. 'The Unlimited Possibilities of the Pre-Vetting Commission'

- The extraordinary (pre-vetting) evaluation carried out by a Commission outside any legal control and immunized against any legal liability revealed multiple shortcomings in ensuring the fairness, transparency, and independence of the evaluation process.

- The Pre-Vetting Commission operated with unlimited discretion, frequently applying double standards in assessing the integrity of candidates, so that there were cases where similar but more compromising situations were given milder assessments than lighter and/or unproven situations.

- The Pre-Vetting Commission defied the national legal framework on the possibilities of using special investigative means and made use of secret services, contrary to the Council of Europe standards in the field of ensuring integrity processes in the justice system.

- The Pre-Vetting Commission defied the authority of res judicata and the interpretations of the CC, which have summoned it to comply with the Supreme Court's assessments in examining the candidates' appeals.

- Candidates and their relatives were put under immense pressure, sometimes humiliated in public and obliged to tolerate interference in private life, and forced to defend their integrity in the face of unfounded accusations brought against them by the Commission.

- Undisguised political interference has affected the evaluation, undermining the independence of the judiciary.

- Although the initial aim was to increase transparency in appointments to the bodies of judicial self-administration and the prosecutor's office, the method used has led to increased suspicion and inconsistency, increasing the chances of manipulation and political speculation.

Lessons learnt

- When developing mechanisms to produce integrity, it is good to keep in mind the famous formula of Professor Robert Klitgaard,[246] taken up by all UN anti-corruption guidelines:
  Corruption = Monopoly + Discretion – Accountability
  You cannot achieve integrity by mixing all the ingredients of corruption.

- Respect for the law and the Constitution in judicial reform processes is the first guarantee of respect for the law and the Constitution by those to whom the reform is addressed. Symmetrically, favouritism in justice reform processes guarantees subsequent favouritism in the justice processes.

- Justice reform starts where political influence ends. Justice reform based on political interference only aggravates the problems that make justice reform necessary.

- The perception of the politicization of justice through the justice reform process is more serious than dissatisfaction with the delay in justice reform.

- There are no "good parties" that can be allowed to politicize justice or its reform processes. Genuine justice reforms can only be achieved at a respectable distance from politics, politicians, and their political ambitions.

246 https://www.undp.org/latin-america/blog/anti-corruption-formula

10

APPEAL TO THE SUPREME COURT OF JUSTICE

Summary: *The procedures for appealing unfavourable decisions issued by the Pre-Vetting Commission have been characterized by significant political and administrative pressures that have negatively influenced the efficiency and transparency of the process. The amendments to Law 26/2022 changed the rules of the game, limiting the possibility of the SCJ to apply the rigours of the Administrative Code and preventing candidates who obtained favourable solutions from re-entering the competition for the positions concerned. In addition to the organizational and political difficulties, the judiciary has been affected by a crisis caused by the chain of resignations of the SCJ judges, which has led to delays in the examination of appeals, of other cases pending at the SCJ and instability of specially appointed panels. During this period, the SCJ decisions on the Pre-Vetting Commission's decisions were proclamed as illegal by politicians, being vehemently criticized, while others led to the sanctioning of the judges who issued them. In the end, the appeals were resolved and some of the judges involved in the process of overturning the decisions of the Pre-Vetting Commission were subject to disciplinary proceedings.*

The procedures for appealing unfavourable decisions issued by the Pre-Vetting Commission have been conducted under various pressures. The Parliament made amendments to Law 26/2022 on the control exercised by the SCJ in the appeal procedures, changing the rules of the game during the game, thus trying to close the SCJ's way of applying the rigours of the Administrative Code to the appeals, as well as the possibility for candidates who obtain favourable solutions at the SCJ to be considered to have passed the evaluation and to re-enter the competition with the other candidates.[247]

Another constraint related to the need to organize the GAJ and the GAP; it was not certain whether they could be organized or whether they would be boycotted, and it was considered risky that they might be attended by an insufficient number of judges and prosecutors, respectively, to meet the quorum required for the appointment of members of the SCM/SCP. In this respect, certain amendments were made to introduce the power of the Minister of Justice to convene those assemblies and to reduce the quorum.[248]

These and other constraints made the process of examining the appeals very cumbersome, with a continuous change in members of the special panel appointed to examine the appeals lodged against the decisions of the Pre-Vetting Commission, which considerably exceeded the 10-day deadline set by law.

10.1 Synchronization of the launch of the SCJ reform with the submission of candidates' appeals. Chain of resignations from the SCJ

Shortly before the finalization of the initial evaluations of candidates for the SCM and SCP positions in early February 2023, the Ministry of Justice published the draft law on the SCJ reform. The reform entails reducing the number of SCJ judges from 35 to 20 and their mandatory passing of the extraordinary evaluation (vetting). This novelty prompted 16 CSJ judges to announce their resignation on 13 February 2023. On 14 February 2023, their resignation requests were accepted by the SCM from the dates indicated by them. *"Under these circumstances, following the resignation of the above-mentioned judges, on the indicated date (March 1/March 13/March 17/31/31 March/3 April), five judges will be active in the SCJ Civil Commercial and Administrative Disputes Chmamberand three judges in the Criminal Chamber, taking into account that one judge is seconded to the SCM,"* reads a statement of the SCJ.[249]

At the same time, on the same day, four members of the SCM resigned from the SCM, understanding that they were to be replaced by a new composition of the SCM.[250] There were only three members left in the SCM at that stage, and the Council became non-deliberative.

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247 For more details, see Sections 5.6 and 5.7 of the study.

248 For more details, see Section 5.5 of the study.

249 https://www.zdg.md/investigatii/dosar/de-ce-au-demisionat-16-judecatori-de-la-csj/

250 https://moldova.europalibera.org/a/un-grup-de-judec%C4%83tori-membri-ai-csm-%C3%AE%C8%99i-depun-demisia-continu%C3%A2nd-demisiile-%C3%AEn-lan%C8%9B-ale-magistra%C8%9Bilor/32270522.html

The chain of resignations has led to delays in the examination by the SCJ of all categories of cases, including appeals against unfavourable decisions by the Pre-Vetting Commission. As the appeals against the decisions of the Pre-Vetting Commission were to be examined by a special panel whose composition was constantly subject to changes due to resignations, this led to the procedure being resumed each time. A major crisis was looming in the judiciary, with the Government trying to persuade judges not to resign.

There were several meetings of the Minister of Justice, Veronica Mihailov-Moraru, with the judges of the SCJ, some of which overlapped with the timetable for the examination of the candidates' appeals.

In the end, it was not clear whether the synchronization of the SCJ reform with the period of examination of the appeals against the decisions of the Pre-Vetting Commission was a coincidence or a calculation aimed at determining the SCJ magistrates to give solutions loyal to the Government and to uphold the decisions of the Pre-Vetting Commission.

CASE STUDY 40. Minister of Justice Veronica Mihailov-Moraru: discussions at the SCJ during the examination of appeals

Message from the SCM candidate Marina Rusu, 20 March 2024[251]

"On 3 April 2023, a court hearing was scheduled for the administrative case initiated based on my application against the Pre-Vetting Commission regarding the annulment of the unfavourable decision yielded in the evaluation process. The hearing was set for 1:30 p.m., but when my lawyer and I arrived on time, my colleague Alexei Panis, whose case was to be heard at 10:00 am, was in the courtroom and had not even started yet. From what he told me, I understood that the hearing for his case had not yet started and that the judges had not appeared in the courtroom. We waited together until 3:00 p.m., when a secretary came and informed us that the hearings for our cases would not take place that day because a full court could not be formed. In the meantime, while we were waiting, we found out that the judges could not hold court sessions because they had been summoned to a meeting by the Minister of Justice, who showed up before the court session and for some reason kept the judges up until almost 3:00 p.m. Given that the examination of my case and Panis' case was already in the pleading stage and both cases were of public resonance as they could threaten the reputation of the pre-vetting procedure promoted also by the Ministry of Justice, I suspected that the Minister's meeting with the judges just before the case was finalized might be related to the pressure that might have been exerted on them in connection with the examination of these cases.

In addition, the next day I was a guest on the 'Spațiul Public' show on TV and Radio Moldova on the topic of justice reform. Mr Vladislav Gribincea and Mrs Olesea Stamate were also invited to the same show. When they discussed the fact that my case with the Pre-Vetting Commission had not yet been examined, I told Ms Stamate that yesterday's visit of the Minister of Justice and her meeting with the judges of the SCJ examining my case just before the hearing seemed suspicious to me and suggested that pressure was being exerted on the judges. Ms Stamate, of course, denied this and said that it was linked to the massive announcements of resignation by the Supreme Court judges and the decision taken by the Commission for Emergency Situations to postpone the resignation of these judges and force them to continue working."

10.2 The exceptional situation in the justice system and deadlines for appeals

The chain of resignations of the SCJ magistrates has triggered a crisis in the judiciary, threatening to block the examination of cases in the Supreme Court. Given the difficulties in forming the special panel to examine appeals against the decisions of the Pre-Vetting Commission, the examination of the candidates' appeals before the GAJ, scheduled for 17 March 2023, was not possible. The GAJ decided to suspend the Assembly until 28 April 2023.

Despite the formation of the special panel of the SCJ from the last three remaining judges of the SCJ, entitled to examine the cases of the candidates,[252] it was not possible to examine the appeals of the candidates before 28 April 2024, given the volume of materials of these cases and their degree of complexity. In addition, the representative of the Pre-Vetting Commission had recused a member of the special panel, and in the circumstances created there was no one to further examine either the recusal or the appeals.

In the end, the judgements on 21 decisions of the Pre-Vetting Commission were rendered on 1 August 2023, all of which were to refer for re-evaluation by the Pre-Vetting Commission. Thus, even if the SCM had managed to examine the candidates' appeals before 28 April 2023, the winners of the trials would not have been able to re-enter the race for appointment to the SCM anyway. On 28 April 2024, the GAJ appointed four judges from the lower court plus one substitute, out of the total number of five judges who passed the pre-vetting procedure.

Under these circumstances, it is not clear the haste that was imposed and frequently reproached to the SCJ magistrates in examining these appeals, if the favourable solution of the SCJ could send the candidates only to re-evaluation, not to the GAJ. A similar situation occurred in the GAP, where at the second GAP organized only the candidates who passed the evaluation before the Pre-Vetting Commission were appointed as members of the SCM.

However, on 31 March 2023, when the Commission for Emergency Situations (CES) met to determine the exceptional situation in the judiciary and the SCJ, it adopted the decision to oblige the resigning magistrates of the SCJ to work after their resignation.

CASE STUDY 41. SCJ judges forced by the CES to work after resignation

Uninmedia.md, 31 March 2023, Breaking news! Resigning SCJ judges forced to work: the CES suspended their applications for 30 days[253]

251 Message sent as part of the study, published with the consent of the sender.

252 In total, in April 2023, there were five judges left at the SCJ, two of whom had applied for the position of SCM member and did not pass the evaluation, and therefore could not participate in the examination of these cases.

253 https://unimedia.info/ro/news/bd29f8c4e65f8b2b/ultima-ora-magistratii-demisionari-de-la-csj-obligati-sa-munceasca-cse-le-a-suspendat-cererile-pentru-30-de-zile.html

"Prime Minister Dorin Recean has convened a meeting of the CES to examine, at the proposal of the Ministry of Justice, the necessary measures to avoid bottlenecks in the justice system.

The Commission members noted the exceptional situation at the SCJ and decided to adopt a temporary extraordinary measure suspending the judges' requests for resignation for 30 days in order to ensure the functioning of the institution.

"It is a rapid intervention tool, an extraordinary but necessary measure. We need to adjust and ensure the legal framework for the functioning of justice so as to mitigate the risks that may arise and ensure people's access to justice. It is one more opportunity for honest judges to step forward and act for the benefit of citizens", emphasized Prime Minister Dorin Recean.

According to the Minister of Justice, Veronica Mihailov-Moraru, in the context of the resignation of several judges and the risk of disruption of the SCJ's functioning and a possible halt in the examination of cases, this temporary measure is a last resort.

"If a sufficient number of existing vacancies at the Supreme Court are filled quicker, that decision may be reviewed at any time. The decision is taken to ensure the public interest, for the continuation of the examination process of priority cases, including appeals lodged against the Pre-Vetting Commission. Furthermore, given the essential role that the court system plays in the process of defence of human rights and access to justice, it is essential to maintain its uninterrupted functioning during the state of emergency," added Minister Veronica Mihailov-Moraru." [...]

"In the evening of the same day, the Head of State, Maia Sandu, announced that she would convene the SSC on the exceptional situation in the judiciary. This is because the GAJ postponed the appointment of the members of the SCM."

10.3 Pre-Vetting Commission's infringements in assessing candidates

On 1 August 2023, the special panel of the SCJ for examining appeals against the decisions of the Pre-Vetting Commission adopted 21 decisions ordering the resumption of the evaluation of candidates. The SCJ issued a press release explaining the violations found.

CASE STUDY 42. Explanation of violations found by the SCJ when issuing 21 decisions of the Pre-Vetting Commission

csj.md, 1 August 2023, PRESS RELEASE on the settlement of the administrative lawsuits filed against the Pre-Vetting Commission by candidates for the positions of members of the SCM and the SCP[254]

"On 1 August 2023, the special panel of the SCJ issued irrevocable decisions on the admission of lawsuits in 21 administrative cases initiated by judges, prosecutors, and representatives of civil society, candidates for the positions of members of the SCM and the SCP.

The special panel of the SCJ carried out an effective judicial review of the factual and legal issues relevant to the Court's assessment and judgements.

The rule of law obliges, according to Art. 53 of the Constitution of the Republic of Moldova, Art. 6 § 1 ECHR and Art. 21, 36, 39, 219 of the Administrative Code, the courts of law to carry out an effective control of legality in respect of any administrative activity of public law carried out by any public authority on behalf of the State of the Republic of Moldova.

Thus, based on the principle of the supremacy of the law in the activity of the Pre-Vetting Commission (Articles 21 and 36 of the Administrative Code), the SCJ has raised serious issues of legality regarding the decisions of the Pre-Vetting Commission, both on the substantive and procedural legality.

The Supreme Court overturned the decisions of the Pre-Vetting Commission and ordered the re-evaluation of the candidates because the violations are similar, starting from:

- misinterpretation of the substantive rules of law governing the evaluation, in particular of the undefined legal concepts that form the legal basis for the decisions of the Pre-Vetting Commission;

- wrong ascertainment of the facts and their non-objective assessment;

- unequal treatment of similar facts;

- interference in the rights of judges, prosecutors, and other candidates contrary to the principle of proportionality;

- wrongful exercise of procedural discretion;

- undermining the security of legal relations;

- violation of the guarantees of the administrative assessment procedure, such as the right to a full examination of the facts, the right to a reasoned and impartial decision, the right to an effective hearing, the right of access to the administrative case, the right to be effectively involved in the evaluation procedure, the right to effective cooperation in clarifying the facts, and the right to a decision without discretionary errors in the assessment of the evidence;

- violation of legitimate protection in the activity of public authorities that have previously dealt with the candidates in the handling of various legal relations with the candidates under assessment;

- non-application of the principles and norms that form the right to good administration enshrined in the Administrative Code, and implicitly in some provisions of Law No. 26/2022, as provided for in Article 41 of the Charter of Fundamental Rights of the European Union; and

- interpreting legal rules retroactively and unfavourably to candidates, as well as other infringements.

The SCJ has emphasized in each decision that any law, including Law No. 26/2022, must be interpreted and applied taking into account legal realism, i.e. in the socioeconomic context of the Republic of Moldova that has been perpetuated since the Declaration of Independence until the adoption of Law No. 26/2022, in which judges, prosecutors, and the rest of the civil servants and citizens have lived and continue to live.

The SCJ has detached itself from any influence, including political influence, and has objectively weighed in the balance of justice the facts and laws, taking into account the supremacy of the law, the separation of powers in the State, and human dignity both in general and of judges and prosecutors in particular. The decisions of the SCJ are irrevocable, binding, and have to be executed according to the law. They can be criticized in various articles, monographs, and other scientific works.

The SCJ advises politicians, the Government, interest groups, the media, and anyone else to refrain from humiliating labelling, public lynching, and making televised justice."

10.4 The fate of the magistrates who overturned the decisions of the Pre-Vetting Commission

The adoption of the 21 decisions of the SCJ ordering the resumption of the evaluation of candidates by the Pre-Vetting Commission has sparked a wave of vehement criticism from exponents of the Government, Parliament, and Presidency. Only four months after the Minister of Justice was asked not to resign and judges were forbidden

254 https://csj.md/index.php/despre-curtea-suprema-de-justitie/mass-media-si-relatiile-cu-publicul/2184-referitor-la-solutionarea-actiunilor-in-contencios-administrativ-inaintate-impotriva-comisiei-de-pre-vetting-de-catre-candidatii-la-functiile-de-membru-al-consiliului-superior-al-magistraturii-si-al-consiliului-superior-al-procurorilor

to resign by the ESC, the country's leading politicians have called the SCJ magistrates corrupt and their judgements illegal.

CASE STUDY 43. Prime Minister Dorin Recean, Chair of the Parliamentary Legal Commitee Olesea Stamate, and Moldovan President Maia Sandu accuse magistrates of annulling the decisions of the Pre-Vetting Commission and promise to clean up the judiciary

Unimedia.md, 2 August 2022, (video) Recean to the SCJ: I'm saying to the corrupt minority in the judicial sector that it did not surprise us. You will not be able to resist efforts of self-cleansing[255]

Prime Minister Dorin Recean has issued a warning to the judges of the SCJ, who participated in the annulment of some decisions of the Pre-Vetting Commission.

The Chair of the Committee for Legal Affairs, Appointments and Immunities, Olesea Stamate, came out with a comment after the SCJ upheld the appeals of several judges and prosecutors who failed the pre-vetting evaluation. *"We are witnessing yet another attempt by corrupt groups in the system to block the extraordinary evaluation. They did not thoroughly examine to see whether some really deserve to be returned for evaluation or not. It is about "Après moi, le deluge",* Stamate said.

ZdG.md, 9 August 2022, "Rampant and almost xeroxed decisions of the SCJ to annul the decisions of the Commission for External Evaluation of Judges' Integrity are illegal". President Maia Sandu on the decisions of the SCJ on the candidates for members of the SCM and the SCP and what's next in the justice reform[256]

"The rampant and almost xeroxed decisions of the SCJ to annul the decisions of the Commission for External Evaluation of Judges' Integrity are illegal. We are seeing yet another attempt by the system to jeopardize the justice reform and efforts to remove corrupt people from the system. These decisions once again confirm that the system does not want to clean itself from the inside and that our approach of external evaluation is correct. This is not to say that there are no honest people in the system, but, as far as we can see, very few of them are involved in this effort to clean up the justice system. This is not the first obstacle that corrupt judges create, and it will probably not be the last. But despite these obstacles, the reform is moving forward. The Extraordinary External Evaluation Commission will continue its work and will remove from the system judges and prosecutors who cannot prove their integrity," said President Sandu, referring to these court decisions.

