

Foreign Policy Association together with Friedrich-Ebert-Stiftung offer you a newsletter on foreign policy and European integration issues of the Republic of Moldova. The newsletter is part of the "Foreign Policy Dialogue" joint Project.

# NEWSLETTER

MONTHLY BULLETIN • JULY 2020 • NR.7 (173)

## Synthesis and Foreign Policy Debates

The newsletter is developed by Sorina Ștefârță, editor-coordinator

### TOPICS OF THE EDITION:

1. Vladislav Gribincea, director of the Legal Resources Center from Moldova: "Things will turn for the better when politicians give up the tradition of having judges in their pockets"
2. Editorial by Victor Chirilă, executive director of the Foreign Policy Association (APE): "Where justice is absent, the state is at the mercy of corrupt politicians and judges"
3. Iulian Rusu, IPRE: "The extraordinary evaluation of the actors in the justice sector: how and under what conditions can it be implemented"
4. Expert opinion. Dragoș Lucian Ivan: "Justice crumbled in paper tied up with strings or Justice completed through digitalisation?"

### News in Brief



The Ministry of Foreign Affairs and European Integration (MAEIE) issued a statement on Saturday, August 15, announcing that it is following with attention and concern the developments of the post-election situation in Belarus, being particularly concerned about the violence registered in this country. "Reiterating the importance of respecting human rights and generally accepted democratic norms, we hope that the difficulties faced by the Belarusian people in these days will be overcome peacefully in an authentic and inclusive political dialogue," the Chisinau diplomacy statement said. In these difficult times, we express our full solidarity with the people of Belarus, continuing to support the consolidation of democracy, prosperity, stability and independence of the Republic of Belarus - a friendly country and an important traditional cooperation partner of the Republic of Moldova", the MAEIE mentions.



One day earlier, on 14 August, the foreign ministers of the EU member states gave the green light to sanction the repression in Belarus following the disputed re-election of Alexander Lukashenko for a new presidential term. According to European officials, quoted by AFP and Agerpres, "a list of names will be drawn up" in this regard. The imposition of sanctions has been called for by at least nine EU Member States, including Poland, the Czech Republic, Estonia, Lithuania, Latvia and Denmark. In a joint letter, the leaders of these countries called for "restrictive measures against officials" responsible for the elections that ended with the re-election of Lukashenko with about 80% of the vote and for violence against protesters contesting the election result.



On 4 August, Minister Oleg Tulea paid a working visit to Kiev, at the invitation of his Ukrainian counterpart, Dmytro Kuleba. The officials discussed a wide range of issues on bilateral, regional and international cooperation, and noted a positive dynamic of dialogue between the two countries. Oleg Tulea thanked Kiev for the assistance provided in the transit on the territory of Ukraine of 15 thousand Moldovan citizens returning from the countries affected by the pandemic. In turn, Dmytro Kuleba thanked for the humanitarian aid provided by the Republic of Moldova to the regions severely affected by the weather and floods in Western Ukraine. The heads of diplomacy of the two states also discussed the implementation of practical actions to boost collaboration in the trade, economic and humanitarian areas as well as in the interaction at the Moldovan-Ukrainian state border, aspects of the Nistru River ecology and the operation of the Nistru Hydropower Complex. For this, Oleg Tulea and Dmytro Kuleba signed, in Kiev, the Plan of consultations between the two ministries for the years 2021-2022.



On 30 July, the Head of the Mission of the Republic of Moldova to the EU, Ambassador Daniela Morari, presented her credentials to the President of the European Commission, Ursula von der Leyen. In the discussion that followed the ceremony, Daniela Morari referred to the priorities of her mandate in Brussels - in particular, the effective implementation of the Association Agreement with the EU and the constructive participation of our country in the Eastern Partnership. The diplomat also reiterated the high appreciation on part of the Chisinau authorities for the assistance provided by the EU in the context of COVID-19.

## Justice reform: angry with the look in the mirror?

Sorina Ștefârță

In just a few days, the Republic of Moldova will celebrate the 29<sup>th</sup> anniversary of its Independence - a period neither too long- if we compare ourselves with countries that have an experience of hundreds of years of statehood- nor too short if is to think that from a 29 year-old in whom you invested generously from his/her very first day of life, you still have some performance expectations.

What are the performance expectations from a state? Happy people, would be the first answer that comes to my mind, despite the fact that happiness is an extremely relative thing, and the state, *a priori*, is seen more as a restrictive mechanism than a generator of positive emotions. However, we do have examples of countries with happy people (Denmark seems to remain consistently



on top), and one of the key components of this well-being is people's trust in justice. "Fair justice", as an electoral spot from almost another life said ...

And here comes the natural and legitimate question: how much trust do they have - if they still have - in the judiciary and its capacity to be "fair" to the citizens of the Republic of Moldova? A country that, for over two decades, has made justice reform the official spearhead, only that something is wrong and, as a result, every time we return to the starting point. It's as if

we live in a continuous joke, when Don Quixote is drunk, the jade is weak, and the mill (justice sector) is invincible.

Thus, with almost three decades of independent life, the Republic of Moldova is still struggling with this process of justice reform that no one seems to be able to say exactly when it began and especially when it will end. At the same time, it is enough for someone to draw our attention to the fact that we are dawdling again and that the effort is far from meeting the expectations of the people of this country, but also of

▶ those who have given us millions to break, once and for all, the vicious circle of lack of changes in the justice sector - and we jump with anger without wanting to realize that we are, in fact, angry with the look in the mirror.

But nothing new under the sun so far - countries, like the people, did not once chose to get upset, instead of solving their problems. The novelty is that the anger comes loudly from those who should stay well hidden in the grass, hoping that they will not be noticed. The latest example of this is the protest organized at the European Union Delegation in Chisinau by the representatives of the "Shor" Party, who, outraged by a statement made by Ambassador Peter Michalko, accused the latter of meddling in justice and asked Brussels to recall him from office.

What did the EU Ambassador de facto do to deserve this avalanche of accusations? He also asked himself, in a TV show, as thousands of people in this country ask themselves when talking about the (non) investigation of the bank fraud: "How long can we see it how the court hearings in the Shor case keep being postponed? This procrastination calls into question the trust in the justice system and questions the efficiency of the law enforcement bodies...". Peter Michalko did not let himself be intimidated and responded, calmly, by publishing a link to the first, then to the second Kroll Report, where the leader of the "Shor" Party has the role of the central character.

However, this embarrassing episode is more than a well-crafted trolling action. It once again denotes the general situation in the judiciary of the Republic of Moldova, when the key actors in the system understand they are not behaving well, that the public interest requires a different approach and action, but ... why start the change today and why me?!

In fact, a "fair" judiciary should be ashamed of such embarrassing episodes. Because it stains both its robe and name ... But as long as shame is delayed, we can write the best laws in the world and ... pray that we never end up in the Moldovan justice machinery. This is what the current newsletter is about.

## Things will turn for the better when politicians give up the tradition of having judges in their pockets

**Vladislav Gribincea, director of the Legal Resources Center from Moldova**



**J**uly has ended up in a series of controversial promotions in the country's top judicial hierarchy, bringing to light all the pandemic-attenuated discussions about the delayed sector reform, generating a wave of revolt among both civil society and the Opposition, as well as among some actors in the system. In this case, it is about the appointment of Vladislav Clima (the panel that upheld the decision to cancel the results of the 2018 new elections in Chisinau) as

chairman of the Chisinau Court of Appeal; and Tamara Chișca-Doneva (the panel that issued the decision on the "Gemenii" JSC case which was later considered arbitrary by the ECHR) as vice-chairperson of the Supreme Court of Justice. The Ambassador of the European Union, Peter Michalko, also responded that "the hopes that there can be a change in the justice system depend on the appointment of persons with undoubted integrity instead of those who have

*determined justice to serve private interests”, and that the decisions in question “raise doubts as to the sincerity of the words about the justice system reform...” I discussed the current situation of the judiciary with Vladislav Gribincea, director of the Legal Resources Center from Moldova.*

### **We are still champions in addressing the ECHR**

■ *Mr. Gribincea, I will start from the end, namely, with the most recent ECHR Decisions pronounced against the Republic of Moldova and which, again, means compensation of hundreds of thousands of lei - money from the budget, that is people’s money. To what extent do these decisions prove the perpetuation of problems in the justice system? Or things are better, these decisions being an echo of the past?*

■ Last year, the Republic of Moldova ranked fifth out of the 47 member states of the Council of Europe, based on the number of ECHR convictions per capita. These statistics are a clear indicator of systemic problems in the judiciary of the Republic of Moldova. Many would say that most of these violations are caused by imperfect laws, but I do not agree with such an approach. Moreover, an analysis that we have completed recently on the convictions of the Republic of Moldova in the ECHR, confirms that, at least in the last seven to ten years, most violations are caused not by legislative imperfections, but by the defective way in which laws, which are good per se, are applied by the Moldovan judges and prosecutors. As I have said on other occasions, it is useless to have a good law if it is misapplied. Even a righteous law is crooked ... in a crooked mind. So, formally, obviously, the recent ECHR judgments are an echo of the past,

because they refer to the situation in 2012, 2015... But it does not mean that things have changed significantly - the number of applications submitted to the Court by our citizens is continuously big.