"The crisis in the justice system will continue until we get the system in order. The fight we are engaged in is a fight for survival. It is about our survival as a democratic state with a future in the European Union, which can only be achieved by reforming justice and reducing corruption. On the other side of the barricade are the corrupt judges and prosecutors who have reaped undeserved benefits all these years and who are clinging to the rotten system they have built because they fear that they will otherwise have to answer for their abuses. They have become rich and untouchable through injustice, and their aim is to continue just that. They are supported by other individuals who want to perpetuate corruption – criminal groups, politicians who promise to cancel the reforms if they compromise the changes in the judiciary and the current Government," Maia Sandu said in the interview for the ZdG.

During the resumed proceeding before the Pre-Vetting Commission, the evaluation was successfully passed by only one candidate, at the level of the SCJ – magistrate Aliona Miron –, who was appointed as a member of the SCM at the GAJ of 30 March 2024.

However, by virtue of the aggressive political discourse towards the SCM magistrates, the judicial inspectorate of the newly formed SCM has taken the matter into its own hands, initiating disciplinary proceedings against them.

CASE STUDY 44. Magistrates who annulled the decisions of the Pre-Vetting Commission, triggering disciplinary proceedings

ZdG.md, 19 January 2024, The three magistrates who overturned the unfavourable decisions of the Pre-Vetting Commission, two of whom have resigned, could be disciplinarily sanctioned[257]

"Judges of the SCJ Tamara Chisca-Doneva, Mariana Pitic, and Ion Guzun could be disciplined in the context of the decisions taken in early August 2023, which annulled 21 decisions of the Pre-Vetting Commissionof failing the integrity evaluation of candidates for the position of member of the SCM and the SCP.

According to the acting Chair of the SCM, Sergiu Caraman, the Judicial Inspection of the Council, which has taken note, has found irregularities in the work of the three judges.

"At the moment, the case is before the Disciplinary Board, because the inspector-judge has asked to sanction the judges," Caraman said in a TV show.

Contacted by the ZdG, the acting Chair of the SCM said that the Judicial Inspection has drawn up a report, which was sent to the Disciplinary Board with a proposal for sanction.

"It is up to the Disciplinary Board to give a solution– guilty or not guilty– and to apply the disciplinary sanction as the case may be."

Should the Disciplinary Board find violations, Tamara Chisca-Doneva and Ion Guzun, the magistrates who resigned less than a month after the controversial judgements were handed down, would not suffer from the sanctions unless they tried to return to the judiciary. Magistrate Mariana Pitic continues to serve at the SCJ. She has applied to keep her position as a judge of the SCJ and is now being evaluated by the Vetting Commission."

Interim President of the SCJ Tamara Chisca-Doneva, being notified about the initiation of the evaluation of the SCJ judges, submitted her resignation starting from a later date. The SCM accepted her resignation immediately, which was equivalent to her dismissal from the system.

CASE STUDY 45. SCM, premature acceptance of the resignation of the Interim President of the SCJ, Tamara Chisca-Doneva

Unimedia.md, 25 August 2023, Breaking news! Interim President of the SCJ, Tamara Chișca-Doneva, dismissed from today, al-

255 https://unimedia.info/ro/news/49dcec2d8b90bbdb/video-recean-catre-csj-le-spun-la-minoritatea-corupta-din-tagma-judecatorilor-ca-nu-ne-a-surprins-nu-veti-reusi-sa-rezistati-eforturilor-de-autocuratare.html

256 https://www.zdg.md/stiri/stiri-justitie/deciziile-pe-banda-rulanta-si-aproape-trase-la-indigo-ale-csj-de-anulare-a-hotararilor-comisiei-de-evaluare-externa-a-integritatii-judecatorilor-sunt-ilegale-presedinta-maia-sandu-d/

257 https://www.zdg.md/stiri/stiri-justitie/cei-trei-magistrati-care-au-anulate-deciziile-de-nepromovare-emise-de-comisia-pre-vetting-dintre-care-doi-si-au-dat-demisia-ar-putea-fi-sanctionati-diciplinar/

though she signed the resignation as of 31 December: "I am not ashamed of any of my judgements"[258]

"The Interim President of the SCJ, Tamara Chisca-Doneva, has resigned. The SCM approved her request to resign at its meeting today [25 August 2023]. "I am not ashamed of any of my decisions," she said." [...]

The Interim President of the SCJ, Tamara Chisca-Doneva, and the SCJ magistrate, Ion Guzun, have resigned. It happened as the SCM kicked off in July the process of assessing the financial and ethical integrity of the Supreme Court judges by the Pre-Vetting Commission.

Tamara Chisca-Doneva indicated in her resignation request to the SCM that she was requesting to resign as of 31 December 2023, claiming the one-off severance pay. The magistrate invoked in the request that the proper functioning of the SCJ is seriously affected due to the number of vacancies and claims that she considers it inappropriate to participate in the evaluation within the Pre-Vetting Commission due to the fact that her term of office expires soon, namely on 14 June 2024."

Conclusions of Chapter X. 'Appeal to the SCJ'

– The process of appealing the decisions of the Pre-Vetting Commission has been marked by a number of legal and political challenges, including legislative changes during the proceedings, mass resignations of judges, and external pressures on the judiciary. These factors have compromised the efficiency, speed, and transparency of the appeals examination.

– The decisions taken by the SCJ against the Pre-Vetting Commission's solutions have been criticized by high-ranking state officials and have led to an intensification of political interventions in the pre-vetting process.

– There have been repercussions in the form of disciplinary proceedings for magistrates who have overturned the decisions of the Pre-Vetting Commission, suggesting a climate of instability and interference in the judiciary.

– It is thus clear that the reforms have been influenced by external factors that have led to a mismanagement of the evaluation and appeal process.

Lessons learnt

– Parliament's function is to make impersonal rules, not to change laws with the special purpose of achieving a particular procedural outcome.

– The parliamentary momentum shown in the process of examining appeals discredits the SCM and the SCP created by the pre-vetting procedure as governing bodies of the judicial and prosecution systems. Today's SCM and SCP are parliamentary emanations.

– Attacks on judges in relation to the solutions issued on the external evaluation processes delegitimize the function of the judiciary and of individual judges, as well as the processes of justice reform.[259]

258 https://unimedia.info/ro/news/885fd786740f7a8e/ultima-ora-tamara-chisca-doneva-a-demisionat-mie-nu-mi-i-rusine-de-nicio-hotarare-de-a-mea.html
259 https://medelnet.eu/medel-statement-about-the-attacks-on-the-judiciary-in-moldova/

11

IMPLEMENTATION OF THE VENICE COMMISSION RECOMMENDATIONS OF LAW 26/2022 ON PRE-VETTING

Summary: *This chapter analyses the implementation of the recommendations of the Venice Commission regarding Law 26/2022 of the Republic of Moldova, which regulates the pre-vetting procedures for members of the SCM and SCP. The law was adopted in a political context in which the parliamentary majority decided to implement a system of integrity assessment of candidates prior to their elections, with the aim of preventing politicization and increasing transparency in appointments to senior judicial positions. The Venice Commission made a number of recommendations to ensure compliance with the principles of the rule of law, including the need for adequate consultation of the opposition and stakeholders and respect for the principles of the separation of powers.*

The analysis refers to the way in which the Parliament of the Republic of Moldova has implemented these recommendations, identifying some discrepancies between the legislative provisions and the international recommendations, such as the lack of a broad consensus on the law, the insufficiently defined integrity criteria, and the creation of an Evaluation Commission outside the judiciary. It also discusses the risks associated with political influence in the selection process, in particular through the direct involvement of the Parliament in the appointment of the pre-vetting panel members and regulations that could undermine the independence of the judiciary.

By its Decision No. 20 of 23 July 2021, the CC confirmed the results of the election of the Parliament of the eleventh legislature of 11 July 2021. The mandates of the MPs elected to the Parliament of the Republic of Moldova were validated as follows: the political party 'Action and Solidarity Party' – 63 seats; the Electoral Bloc of Communists and Socialists – 32 seats; and the political party 'Shor' – 6 seats. Thus, the political party 'Action and Solidarity Party' (PAS) obtained an absolute parliamentary majority, with 63 MPs in Parliament, which exceeds the threshold of 51 MPs needed to adopt ordinary and organic laws. However, to adopt a constitutional law, this number of MPs was not sufficient, as the quorum required is 67 votes.

The SCM is a constitutional body whose main role, according to the Constitution, is to protect the independence of the judiciary. In practice, the SCM is *the only body* that ensures the appointment, transfer, promotion in office, and disciplinary measures against judges.

On 23 September 2021, the Parliament of the Republic of Moldova adopted Law No. 120 on amending the Constitution of the Republic of Moldova, which referred to the judicial system.

The law was passed by 86 out of 101 MPs *following a broad consensus* among the factions (the parliamentary factions 'Action and Solidarity Party' and the Bloc of Communists and Socialists).[260] One of the main changes to the fundamental law concerned the structure and composition of the SCM. According to the new amendments to Art. 122 para. (1) of the Constitution of the Republic of Moldova, the SCM is composed of 12 members, whereby the number of judges and non-judge members was made equal. Prior to the revision of the Constitution, judges held the decisional majority in the SCM.

The purpose of this amendment was to avoid corporatism and politicization of this constitutional body. In this context, the Venice Commission explained that:

1. *to avoid corporatism*, it is important that the members of the SCM, elected by their fellow judges, do not have a decisive influence as an entity. They should be usefully balanced by representation from civil society (lawyers, law professors, and legal advisors, and academics or scholars from all fields); and

2. *to avoid politicization,* political power should not control appointments, promotions, or possible sanctions.[261]

The key point is that the decision-making majorities *should not depend* solely on the votes of one of these groups (judges or

260 For more details, see the minutes of the plenary session of 23 September 2021, pp. 16-17 https://www.parlament.md/LinkClick.aspx?fileticket=iECYFonh878%3d&tabid=128&mid=506&language=ro-RO)

261 For details, see CDL-AD(2002)012, Opinion on the amendment of the Constitution of Romania, para. 66.

non-judge members). This underlines the importance of balanced representation and the need for decisions to be taken in a way that reflects the contribution of both categories of members, thus promoting collaboration and balance within the body.[262]

Two important points should be noted following the above constitutional amendments.

First, according to Art. (3) of Law No. 120/2021 amending the Constitution:

– The members of the SCM from among the judges in office on the date of entry into force of this law shall serve until the expiration of the term for which they were elected.

– The term of office of non-judges in office at the date of entry into force of the amending law was to be confirmed for a total of six years by a vote of three-fifths of the elected deputies.

Second, in its Opinion No 983/2020 of 18 June 2020 (CDL-AD(2020)), the Venice Commission explained that the full renewal of the SCM after the adoption of the constitutional amendments would involve the opposition in the selection process of non-judicial candidates, thus contributing to the *objective of depoliticization of the SCM*.[263]

As a result of the reform, the Parliament obtained a more influential role in the process of forming the SCM, whereby the corporatism of judges (the right to decide) was counterbalanced by "users" of the judiciary belonging to other professions.[264] By way of example, in the case of the full composition, judges cannot take decisions without the support of non-judge members of the SCM in terms of:

– appointing judges to the CC;

– appointing judges to territorial courts, appeal courts, or the SCJ;

– adopting the final decision on the extraordinary evaluation of judges;

– appointing the next presidents of the courts, Courts of Appeal for the next four years; and

– appointing, transferring, seconding, promoting in office, and applying disciplinary measures against any judge.

As a consequence, according to the constitutional amendments, the GAJ had to elect the judges who would represent the judiciary, on the one hand, and the Parliament had to confirm or appoint the persons who would represent the non-judges in the SCM on the other.

11.1 Expiry of CSM mandate and adoption of Law 26/2022 on Pre-Vetting

At the end of 2021, the term of office of the judges of the SCM was about to expire. The elections of the judges and prosecutors of these bodies by the General Assemblies of Judges and Prosecutors (GAJ and GAP) were scheduled to take place on 19 November 2021 and 3 December 2021, respectively, but were postponed by the provisions of the (Government) CES due to the COVID-19 crisis.

The parliamentary majority, formed by a single parliamentary faction 'Action and Solidarity Party', decided to implement a system to assess the integrity of candidates for these positions before the elections take place in early 2022.

On 2 December 2021, the Minister of Justice of the Government of the Republic of Moldova sent to the Venice Commission the draft of the revised law on some measures related to the selection of candidates for the position of members of the self-administrative bodies of judges and prosecutors (*see* CDL – REF (2021)097; link).

On 13 December 2021, the Venice Commission and the DGI of the Council of Europe adopted Joint Opinion No. 1069/2021, CDL – AD (2021)046 on the above draft (hereinafter, Opinion No. 1069/2021). It ought to be underlined that in the Preamble, in paragraph 5, the Venice Commission has mentioned the extremely short period of time provided by the authorities of the Republic of Moldova to scrutinize the draft law: *"Given the extremely limited time available for the preparation of this opinion, the Venice Commission has focussed on the most essential features of the revised draft law; this opinion therefore does not represent an exhaustive analysis of such law."* Further on, in paragraph 9 of its opinion, the Venice Commission mentions that *"The urgency of the matter does not justify, however, the lack of consultation of the stakeholders, notably the crucial ones such as the SCM and the SCP. The Venice Commission recalls that meaningful consultation of the opposition and of the stakeholders is a key element in democratic law-making. Appropriate consultations should take place prior to the final adoption of this law"*. In conclusion, the Venice Commission reiterated in paragraph 45: „Finally, the Venice Commission and the Directorate General underline the need

262 For details, see, mutatis mutandis, Venice Commission Opinion No 1082/2022 of 20 June 2022, para. 49.

263 By way of example, see paragraphs 40-42:
"40. Therefore, in the current context, the renewal of the entire composition of the SCM after the entry into force of the constitutional amendments would not allow the current ruling majority to remove members they do not appreciate, elected by the previous majority with members of their choice: on the contrary, it would force them to associate the opposition to this decision, thus contributing to the goal of depoliticization of the SCM, which is undoubtedly an essential first step towards a successful judicial reform in the Republic of Moldova.
41. The recent election of lay members in a controversial and non-consensual manner, together with the hasty adoption and implementation of legislative amendments on the composition and functioning of the SCM before the adoption of constitutional amendments, will have negative consequences for the independence of this institution and public trust in it.
42. Finally, the terms of office of the judges of the SCM will expire at the end of 2021, and new judges will be elected by the GAJ of courts of all levels, in line with the constitutional amendments."

264 See Opinion CDL-AD (2018)003-e, para. 56; CC Opinion No 1 of 22 September 2020, para. 123

for appropriate consultations of the stakeholders and the opposition prior to the final adoption of this law."

On 19 January 2022, the Government of the Republic of Moldova registered the draft law with the Secretariat of the Parliament of the Republic of Moldova.

On 17 February 2022, the above-mentioned law was passed in the final reading by parliamentary majority. However, the President of the Republic sent the law for reconsideration, which was adopted by the Parliament on 10 March 2022.

Law No. 26 of 10 March 2022 on some measures related to the selection of candidates for the position of member of the self-administrative bodies of judges and prosecutors (Law No. 26/2022) entered into force on 10 March 2022.

Law No. 26/2022 granted the Parliament of the Republic of Moldova the power to introduce an ad hoc Evaluation Commission responsible for verifying the integrity of judicial candidates for administrative positions within the SCM (pre-vetting).

11.2 Benchmarks for checking the implementation of the Venice Commission's recommendations when adopting Law 26/2022

On 13 December 2021, the Venice Commission and the Council of Europe's DGI adopted Joint Opinion No. 1069/2021, CDL – AD (2021)046 on the above draft (hereinafter, Opinion No. 1069/2021).

At the outset, the Venice Commission explained that it had extremely limited time available for the preparation of the opinion; i.e., it focused on the most essential features of the revised draft law; therefore, it cautioned the Venice Commission that this opinion does not represent an exhaustive analysis of such a law.[265]

This analysis aims to compare the recommendations made by the Venice Commission with the legislative measures adopted by the Parliament of the Republic of Moldova. In other words, the aim is to assess the extent to which the Parliament has followed the opinion expressed by the Venice Commission above.

In this respect, the main benchmarks can be established through the following questions:

1. Did the drafting and final adoption of Law 26/2022 take place after effective consultations with stakeholders and the opposition?

2. Does the situation in the Moldovan judiciary create sufficient basis for subjecting the members of the SCM to an extraordinary integrity assessment?

3. Does the creation of a Commission outside the judiciary respect the constitutional principles of the separation of powers and mutual control?

4. Does the role and composition of the Pre-Vetting Commission meet international standards?

5. What if the Pre-Vetting process had a legal basis with narrow criteria?

6. Have the rules on the adoption of the Pre-Vetting Commission decisions been adjusted?

7. Did the assessed candidates have access to a court of law?

11.3 Did the drafting and final adoption of Law 26/2022 take place after effective consultations with stakeholders and the opposition?

According to Opinion No 1069/2021, the Venice Commission noted that:

> *"9. The urgency of the matter **does not justify, however, the lack of consultation of the stakeholders**, notably the crucial ones such as the SCM and the SCP. The Venice Commission recalls that **meaningful consultation of the opposition and of the stakeholders is a key element in** democratic law-making. Appropriate consultations should take place prior to the final adoption of this law. [...]*
>
> *42. Finally, the Venice Commission and the Directorate General **underline the need for adequate consultations with stakeholders and the opposition before the final adoption of this law**."*

In reality, Parliament has taken the following steps:

After receiving the opinion of the Venice Commission, the Government of the Republic of Moldova registered the draft law with the Secretariat of the Parliament of the Republic of Moldova on 19 January 2022.

On 17 February 2022, the above-mentioned draft law was passed in the final reading with 54 votes of the MPs from the parliamentary faction 'Action and Solidarity Party'. According to the transcript of the session, **the parliamentary opposition represented by the parliamentary faction of the Bloc of Communists and Socialists *voted with 20 MPs against the* draft law**.

On 10 March 2022, the Parliament re-examined the draft law and passed it with 56 votes of the MPs belonging to the parliamentary faction 'Action and Solidarity Party'. **The parliamentary opposition *did not participate in* the plenary session of the Parliament**.

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265 Opinion No 1069/2021, para. 5.

It was important that those consultations *recommended by the Venice Commission* should not be a formality, but should provide a real opportunity for the views and concerns expressed by the opposition to influence the decision-making process. Therefore, when emphasizing the need for adequate consultations, it is suggested that the authorities should pay attention to and take into account the perspective and feedback of stakeholders and opposition in the drafting and adoption of the law.

In the case described, it can be seen that the bill was voted exclusively by the parliamentary majority, represented by the ruling party. Voting against the bill and the absence of the opposition at the plenary session where the bill was voted on may indicate that their concerns and views were not taken seriously or that the consultation process was not transparent and fair.

On 14 March 2022, Law No. 26/2022 was promulgated by the President of the Republic of Moldova.

The lack of proper consultation between the parliamentary majority and the opposition is further demonstrated by the following two examples.