■ *So the chances can be high that, in about five years, for example, we will talk about the new ECHR cases as an echo already of the 2020s?..*

■ People go to court, because they are in trouble. Justice is their last hope. And when that trust disappears, all that remains is disappointment and chaos. If we do not look for solutions to existing problems and limit ourselves to excuses that “something is wrong”, we will come to a standstill. In fact, it is very simple not to have convictions at the ECHR - do not violate the law, implicitly human rights. And if judges, prosecutors, police, civil servants abide by the law, trust in the judiciary, and respect for the state and public order will automatically increase.

■ *Why has this tradition of “non-compliance” become so prevalent, when almost everyone takes pride in the fact that they have managed to break a rule, played an authority or evaded paying a fine? And here I am not just talking about the justice sector, but also about ordinary citizens.*

■ Things are interdependent, and people are often inspired by those who should be role models. At the same time, justice is a reflection of what is happening in society, and in Moldovan society we are still accustomed to adopting laws that we evade. The judges, and people too, feel when a law is written “for someone,” when it is made to be bypassed. The question here is whether and how many of them manage to remain principled... Personally, I know many principled judges, but they understand very well that principality involves some risks: either you are fired, or you end up with

a criminal case, or you are stigmatized. At the same time, the fact that a judge with integrity problems is doing just great and even promoted, sends a clear signal to everyone: you have to play by the rules established by the system. Thus, no matter how brave and principled judges may be, I think that today, before issuing a decision, they analyse at length what the consequences of their decision may be for them personally.

***Like in the rest of society, there is a huge crisis of leaders in the judiciary***

■ *You mentioned about judges with problems of integrity. How to get rid of them, when the competent structures with integrity control functions turn a blind eye on them?*

■ This is a question often asked by lawyers. What is certain is that, when we refer to the actors in justice, the public perception matters the most. It doesn’t matter how independent a judge is, if everyone is convinced that he/she is biased. And it doesn’t matter how honest he/she is, if everyone suspects him/her of being corrupt. It is exactly the context when appearances prevail over reality. For, when we can prove the corruptibility of a magistrate, we are no longer talking about a simple dismissal – he/she must be criminally liable. But when there are only assumptions, but at the same time the judge cannot credibly justify his/her assets and cannot clearly argue the judgments issued, then the system should be interested in removing such persons from its ranks. Otherwise, their image affects the whole system, and the first to suffer are the good judges.

■ *Can you give an example of such a self-cleaning case of the system?*

■ As far as I can remember, there were no serious moves in this regard.

One explanation would be the huge crisis of leaders in the justice sector, to be followed by other people in the system. Judges, naturally, are the most conservative part of a society, because their role is to ensure balance, not to make revolutions. This, inevitably, makes them among the most resistant to change. That is why we need leaders to set an example and set the tone. Each judge may be very good, but this is irrelevant as long as they are not seen as an honest whole. Judicial leaders are needed to promote this image! Personally, I have already noticed signals for the emergence of such leaders. For example, last autumn, a large part of the judges did not participate in the obviously illegal actions meant to revoke the Supreme Council of Magistracy (SCM) members, regardless of who they were. In the case of recent appointments to the SCM and the Supreme Court of Justice (SCJ), there have been several separate opinions - a kind of dissent, so to speak - and the fact that some judges have the courage to talk about the integrity issues of some colleagues cannot but inspire optimism. Of course, that is not enough and, in general, the change in justice will come with the change in the whole society. When people understand that the state must help them live, not limit their possibilities, they will be less lenient with the authorities and demand respect for the law every day. And, of course, when politicians prove that they are not cheating, that their messages on fighting corruption and cleaning up the judiciary are not demagoguery. This will support the change of critical mass in society and in justice. The important thing is for justice to be ready for this change. Otherwise, politicians will bulldoze through the "Moldovan justice".

■ *Speaking of integrity, how do you assess the progress in this regard? Because, here too, we seem to have laws and institutions, but the results leave much to be desired.*

■ A reform means a continuous process of learning. It is the same with the fight against corruption, including in the justice system. The good thing is that corruption is not part of our social culture, as it is in Central Asia or the Middle East, for example. More than 80% of citizens consider corruption as a priority issue, meaning there is support from people to fight it. We need to be firm in five clear directions: **1) transparency** - the more transparency in 'musty' areas, such as public procurement, the lower the temptations to commit illegalities; **2) limiting discretion** - clarifying the regulations of the economic sector, minimizing the contacts between civil servants and citizens, and digitalisation of public services; **3) value of public positions** - those in public office need to know that if they lose job, they lose far more than the benefits of corruption; **4) sanctions** - should be tough, commensurate with the offense committed and unavoidable; and here it is not only a question of deprivation of liberty, but also of other measures of deterrence, such as the loss of a special salary and pension, the confiscation of property which you cannot justify. Many of these sanctions already exist in our legislation - what we lack is the inevitability of the sanction, because the cases either don't go to court or are delayed indefinitely, or modest sanctions are applied in the end; **5) authorities** to effectively investigate corruption. We need to move simultaneously in all five areas. Progress in two or three areas will not have the expected result. On the contrary, the increase in the salaries of judges and prosecutors without holding them accountable has led to the perception that this step was not necessary.

***There is a need for consolidation of good people in the system***

■ *Speaking of salary increases, was it worth the effort?*

■ It was the right move. You cannot be a judge in Chisinau with a family, two children and a salary of 6,000 lei, and at the same time, issue decisions on 20-30 million ... The increase in the salaries of judges and prosecutors was necessary above all to not allow the honest turn into corrupt people. Some would say that judges and prosecutors still have good pensions, and previously received free housing from the state. I am firmly convinced that the civil servant must live on a salary, not on allowances, awards, hope for a decent pension or free apartments. The latter are tools to create an administrative hierarchy based on loyalty and not the law.

■ *Don't we risk confusing the people with so many "fighting" structures?..*

■ Yes, there is National Integrity Authority (ANI), but it is not conducting criminal investigations. Yes, the Anticorruption Prosecutor's Office was created, but it was not empowered enough. There are many institutions, but "many" often means none, because responsibilities are thrown from one to another. And we need prosecutors who have the courage to deal with high-ranking officials ... And, in this context, I believe that the role of the National Anticorruption Center (CNA) - as a criminal investigation body as currently exists - is outdated. Petty corruption can be investigated by ordinary prosecutors, and big corruption should remain in the spotlight of the Anti-Corruption Prosecutor's Office. Every year, the latter should show the society what they have done.

■ *What other major decisions would be required in the field, in order to speed up the justice reform process? And, in general, in these almost 30 years of the country's independence, were there times when the reform took place de facto?*

■ The dynamism can be brought about by the political change, when

the politicians will come with a clear message that this is no longer possible. I felt such a mood in August-October 2019, when all judges and prosecutors were very attentive to what they were doing, understanding that if they step out of line they will pay. The second ingredient is to consolidate the good people in the system in order to generate change from within. Without them we will not succeed. No matter how many foreign judges we bring, they will not be able to replace ours, because justice must be done by Moldovans, for Moldovans. Ultimately, it is necessary to monitor all legal processes, generating constant pressure from society and development partners. But things will certainly take a turn for the better when politicians give up the tradition of having judges in their pockets.

■ ***IPRE colleagues have published recently a policy brief on extraordinary evaluation of the justice actors. How realistic is such an exercise? And to what extent are the civil society recommendations taken into account?***

■ Our recommendations are taken into account, in particular, when drafting laws - which is why, as I said earlier, our laws are not so bad. Putting the legislation into practice is another matter already ... Regarding the external evaluation of judges and prosecutors, it is an exercise that you can use once a century, maybe, when you understand that the mechanisms meant to ensure the integrity of justice have no chance to work. For this evaluation to take place, however, we have to meet several conditions: major political consensus, which we do not have; society's confidence that such processes are real, not for show; the people who will carry out the evaluation and their confidence in the given exercise; the politicians should relinquish control of the evaluation process and the development partners should monitor this process.

***In real terms, the reform has not yet started***

■ ***The justice system reform has been a stumbling block to almost all governments. How is it going to be this time?***

■ I would rather say it is like a hot potato that, if you hold it too much in your hand, you risk burning yourself. To make a profound reform of the judiciary requires only one thing: to be an example yourself, as the leader of a country or a society. In our case, examples of this kind are also delaying the reform of the judiciary, meaning that the profound changes in the judiciary that the common people can feel have not started yet.

■ ***A serious accusation, if we think about the millions of euros pumped into this ...***

■ And yet, if we are talking about sensitive areas, this is the truth. Yes, laws have been passed and institutions have been created, but for the people the change has not come yet. We have not had a radical change in staffing, neither in the judiciary nor the prosecutor's office. Only when this begins will we be able to speak of movements. There will be a lot of blood, a lot of sweat and a lot of tears around, but we will have to act like a surgeon in order to save and get saved. Surgeons will have to be judges and prosecutors who self-purify as a system. Because, if they don't do it, the politicians will enter justice and the latter will disappear. The politicians have a different framework for action, and if everything is left with them, people who don't deserve it may be fired. External reforms are not sustainable, they should come from within, with external support.

■ ***Do you believe in the new generation?***

■ Yes, because many of them have been abroad and seen how comfortable it is to live in countries where the law really works. I hope they want to see the same thing with us. In addition, their set of values is not based on obedience to the system. But here comes a condition: to have good role models, from which to learn. Without values and without leaders, there is a risk that it will be even worse than what we have today.