On the one hand, in contrast to the above case, we recall that Law No. 120 on amending the Constitution of the Republic of Moldova (judicial system) was passed by 86 out of 101 MPs *following a broad consensus* between the parliamentary faction 'Party of Action and Solidarity' and the parliamentary faction of the Bloc of Communists and Socialists. In that case, there was a clear parliamentary consensus, whereas in the vote on Law 26/2022 such a consensus was clearly lacking.

On the other hand, on 22 March 2022, Vasile Bolea, at that time a member of the parliamentary faction of the Bloc of Communists and Socialists, lodged a complaint with the CC for a constitutional review of Law 26/2022. In the grounds of the complaint, the author referred to paragraph 9 of Opinion No. 1069/2021.

Moreover, at the public hearing on 7 April 2022, the author of the complaint was represented by lawyer Maxim Lebedinschi. According to the transcript of the hearing, the lawyer noted that:

> *"The Venice Commission warned that for such a measure there must be a broad consensus at both parliamentary and societal level, including with the involvement of the SCM. The Commission emphasized that it is not enough to have a firm majority in the Parliament of the Republic of Moldova, and the adoption of such a law must be voted with the parliamentary opposition. So far, we do not have a broad consensus on this law. Moreover, the law has also been criticized by specialized associations in the field of justice, as well as by public associations.*[266]

However, those objections remained without a clear answer from the constitutional authority. In fact, the CC focused on other issues of constitutionality concerning Law 26/2022, which is apparent from the content of Decision No. 9 of 7 April 2022.

Therefore, the issues of consensus, transparency, and the approach to dialogue between the majority and the opposition, which were requested by the Venice Commission, were more formal than substantive.

11.4 Does the situation in the Moldovan judiciary create a sufficient basis for subjecting the members of the SCM to an extraordinary integrity assessment?

According to Opinion No 1069/2021, the Venice Commission noted that:

> *"13. The Venice Commission and the Directorate General have previously expressed the view, […]. At the end, it falls ultimately within the competence of the Moldovan authorities to decide whether the prevailing situation in the Moldovan judiciary **creates sufficient basis** for subjecting all judges and prosecutors, as well as members of the SCM and SCP, to extraordinary integrity assessments. [...]*
>
> *42. [...] it falls ultimately within the competence of the Moldovan authorities to decide whether the prevailing situation in the Moldovan judiciary **creates sufficient basis** for subjecting all judges and prosecutors, as well as members of the SCM and SCP, to extraordinary integrity assessments."*

The Venice Commission noted that the sole reason for conducting the pre-vetting process was the following:

"10. […] In the Information Note it is pointed out that this 'is an essential condition for increasing the confidence of society in the judicial system, as well as for the proper functioning of these institutions."

In reality, the Parliament did not put forward any other arguments than those mentioned above. Specifically, **the executive and legislative branches of state power have used *only* political arguments to interfere in the work of the judiciary**.

For example, in the case of Croatia, the Venice Commission (Opinion No. 1073/2022 (CDL – AD (2002)05), 21 March 2022) examined the introduction of the procedure for the renewal of the security control by amending the Law on Courts. It stated that:

"18. As far as the authorities refer to recent 'individual, high-profile cases of frequent inappropriate contacts and behaviour of judges', it seems that this concerns a quite limited number of cases which are currently subject to disciplinary and criminal

266 CC sitting, min. 7:00-8:18; link: https: https://www.youtube.com/watch?v=kvsigtrDpO4

proceedings. **This situation must be considered as a normal functioning of the system**. There does not seem to be clear evidence that corruption in the Croatian judiciary has reached such a scale to justify the introduction of such a far-reaching measure. The mere fact that public perception as regards corruption in the judiciary is very high cannot justify in itself such a measure. Furthermore, the lack of citizens' trust in the judiciary on account, inter alia, of corruption seems to be linked to a perceived lack of independence of the judiciary, notably on account of alleged interference or pressure from Government and politicians. **There is a risk that such perceptions would even be aggravated if the security vetting of judges by an executive body were introduced**."

By Decision No. 9 of 7 April 2022, the CC did not respond to these observations made by the complainant.

In contrast to this situation, in 2012, the authorities proposed to liquidate the specialized courts, stating in the informative note to the law that "*on the grounds that the specialized courts have over time demonstrated their inefficiency and lack of logical justification",* as well as a measure to "*fight corrupt judges".*

In this case, according to paragraphs 57-60 of Decision No. 3 of February 2012, the CC found that:

– "the argument about the *inefficiency* of specialized courts is not based on complex studies, containing concrete and convincing conclusions, carried out with the assistance of the body of judicial self-administration and the supreme body of the judiciary."

– Analysing the arguments that served as a basis for the adoption of the contested law, the Court ***noted that the fight against corruption*** is an obligation of the state and is entrusted to the bodies empowered with such powers. The perception of corruption differs in different periods. At the same time, the Court reiterated that any public statements (or statements made in any other way) are inadmissible because they could give rise to a distorted perception of the work of the judges concerned and of the work of the judiciary as a whole, which is unacceptable in a democratic society, especially when such statements, without factual support, emanate from the State authorities.

Consequently, at that time, the CC found a lack of consistency in the process of reforming the judicial system, discrepancy, and a lack of legal, scientific, statistical, and practical argumentation of the proposals, which led to the unconstitutional declaration of the political initiative to intervene in the activity of the judiciary.

This example is of particular importance if we compare the situation of the reform of the SCM in the Republic of Moldova with the reforms of the Polish judiciary and the SCM initiated in 2017. In particular, the ECtHR in Strasbourg has examined the 2017 Amendment Act and the reconstituted National Council of Judges ((NCJ) (Polish SCM)), including its involvement in the procedure of appointing judges, in several cases (*see* Reczkowicz vs. 43447/19, 22 July 2021); Dolińska-Ficek and Ozimek vs Poland (nos. 49868/19 and 57511/19, 8 November 2021); Advance Pharma sp. z o.o. vs Poland (no. 1469/20, 3 February 2022); Żurek vs Poland, no. 39650/18, 16 June 2022; Juszczyszyn vs Poland , no. 35599/20, 6 October 2022; and Tuleya vs Poland, nos. 21181/19 and 51751/20, 6 July 2023).

In the case of the Polish reform, prior to the amendments, the members of the Polish SCM were elected by the judges, a rule that had been firmly established in the Polish legal system and unequivocally confirmed by the CC of Poland in a judgment of 18 July 2007. This judgment was subsequently annulled by the CC on 20 June 2017. Following the 2017 reform, the members of the Polish SCM judges were elected by the Sejm (the Polish Parliament).

It would not be worth deliberating on each individual case mentioned above, as the European Court found above that the Polish SCM was a body over which the executive and legislative authorities had unlimited power. In particular, in the Reczkowicz case, the European Court emphasized that:

*"228. In particular, the applicant claimed that domestic law had been breached, first, **as a result of the change in the manner of electing** judicial members of the NCJ under the 2017 Amending Act, which had stripped this body of independence from the legislative and executive powers [...].*

229. The Government, for its part, asserted that the reform of the NCJ and the Supreme Court had been carried out in accordance with the Constitution and national legislation. They stressed that the modification of the legal provisions governing the organization of the NCJ, granting Sejm the power to elect the NCJ's judicial members, had been introduced by the 2017 Amending Act in order to implement the CC's judgment of 20 June 2017 [...].

*237. The Court accepts that the aim pursued and the general reasons given for the new model of election of judicial members to the NCJ could prima facie be considered legitimate. However, **this justification alone cannot be seen as sufficient to substantiate the CC's complete reversal of its previous case law without being based**, as emphasized above, on a duly conducted assessment, weighing in the balance the competing interests at stake, as required under the Convention.*

*238. In this connection, the Court observes that, apart from its statement of dissent that 'the CC in its current composition does not agree with the [CC's] position in the judgment [of 18 July 2007] that the Constitution specifies **that [judicial] members of the NCJ shall be elected by judges**', the CC **did not engage substantively** with legal arguments contained in the earlier ruling. While it is true that the judgment was given after the composition of the CC had changed following the December 2015 election of five new judges [...], this by itself could not serve as a ground for creating a new and divergent interpretation of the Constitution. Nor should it be an obstacle for the CC judges to give convincing reasons – or explain specific legal considerations – for their departure from the final*

judgment, universally binding in its application, given by their predecessors, a judgment which had been in force for the previous ten years (see also Article 190 of the Polish Constitution cited in paragraph 59 above).

239. The purported aim to be achieved by means of the new interpretation of the Constitution, radically changing the existing election model, was to ensure that all the judges would have equal opportunities to stand for election to the NCJ. However, ***the Court has been unable to detect any attempt on the part of the CC to explain in its judgment why and how the new election model would better serve the interests of the judiciary and equal opportunities*** *or whether, and if so how, it would impact upon the NCJ's primary constitutional obligation of safeguarding the independence of courts and judges, as laid down in Article 186 (1) of the Constitution. Likewise, in the CC's assessment, no consideration appears to have been given to the Convention case law or the fundamental Convention principles of the rule of law, separation of powers, and independence of the judiciary, principles which are also enshrined in the Polish Constitution and were obviously relevant in the context of the new interpretation.*

Furthermore, as demonstrated by subsequent developments, both at domestic and international level, the CC appears to be isolated in its perception and assessment of the necessity and legitimacy of the change in the procedure for election of the judicial members of the NCJ."

From this perspective, the CC of the Republic of Moldova was to provide a clear answer to the objections related to the existence of a sufficient basis for subjecting the members of the SCM to an extraordinary assessment in relation to the reasoning of its previous Decision No. 3 of February 2012.

Such a procedure is not *at all* alien to the case law of the CC. For example,

– according to paragraph 23 of Decision No. 13 of 14 May 2018, the Court has indicated that it may subsequently decide that the interpretation it made in previous cases *can be developed* or that there are other compelling reasons to change its interpretation, including to ensure that the way it interprets the Constitution reflects social changes and coincides with the conditions of life today. [...] The reasoning present in these cases are compelling reasons for the Court to develop its own case law on the basis of the authority of the European Court's judgments as a matter of case law; and

– according to paragraph 38 of Decision No. 38 of 6 August 2020, [...] in the light of the reasoning set out above, the Court deems it necessary to *re-evaluate its reasonings* and the solution established by Decision No. 28 of 17 October 2017.

The lack of a clear position from the CC *may create a danger* for the principle of independence of the judiciary, which will have more of an illusory and theoretical character.

From this perspective, the Venice Commission's recommendation to verify the existence of a "sufficient basis" for pre-vetting indicates that the authorities must have valid and well-founded reasons to initiate such an assessment. Any change to the way in which the SCM is constituted must not detract from the independence of this public authority of constitutional rank and must not place it under political influence or control. As a consequence, any legislative intervention in its composition must be justified and thoroughly reasoned.

In other words, this requirement aims to avoid possible political manipulation or outside influence on the judiciary depending on the results of parliamentary elections.

11.5 Does the creation of a Commission outside the judiciary respect the constitutional principles of separation of powers and mutual control?

According to Opinion No. 1069/2021, the Venice Commission noted that:

"16. Furthermore, the fact that the integrity checks will be carried out not by the self-governing bodies of the judiciary and procuracy themselves, ***but rather by an external body*** *(...), requires that the utmost consideration be given to respecting the constitutional principles of separation of powers and checks and balances."*

Through the CC notification of 22 March 2022, Vasile Bolea, then deputy in the parliamentary faction of the Bloc of Communists and Socialists, raised this issue before the Court.

However, in its Decision No. 9 of 7 April 2022, the CC dismissed this claim as inadmissible. In this respect, the CC held that:

"20. With regard to the incidence of Articles 6 and 116, the author of the complaint noted that the establishment of the magistrates' Evaluation Commission, whose members are appointed by the Parliament, would violate the principle of separation of powers in the State and the principle of independence of judges.

21. The Court did not find the arguments justified, because Law No. 26 of 10 March 2022 does not aim to evaluate magistrates, as the author of the complaint claims [...].

23. [....], the Court holds that the prior assessment of the integrity of candidates for the office of member of the SCM, the SCP, as well as candidates for the office of member in their specialized bodies does not interfere, per se, with the principle of independence of justice and the principle of separation of powers in the State.

24. For this reason, the Court did not consider the incidence of Articles 6 and 116 of the Constitution in relation to the criticism raised by the author of the complaint regarding the existence of the verification mechanism in itself."

However, the CC failed to address the following observation raised by the Venice Commission:

> *"15. The integrity test is not being applied to judges or prosecutors in respect to their roles as such judges or prosecutors and is thus not engaging the independence of their role. However,* ***it is a crucial part of the Moldovan structure of governing the justice system*** *that judges and prosecutors serve from time to time on the eight legal bodies concerned by the revised draft law.* ***These are more than administrative positions; they are crucial roles in ensuring the good governance of these bodies in the justice system.*** *Those bodies are designed to have a wide range of members from specific backgrounds, with judges and prosecutors being central."*

In addition, the CC did not explain the difference between that case and the case of introducing a Commission of the Ministry of Justice in the process of appointing the PG.

In this chapter, according to Decision No. 13 of 21 May 2020, the CC ruled that:

> *"81. The substantive amendments to the Law on the PG's Office with regard to the pre-selection and nomination of the PG lead the Court to conclude that the Commission set up by the Ministry of Justice does not have only an advisory role. The SCP is obliged to select a candidate from the list drawn up by the Commission.* ***Insofar as the Council cannot select a candidate from outside the list of candidates shortlisted by the Commission, the latter can be said to interfere substantially with the constitutional mandate of the SCP****. In the Venice Commission's view, the Constitution empowers the Parliament to define, by law, the general procedures to be followed by the SCP. On the other hand, the* ***SCP has a constitutional role that must not be usurped by the Parliament – it is the role of forming a list and selecting a candidate to be proposed to the President of the Republic for appointment****. The Council should follow the law, and the legislature should not exceed its law-making power to prevent the SCP from exercising its constitutional mandate (Amicus curiae Opinion No. 972/2019 on amendments to the Law on the Prosecutor's Office (CDL-AD(2019)034), § 39).*
>
> *82. On the basis of the above, the Court considers that the involvement of the Commission set up by the Ministry of Justice in the process of appointing the PG in the manner laid down by Article 17 of the Law on the PG's Office is contrary to Article 125 of the Constitution."*

Similar to the procedure for the appointment of the PG regulated by the Constitution, Article 122 paragraph (1) of the Constitution expressly indicates that the six members of the SCM are elected by the GAJ.

However, in the context of the legislative changes made by Law 26/2022, the actual process of electing the members of the SCM/SPC was initiated by a specially created Commission, which decides who is eligible and who is not eligible to run for the position of a member of the SCM/SPC. In other words, ***the judges of the GAJ and GAP cannot exercise their constitutional right to elect their colleagues to its representative body, but are obliged to choose from among the candidates proposed by the Pre-Vetting Commission.***

By analogy with the decision of the CC No. 13 of 21 May 2020, we can conclude that the Pre-Vetting Commission substantially interferes with the constitutional mandate of the SCM and the SCP, as judges and prosecutors are not able to choose their candidates from outside the list shortlisted by the Commission.

In connection with the above, the ECtHR has verified a similar procedure in the context of the reforms in the Polish justice system, which was initiated in 2017 (*see* above relevant cases). In Dolińska-Ficek and Ozimek v. Poland (application nos. 49868/19 and 57511/19, 8 November 2021), the ECtHR made an extensive analysis of this issue and identified the following issues in the light of Article 6 paragraph (1) of the ECHR:

"(a) The first alleged violation of domestic law – the alleged lack of independence of the NCJ (SCM) from the executive and legislative powers

> *290. As noted above, the applicants' first argument is that the first manifest breach of the domestic law originated in the 2017 Amending Act, which had changed the manner of electing the 15 judicial members of the NCJ (SCM equivalent), who were thenceforth to be elected by the Sejm* ***and not, as previously, by their peers****, and which had resulted in that body no longer being independent from the legislative and executive powers.*
>
> *316. [...] In that regard, (the Court) would reiterate that 'independence of a tribunal established by law' refers to the necessary personal and institutional independence that is required for impartial decision-making, and it is thus a prerequisite for impartiality. It characterizes both* ***(i) a state of mind****, which denotes a judge's imperviousness to external pressure as a matter of moral integrity, and* ***(ii) a set of institutional and operational arrangements*** *– involving both a procedure by which judges can be appointed in a manner that ensures their independence and selection criteria based on merit –, which must provide safeguards against undue influence and/or unfettered discretion of the other State powers, both at the initial stage of the appointment of a judge and during the exercise of his or her duties (see Guðmundur Andri Ástráðsson v. Iceland (Grand Chamber), 1 December 2020, § 234, and the case law cited therein).*
>
> *320. Having regard to all the above considerations, and in particular [...], – the Court finds it established that there was a manifest breach of the domestic law for the purposes of the first step of the Ástráðsson test. [...]*

(c) If the above breaches of national law concerned a fundamental rule of the procedure for the appointment of judges

> *348. In view of the foregoing, the Court finds that by virtue of the 2017 Amending Act,* ***which deprived the judiciary***

of the right to elect judicial members of the NCJ *– a right afforded to it under the previous legislation and recognized by international standards –* ***the legislative and the executive powers achieved a decisive influence on the composition of the NCJ*** *(see paragraphs 156-176 and 184-210 above).* ***The Act practically removed not only the previous representative system but also the safeguards of independence of the judiciary in that regard****. This, in effect, enabled the executive and the legislature to interfere directly or indirectly in the judicial appointment procedure, a possibility of which these authorities took advantage – as shown, for instance, by the circumstances surrounding the endorsement of judicial candidates for the NCJ (see paragraphs 345-346 above). This situation was further aggravated by the subsequent appointment of judges to the Chamber of Extraordinary Review and Public Affairs by the President of Poland, carried out in flagrant disregard for the fact that the implementation of NCJ resolution no. 331/2018 recommending their candidatures had been stayed."*

Another example is the amendment of the Law on Judicial Organization No. 514-XIII of 6 July 1995 regarding the number of votes required for the election of members of the SCM. Until the law was changed, Article 23[2] paragraph (8) did not establish the number of votes required to win a seat on the SCM. In any case, the Regulation on the functioning of the GAJ**, adopted on 23 November 2012, provided for the following conditions:**

"40. The candidates included in the ballot papers ***who have obtained 50 plus one votes out of the number of the simple majority of the judges present at the Assembly*** *at the time of the voting procedure and participating in the voting procedure, in descending order of the votes obtained, shall be considered elected to the office of permanent member, substitute member of the SCM [...].*

40.[1] In case no candidate has obtained the required number of votes, as provided for in point 40 of this Regulation, as well as in case only one candidate out of the candidates included in the ballot papers has obtained the required number of votes, a second round of voting shall be organized within the same GAJ.

In the second ballot, the first three candidates with the highest number of votes will be included on the ballot paper if no candidate has been elected from those on the ballot paper, and the next two candidates if only one candidate has been elected from those on the ballot paper to fill the remaining positions."

By Law No. 103 of 24 August 2021, the Parliament introduced at the legislative level the way of calculating the votes for the election of the members of the SCM/SCP, by simplifying it. In particular:

(8) The candidates who obtained the highest number of votes shall be considered elected as members of the SCM. (...)

In other words, the new amendments do not impose a specific requirement on the number of votes a candidate must obtain in order to be considered elected. Instead, they are simply based on obtaining the highest number of votes. If members are elected solely on the basis of the highest number of votes, there is a risk that certain groups or perspectives will be under-represented on the SCM. Those with the highest number of votes may not reflect diversity or adequately represent all segments of the judiciary. By way of example, a single "yes" vote will make the candidate for SCM member a winner if all other members of the Assembly refuse to vote for him or her and other counter-candidates do not exist or do not receive any votes. Thus if, at the GAJ on 28 April 2023, at which the candidates selected by the Pre-Vetting Commission to become members of the SCM were put forward, only these candidates voted for themselves and/or their peers, and all other members of the Assembly voted against them, these candidates would have been appointed as members of the SCM anyway, as the number of candidates selected by the Pre-Vetting Commission coincided with the number of SCM members (including substitutes) to be appointed to office. In general, these differences may influence the degree of representativeness within the SCM.

Based on the above examples, we recall that, according to the constitutional reform, the Parliament of the Republic of Moldova was entitled to elect six non-judge members to the SCM, which pursued a legitimate aim to avoid corporatism of judges in the future SCM.

However, according to the procedure of evaluation of candidates to the SCM, the Parliament of the Republic of Moldova had a decisive influence on the final composition of the SCM, taking into account that the role and composition of the Pre-Vetting Commission was strictly determined by the legislative branch.

Therefore, Law 26/2022 has practically eliminated not only the representative system that existed previously, but also the guarantees of judicial independence in this respect. This has, in fact, allowed the legislature to intervene directly or indirectly in the appointment procedure of all SCM members (12 out of 12).

In practical terms, 28 judges registered for the competition for the position of member of the SCM. **Therefore, the Pre-Vetting Commission determined that *only 5 out of 28* magistrates met the criteria of ethical and financial integrity and thus passed the evaluation.**

In conclusion, in the Dolińska-Ficek and Ozimek case, cited above, the European Court noted the Venice Commission's opinion on the reforms in Poland:

"303. As in the case of the 2017 Amending Act, the Venice Commission raised its concerns about the 2017 Act on the Supreme Court already before the Act's entry into force, in its report adopted on 11 December 2017 [....]. In sum, considering the cumulative effect of the amendments proposed under both Acts, the Venice Commission concluded that ***they would***

***put the judiciary under direct control of the parliamentary majority and of the President of Poland**, contrary to the very idea of the separation of powers and judicial independence laid down in Articles 10 and 173 of the Polish Constitution (see paragraph 168 above). Similar views were expressed subsequently, after the Act entered into force, by parliamentary Assembly of the Council of Europe and the Council of Europe's Commissioner for Human Rights (see paragraphs 163 and 165-166 above).*

11.6 Does the role and composition of the Pre-Vetting Commission meet international standards?

According to Article 1, paragraph (8) of Law 26/2022, the Pre-Vetting Commission is composed of six appointed members, who must meet the following requirements:

"a) three members citizens of the Republic of Moldova – at the proposal of the parliamentary factions, respecting the proportional representation of the majority and the opposition, approved by the vote of 3/5 of the elected MPs;

b) three members –- at the proposal of the development partners, approved by 3/5 of the elected members.

(8) The member of the Evaluation Commission must meet the following requirements:

b) has an impeccable reputation;

f) has not held the office of judge or prosecutor in the Republic of Moldova in the last three years."

In its Opinion No 1069/2021, the Venice Commission emphasized that:

*"18. t is commendable that the revised draft law provides for two ineligibility criteria which aim at excluding political affiliation (Article 2 d) and e)). It is also positive that the opposition is involved [...]; **this will not totally exclude the politicization of the process** but should guarantee more inclusiveness and cross-party support for the exercise;*

*22. [....] the requirement that the member 'has not held the position of judge or prosecutor in the Republic of Moldova for the last three years' **seems to lack reasonable justification.***

*The Information Note does not give any reasons for the creation of **such an extrajudicial mechanism**, nor does it indicate the the basis for the establishment of the three-year period.*

*The international standards on this matter are well-established and rather clear: judicial members of the Councils for the Judiciary should be elected by their peers. Given that integrity checks are de facto a consisting part of the selection process of members of the SCM, SCP, and other specialized bodies, **the proposed requirement implying that judges and/or judiciary per se cannot be trusted is arbitrary and should be rejected."***

On this chapter, the Parliament did not take into account the above recommendations and maintained the bans criticized by the Venice Commission.

By way of example, Ukraine has chosen the same method for the pre-evaluation of candidates to the SCM. In this regard, according to Opinion No. 1029/2021, (CDL- AD(2021)018), 5 July 2021, the Venice Commission recommended that:

"21. The Ethics Board shall consist of

a) three active or retired judges appointed by the SCM; and

b) three members 'proposed by international organizations with which Ukraine has cooperated at least during the last three years in preventing and combating corruption and/or in judicial reform in accordance with international treaties of Ukraine'.

22. The Venice Commission and the Directorate welcome the fact that the composition of this Ethics Board reflects the Commission's previous recommendations, in particular as regards the participation of international experts in [...].

*30. As for the three 'national members', **they should be judges or retired judges** (according to Article 9-1 (3) (1) (1)). They should have already undergone an evaluation and, of course, should not have a disciplinary or criminal record, have correctly presented their declarations of assets and interests, etc. These conditions should be specified in an amendment to Article 9-1 (2)).*

31. As an additional measure of procedural security, the Council of Judges should announce on its website the candidatures of national members at least two weeks before their appointment, providing all relevant documents to allow transparent debates on the candidates."

With regard to the mixed composition of the evaluation committee, the Venice Commission's Opinions No 999/2020 (CDL – AD(2020)022, October 9, 2020) and No 969/2019 (CDL – AD (2019)027, December 9, 2019) make the following recommendations:

"41. The Venice Commission considers that the composition of this competition committee is inspired by its previous opinions, in particular as regards the participation of international experts, [...] Such a composition fosters public trust and can help overcome problems of corporatism.

*42. The Venice Commission reiterates that they should be established only for a transitional period until the desired results are achieved. **A permanent system could raise issues of constitutional sovereignty**."*

Unlike the above case, the parliamentary majority elected five out of six members of the Pre-Vetting Commission. It is worth noting that the faction 'Bloc of Socialists and Communists' left the Plenum and did not vote for the international experts. They were voted only by the parliamentary majority (63 MPs).

Thus, the Pre-Vetting Commission is composed of six members: three international experts (Herman von Hebel, Nona Tsotoria, and Victoria Henley) and three national experts (Vitalie Miron, Nadejda Hriptievschi, and Tatiana Raducanu (resigning judge)). Mr. Vitalie Miron was proposed by the Bloc of Socialists and Communists.

During the pre-vetting procedure, the candidates for the position of member of the SCM/SCP considered that the Commission member Tatiana Raducanu, a resigning judge of the SCJ, *does not meet the legal requirements* required by Article (8) letter b) of Law No. 26/2022. In their opinion, the member of the Commission had 10 cases lost at the ECtHR and did not declare a bank account with financial turnovers in the amount of EUR 90,000 in 2014. Respectively, they argued that the member did not meet the criterion of irreproachable reputation to be appointed as a member of the Pre-Vetting Commission, i.e., she did not meet the eligibility criterion.

In support of this argument, reference was made to the vetting process in Albania. The case of Besnik Cani v Albania (4 October 2022) concerned an Albanian prosecutor who complained to the European Court under Article 6 § 1 of the Convention. According to him, the Special Appeals Chamber (SAC), which dismissed him from his former office, was not "a tribunal established by law", as ***one of the judges hearing his case had been appointed to that office in breach of a statutory eligibility criterion***. In this respect, the European Court found that:

> *"102. [...] In the Court's view, the importance of the statutory eligibility criteria for judges is also apparent from the Status of Judges and Prosecutors Act, which provides that a failure to fulfil the eligibility criteria leads to the termination of a magistrate's term of office as of the date of the decision recognizing such failure, and irrespective of the passing of time since the original appointment (see paragraph 53 above).*
>
> *103. The Court would further note that, as far as vetting proceedings are concerned, the SAC is the highest tribunal in the country. Accordingly, the appointment to the SAC of a candidate who had been previously dismissed from an office for a breach of the law and for incompetence (see paragraphs 9 and 51 above) is difficult to reconcile with the requirement that the higher a tribunal is placed in the judicial hierarchy, the more demanding the applicable selection criteria should be (see paragraph 84 above). [...]*
>
> *115. The Court has established that there was an arguable claim of a manifest breach of a fundamental rule of the domestic law that had adversely affected the appointment of L.D. as a SAC judge. [...]*
>
> *149. The Court (considered) that the most appropriate form of redress for the violation of the applicant's right to a "tribunal established by law" under Article 6 § 1 of the Convention would be to reopen the proceedings, should the applicant request such reopening, and to re-examine the case in a manner that is keeping with all the requirements of Article 6 § 1 of the Convention."*

In the same context, it should be noted that the member of the Commission appointed by the opposition, Mr Vitalie Miron, was the only one who had separate opinions in the case of the Pre-Vetting Commission's assessment of candidates. Moreover, in October 2023, he resigned from his position as a member, based on the reasons stated on his Facebook page,

> *"[...] Anyone who would go into the essence of things, would realize that we are in the presence of a legal absurd, when taking a different decision would mean breaching Article 120 of the Constitution of the Republic of Moldova by not executing the decisions of the SCJ, an option that is not admissible for me.*
>
> *An even more serious circumstance is the fact that we have learned from the public that the Commission has positively evaluated people who are currently under criminal prosecution, or who have financial obligations, circumstances hidden by the candidates. Thus, I believe that the legal mechanism has not given the Commission the possibility to objectively and multifacetedly assess all candidates. In fact, we limited ourselves to the honesty of the candidates and of the bodies and institutions that provided us with the information, which turned out to be in bad faith in some cases, for which they were to be disqualified.*
>
> *Under these circumstances, the only solution that I consider appropriate in order to preserve my impartiality and honesty, in order not to admit the violation of the legal framework and to avoid non-execution of the decisions of the SCJ, is to announce my resignation as a member of the Pre-Vetting Commission as of today."*

So far, the parliamentary opposition has refused to propose another member of the Pre-Vetting Committee in his place.

From this perspective, we note that the minimum standards imposed by the Venice Commission were not respected in the adoption of Law 26/2022. In particular:

- the judges did not have the possibility to appoint at least one of their members to the Commission, and the imposed prohibition continued to lack a reasonable justification, which imposes its arbitrariness;
- the existence of suspicions that one of the members proposed by the parliamentary majority does not meet the legal requirements to be appointed as a member of the Pre-Vetting Commission; and
- the resignation of the member of the Pre-Vetting Commission appointed by the opposition and refusal to propose another member.

1.7 Did the pre-vetting process have a legal basis with narrow criteria?

In the initial draft of Law 26/2022, the parliamentary majority communicated to the Venice Commission the following criteria for verifying the integrity of the candidates assessed:

"Article 8. Assessment of candidates' assets

(1) The assessment of the assets and lifestyle and living costs of the candidates referred to in Article 2 consists in verifying the correspondence of their standard of living with the income earned and expenses incurred by them independently or together with close persons within the meaning of Law 133/2016 on the declaration of assets and personal interests, as well as the persons referred to in Article 33 paragraphs (4) and (5) of Law 132/2016 on the NIA, ***in the last 10 years****.*

(2) For the assessment of the candidates' lifestyle and living costs, the Pre-Vetting Commission will verify their compliance with:

a) the tax regime in the part related to the payment of taxes on using funds and income derived from the owned property, as well as taxable income and the payment of import duty and export duty; and

b) the legal regime of declaring assets and personal interests.

Article 9. Assessment of the candidates' integrity

(1) The assessment of the candidates' integrity for one of the positions referred to in Article 2 paragraph (1) from among judges or prosecutors shall consist in verifying the following aspects:

a) the candidate's compliance with the principles established by the Code of Ethics and Professional Conduct of Judges or, where applicable, prosecutors;

b) the non-existence of a final court judgment issued on the candidate, related to acts of corruption or corruptible acts, within the meaning of Integrity Law No. 82/2017;

c) the non-existence of a final judgment against the candidate for serious, exceptionally serious, and particularly serious crimes other than those referred to in point b);

d) no disciplinary sanctions imposed on the candidate in the last five years; and

e) the commission by the candidate of acts that violate the honour or professional probity or the prestige of justice to such an extent that confidence in justice is affected.

(2) The integrity assessment of candidates for one of the positions referred to in Article 2 paragraph (1), who are not judges or prosecutors, shall consist in verifying the aspects set out in paragraph (1) letters b)-d). (...)

Article 11. Evaluation procedure

(3) In the process of the assessment of lifestyle and living costs and professional integrity, the Evaluation Commission shall have the right to request from individuals and legal entities under public or private law, including financial institutions, the documents and information necessary for the conduct of the assessment. The information requested must be submitted free of charge within 10 days of the date of the request."

In its Opinion No. 1069/2021, the Venice Commission emphasized that:

"15. [...] For these reasons, it is an essential step that this preliminary filtering process be put on a statutory basis ***with narrow criteria*** *and [...].*

26. It is unclear whether the evaluation is a checklist of previous compliance, declarations, tax status, etc, or an assessment of the reputation of the candidate. It is not clear what should be understood by "the correspondence of [the] standard of living with the level of incomes obtained and the expenses incurred". How much discrepancy between the "standard of living" and "expenses" can be considered as a manifestation of non-correspondence? It is commendable that Article 13(1) requires that a reasoned decision is adopted, ***but in the absence of such specific criteria there is no guidance on what can be considered reasoned or unreasoned [...].***

28. There is no definition of "integrity". Article 11(3) refers to professional integrity, which might be different from integrity in one's private life. Perhaps integrity could be defined or explained by reference to professional or business life. Perhaps the scheme is that integrity is the wide test of the Committee, which includes professional integrity, lifestyle, and standard of living.

29. ***The criteria for the assessment of integrity are quite heterogeneous, in particular as regards the nature of their evaluation****. While the absence of a judicial decision or the absence of disciplinary sanctions are relatively easy to verify, "the candidate's compliance with the principles laid down in the Code of Ethics and Professional Conduct of Judges or, where applicable, Prosecutors" or "the candidate's having committed acts which violate the honour or professional probity or the prestige of justice to such an extent that confidence in justice is damaged"* ***are rather complex assessments.***

30. The criteria used to assess the assets and the integrity of the candidates ***should be the same which*** *are used for any equivalent assessment process in the Republic of Moldova."*

The analysis of the above criticism shows that the original law has been revised. In this respect, the following aspects are noted:

– ***Law 26/2022 still does not contain a definition of "integrity", but the original scope of integrity (professional integrity, lifestyle, and standard of living) has been narrowed down***

to ethical and financial integrity (Article 8, paragraph (1) of Law 26/2022);

- ***Law 26/2022 has increased the verification period from 10 to 15 years in terms of the adequacy of the declared income in the financial integrity part; and***

- ***The Venice Commission considered that the criteria for assessing integrity (in particular, ethical integrity) are rather heterogeneous, especially in terms of the nature of their assessment.***

Regarding the first two aspects mentioned, we note that in its Decision No. 42 of 6 April 2023, the CC considered as reasonable the decision of the legislator to establish an extended period for the verification of the candidates' financial integrity (see paragraph 123). Moreover, the Court referred to paragraphs 348-349 in Xhoxhaj v. Albania, 9 February 2021.

However, it should be noted that the CC did not retain the last sentence of paragraph 349 of the Xhoxhaj case, cited above, which states that:

> *"At the same time, such flexibility cannot be unlimited, and the implications for legal certainty and the applicant's rights under Article 6 § 1 of the Convention* ***should be considered on a case-by-case basis.****"*

Also, the Constitutional Court did not consider the fact that the ECHR underlined the importance of granting the subjects of vetting access to the materials of their case file, in order to safeguard their right to a fair trial: *"352. The Court further reiterates that it is not per se arbitrary, for the purposes of the "civil" limb of Article 6 § 1 of the Convention, that the burden of proof shifted onto the applicant in the vetting proceedings after the IQC had made available the preliminary findings resulting from the conclusion of the investigation and had given access to the evidence in the case file […].*

On the other hand, in that case, the Court noted that the applicant's judicial career began in 1995 and continued without interruption until her removal from office in 2018. The adverse inferences against her were based both on her declaration of assets submitted in the assessment proceedings and on previous declarations of assets submitted by her and her partner (see paragraph 250 of Xhoxhaj v. Albania, 9 February 2021).

The above findings allow us to conclude that the verification was strictly related to the professional activity of the candidate. *However, Law 26/2022 does not make any difference in the given sense* and covers the whole period of activity of the candidate regardless of whether he/she was a judge/prosecutor or of other professional occupation.

In the case of Sevdari v. Albania of 13 December 2022, the applicant also complained that *the burden of proof assigned to her in the verification procedure was unreasonable*. In this context, the ECtHR held that:

> *"131. [...] In any event, the plaintiff was free to argue under the Verification Act* ***that it was objectively impossible to obtain such evidence****, e.g. because the official records had been destroyed in the meantime. The SAC was not persuaded that the applicant had completed this task, and the Court finds no reason to challenge this internal finding."*

Moreover, in the opinion CDL – AD (2023)05 (14 March 2023), the Venice Commission analysed the same limitation period in the case of the extraordinary evaluation of judges and held that:

> *"73. Finally, when establishing facts related to unjustified enrichment or non-declaration of donations, the Evaluation Commission would have the power to require justification of purchases or expenditures, which were made up to 15 years before the enactment of the law. In a similar context, while recognizing that the use of such presumptions is permissible, the Venice Commission observed that "the obligation to prove the lawful origin of [...] assets or transactions should not impose a disproportionate burden on the judge, should only concern particularly important transactions, and should not concern, for example, an asset that the judge or his/her family has owned for decades. The obligation to provide explanations must remain reasonable."*
>
> *74. In conclusion, the* ***Venice Commission invites the authorities of the Republic of Moldova to take into account the reduction of the time period that is taken into account when detecting unjustified wealth and/or undeclared donations, as it is unrealistic to believe that a person can keep track of his or her assets for such a long period of time****. Also, judges and prosecutors* ***must have a real chance to rebut the presumption and be able to rely on 'inaccessible evidence' or defend bona fide property, things that must be spelled out in the law."***

Regarding **the heterogeneous nature of the integrity criteria**, we note that the term 'heterogeneous' refers to the varied or diverse nature of some elements. In this context, it suggests that the criteria for assessing integrity are diverse or varied in the nature of their assessment. In other words, these criteria may cover a wide range of issues or may have different approaches to assessing the candidates' integrity.

However, Law 26/2022 dropped Article 9 from the original draft and reduced the criteria for assessing ethical integrity. In any case, the major difference is that the phrases "has not seriously violated the rules (of ethics and conduct)"; "reprehensible actions or inactions"; and "which would be inexplicable" have been introduced, which has worsened the situation in relation to the Venice Commission recommendation.