■ ***And finally, a question that risks being rhetorical: will we find out the truth about the bank fraud?***

■ I do not rule out that, sooner or later, the law enforcement bodies will tell us who and where the money was taken. The question is how credible this information will be and, especially, how much we will recover from the lost amount. I am realistic and I will say that if we manage to get back 20% of the fraud, it will be a success. Money, today, travels the world for a few hours. In this case, six years have passed!.. How many bank accounts and how many jurisdictions it has gone through so far- the one who stole it probably doesn't know it either. However, this does not mean giving up on investigative and sanctioning actions. Impunity gives birth to monsters and ... precedents. As a result, even if we do not return the money, convictions should exist and the sanctions should be very harsh. So that in the future no politician will think of such enrichment schemes and no official will accept to be their accomplices. In this sense, the bank fraud can be a litmus test for justice as well - there are enough reasons to believe that, along with politicians, there have been many people involved in it. However, I have to make a remark: any conviction must be based on evidence, not on public opinion.

■ ***Thank you for the interview.***

***Sorina Ștefăruță***

## Editorial

# Where justice is absent, the state is at the mercy of corrupt politicians and judges

**O**n 27 August 2020, the Republic of Moldova will celebrate 29 years since proclamation of its independence. We have been trying to make sense of this historic day for 29 years, building a truly sovereign, democratic, prosperous and equitable state. A state for the people ... Unfortunately, for the same 29 years, we have failed lamentably.

The Republic of Moldova is the poorest country in Europe today with at least a quarter of the population having chosen to emigrate, in search of a decent living, while the state built by us is considered a “hybrid” one, where the national, regional and local institutions are weak, inefficient and lacking transparency. Justice is unfair, and its independence is a fantasy; respect for basic political, civil and human rights is selective and equality before the law is an illusion; corruption is widespread and a major impediment to the political and economic development of the state; and anti-corruption efforts are inconsistent.

### **Moldovan justice, the “watchdog” of the corrupt...**

In the opinion of the majority of our society, namely the corrupt, incompetent and unprincipled politicians are responsible for this disaster. In turn, the politicians draw our attention to the fact that the people have what and how they vote, that they are the expression of society. However, they miss an important detail: if the Moldovan judiciary did its job fairly and independently, those who are at odds with the law would not be elected mayors or deputies, nor would they be promoted to government positions. On the contrary, these people would be fully accountable to the law. Unfortunately, however, our judiciary has become the “watchdog” of corrupt oligarchs and politicians, who are given the much-needed immunity to continue unhindered their political careers, turned into



**Victor Chirilă,**  
**Executive Director of the Foreign Policy Association (APE)**

profitable business. At the same time, corrupt politicians provide the compromised judges with comfort and protection - in other words, one hand washes the other ... Therefore, the question of the day that the future of the Republic of Moldova depends on, without exaggeration, is: can we destroy this tacit conspiracy between politics and justice?

### **A high degree of resistance to ... change**

Over the last ten years, with the support of the EU and the USA, our authorities have implemented countless reforms aimed at ensuring the independence and integrity of judges and prosecutors; transparency and impartiality of justice; meritocratic promotion of judges and prosecutors etc... In 2012, the European Union allocated 70 million

euros for the implementation of the 2011-2016 Justice Reform Strategy, a large part of this amount having been assimilated. Also, in order to prevent the corruption of judges and prosecutors, the authorities have substantially increased their salaries. According to the Center for Legal Resources of Moldova (CRJM), in 2018, the Republic of Moldova allocated 1.5% of its budget for the judiciary, while the average in the Council of Europe member states accounting for 0.9%. In recent years, most of the increased budget allocations to justice have been directed towards raising the judges' and prosecutors' salaries.

Faced with these figures, of course, *volens-nolens*, you ask yourself: why, despite the multiple beneficial reforms implemented in the last ten years, is the change in our judiciary more of a façade than substance? Why the resounding and already old cases of big corruption, abuse of office, embezzlement and illicit financing - in particular, the "Russian laundromat", "The bank theft", "The Bahamas case" - remain uninvestigated or completely ignored. The answer is given by Freedom House in its report "Nations in Transition 2020". According to this report, in 2019, the quality of justice in the Republic of Moldova was affected by the servility of the judiciary, in other words, by the lack of real independence. At the same time, the appointments made in 2019 to the Constitutional Court and the General Prosecutor's Office showed that the system continues to be influenced by political interests, and the dismissal of the Sandu Government, which took a series of positive steps to relaunch the reform, showed a high degree of resistance to the changes in the Moldovan judiciary.