By Decision No. 42 of 6 April 2023, the CC held that

> *"120. The Court finds that, by using the term 'serious', the legislator has limited the discretion of the Evaluation Commission to the assessment of the ethical integrity of candidates. The criterion allows the Commission to decide not to pass the*

candidate only if it has found that the breaches of the rules of ethics and professional conduct are of a serious nature. This implies that the candidate can challenge the seriousness of the breaches found by the Commission before the special panel of the SCJ, which can ultimately assess the "seriousness" of the misconduct found in the light of the particular circumstances of the case. The reasoning is applicable, mutatis mutandis, to the terms 'reprehensible' and 'inexplicable' in Article 8(2)(a) of the Law."

On the other hand, the Venice Commission emphasized in its Opinion No. 1069/2021 that:

*"29 [...] In order to justify disciplinary proceedings, **misconduct must be serious and flagrant**, in a way which cannot be posited simply because there has been a failure to observe professional standards set out in guidelines. In this context, the implementation of a system of integrity checks should always be strictly in line with the principle of proportionality. Breaches of professional conduct cover a wide range of actions ranging from minor offences to serious misconduct giving rise (potentially) to disciplinary sanctions. This is not to say that breaches of the professional standards may not be of considerable relevance where there has been misconduct sufficient to justify and require disciplinary sanction. However, minor offences should not provide, in the opinion of the Venice Commission and of the Directorate General, a valid ground to reject a candidate."*

Another example would serve the ECtHR case of Xhoxhaj v. Albania, 9 February 2021. In this context, the European Court reviewed the assessment of the applicant's professional competence and established the following:

*"410. **As regards the assessment of professional competence**, the SAC upheld the Independent Qualifications Commission (IQC)'s (note: the equivalent of the Vetting and Pre-Vetting Commissions) conclusion that the applicant's failure to recuse herself from a set of constitutional proceedings undermined public confidence in the justice system. In the light of the decisions given by the IQC and the SAC and the circumstances of the present case, the Court finds that, for the reasons set out below, the reviewing bodies failed to give adequate reasons for such a finding. **First**, the applicant's father had been a member of an appeal court which had decided that the prosecution of certain persons who had been convicted at first instance of forgery was time-barred. The appeal court therefore did not examine the merits of the case and ruled on the charge of forgery of documents. As for the applicant, she was called to examine a constitutional complaint relating to a separate set of civil proceedings. **Second**, as neither she nor her father had any other personal conflict of interest in any of the proceedings, the Court is not convinced that the reviewing bodies have sufficiently demonstrated that doubts as to the applicant's impartiality existed. The Court observes that, although Contracting States are under an obligation to organize their legal system in such a way as to ensure compliance with the requirements of the right to a fair trial, impartiality being undoubtedly one of the most important of those requirements, the automatic disqualification of a judge who has blood ties with another judge who has heard another set of proceedings concerning one or all of the parties to the proceedings is not always required, particularly for a country the size of Albania (see, for the application of this principle, [...]). **Thirdly**, there is no indication that the parties to the constitutional proceedings had raised an objection to the applicant's participation in the court, even though she bore the same surname as her father."*

Furthermore, according to Decision No. 20 of 9 November 2023, the CC held that:

*"47. Given that the PG exercises a constitutional mandate, giving the SCP the power to regulate the substantive criteria for evaluating the performance of the PG, which may lead to his dismissal, **significantly diminishes the stability of the constitutional mandate of PG**.*

*48. Therefore, the Court holds that, in order to protect the constitutional mandate, the **criteria for assessing the performance of the PG must be laid down by Parliament in a law, in a clear manner**. [...]*

50. Therefore, the Court concludes that Article 31[1] paragraph (5) of the Law on the PG's Office, in the wording prior to the entry into force of Law No. 280 of 6 October 2022, which delegates to the High Council of Prosecutors the competence to establish the criteria for assessing the performance of the PG, does not comply with the requirement laid down in Article 125 paragraph (2) of the Constitution, according to which the PG may be dismissed "in accordance with the law, for objective reasons".

As a consequence, the wording of Art. 8 of the revised Law No. 26/2022, as it has been formulated, *creates* a risk of abuse or at least a subjective and discretionary assessment of the substantive criteria. Even if these kinds of mistakes are later corrected before the SCJ or the European Court, they would undermine public confidence in the reform and further destabilize the judiciary.

11.8 Have the rules on the adoption of the Pre-Vetting Commission's decisions been adjusted?

In its Opinion No. 1069/2021, the Venice Commission emphasized that:

*"35. [...] Considering that the Integrity Evaluation Commission will consist of six members, there should be some instruction what will happen **if the votes are divided equally between the members [...]: the rules on the quorum for the decisions to be taken by the Commission should reflect the need for a meaningful but balanced participation of the second group**. One option could be that the Evaluation Commission Chair has a decisive vote. However, there is no mention in the law of the Chair and his/her rights [...].*

According to Article (4) of Law 26/2022:

"(4) In the case of a tied vote, the Evaluation Commission will repeatedly examine the information on the candidate and vote on it the following day. If a tie vote is repeatedly established, the candidate shall be deemed not to have passed the assessment."

The text of the law adopted by the parliamentary majority shows that the proposal made by the Venice Commission was not accepted. Therefore, it can be said that there is a legal presumption that, in the absence of a clear majority in favour of the candidate after repeated assessment, the candidate does not meet the standards or criteria necessary to be considered suitable for the position in question.

As an alternative, according to Opinion No. 1029/2021, (CDL-AD(2021)018), 5 July 2021, the Venice Commission proposed to Ukraine in such a case:

"51. However, the Venice Commission and the DGI consider it necessary that, following a repeat vote, the vote of the group with at least two votes of international experts should prevail. This is not only important to build confidence in the Ukrainian judiciary, but is also acceptable from the point of view of national sovereignty. In fact, as far as the current members of the Supreme Judicial Council are concerned, they would only be suspended and the decision on their dismissal would remain with the appointing body. Finally, all decisions of the Council of Ethics, both those concerning candidates and current members of the SCM, can be appealed to the Supreme Court. The final decision therefore remains in any case with a national body.

52. There are other possible alternatives to the anti-blocking mechanism proposed above, including, for example, adding a seventh member to the Ethics Board to overcome the tie votes. The Commission is ready to assess the compatibility of such possible alternatives with international standards, should the Ukrainian authorities so request."

11.9 Did the assessed candidates have access to a court of law?

In its Opinion No. 1069/2021, the Venice Commission emphasized that:

15. [...] For these reasons, it is an essential step that this preliminary filtering process be put [...] and a possibility of appeal.

In its initial version, Law 26/2022 established in Article 14 paragraph (8) the following:

"(8) When examining the application to appeal the decision of the Evaluation Commission, the special panel of the SCJ may adopt one of the following decisions:

a) reject the appeal; or

(b) ***uphold the appeal and order the Evaluation Committee to resume the assessment procedure****."*

By Law No. 354 of 22 December 2022, Article 14 paragraph (8) of the above-mentioned Law was amended as follows*:*

"(8) When examining the appeal against a decision of the Evaluation Commission, the special judicial panel of the SCJ may adopt one of the following decisions:

a) reject the appeal; or

b) accept the appeal ***(if it finds that there are circumstances which could have led to the candidate passing the assessment)*** *and order the Assessment Committee to resume the assessment procedure."*

However, according to Decision No. 5 of 14 February 2023, the CC ruled that the text of the above-mentioned law contravenes Articles 20, 23 paragraph (2), and 54 of the Constitution, namely:

"2. The text ***"if it finds that there are circumstances which could have led to the candidate passing the assessment"*** *in Article 14 paragraph (8) letter b) of Law No. 26 of 10 March 2022 on some measures related to the selection of candidates for the position of member of the self-administrative bodies of judges and prosecutors is declared unconstitutional.*

3. Until the law is amended by the Parliament, the special panel of the SCJ, when examining the appeals lodged against the decisions of the Evaluation Commission, may order the re-evaluation of candidates who have not passed the evaluation if it finds:

(a) that serious procedural errors were admitted by the Evaluation Commission in the evaluation procedure which affect the fairness of the evaluation procedure, and

(b) if there are circumstances that could have led to the candidate's passing the evaluation."

Thus, the decision of the CC was implemented by Law No. 147 of 9 June 2023, which amended Article 14 paragraph (8) of Law 26/2022.

Furthermore, by Decision No. 42 of 6 April 2023, the CC ruled that:

"143. The Court holds that the power to refer the case back to the Court of Justice is not in itself contrary to Article 20 of the Constitution. According to the European Court's case law, it is as a rule inherent in the concept of judicial review that, in the event of an appeal being allowed, the reviewing court has jurisdiction to quash the contested decision and either to give a new decision or to remit the case for reconsideration to the same or a different body (see Ramos Nunes de Carvalho e Sá v. Portugal [MC], 6 November 2018, § 184 and the case law cited there). Thus, even if the special panel of the SCJ cannot compel

the Evaluation Commission to pass the assessed candidate, ***the arguments and conclusions made by that court in deciding the appeals remain binding on the Commission****."*

However, in practical terms, the referral of the case back to the Commission has created misunderstandings between Commission members. In fact, the Commission member appointed by the opposition, Vitalie Miron, has resigned from his position as a member, based on the reasons given on his Facebook page,

"[...] Anyone who would go into the essence of things would realize that we are in the presence of a legal absurd, when taking another decision would mean violating Article 120 of the Constitution of the Republic of Moldova by not executing the decisions of the SCJ, an option that is not admissible for me.

[...] Under these circumstances, the only solution that I consider appropriate in order to preserve my impartiality and honesty, in order not to admit the violation of the legal framework and to avoid non-execution of the decisions of the SCJ, is to announce my resignation as a member of the Pre-Vetting Commission as of today."

Therefore, the above example serves as an illustration of the risk indicated by the Venice Commission in its opinion CDL – AD (2023)05 (14 March 2023). In particular:

"100. [...] In addition, providing only for the power of the SCJ to remit the case and not to make a final decision entails the risk of repetitive appeals, if the Evaluation Commission or the SCM insist on their initial position and do not correct the errors identified by the SCJ. Therefore, the SCJ should have the right to take a final and binding decision if the referral to the SCM/SCP or the Evaluation Commission does not lead to a satisfactory outcome, which is necessary for a meaningful right of appeal before a court of law."

Finally, the following recital of the Venice Commission can be mentioned:

"Respect for the rule of law cannot be restricted only to the implementation of the express and formal provisions of the law and the Constitution. It also implies constitutional behaviour and practices, which facilitate compliance with the formal rules by all constitutional organs and mutual respect among them.[267]

Conclusions of Chapter XI. 'Implementation of the Venice Commission Recommendations of Law 26/2022 on Pre-Vetting'

– The version of Law 26/2022 adopted by the Parliament did not take into account the important recommendations of the Venice Commission, as there are multiple points of divergence between the provisions of the law and the international standards referred to by the Venice Commission in its Opinion No. 1069/2021.

– Contrary to the recommendations of the Venice Commission, the consultation process with the opposition and stakeholders was insufficient to ensure a broad consensus, and the establishment of a Pre-Vetting Commission raises legitimate questions about the respect of the principle of separation of powers.

– Contrary to the recommendations of the Venice Commission, the existence of a sufficiently serious situation in the judiciary to require the establishment of an extraordinary evaluation mechanism has never been proven by authorities. All the arguments put forward were exclusively political – the need to increase trust and the proper functioning of justice.

– Contrary to the recommendations of the Venice Commission, the composition of the Pre-Vetting Commission did not meet the minimum international standard that it should be composed predominantly of judges.

– Contrary to the recommendations of the Venice Commission, the integrity criteria have remained broad and vaguely defined, and their application has been susceptible to abusive and discretionary interpretations, giving way to a wide uneven practice and double standards by the Pre-Vetting Commission.

– Contrary to the recommendations of the Venice Commission, the decision-making process in the Pre-Vetting Commission was also not adapted to the Commission's recommendations.

– Contrary to the recommendations of the Venice Commission, the pre-vetting process and the mechanism for appealing decisions has not always ensured transparency and fair access to justice.

Lessons learnt

– Broad political consensus in promoting extraordinary reforms in the field of justice also requires the support of the majority of society. The lack of such a consensus raises doubts in at least part of society.

– Failure to comply with international standards when planning reforms in the field of justice is incompatible with increasing society's confidence in the independent functioning of justice. Ignoring standards undermines judicial independence and public confidence.

267 See Venice Commission Opinion No. 701/2012, DL – AD (2013)007, 11 March 2013; paragraph 73.

12

FALSE INSPIRATION FOR JUSTICE REFORM IN MOLDOVA: ALBANIAN VETTING OF JUDGES AND PROSECUTORS

Summary: *Justice reform in Albania, in particular the vetting process of judges and prosecutors, was claimed as a model for reforms in the Republic of Moldova. However, the implementation and mechanisms of the vetting process in Albania differ significantly from those proposed in Moldova. This chapter provides a comparative perspective on Albania's experience in implementing vetting, analysing its origins, challenges, and results. The reform process in Albania started in 2014, following an extensive analysis of problems in the judiciary, including corruption and inefficiency. The Albanian reform was driven by the urgent need to tackle endemic corruption in the judiciary, with international support, in particular from the Venice Commission.*

The vetting process focused on assessing the professional backgrounds, relationships, and skills of judges and prosecutors. The main aim has been to ensure high standards of integrity and professionalism within the judiciary, thereby contributing to increased transparency and public confidence in justice. The reform has not been without challenges, including political resistance and delays in the judicial process, but it has led to significant results, such as the dismissal of many judges and prosecutors for unjustified assets, unethical behaviour or incompetence.

This chapter details the key elements of the vetting process, including the establishment of the independent bodies, the assessment criteria, and the role of International Observers. Although there has been criticism of the lengthy proceedings and the pressure on the judiciary, which has led to a backlog of unresolved cases, the vetting process in Albania has been seen as an essential step towards improving the integrity of the judiciary and restoring public confidence.

The justice reform in Albania has been heralded as the inspiration for justice reform in Moldova. However, the premises of the implementation of justice reform through vetting in Albania, the mechanisms introduced, as well as the safeguards in this process were totally different from the elements of the reform in the Republic of Moldova as we know it. This chapter provides a comparative perspective on Albania's experience in implementing vetting of judges and prosecutors.

12.1 Overview: analysing the problems in the justice system, the Venice Commission's views, and amending the Constitution of Albania

> *"A comprehensive reform of the Albanian judiciary. Such reform is urgently needed and the critical situation in this area justifies radical solutions"*
> *Venice Commission, Interim Opinion*

The process for the reform of the justice system in Albania began in 2014 with the establishment of an ad hoc Committee of Parliament, with representatives of all the political parties, support from a pool of local and international high-level experts, and political and technical support from both the US Embassy in Tirana and the European Union Delegation. The first phase of the work of the ad hoc Committee and the experts was a stocktaking and assessment of the current situation, institutional capacities, and main problems faced in the justice system, which were compiled in the 'Analysis of the Justice System in Albania', published in June 2015. The analysis highlighted several problems and shortcomings both in the content of the performance evaluation system for judges and prosecutors and in its implementation,[268] including:

- lack of effectiveness of this system because it takes a considerable amount of time to produce evaluation results;
- use of complicated criteria in the evaluation process;
- concentration of attention on professional performance, thus neglecting ethical evaluation;
- lack of disciplinary measures for violations of rules of ethics by judges and prosecutors; and

268 See p. 40 of Strategy for Reform in the Justice System (July 2015).

– lack of periodical training and evaluation for ethics.

This stocktaking exercise was followed by the design of a 'Strategy for Reform in the Justice System' (July 2015), one of the main objectives of which was to "*Create a corps of judges and prosecutors with high ethical-moral and professional integrity, improving the performance evaluation and re-evaluation system and their ethics*." In order to realize the above objectives, constitutional and legal amendments were proposed.[269] These included, among others:

– drafting necessary constitutional and legal amendments that prescribe the creation of a qualified, independent, and impartial ad hoc mechanism that will be tasked with conducting the evaluation of the professional knowledge, moral, ethical, and psychological integrity of judges and prosecutors, combined with a special verification of their assets, with the burden of proof resting on the verified subjects, providing all the necessary procedural guarantees to the evaluated judge or prosecutor, such as: (i) a review process with clear criteria; (ii) a review process that is individual and transparent; (iii) a review process conducted by a professional, independent, and impartial corps; (iv) a review process that guarantees the opportunity to complain before a structure that has the same characteristics as the structure tasked with the review and (v) in accordance with all other guarantees articulated by the Opinion of the Venice Commission on Ukraine; and (vi) direct assistance with and control of the process by international agencies monitoring and assisting our country's justice system; and

– not accepting or ousting from the system judges, prosecutors, and judicial police officers with criminal precedents for criminal offences, according to the definition of a fair and reasonable minimum of punishment prescribed for these offences by law.

In the design of the re-evaluation ('vetting') process, prior experiences with similar transitory processes were taken into account, such as those in Serbia, Kosovo, and Ukraine, as well as relevant holdings of the CCs of these respective countries and the relevant opinions of the Venice Commission.[270] Moreover, the Venice Commission was requested to provide their evaluation and opinion on the draft constitutional amendments on the Judiciary of Albania. In both its interim opinion and the final opinion, the Venice Commission stated that:

"*The necessity of the vetting process is explained by an assumption – shared by nearly every interlocutor met by the rapporteurs in Tirana – that the level of corruption in the Albanian judiciary is extremely high and the situation requires urgent and radical measures […]* ***It must be remembered, however, that such a radical solution would be ill-advised in normal conditions, since it creates enormous tensions within the judiciary, destabilizes its work, augments public distrust in the judiciary, diverts the judges' attention from their normal tasks, and, like every extraordinary measure, creates a risk of the capture of the judiciary by the political force which controls the process.***"[271]

The Venice Commission also reiterated its position in the case of Ukraine[272] that "*…such a measure as the qualification assessment […]* ***should be regarded as wholly exceptional and be made subject to extremely stringent safeguards to protect those judges who are fit to occupy their positions***." In conclusion, the Venice Commission expressed its support for the effort of the Albanian authorities aimed at the comprehensive reform of the Albanian judicial system, stating that "*Such reform is needed urgently, and the critical situation in this field justifies radical solutions*."[273]

However, while finding that the Draft Amendments represent a solid basis for further work in this direction, the Venice Commission recommended that the proposals be simplified and institutions streamlined, and that the composition of the Independent Qualification Commissions and status of their members should guarantee their genuine independence and impartiality; judges/prosecutors subjected to the vetting should enjoy basic fair trial guarantees and should have the right to appeal to an independent body; the status and conditions of the appointment/removal of the International Observers should be defined; and their powers should be described with more precision (and further developed in the implementing legislation).

In its final opinion, the Venice Commission upheld the revised proposals and its position regarding the necessity of the vetting process[274], but stated that the need for vetting can only be under the condition that "it is an extraordinary and a strictly temporary measure" and the vetting structures should not replace ordinary constitutional bodies, such as SCM and SCP; they may coexist with them for some time, but should not turn into parallel quasi-permanent mechanisms. Thus, the Venice Commission recommended significantly reducing[275] the duration of the vetting process.[276]

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269 See p. 41 of Strategy for Reform in the Justice System (July 2015).

270 See p. 42 of Strategy for Reform in the Justice System (July 2015).

271 See para. 98 of CDL-AD (2015)045, Interim Opinion on the Draft Constitutional Amendments on the Judiciary of Albania ('Interim Opinion').

272 See para. 75 of CDL-AD (2015)007, Joint Opinion by the Venice Commission and the Directorate of Human Rights of the Directorate General of Human Rights and the Rule of Law on the Law on the Judiciary and the Status of Judges and amendments to the Law on the High Council of Justice of Ukraine.

273 See paras.136-137 of Interim Opinion.

274 See para. 52 of CDL-AD (2016)009, Final Opinion on the revised draft constitutional amendments on the Judiciary ('Final Opinion').

275 See paras. 55 and 88 of Final Opinion.

276 The question of the duration of the vetting process in Albania was again assessed by the Venice Commission in its opinion CDL-AD (2021)053, Opinion on the Extension of the Term of Office of the Transitional Bodies in Charge of the Re-evaluation of Judges and Prosecutors.

The amendments to the Constitution of the Republic of Albania, including transitory provisions,[277] the introduction of an annex on the 'Transitional re-evaluation of judges and prosecutors', and the provisions on the vetting process, were voted by unanimity of all 140 deputies of Parliament on 22 July 2016. Meanwhile, Law No. 84/2016 'On the transitional re-evaluation of judges and prosecutors in the Republic of Albania' ('Vetting Law') was voted by a qualified majority (3/5) of all deputies of Parliament, representing the then governing coalition.

The opposition, while in full agreement and voting the constitutional amendments, had a number of concerns regarding the Vetting Law and made a request to the CC to find the Vetting Law in contravention with the Constitution and to suspend its applicability until the moment of rendering a final decision. The CC, however, found that the Vetting Law was in concordance with the Constitution.[278]

12.2 Scope of vetting. Evaluation criteria

The vetting process is established in order to guarantee the proper functioning of the rule of law and the independence of the justice system, as well as to re-establish public trust and confidence in the institutions of this system. The vetting is carried out on the basis of the principles of due process, as well as of respect to the fundamental rights of the assessee.[279] The vetting includes (i) assets, (ii) background; and (iii) proficiency assessment.[280]

Assets assessment

Assessees are subject[281] to the declaration and assessment of their assets, with the purpose of identifying those who own or have in use greater assets than what can be legally justified, or those who have not accurately and fully declared their assets and those of persons related to them.

The assessee must credibly explain the lawful source of assets and of the income. For the purposes of the vetting process, lawful assets are considered the declared income and for which tax obligations have been paid.[282]

If the assessee has assets greater than double the amount of the lawful assets, he/she is presumed guilty of disciplinary misconduct, unless he/she presents evidence that proves the contrary. If the assessee tries to hide or to inaccurately present the assets in her ownership, possession, or use, the presumption of disciplinary misconduct resulting in dismissal applies and the assessee has the obligation to prove the contrary.[283]

The burden of proof shifts to the assessee only for the vetting process, excluding any other process, in particular criminal proceedings.[284]

Background assessment

Assessees are required to submit a background declaration and are subject to a background assessment with the purpose of identifying those with inappropriate contacts with persons involved in organized crime. The background assessment on persons involved in organized crime is based on the background declaration and other evidence, including Albanian or foreign court decisions.[285]

If the assessee has inappropriate contacts with persons involved in organized crime, a presumption for the disciplinary measure of dismissal is established, which the assessee shall have the burden to disprove. If the assessee takes steps to inaccurately disclose or hide contacts with persons involved in the organized crime, a presumption for the disciplinary measure of dismissal is established, which the assessee shall have the burden to disprove. [286]

Proficiency assessment

Assessees are subject to a proficiency re-evaluation, with the purpose of identifying those who are not qualified to perform their function and those who have professional deficiencies which may be remedied through education.[287] The

277 Article 179/b of the Constitution.
278 See Decision of the CC of the Republic of Albania No. 2 dated 18 January 2017. The CC also requested and received an amicus curiae opinion from the Venice Commission. See CDL-AD(2016)036, Amicus curiae brief for the CC on the law on the transitional re-evaluation of judges and prosecutors (the vetting law).
279 Article 179/b of the Constitution.
280 Article Ç(1) of Annex of Constitution.
281 Article D(1) of Annex of Constitution.
282 Article D(3) of Annex of Constitution.
283 Article D(4) and (5) of Annex of Constitution.
284 Article Ç(5) of Annex of Constitution.
285 Article DH(1) of Annex of Constitution.
286 Article DH(3) and 4 of Annex of Constitution.
287 Article E(1) of Annex of Constitution.

proficiency assessment is conducted with the inspectors of the Inspectorate of the then High Council of Justice and the Inspection Unit of the General Prosecution Office,[288] which review legal documents issued by the assessee during the past (three) years[289].

If it results that the assessee has inadequate proficiency, then this is considered professional deficiency and the presumption in favour of the disciplinary measure of suspension applies, together with the obligation to attend the education programme, and the assessee has the obligation to prove the contrary. If it results that the assessee has inappropriate proficiency and the noticed deficiency cannot be remedied through the one-year education programme, the presumption in favour of the disciplinary measure of dismissal applies and the assessee has the obligation to prove the contrary. In these cases, the assessee has the obligation to prove the contrary[290].

12.3 Vetting structures

Procedure of appointment

The process for the appointment[291] to the positions of the member of the Independent Qualification Commission, judge of the SAC, and Public Commissioner is commenced by the call for applications from the President of the Republic.[292] The criteria for being appointed to these positions are strictly construed and are fully laid out in the Constitution and the Vetting Law.[293] Within seven days from the conclusion of the application process, the President compiles a list of the candidates who meet the formal criteria for each position, and a separate list of the candidates who do not meet the formal criteria. This process is monitored throughout by the International Monitoring Operation (IMO).

A committee composed of at least three representatives of the IMO assesses the candidates, by preparing within 14 days a 'whitelist' of candidates who fulfil the criteria and a 'blacklist' of candidates who do not fulfil them.[294] Within three days of receiving the two lists from IMO, Parliament establishes an ad hoc **verification committee** with six members consisting of equal representatives from the parliamentary majority and opposition. The committee may, with at least four votes, move a candidate from the 'blacklist' to the 'whitelist', while it needs five votes to move a candidate from the 'whitelist' to the 'blacklist'.[295]

Following submission by the verification committee, Parliament establishes within ten days two ad hoc **selection committees** consisting of equal representatives from the parliamentary majority and opposition, where one committee is responsible for selecting candidates for the Commissioner of the Independent Qualifications Committee and the two Public Commissioners, while the other committee selects the candidates for judge of the SAC. In all cases, voting is secret and electronic and there is need for a majority for a candidate to be selected.[296]

The selections from the two ad hoc committees are consolidated *en bloc* into one list and sent to the Speaker of Parliament. Within 10 days, the Assembly approves the entire list of candidates *en bloc* by a majority of three-fifths of all deputies of Parliament.[297] In the event that Parliament fails to approve the list of candidates *en bloc*, the Speaker shall send the list back to the ad hoc selection committees to repeat their selection process and submit a second list within 10 days. Parliament may reject the entire list of candidates *en bloc* by a majority of two-thirds of all its members, otherwise the list is considered adopted and those selected are considered appointed.

Following an agreement between the governing majority and the opposition prior to the 2017 general elections, the lists of candidates for the vetting structures were unanimously adopted on the plenary session of 17 June 2017.

The vetting process is conducted by an Independent Qualification Commission, while appeals of the assessees or the Public Commissioners are adjudicated by the SAC (separate chamber attached to the CC). During the transition period of nine years, the CC shall consist of two chambers.[298]

IQC

The IQC is organized into four adjudication panels, composed of three members each elected by lot. Substitute members are also assigned by lot. The mandate of members of the IQC was originally five years from the date of commencement of their operation,[299] which was further

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288 Article 3(10) of Vetting Law.
289 Article 41(3) of Vetting Law.
290 Article E(3),(4) and (5) of Annex of Constitution.
291 See Article C of Annex of Constitution and Articles 7 to 11 of Vetting Law.
292 If the President does not exercise his competences within five days from the entry into force of the Vetting Law (with a maximum period of 45 days from the entry into force of the Annex of Constitution), the competence shall revert to the Ombudsperson, which is a deblocking mechanism foreseen by Article C(6) of the Annex of Constitution and Article 7(7) of the Vetting Law.
293 Article C(5) of the Annex of Constitution and Article 6 of the Vetting Law.
294 Article C(7) of the Annex of Constitution.
295 Article C(7) of the Annex of Constitution and Article 8 of the Vetting Law.
296 Article C(10) and (11) of the Annex of Constitution and Articles 9 and 10 of the Vetting Law.
297 Article C(10) and (12) of the Annex of Constitution and Articles 9 and 11 of the Vetting Law.
298 Article 179/b(5) of the Constitution.
299 Article 179/b(8) of the Constitution.

Structure

Independent Qualification Commission (IQC)
5-year mandate

Appeals Chamber (separate chamber of the Constitutuinak Court)
9-year mandate

Public Commissioners
empowered by the Constitution to appeal decisions of the IQC

International Monitoring Operation (IMO); funded by the EU and US
monitors vetting activities

extended by about two years through an amendment to the Constitution.[300]

During the exercise of their mandate, the Commissioners of the IQC enjoy the status of member of the High Court and they and their families are guaranteed protection of the highest level, in accordance with the law.[301]

Commissioners of the IQC sign a written declaration, as per the law, authorizing the annual audit of their assets, systematic monitoring of their financial accounts and transactions, as well as the waiver of the privacy of their communications throughout the duration of their stay in office. All declarations of their assets become public.[302] Commissioners of the IQC are subject to disciplinary liability and cases of disciplinary misconduct are reviewed by the SAC, in accordance with the law.[303]

The distribution of the cases to the panels is carried out by lot, whereby the Rapporteur is also assigned. The Commission panel is led by the Chair of the panel, who is elected from among the respective members. In his or her absence, the panel is chaired by the most senior member by age.[304]

An assessee filing an appeal against the disciplinary measure of dismissal from the IQC is suspended from duty pending the decision of the Appeal Chamber. During the period of examination of the appeal, the suspended assessee is paid 75 per cent of the salary.[305]

Public Commissioners

Two Public Commissioners represent the public interest and may file appeals against the decisions of the Commission.[306]

The mandate of the Public Commissioners is seven years from the date of commencement of their operation, including the extended mandates by about two years. During the exercise of their mandate, the Public Commissioners enjoy the status of member of the High Court and they and their families are guaranteed protection of the highest level, in accordance with the law.[307]

Public Commissioners sign a written declaration, as per the law, authorizing the annual audit of their assets, systematic monitoring of their financial accounts and transactions, as well as the waiver of the privacy of their communications throughout the duration of their stay in office. All declarations of their assets become public.[308] Public Commissioners are subject to disciplinary liability and cases of disciplinary misconduct are reviewed by the SAC, in accordance with the law.[309]

SAC attached to the CC

The SAC of the CC consists of seven judges for a term of nine years and is the sole judicial body that considers appeals against the decisions of the Commission, in accordance with the annex of the Constitution and the Vetting Law.[310] The Chamber decides in adjudicating panels composed of five members each.[311]

The judges of the Appeal Chamber enjoy the status of judge of the CC and their mandate shall not be subject to an age limit, unless provided otherwise by the law.[312] Judges of the SAC sign a written declaration, as per the law, authorizing the annual audit of their assets, systematic monitoring of their financial accounts and transactions, as well as the waiver of the privacy of their communications throughout

300 Amendments to the Constitution to extend the mandate were adopted on 10 February 2022, with 118 votes in favour and 4 abstentions.
301 Article C(3) and (17) of Annex of Constitution.
302 Article C(4) of Annex of Constitution.
303 Article C(16) of Annex of Constitution.
304 Article 14 of Vetting Law.
305 Article F(5) and (6) of Annex of Constitution.
306 Article C(2) of Annex of Constitution.
307 Article C(3) and (17) of Annex of Constitution.
308 Article C(4) of Annex of Constitution.
309 Article C(16) of Annex of Constitution.
310 Article F(1) of Annex of Constitution.
311 Article F(1) of Annex of Constitution and Article 15(1) of Vetting Law.
312 Article C(3) of Annex of Constitution.

the duration of their stay in office. All declarations of their assets become public.[313]

The SAC shall review appeals against decisions of the Commission and during its mandate it has the jurisdiction to adjudicate[314]:

– Disciplinary misconducts of CC judges, members of the High Judicial Council, the High Prosecutorial Council, the PG, and the High Justice Inspector; and

– Appeals against decisions of the High Judicial Council, High Prosecutorial Council, and the High Justice Inspectorate, imposing disciplinary sanctions against judges, prosecutors, and other inspectors, respectively.

The assessees and the Public Commissioners, under the law, may file an appeal to this Chamber against the decisions of the Commission, except for decisions for suspension from duty coupled with an obligation to attend an education programme to address professional deficiencies of the assessee.[315]

The SAC may request the collection of facts or evidence as well as remedy any procedural errors committed by the Commission, taking into account the fundamental rights of the assessee. The SAC decides the case and may not transfer it back to the Commission. The constitutional jurisdiction does not permit calling into question the constitutionality of the principles, on which the re-evaluation process is based, and as such, it is also based on the criteria set forth in this law.[316]

The SAC may uphold, modify, or overrule the decision of the Commission, giving a reasoned decision in writing. In cases of appeals by the Public Commissioners, the Appeal Chamber may not impose a more severe disciplinary measure, without providing the assessee with sufficient time to prepare and be heard in a hearing. In case the Chamber accepts the appeal by annulling the decision of the Commission, 25 per cent of the salary is paid to the assessee for the entire period of suspension.[317] A final decision ordering dismissal from office has *ex lege* immediate effect. Assessees may exercise the right of appeal to the ECtHR.[318]

IMO

The IMO shall support the re-evaluation process by way of monitoring and overseeing the entire process. This Operation includes the European Union institutions, European Union Member States, and the USA, and is led by the European Commission.[319]

The IMO performs its tasks in accordance with international arrangements in force. The IMO appoints the International Observers following a notification to the Council of Ministers. The Observers are appointed from among judges or prosecutors with no less than 15 years of experience in the justice system of their respective countries. The mandate of an International Observer may be terminated by the IMO only for gross misconduct.[320]

The International Observer exercises the following duties[321]:

– provides recommendations to the Assembly concerning the qualification and selection of the candidates for the position of member of the Commission, Appeal Chamber judge, and Public Commissioner;

– presents findings and opinions on issues that are examined by the Commission and the Appeal Chamber and contributes to the background assessment as per Article DH. Regarding these findings, the International Observer may request that the Commission or Appeal Chamber examine evidence or submit evidence obtained from state bodies, foreign entities, or private persons, in accordance with the law;

– submits written recommendations to the Public Commissioners for filing an appeal. In the event that the Public Commissioner does not follow this recommendation, he/she prepares a written report and provides the reasons for the refusal; a

– is entitled to have immediate access to all information, data on persons, and documents necessary to monitor the re-evaluation process at all levels and in all stages.

International Observers and their families are guaranteed protection of the highest level, in accordance with the law.[322]

Administration of vetting structures

The staff of the re-evaluation institutions shall comprise the Legal Service Unit and the administrative employees.[323] The Appeal Chamber shall also be assisted by the supporting structures of the CC. The duties of the Secretary-General

313 Article C(4) of Annex of Constitution.
314 Article 179(7) of the Constitution and Article 5(3) of Vetting Law.
315 Article F(2) of Annex of Constitution.
316 Article F(3) of Annex of Constitution.
317 Article F(5) and (6) of Annex of Constitution.
318 Article F(6)-(8) of Annex of Constitution.
319 Article B(1) of Annex of Constitution.
320 Article B(2) of Annex of Constitution.
321 Article B(3) of Annex of Constitution.
322 Article C(17) of Annex of Constitution.
323 Article 18(1) of Vetting Law.

include, among others, to organize and lead the daily work of all the staff, with the exception of the advisory staff, and to recruit the administrative personnel in compliance with the Labour Code.[324]

All staff of the vetting institutions sign a written declaration, as per the law, authorizing the annual audit of their assets, systematic monitoring of their financial accounts and transactions, as well as the waiver of the privacy of their communications throughout the duration of their stay in office. All declarations of their assets become public.[325]

The IQC and the SAC will be assisted, in their decision-making, by the Legal Service Unit, which carries out advisory and supporting activity in the decision-making process of these institutions. The Legal Service Unit is composed of legal advisors, and economic advisors under the supervision of the meeting of the commissioners or judges.[326]

Upon termination of the mandate of the vetting institutions, the legal/financial advisor, upon her consent, shall have the right to be appointed in functions or public functions that he or she had before the appointment or in positions equivalent to them in the public administration.[327]

The administration staff of vetting structures and their families are guaranteed protection of the highest level, in accordance with the law. [328]

Vetting implementation

The vetting process officially began on 17 June 2017, with the adoption by Parliament of the list of IQC Commissioners, Public Commissioners, and SAC judges. The vetting process was finalised at first instance with the rendering of all 805 decisions of the IQC on 21 November 2024. Out of all 805 decisions, there were 373 confirmations in office, 268 dismissals (mostly for matters relating to unjustified assets), 105 decisions to terminate the re-evaluation (vetting) proceedings, 8 decisions for suspending proceedings, 49 decisions to discontinue proceedings without a final decision, 2 decision for suspension of the assessee with the obligation to undergo specialised training.[329] Overall, 54% of the vetting proceedings resulted in dismissal or termination due to the assessee resigning or reaching retirement age.

The IMO has continued to oversee the vetting process and has issued opinions on first-instance assessments, with the vetting institution of the Public Commissioners having followed all recommendations for appeal resulting in a total of 124 appealed decisions, while for 685 decisions the Public Commissioner did not make an appeal. The SAC is continuing the adjudication of appeals and has made appropriate planning and resource allocation in order to render all vetting decisions within the constitutional mandate of July 2026.

The European Commission found that "*the vetting process, carried out under independent international monitoring, has yielded good results in increasing the accountability of the justice sector*".[330] However, the high number of dismissals resulting from vetting has led to delays and lengthy delays in the adjudication of cases. By the end of December 2022, there were 132,769 pending cases in all courts in Albania, compared to 125,689 in December 2021, an increase of 5.6 per cent.

The courts with the highest backlogs are the High Court, Tirana District Court, and the Administrative Court of Appeal. The High Court has the highest backlog, with over 35,822 cases, of which 77 per cent are more than two years old. As for the Courts of Appeal, the backlogs have increased by 43 per cent in the last three years, with the average time to resolve a case at the appellate level being 893 days. At the Tirana Court of Appeal, the average length of a criminal case was 5,820 days.[331]

In addition, a commissioner of the IQC and a judge of the Special Appeals College (SAC)[332] were dismissed for failing to disclose information and documents that would have caused them to fail to meet the criteria for appointment.