The Global Competitiveness Report 2019 of the World Economic Forum also ranked the Republic of Moldova 132<sup>nd</sup> out of 141 countries in terms of the independence of the judiciary. This sad reality was recently reconfirmed by the members of the Superior Council of Magistracy (SCM) who decided to appoint persons with questionable professional integrity to the leadership of the Supreme Court of Justice (SCJ) and the Chisinau Court of Appeal (CA). By the respective decisions of the SCM, Judge Tamara Chișca-Doneva was elected as vice-chairperson of the SCJ and chairperson of the Civil College, and Vladislav Clima - as president of the Chisinau Court of Appeal. Chisca-Doneva is one of the magistrates who made the decision

in the "Gemini" case because of which our country was penalized by the ECHR to pay compensations of 3.6 million euros, while Vladislav Clima maintained the decision to invalidate the results of the 2018 local elections in Chisinau.

### **Justice reform, impossible without the politics reform**

In March 2019, the International Commission of Jurists (ICJ) presented in Chisinau a report assessing the independence of the judiciary in the Republic of Moldova. According to that report, despite the fact that many significant legislative reforms have been undertaken, the independence of the judiciary is far from being achieved in our country. This is why, in the opinion of the ICJ, reforms are still needed, but more than reforms, a change in the mentality and work culture of judges is needed, who should protect and promote judicial independence in their work. In this context, I'm asking myself and I'm asking you as well: how real is it to change the mentality of our judges, without changing the mentality and the culture of making politics of our politicians? Is it possible to bring qualitative changes to justice without radically changing our political class in a qualitative way?!

Personally, I am very sceptical of the possibility that our judiciary, which is controlled by clientelistic clans resistant to reform, will be reformed without having a government with a broad popular mandate and composed of honest people, committed and determined to radically change things in this field - first and foremost, by ensuring optimal conditions for the meritocratic promotion of judges and prosecutors with an impeccable reputation, who will later become agents of qualitative change within the system.

Otherwise, for the moment, we can only quote the Ambassador of the European Union in Chisinau, Peter Michalko: "The hopes that there can be a change in the justice system of the Republic of Moldova depend on the appointment of persons with undoubted integrity instead of those who determined justice to serve private interests, to cancel elections, etc." Indeed, only then will we be able to gradually destroy the tacit conspiracy between corrupt politicians and compromised judges/ prosecutors. Until then, nothing new on the justice front ...

# The extraordinary evaluation of the actors in the justice sector: how and under what conditions can it be implemented

**Iulian Rusu, Deputy Director of the Institute for European Policies and Reforms (IPRE)**



**C**hecking the integrity, wealth, lifestyle, professionalism and ethics of its actors is one of the biggest challenges for the justice sector, but also for the society as a whole and the Republic of Moldova as a state. Although the necessary legal framework has been in place since 2000 and several structures with control functions have been established in recent years, the situation remains unchanged- the unjustified assets remain unpunished and without a prompt and effective response from the competent bodies. One of the solutions proposed by experts in this context is to apply an exercise of extraordinary evaluation of the actors in the justice sector. What this mechanism entails and how it could be implemented in our country, you can find out from the *policy brief* developed by Iulian Rusu, Deputy Director of the Institute for European Policies and Reforms (IPRE). It should be mentioned that below is the short version of the policy brief and the full version of it can be accessed on the IPRE website.

On 16 July 2020, the Parliament of the Republic of Moldova removed from the agenda the draft Decision of the Parliament on the appointment of Ms. Viorica Puica as a judge at the Supreme Court of Justice and, subsequently, on 20 July, did not include this topic on the agenda. The Supreme Council of Magistracy (SCM) presented the candidacy of Ms. Puica on

9 June 2020... At the same time, on 28 July, the SCM promoted for appointment in question two controversial judges: Vladislav Clima- who was part of the panel that upheld the decision to annul the results of the new elections in Chisinau in the summer 2018 - for the position of chairman of the Chisinau Court of Appeal; and Tamara Chişca-Doneva - who was

part of the panel that issued the decision on the case of “Gemenii” SA, which was later considered arbitrary by the ECHR - for the position of vice-chairperson of the Supreme Court of Justice. The above are additional arguments in support of the implementation of the extraordinary evaluation of the justice sector actors. Although the Ministry of Justice launched initiatives with similar content in 2019 and 2020, the issue of the extraordinary evaluation of the justice sector actors remains, for the time being, a desideratum without continuity.

## ***A history of at least two decades...***

The evaluation of actors in the justice sector has been a topic of discussion for at least two decades in the Republic of Moldova. Some provisions have been approved to ensure the verification of the quality of actors in the justice sector, but they have not generated the expected result. (...) The effects of the legislation related to the verification of assets and interests in the judicial system and that on the prosecution bodies, but also on the public sector in general, are unlikely to be seen. Sanctioning for illicit enrichment or violation of the legislation on wealth and interests, including dismissals, did not take place. On the contrary, in the years following the approval of the mentioned legal framework (2016-2020), compromised persons were promoted through the Parliament and the SCM in leading positions within courts and prosecution bodies - especially the specialised prosecution offices - have been frequently exposed to suspicions of political control, selective initiation of criminal cases and violation of

fundamental rights in the conduct of criminal proceedings.

The public at large has witnessed numerous cases of mismatch of wealth and expenses among the actors in the justice sector, which denotes a luxurious lifestyle compared to the legal available income. Thus, the cases of purchasing luxury cars at declared prices of 10,500 lei or declaring income obtained from family events, which reach 100 thousand euros, are truly emblematic. These cases, supplemented by recent journalistic investigations which show that, for example, electric cars - relatively new products on the world market - are declared to have been purchased for 14 thousand euros, prove once again that the system of verification and control of wealth and lifestyle when comparing them to the available legal income does not work. This state of affairs is also explained by the scattered competences between the actors in the justice sector in the field of declaration and verification of assets and interests, as well as by the sanctioning mechanism, including dismissal and prosecution with confiscation of unjustified assets.

Moreover, the vicious circle of corruption and political control that the justice sector in general has entered shows that the current institutional instruments failed to ensure the elimination of compromised actors with serious integrity problems. The results are constantly materialising on the public arena, through resounding cases such as the cancellation of the 2018 Chisinau new general elections; ECHR Decisions on the violation by the Republic of Moldova of the ECHR provisions, including one of the last important Decisions on the "Gemenii" JSC case; controversial decisions cancelling SCM decisions; judges exceeding their powers by examining other aspects than those mentioned in the case; but also unjustified decisions on less resounding cases that continue to constantly reduce the citizens' trust in justice.

### ***The mechanism of extraordinary evaluation of the actors in the justice sector***

The extraordinary evaluation is a different mechanism from those currently in place, prescribed by the above-mentioned normative acts, which assess the integrity, ethics and professionalism of the justice sector actors. Such an assessment will require evaluation criteria and procedures separate from the existing ones, an integration in the process of the competent authorities in the field, mainly the SCM and the Superior Council of Prosecutors (SCP), to ensure compliance with the requirements of the Constitution, but also close cooperation and access to information relevant for the evaluation of the targeted persons.

#### **➤ *Need for intervention***

The current institutional framework does not provide us with the necessary capacity to apply strict criteria and rules to all actors in the justice sector. The Anti-Corruption Prosecutor's Office, which manages corruption cases, including cases of illicit enrichment and/or with the involvement of justice actors (judges, prosecutors), is itself suspected of lack of integrity. In addition, the National Integrity Authority (NIA) rulings on breaches of the provisions on the declaration of assets and interests are subject to scrutiny by the judiciary, which also suffers from a lack of trust and integrity. Under these conditions, an external intervention that seeks to verify the integrity of actors in the justice system is the only reliable solution to overcome the abuses in the sector and give the professional actors of integrity the place they deserve in the justice system of the Republic of Moldova.

Similar practices in other states have shown different progress and this has been influenced, above all, by the institutional framework created to

ensure the extraordinary evaluation, but also compliance with constitutional requirements and the recommendations of the Venice Commission, as well as practical assurance of institutional independence of the actors involved in the evaluation, as well as ensuring a fair trial for the subjects of extraordinary evaluation. Thus, given the views expressed by the Venice Commission in the context of the evaluation promoted in Serbia, it is clear that the practice in this country should not be taken over. At the same time, the examples from Georgia and Ukraine offer some components that deserve attention, in particular, in terms of detailing the evaluation criteria, while the example of Albania is currently considered the most complex and with results generally recognised as positive. The [IPRE policy brief](#) from October 2019 details these aspects.

#### **➤ *Preconditions to initiate and conduct the extraordinary evaluation***

For this complex evaluation exercise to be successfully implemented, three essential preconditions are needed: (1) broad consensus in the society and in Parliament to initiate such an extraordinary evaluation; (2) the availability of development partners to support and engage in the extraordinary evaluation process; and (3) the availability of sufficient human and financial resources.

#### **➤ *Proposed institutional framework for the extraordinary evaluation of the actors in the justice sector***

Following the example of Albania, with the adjustment to the constitutional context of the Republic of Moldova, the mechanism for extraordinary evaluation of actors in the justice sector would consist of:

- a.** International Monitoring Mission (IMM);

- b.** Evaluation Commission (EC), composed of four Evaluation Boards (EBs);
- c.** Special Board of Appeal (SBA);

The self-administration bodies in the sector - the Superior Council of Magistracy and the Superior Council of Prosecutors- are to be involved in the process of extraordinary evaluation of the actors in the justice sector in order to guarantee the observance of the Constitutional provisions (art. 123 paragraph (1), and art. 1251 para. (3) respectively.

The Parliament, the Government, the development partners, and civil society will also be involved in the formation of the IMM, the EC, the EBs and the SBA.