Furthermore, a number of dismissed judges and prosecutors have challenged the decisions of the SAC at the ECtHR. The ECtHR delivered a key judgment in the case of Xhoxhaj v. Albania, where it found that "*...the Court must take into account the extraordinary nature of the vetting process of judges and prosecutors in Albania. This process was introduced in response to the urgent need, as assessed by the national legislature, to combat widespread corruption in the justice system. It consists of the assessment of three criteria and specifically targets all serving judges and prosecutors. For this reason, the vetting process of judges and prosecutors in Albania is* sui generis *and must be different from any ordinary disciplinary procedure against judges or prosecutors*", and dismissed the applicant's complaint in the present case.

In February 2022, the Parliament extended the mandate of the IQC and Public Commissioners until the end of 2024. With the termination of the mandate of the Independent Qualification Commission, pending vetting cases for

324 Article 21 of Vetting Law.
325 Article C(4) of Annex of Constitution.
326 Article 22(1) of Vetting Law.
327 Article 29(1) of Vetting Law.
328 Article C(17) of Annex of Constitution.
329 https://ata.gov.al/2024/12/16/perfundimi-i-mandatit-te-kpk-se-ilia-805-vendime-373-konfirmime-ne-detyre-dhe-268-shkarkime/
330 See p. 39 of the European Commission's Albania Report for Cluster 1 (Fundamentals).
331 See p. 44 of the European Commission's Albania Report for Cluster 1 (Fundamentals).
332 See www.kpa.al/wpcontent/uploads/2020/07/vendim-nr.14.2020.pdf

judges are examined by the High Judicial Council, while pending vetting cases of prosecutors are examined by the High Prosecutorial Council, in accordance with the Law on Vetting. After the dissolution of the Public Commissioners, their powers are exercised by the Special PG of the Special Prosecutor's Office. The Special Board of Appeals will cease its work in June 2026, and any unresolved appeals against pending decisions of the Commission are to be considered by the CC.[333]

Conclusions of Chapter XII. 'False Inspiration for Justice Reform in Moldova: the Albanian Vetting of Judges and Prosecutors'

- Judicial reform in Albania, in particular the vetting process of judges and prosecutors, has been a crucial and radical step in tackling endemic corruption in the Albanian judicial system. Although the mechanisms of the reform and the results of the vetting process have varied, the goal of ensuring integrity and professionalism in the judiciary has largely been achieved.

- The extraordinary evaluation system implemented in the Republic of Moldova is not based on the Albanian model. The initial concept presented by the Ministry of Justice in autumn 2021 was inspired by the Albanian system, but the initial concept, as well as the Albanian model, was dropped.

- A comparison of Albania's experience with the ongoing reforms in the Republic of Moldova highlights the following important features of the Albanian system, which were missing in Moldova:

    1) planning reform on the basis of a comprehensive analysis of the problems in the field of justice;

    2) the broad parliamentary consensus on the adoption of the law on extraordinary evaluations;

    3) amending the Constitution in order to regulate vetting and guarantees within the framework of the extraordinary evaluation and to ensure the non-repetition of this evaluation;

    4) ensuring rigorous integrity criteria for the members of the evaluation bodies;

    5) guaranteeing respect for state sovereignty, by not admitting foreign citizens in the evaluation process;

    6) involving foreign citizens only in the monitoring bodies of the Commission responsible for the extraordinary evaluation;

    7) the creation of special jurisdictional bodies to appeal the decisions of the extraordinary Evaluation Commission;

    8) the possibility for the subjects of the evaluation to appeal the actions and behaviour of the Commission members;

    9) the Evaluation Commission is an administrative authority of the state, bound to comply with the provisions of administrative legislation;

    10) members of the Evaluation Committee are required to submit asset declarations;

    11) membership of the Evaluation Committee is incompatible with any remunerated activities;

    12) the Secretariat of the Evaluation Committee has not been secretized;

    13) narrow criteria for assessing integrity: assets, background, and professional skills, in the case of Albania; and

    14) the Court had the last word in disputes over extraordinary evaluations.

- Despite the challenges posed by delays and political resistance, the vetting process in Albania remains an essential and transformative step, demonstrating that reforms of this kind, although controversial, can be indispensable for strengthening the rule of law and ensuring the long-term stability of democratic institutions.

Lessons learnt

- Albania's experience could have been valuable for the Republic of Moldova, if the Albanian model of assessing the integrity of magistrates had been applied.

- Effective treatments are based on a thorough analysis, while reforms are based on a serious assessment of the situation.

- The extraordinary nature of the evaluation implies a deviation from certain constitutional guarantees, first and foremost guarantees in the field of justice. Therefore, the constitutional implementation of this evaluation, without amending the Constitution, sets dangerous precedents of weakening the constitutional guarantees applicable in the ordinary regime

333 Article 179(8) of the Constitution .

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CONCLUSIONS AND LESSONS LEARNT

Conclusions of Chapter II. 'Myths of Justice Reform in Moldova'

– Justice reform in Moldova is deeply marked by myths that reflect the tensions between public expectations and reality. Although there have been significant efforts to "clean up" the justice system, the process has stalled due to internal conflicts between Moldovan politicians and the judiciary.

– The myth that the judiciary is opposing the reform or that judges have failed to punish the 'Laundromat' corruption cases underestimates the complexity of the judicial process and the need to respect due process.

– The last pre-reform SCM, discredited and with an outdated mandate, functioned by accepting political interventions and protection, failing to undertake a real "self-cleaning" of the system.

– Despite criticism, judges did not have the necessary levers to reform and clean themselves (other than through the SCM), while political interventions have made these reforms look more like an attack on justice than real change.

– Justice reform through extraordinary evaluations was inspired by the "bulldozing politics into justice" approach. This approach can be considered a failure, since the reformed members of the SCM have announced that the judiciary should no longer be independent, while the President of the country declared that the approaches so far have not been tough enough and the international practices and standards in the field of justice do not work in the Republic of Moldova.

Lessons learnt

– A clear and realistic understanding of the fundamental problems facing the justice system is essential for successful justice reforms.

– The political context and election slogans may anticipate justice reforms, but they are not sufficient for their successful design and implementation. Justice reforms can only be based on a genuine and comprehensive understanding of the problems they address, and on evidence, not myths.

– To be credible, justice reform processes need to be based on the principles of transparency, independence, and the exclusion of political interference.

– If, instead of international standards in justice reform, methods contrary to these standards are applied, the conclusion cannot be that international good practices have not worked in Moldova.

– International standards and best practices are known as such because they have repeatedly demonstrated their effectiveness. They just need to be applied strictly, consistently, uniformly and in good faith.

Conclusions of Chapter III. 'Rules of the Game in Pre-Vetting'

– Despite the intentions to introduce the Albanian model, the process was implemented without constitutional amendments and did not reach the initially announced scale (in the first stage, only the self-administrative bodies of the judiciary and prosecution were involved).

– The complexity and imbalances of the pre-vetting procedure, established with the purpose of assessing the integrity of judges and prosecutors in the Republic of Moldova, together with the restriction of candidates' rights, have foreshadowed a dysfunctional process, which exceeded the time limits set for this purpose.

– Imposing of unrealistic time limits by Law 26/2022, both for the Pre-Vetting Commission and the Special Panel of the SCJ, did not ensure a speedy completion of the evaluation. Even after almost three years in office, evaluation of about 40 per cent of the candidates to be evaluated by the Pre-Vetting Commission were passed to other vetting commissions.

– Law 26/2022 did not take into account the possibility of the admissibility of appeals of candidates before the SCJ, as no additional time was provided for the repeated evaluation of the Pre-Vetting Commission, while the GAJ and

GAP were not given time to learn the results of the appeals before forming the SCM and SCP.

– The Parliament made the main legislative interventions in the pre-vetting process during the period of examination of the appeals lodged by candidates against the Pre-Vetting Commission's decisions. The amendments were aimed exclusively at reducing the chances of the admission of the candidates' appeals by the SCJ. Thus, the Parliament did not act as a rule-setting authority according to which the appeals were examined, but as a participant in the process, intervening in the pending disputes on the side of the Commission.

Lessons learnt

– Transformations in justice are complex and lengthy processes that need to be carefully thought through, which cannot be rushed by setting deadlines and imposing unrealistic tasks for carrying out the evaluation of judges and prosecutors or examining their appeals.

– Reducing the guarantees for judges and prosecutors in extraordinary evaluation procedures below the constitutionally guaranteed level, in the absence of amendments to the Constitution of the Republic of Moldova, slows down reform processes as this defies the practice of applying the Constitution of the Republic of Moldova.

– Parliament's involvement in justice reform processes must remain impartial and impersonal so as not to undermine their credibility. Legislative interventions in the framework of justice reforms must not turn the legislature into a 'big brother' of the Pre-Vetting Commission, offering it guarantees of infallibility.

Conclusions of Chapter IV. 'Lack of Fair Play'

– The pre-vetting mechanism set up with the intention of ensuring the integrity of judges and prosecutors in the Republic of Moldova has been marred by procedural shortcomings and abuses that have affected the fundamental rights of candidates and compromised the evaluation process.

– The impossibility for candidates to obtain the necessary information, the short time frame for providing it, and the lack of an effective appeal framework have turned pre-vetting into an often arbitrary and disproportionate process.

– Political interventions and the way the Commission has applied its own rules have led to discrimination and contradictions, preventing a fair and transparent assessment of candidates.

Lessons learnt

– The "laissez-faire" of reform is preferable to its lack of "fair play". In other words, letting the reform proceed according to the rules initially set would have been preferable to permanent intervention with a view to constantly reducing the guarantees of the assessed persons.

– Transformations for integrity must only be made in integrity-compatible ways. The judiciary cannot increase its credibility through a reform that is not credible.

– For the credibility and efficiency of the external evaluation mechanism of judicial actors, the evaluation system must be clearly regulated, predictable, and guarantee the right of defence and transparency of procedures.

Conclusions of Chapter V. 'Changing the Rules of the Game during the Game'

– Frequent amendments to Law 26/2022 and changes in the pre-vetting procedure have eroded confidence in the evaluation process, creating an unstable and discriminatory legislative system.

– The legislative changes that favoured the Pre-Vetting Commission had a negative impact on the rights of candidates, who faced changing rules and difficulties in defending their integrity.

– The legislative interventions have undermined not only the principles of the rule of law and transparent decision-making but also the credibility and objectivity of the whole evaluation mechanism.

Lessons learnt

– A correct and fair process of extraordinary evaluation requires a stable, clear, and predictable legislative framework.

– The legal framework for the evaluation of actors in the field of justice must guarantee transparency of decision-making, accountability of the evaluating body, and the fundamental rights of those evaluated.

Chapter VI. 'Civil Society Support for Reform'

– Civil society involvement in the justice reform process in the Republic of Moldova has been complex, and to some extent valuable.

– Although NGOs, such as the LRCM and IPRE, have played a crucial role in advocating and promoting transparency in justice reforms, the emergence of conflicts of interest, conducting selective "parallel" assessments and the unlawful accessing/ processing of personal data have affected the

credibility and legitimacy of the process, generating suspicions of partisanship that may undermine the credibility of the evaluation process.

– Situations such as conflicts of interest and breaches of personal data accessing and processing rules underline the need for clear regulations and close monitoring of civil society involvement in such processes to ensure that justice reform is carried out in the public interest and not under the influence of private or political interests,

– Scandals related to illegal access to personal data highlight vulnerabilities in data protection and the need for a stricter framework for privacy and accountability in data management, especially in sensitive and intrusive assessments, capable of affecting the integrity of reform efforts.

Lessons learnt

– Legal vagueness about the scope of "conflicts of interest in civil society" does not prevent their harmful effects on the credibility of justice reforms.

– "Wearing various hats" by the same civil society activists in the processes of justice reform creates the perception of capturing the reform processes and subordinating them to the personal and organizational interests of these activists.

– The assumption of different roles by the same organizations in the justice reform and their constant representation in high-level public authorities feed the perception of the "governmentalization" of civil society.

Conclusions Chapter VII. 'The Evaluation Process from the Candidates' Perspective'

– Surveying the candidates who did not pass the pre-vetting procedure before the Pre-Vetting Commission allowed us to understand the experience they went through, and the irregularities and abuses to which they were subjected during the evaluation.

– The candidates highlighted shortcomings in the process, such as unreasonably short deadlines for responses, limited access to information necessary for the defence, and difficulties in obtaining documents requested by the Pre-Vetting Commission. There were complaints of biased interpretations of the questions asked, and of discriminatory and humiliating treatment. Unlawful access to personal data, including information about their families, was another major concern, with candidates feeling that their fundamental rights had been violated and that a climate of insecurity and fear for their physical integrity and that of their families had been created.

– The evaluation process was flawed by elements unforeseeable for the candidates, such as the secrecy of the Secretariat of the Pre-Vetting Commission, the failure to grant candidates full access to the information gathered by the Commission, the involvement in the examination of their appeals of judges temporarily transferred from the lower courts, and the admonishment of judges who had ruled in their favour in the examination of their appeals.

– At least 2/3 of the candidates said that, if they had known in advance about the conditions of the evaluation (which could not be deduced from the law), they would not have applied.

Lessons learnt

– The limit of intrusion into the private life of judicial actors during an extraordinary evaluation must be expressly regulated by law, and given the status of the subjects, the guarantees must be enshrined in the Constitution.

– Pre-Vetting is fundamentally different from vetting, because applying for a procedure that you can avoid without leaving office requires more courage than remaining in office in the face of an inevitable procedure.

– The pre-vetting procedure has highlighted judges and prosecutors who are courageous and determined to engage in the processes of self-administration of the justice system. With small exceptions, the pre-vetting process did not select the most vocal and visible among them. They have, however, come to be known to public opinion in a positive light.

– In order to improve the extraordinary evaluation mechanisms and to prevent possible abuses in other evaluation processes, the negative experience of the judicial actors who have voluntarily signed up to pass this integrity filter needs to be studied very carefully.

Conclusions Chapter VIII. 'Integrity doubts on the members of the Pre-Vetting Committee'

– The integrity of Pre-Vetting Commission members was not a clearly articulated requirement in Law 26/2022. The discrepancy between the ethical and financial integrity requirements of candidates for membership in the SCM and SCP and the requirements for the members of the Commission and its Secretariat was huge.

– The integrity of the Pre-Vetting Commission was seriously undermined by the failure to comply with the legal criteria for appointment and the tolerance of conflicts of interest and incompatibilities of its members that were revealed in the public space.

– The lack of adequate responsiveness and low transparency in the handling of integrity incidents within the Pre-

Vetting Commission compromised the evaluation process of candidates.

Lessons learnt

– Ignoring the integrity requirements and failing to sanction violations of integrity requirements by members of the mechanism designed to improve justice reform only worsens the public perception of the authorities implementing the justice reform.

– The participation of international members in the mechanism to improve justice reform is not sufficient to guarantee the integrity of that mechanism.

– The credibility of judicial reforms is ensured by serious mechanisms to verify the integrity of reformers and evaluators, not by the mere participation of foreign citizens.

– The consequences of the integrity deficiencies of the members of the judicial integrity review mechanism are diverse and include significant risks for public confidence in the reform process and in the judicial system, but especially for the Republic of Moldova's relations with development partners, which have financially supported the work of the members of this mechanism (Pre-Vetting Commission).

Conclusions of Chapter IX. 'The Unlimited Possibilities of the Pre-Vetting Commission'

– The extraordinary (pre-vetting) evaluation carried out by a Commission outside any legal control and immunized against any legal liability revealed multiple shortcomings in ensuring the fairness, transparency, and independence of the evaluation process.

– The Pre-Vetting Commission operated with unlimited discretion, frequently applying double standards in assessing the integrity of candidates, so that there were cases where similar but more compromising situations were given milder assessments than lighter and/or unproven situations.

– The Pre-Vetting Commission defied the national legal framework on the possibilities of using special investigative means and made use of secret services, contrary to the Council of Europe standards in the field of ensuring integrity processes in the justice system.

– The Pre-Vetting Commission defied the authority of res judicata and the interpretations of the CC, which have summoned it to comply with the Supreme Court's assessments in examining the candidates' appeals.

– Candidates and their relatives were put under immense pressure, sometimes humiliated in public and obliged to tolerate interference in private life and forced to defend their integrity in the face of unfounded accusations brought against them by the Commission.

– Undisguised political interference has affected the evaluation, undermining the independence of the judiciary.

– Although the initial aim was to increase transparency in appointments to the bodies of judicial self-administration and the prosecutor's office, the method used has led to increased suspicion, inconsistency, and an increased chances of manipulation and political speculation.

Lessons learnt

– When developing mechanisms to produce integrity, it is good to keep in mind the famous formula of Professor Robert Klitgaard,[334] taken up by all United Nations anti-corruption guidelines:
Corruption = Monopoly + Discretion – Accountability
You cannot achieve integrity by mixing all the ingredients of corruption.

– Respect for the law and the Constitution in judicial reform processes is the first guarantee of respect for the law and the Constitution by those to whom the reform is addressed. Symmetrically, favouritism in justice reform processes guarantees subsequent favouritism in the justice processes.

– Justice reform starts where political influence ends. Justice reform based on political interference only aggravates the problems that make justice reform necessary.

– The perception of the politicization of justice through the justice reform process is more serious than the dissatisfaction with the delay in justice reform.

– There are no "good parties" that can be allowed to politicize justice or its reform processes. Genuine justice reforms can only be achieved at a respectable distance from politics, politicians, and their political ambitions.

Conclusions of Chapter X. 'Appeal to the SCJ'

– The process of appealing the decisions of the Pre-Vetting Commission has been marked by a number of legal and political challenges, including legislative changes during the proceedings, mass resignations of judges, and external pressures on the judiciary. These factors have compromised the efficiency, speed, and transparency of the appeals' examination.

334 https://www.undp.org/latin-america/blog/anti-corruption-formula

– The decisions taken by the SCJ against the Pre-Vetting Commission's solutions have been criticized by high-ranking state officials and have led to an intensification of political interventions in the pre-vetting process.

– There have been repercussions in the form of disciplinary proceedings for magistrates who have overturned the decisions of the Pre-Vetting Commission, suggesting a climate of instability and interference in the judiciary.

– It is thus clear that the reforms have been influenced by external factors that have led to a mismanagement of the evaluation and appeal process.

Lessons learnt

– Parliament's function is to make impersonal rules, not to change laws with the special purpose of achieving a particular procedural outcome.

– The parliamentary momentum shown in the process of examining appeals discredits the SCM and the SCP created by the pre-vetting procedure as governing bodies of the judiciary and prosecution systems. Today's SCM and SCP are parliamentary emanation.

– Attacks on judges in relation to the solutions issued on the external evaluation processes delegitimize the function of the judiciary and individual judges, but also the processes of justice reform.[335]

Conclusions of Chapter XI. 'Implementation of the Venice Commission Recommendations of Law 26/2022 on Pre-Vetting'

– The version of Law 26/2022 adopted by the Parliament did not take into account the important recommendations of the Venice Commission, as there are multiple points of divergence between the provisions of the law and the international standards referred to by the Venice Commission in its Opinion No. 1069/2021.

– Contrary to the recommendations of the Venice Commission, the consultation process with the opposition and stakeholders was insufficient to ensure a broad consensus, while the establishment of a Pre-Vetting Commission raises legitimate questions about the respect of the principle of separation of powers.

– Contrary to the recommendations of the Venice Commission, the existence of a sufficiently serious situation in the judiciary to require the establishment of an extraordinary evaluation mechanism has never been proven by authorities. All the arguments put forward were exclusively political, relating to the need to increase trust and the proper functioning of justice.

– Contrary to the recommendations of the Venice Commission, the composition of the Pre-Vetting Commission did not meet the minimum international standard that it should be composed predominantly of judges.

– Contrary to the recommendations of the Venice Commission, the integrity criteria have remained broad and vaguely defined and their application has been susceptible to abusive interpretations, giving way to a wide uneven practice and double standards by the Pre-Vetting Commission.

– Contrary to the recommendations of the Venice Commission, the decision-making process in the Pre-Vetting Commission was also not adapted to the Commission's recommendations.

– Contrary to the recommendations of the Venice Commission, the pre-vetting process and the mechanism for appealing decisions have not always ensured transparency and fair access to justice.

Lessons learnt

– Broad political consensus in promoting extraordinary reforms in the field of justice also requires the support of the majority of society. The lack of such a consensus raises doubts in at least part of society.

– Failure to comply with international standards when planning reforms in the field of justice is incompatible with increasing society's confidence in the independent functioning of justice. Ignoring standards undermines judicial independence and public confidence.

Conclusions of Chapter XII. 'False Inspiration for Justice Reform in Moldova: the Albanian Vetting of Judges and Prosecutors'

– Judicial reform in Albania, in particular the vetting process of judges and prosecutors, has been a crucial and radical step in tackling endemic corruption in the Albanian judicial system. Although the mechanisms of the reform and the results of the vetting process have varied, the goal of ensuring integrity and professionalism in the judiciary has largely been achieved.

– The extraordinary evaluation system implemented in the Republic of Moldova is not based on the Albanian model. The initial concept presented by the Ministry of Justice in

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autumn 2021 was inspired by the Albanian system, but the initial concept, as well as the Albanian model, was dropped.

– A comparison of Albania's experience with the ongoing reforms in the Republic of Moldova highlights the following important features of the Albanian system, which were missing in Moldova:

1) planning reform on the basis of a comprehensive assessment of the problems in the field of justice;

2) the broad parliamentary consensus on the adoption of the law on extraordinary evaluation;

3) amending the Constitution in order to regulate vetting, guarantees within the framework of the extraordinary evaluation, and to ensure the non-repetition of this evaluation;

4) ensuring rigorous integrity criteria for the members of the evaluation bodies;

5) guaranteeing respect for state sovereignty, by not admitting foreign citizens in the evaluation process;

6) involving foreign citizens only in the monitoring bodies of the Commission responsible for the extraordinary evaluation;

7) creating special jurisdictional bodies to challenge the decisions of the extraordinary Evaluation Commission;

8) the possibility for the subjects of the evaluation to challenge the actions and behaviour of the Commission members;

9) the Evaluation Commission is an administrative authority of the state, bound to comply with the provisions of administrative legislation;

10) members of the Evaluation Commission are required to submit asset declarations;

11) membership of the Evaluation Commission is incompatible with any remunerated activities;

12) the Secretariat of the Evaluation Committee has not been secretized;

13) narrow criteria for assessing integrity, in relation to wealth, entourage, and professional skills, in the case of Albania; and

14) the court had the last word in disputes over extraordinary appraisals.

– Despite the challenges posed by delays and political resistance, the vetting process in Albania remains an essential and transformative step, demonstrating that reforms of this kind, although controversial, can be indispensable for strengthening the rule of law and ensuring the long-term stability of democratic institutions.

Lessons learnt

– Albania's experience could have been valuable for the Republic of Moldova, if the Albanian model of assessing the integrity of magistrates had been applied.

– Effective treatments are based on a thorough diagnosis, and reforms are based on a serious assessment of the situation.

– The extraordinary nature of the assessment implies a deviation from certain constitutional guarantees, first and foremost guarantees in the field of justice. Therefore, the constitutional implementation of this assessment, without amending the Constitution, sets dangerous precedents of weakening the constitutional guarantees applicable in the ordinary regime.

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FUTURE POLICY OPTIONS

This chapter discusses the options for further reforms and the policy elements that are mandatory to enhance the integrity of the judiciary.

OPTION 1: *Conduct an audit of the entire process to recognize abuses and rehabilitate the unfoundedly discredited individuals. Those deserving are given a chance to be voted by the General Assemblies of Judges or Prosecutors, as the case may be, to constitute the SCM and SCP.*

Supporting arguments:

1. **Restoring justice and fairness:** Conducting a full audit provides an opportunity to redress mistakes made in the previous assessment and to restore justice to those wrongly discredited. This would address the grievances of those affected and help reduce the sense of unfairness in the justice system.

2. **Saving financial resources:** If a part of the pre-vetting process was correctly implemented, stopping it could have saved financial resources. Thus, some of the investments already made may have been saved, despite recognizing that other parts of the process did not yield the desired results.

3. **Reducing mistrust and internal divisions:** A transparent and fair audit would help to reduce distrust among the public and judicial professionals. It would also help to reduce internal divisions, giving the deserving a chance to recover and rehabilitate themselves in the eyes of colleagues and society.

4. **Reconciliation between the public and the judiciary:** Conducting a fair and impartial audit would help to repair the damaged relations between judges, prosecutors, and other institutions within the justice system. Such a measure would help reconcile them and create a climate of trust necessary for the development of an independent and efficient justice system.

5. **Restoring confidence in justice institutions:** The start of a transparent audit would be a strong signal of commitment to justice reform. It could help rebuild public confidence in the reform process and in the independence of the judiciary.

Arguments against:

1. **Perceived setback in reform:** Acknowledging errors in the pre-vetting process could damage the credibility of the Government and undermine public confidence in the authorities' commitment to implement a clean and independent justice system.

2. **Partial failure of previous investments:** An audit that recognizes the mistakes made and rehabilitates those affected would implicitly mean that part of the financial and human investment in the pre-vetting process was wasted. This could create a sense of waste and lead to a search for a "guilty party" for the partial failure of the reform, which could generate even more conflict and frustration.

3. **Potential delays and bottlenecks:** Even with a proper audit, the process of rehabilitating and reinstating affected persons will take a long time and resources. This could lead to delays in the implementation of the reform and create bottlenecks in the judicial system.

4. **Lack of a clear long-term solution:** Although stopping/cancelling pre-vetting and carrying out an audit would partially solve the problem of abuses, it would not provide a clear and complete solution for improving the judiciary in the long term. Without an effective control and selection mechanism for judges and prosecutors, the system could remain vulnerable to corruption and the abuse of power.

OPTION 2: *Completely abolish the pre-vetting process, and instead introduce integrity criteria in the previous system, allowing GAJs and GAPs to elect their own members to the SCM and SCP, respectively, applying clear integrity criteria.*

Supporting arguments:

1. **Restoring stability and continuity to the judicial system**: The complete repeal of pre-vetting, with the application of clear integrity criteria, would allow a certain level of stability and continuity to be maintained in the judiciary. This would avoid a severe discontinuity in the work of the institutions, and judges and prosecutors would be able to continue their work, but in a more transparent and accountable framework.

2. **Reducing the risks of politicization**: Introducing clear and objective integrity criteria in the selection process of SCM and SCP members by the GAJ and GAP, respectively, could reduce the political influence on these institutions. Allowing selection to continue to be carried out by these structures, but under a more rigid and transparent set of criteria, could ensure a more merit- and integrity-based selection than previously, when these were totally lacking.

3. **Retaining professional authority and accountability**: Judges and prosecutors could retain their professional authority and defend their independence, while still having the right to elect members of the SCM and SCP, but with better regulated integrity criteria. This could foster a more accountable judiciary without leaving room for abuse or external influence.

4. **Flexibility in implementation**: This option would allow for the introduction of integrity measures in a gradual and adaptable way, depending on the evolution of society and the judicial system. It would not imply a radical change but rather an adaptation of the existing system, which may be easier to implement.

5. **Saving resources and avoiding waste of funds**: By annulling pre-vetting and continuing with integrity criteria, resources that would have been needed for a full process could be saved. Thus, funds allocated to the reform process could be used more efficiently without being wasted in continuing a process that has generated controversy, abuse, and mistrust.

Arguments against:

1. **Lack of effective internal control**: Even with the introduction of integrity criteria, the system of selection of SCM and SCP members by the GAJ and GAP remains vulnerable to internal or external influences. While integrity is important, without a strong and transparent control mechanism, the risks of corruption and politicization may persist and the effectiveness of the selection process could be compromised.

2. **The possibility of maintaining the status quo**: A less radical approach, such as a return to the previous formula of election of SCM and SCP members by the GAJ and GAP, respectively, but with integrity criteria, risks not sufficiently addressing the substantive problems of the judiciary. Reform may stagnate without a real and profound change in the way in which justice institutions are managed.

3. **Public confusion and decreased credibility**: Completely abolishing pre-vetting and reverting to a previous system, even with improvements in the integrity criteria, could create confusion among the public. If people do not clearly understand why pre-vetting has been dropped, this could lead to distrust in the reform authorities and a decrease in support for further reform.

4. **The risk of ignoring lessons learnt**: Even if pre-vetting was characterized by multiple abuses, it also allowed for the identification of serious shortcomings in the judicial system. To completely undo this process risks missing the lessons learnt and failing to address fundamental integrity issues in the system.

5. **Possible internal conflicts**: Such a change could generate internal conflicts between those who would like to proceed with the reform process more radically or completely and those who would opt for a more gradual approach. These conflicts could paralyse reform initiatives and complicate the implementation of a shared vision for the future of the judiciary.

Binding elements for future policies to strengthen judicial integrity

By recognizing, assuming and correcting wrongs and restoring the rights of those affected, justice reform can become a genuine and reconciliatory process that not only addresses the need for integrity in the justice system but also protects the fundamental rights of citizens. These measures are necessary to ensure a sustainable reform in which every person, regardless of their position in the justice system, feels respected and protected by the rule of law.

The proposed solutions focus on rebuilding an independent justice system based on a profound reform of national institutions. It is important that this reform does not depend on external intervention but is underpinned by sound and sustainable domestic policies aimed at ensuring respect for

the rule of law and protecting public confidence in the judicial institutions.

In this respect, it is proposed that the following policy elements be taken into account for further strengthening integrity in the justice sector.

1. Reviewing the reform implementation mechanisms

– **Full evaluation of the pre-vetting process**: It is essential that the pre-vetting process be re-evaluated, especially in light of reported abuses and shortcomings. An independent national mechanism should audit the decisions taken, taking into account the transparency of the process, the correct application of the criteria, and the protection of the fundamental rights of those assessed. This audit should focus on identifying abusive or erroneous decisions, removing any doubts about the correct application of the criteria.

2. Creating a permanent structure for justice monitoring

– **Establishing a national system of continuous monitoring**: Instead of relying exclusively on external control mechanisms, we should set up an independent national structure to monitor the work of the courts, promoting a constant evaluation of their performance and respect for professional ethics and institutional integrity, while respecting the inherent principles of independence of the judiciary.

3. Establishing a national system of protection for whistleblowers and those who stand up to abuse

– **Implement a real protection mechanism for judges and prosecutors who report abuses (whistleblowers)**: In order to encourage judges and prosecutors to actively participate in strengthening a fair justice system, there must be effective measures to protect them from political or economic pressures. The creation of a legislative framework to protect whistleblowers and those who oppose abuses of justice can help prevent corruption and systematic abuses.

4. Strengthening initial training and intensifying continuous training of judicial actors

– **Continuous education for judges and prosecutors**: Replacing passive approaches with an active programme of continuing education in areas such as ethics, integrity, and anti-corruption can address some of the existing gaps in the justice system. These training sessions should be conducted by national professionals, not dependent on external intervention, and should be a condition for the retention of those working in the judiciary.

5. Creating a stable national legal framework for justice reform

– **Updating national legislation in line with reform needs**: A long-term legislative framework for reform should be put in place to ensure the stability of the judiciary and to prevent contradictory or abusive reviews. This should include clear accountability mechanisms, strict conflict of interest rules, and clear rules on the transparency of judicial activities.

6. Acknowledging and correcting mistakes made in the pre-vetting and reform process

– **Correcting abuses and ensuring the right to be reinstated**: It is vital that mistakes made in the pre-vetting process are recognized and corrected. Those who have been victims of wrongful assessments or misapplications of criteria or procedures should benefit from a national mechanism to restore their rights. This may include reinstating those who have been wronged, reviewing their cases and compensating them where appropriate. This element is also important to prevent the repetition of any shortcomings or slippages in the subsequent stages of reform (vetting), especially since most of the methods, criteria, personnel and practices have "migrated" from the pre-vetting stage/commission to the vetting ones.

7. Making the pre-vetting review processes and sanctioning decisions transparent

– **Establish an effective appeal and review mechanism**: An appeal and review mechanism should be established that is accessible, effective, and enables those affected by abuse to defend their rights. Such a mechanism should be independent and guarantee the right of those assessed to appeal decisions that do not respect the principles of due process. In addition, any abuse or error should be promptly corrected and those affected should receive adequate redress.

8. Implementing a national system of compensation for victims of abuse

– **Compensation measures for victims of abuse**: In the context of the reform, it is important to have a legislative mechanism in place to provide redress or compensation to those who have been affected by abuses, mistakes, or arbitrary decisions by pre-vetting authorities. Such measures would not only help to restore confidence in the judiciary but would also demonstrate the authorities' commitment to the fundamental rights of citizens and the fairness of the reform process.

9. Promoting a public discourse of accountability and transparency

– **Political and institutional accountability**: Politicians and authorities in charge of the reform process need to publicly admit mistakes and demonstrate accountability. Such public discourse, combined with corrective action, can help restore the credibility of national institutions and support the process of reconciliation between justice and citizens.

10. Providing a mechanism to protect the rights of those who appeal against abuses

– **Safeguards for judges and prosecutors who appeal abuses**: Creating a legislative framework to protect judges and prosecutors who exercise their right to appeal incorrect or abusive decisions, as well as to ensure that they will not suffer repercussions for such appeals, is essential to restoring trust and fairness in the judiciary.

ABBREVIATIONS

AJAM	Association of Administrative Lawyers of Moldova
APO	Anti-Corruption Prosecutor's Office
ASEM	Academy of Economic Studies
BOP	Barometer of public opinion
GAJ	General Assembly of Judges
GAP	General Assembly of Prosecutors
CC	Constitutional Court
CCJE	Consultative Council of European Judges
CES	Commission for Emergency Situations
DGI	Directorate General of Human Rights and Rule of Law
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EGJ	Group of Experts in the Field of Justice
FES	Friedrich-Ebert-Stiftung
GAJ	General Assembly of Judges
GAP	General Assembly of Prosecutors
GPO	General Prosecutor's Office
GRECO	Group of States against Corruption
IQC	Independent Qualifications Commission (Albania)
IMO	International Monitoring Operation (Albania)
IPRE	Institute for European Policy and Reform
Law 26/2022 Law 26/2022 on Pre-Vetting	Law No. 26 of 10 March 2022 on Some Measures Related to the Selection of Candidates for Administrative Positions in Bodies of Self-Administration of Judges and Prosecutors
Law 65/2023 Law 65/2023 on Vetting	Law no. 65 of 30.03.2023 on the External Evaluation of Judges and Candidates for the Position of Judge of the Supreme Court of Justice
LRCM	Centre for Legal Resources of Moldova
Opinion No. 1069/2021	Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law of the Council of Europe No. 1069/2021, CDL - AD (2021)046 on the draft law on the evaluation of the integrity of candidates for the position of member of the self-administrative bodies of judges and prosecutors
MEDEL	Organization of European Magistrates for Democracy and Freedoms
MP	Member of Parliament
Pre-Vetting Commission	Independent Commission for the integrity evaluation of members of the self-governing bodies of judges and prosecutors
NAC	National Anti-Corruption Centre
NCJ	National Council of Judges (Poland)
NIA	National Integrity Authority
NGO	Non-governmental organization
PAS	Action and Solidarity Party
PCCOCS	Prosecutor's Office for Combating Organized Crime and Special Cases
PG	Prosecutor General
PSA	Public Service Agency
RM	Republic of Moldova
SAC	Special Appeals Chamber (Albania)
SCJ	Supreme Court of Justice
SCM	Superior Council of Magistracy
SCP	Superior Council of Prosecutors
SIS	Intelligence and Security Service
SSC	Supreme Security Council

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The version of the study is a translation of the original, which was written in Romanian. Every effort has been made to ensure that the translation is a faithful reflection of the original. However, in all matters relating to the interpretation of specific terms and information the original language version of the study shall prevail over this translation.

THE PRE-VETTING PHASES: THE UNSEEN FACE OF JUSTICE REFORM

A survey among the candidates for membership of the self-administrative bodies of judges and prosecutors revealed a number of shortcomings in the process, such as unreasonably short deadlines for responses, limited access to information necessary for the defence, and difficulties in obtaining documents requested by the Pre-Vetting Commission (inaccessible evidence). Candidates complained of biased interpretations of the questions put to them by the Commission, and discriminatory and humiliating treatment. The evaluation process was flawed by elements that the candidates could not assume by studying the provisions of Law 26/2022, such as the secrecy of the Secretariat of the Pre-Vetting Commission, the failure to grant candidates full access to the information gathered by the Commission from their files, the involvement of judges temporarily transferred from the lower courts in the examination of their appeals, and the admonishment of judges who had ruled in their favour when examining their appeals.

The study describes the most important contradictions between Law 26/2022 and the recommendations of the Venice Commission, including: the promotion of the reform regarding the extraordinary evaluation of judges and prosecutors in the absence of a broad consensus with the parliamentary and extra-Parliamentary opposition; the failure of the authorities to provide evidence of a sufficiently serious situation in the judiciary system, which would require the establishment of an extraordinary evaluation mechanism; the composition of the Pre-Vetting Commission did not meet the minimum international standards required by the Venice Commission, namely that it should be composed predominantly of judges; the integrity criteria remained broad and vaguely defined in Law 26/2022 and their application was susceptible to discretionary and abusive interpretations, giving rise to a wide uneven practice and application of double standards by the Pre-Vetting Commission; the decision-making process within the Pre-Vetting Commission was not adapted; and the pre-vetting process and the mechanism for appealing the decisions of the Pre-Vetting Commission did not ensure transparency and fair access to justice.

The integrity of the members of the Pre-Vetting Commission was not a clearly articulated requirement in Law 26/2022, which only referred to their "irreproachable reputation". Thus, there was a huge discrepancy between the ethical and financial integrity requirements imposed on candidates appearing before the Pre-Vetting Commission and the integrity requirements imposed on members of the Commission and its Secretariat. Moreover, the integrity of the Pre-Vetting Commission was seriously undermined by the failure to comply with the legal criteria for the appointment of its members, as well as by the tolerance of conflicts of interest and incompatibilities of its members that were publicly disclosed. A lack of adequate responsiveness and low transparency in the handling of integrity incidents within the Pre-Vetting Commission compromised the candidates' evaluation process.

Further information on the topic can be found here:
www.moldova.fes.de

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