#### ***a. International Monitoring Mission***

The IMM is the structure that we propose to be composed of seven members to be approved by the Government, based on the proposals from development partners and civil society. This list is to be approved in its entirety by Parliament by the vote of at least 3/5 of the elected MPs.

Once the composition of the IMM is approved, it will select the EC members, including the EBs, but also the SBA, to launch the evaluation process.

In order to ensure that there is no abuse by the EC, the IMM will also have the power to challenge the EC decisions which will target the persons subject to evaluation.

#### ***b. Evaluation Commission and the Evaluation Boards***

The Evaluation Commission is the authority that will ensure the formation of the initial file of the evaluated person and will verify the

data available from other sources, including the automated information systems currently available in the Republic of Moldova. The EC will also have the right to request additional information from other authorities to substantiate its decision.

EC procedures will also include the necessary elements of a fair trial for the persons assessed, with the right to submit additional information within a reasonable time, but also to challenge the documents issued by the EC to the SBA.

The EC would be composed of people with an impeccable and honest reputation, with experience in the fields of justice, prosecution, corruption prevention, integrity promotion, taxation and financial-banking services.

The selection of the EC members will be ensured by the IMM, and, once the composition has been agreed, it will be proposed to the Parliament to be approved in its entirety by the vote of at least 3/5 of the elected MPs.

#### ***c. Special Board of Appeal***

The SBA is to be composed of non-judge professionals, who will be proposed to the President by the SCM and will work at the level of the Chisinau Court of Appeal, but totally independent from an institutional and functional point of view.

The competence of the SBA will be to judge appeals against EC decisions, without adjudication functions on other cases.

Given that the judges in the judiciary are nominated by the SCM and that the SCM members are among the subjects of extraordinary evaluation, the formation of the SBA will be possible only after the SCM members are themselves evaluated and the right of appeal will be ensured once

the SCM submits candidates for the position of judge to the SBA, based on IMM proposals.

#### ***d. Secretariats of IMM, EC and SBA***

The IMM, EC and SBA will each have a separate secretariat consisting of people with experience in the fields of law, integrity promotion, financial-banking services and asset tracking to ensure the efficient functioning of three evaluation structures.

#### **➤ *The persons to be exposed to extraordinary evaluation***

To ensure an efficient evaluation process, as well as to ensure that the justice authorities do not become dysfunctional, it is proposed that the extraordinary evaluation takes place in three stages.

In the first stage, the members of the SCM and the SCP are to be evaluated, except for their ex-officio members; the chairman, vice-chairmen and judges of the Supreme Court of Justice, the Prosecutor General, the Deputy Prosecutor General, the chief prosecutors of the General Prosecutor's Office, the chief, deputies and prosecutors of the Anticorruption Prosecutor's Office, the Prosecutor's Office for Combating Organised Crime and Special Cases, the director and deputy directors of the National Anticorruption Centre, members of the Integrity Council, the director and deputy director of the National Integrity Authority, and of the director, the deputy director and the members of the Council of the National Institute of Justice.

In the second stage, the chairmen and vice-chairmen of the courts of appeal and district courts, members of the boards of the Superior Council of Magistracy and of the Superior Council of Prosecutors, inspectors from the Inspectorate of Judges and of the

Inspectorate of Prosecutors, prosecutors from the General Prosecutor's Office, chief prosecutors and deputies of the territorial prosecutor's offices, judges from the courts of appeal, integrity inspectors from the National Integrity Authority.

In the third stage, the judges and prosecutors who were not evaluated in the first two stages and the employees from the National Anticorruption Centre, who are civil servants with special status, will be evaluated.

#### ➤ *Evaluation criteria*

The extraordinary evaluation of the actors in the justice sector would be based on the criteria of integrity and professional skills, with the necessary detailing in the law. Among the criteria related to integrity are: verification of lifestyle, compliance with the obligations to declare wealth and correctness of presented information, verification of compliance with the requirements of impartiality and independence, respect for professional conduct and ethics, respect of legislation on personal interests and observance of dignity of the position while in office. Professional skills are verified in terms of professional skills and abilities to motivate, justify and solve complex issues; efficiency and level of performance; the capacity to review and verify judgments / acts of lower courts.

#### ➤ *Procedural rules*

To be able to comply with the requirements of the Constitution, the rules of procedure will be adjusted to ensure the involvement of SCM members, respectively of SCP members, in the case of judges/ prosecutors. Thus, in the case of these evaluated persons, the additional quasi-judicial level of verification from the SCM/SCP will be ensured, which can later be challenged in the SBA. In the case of SCM and SCP

members, this stage will not be included, and judicial control will be provided directly by the SBA, once it is formed.

### *Opportunities and risks associated with the implementation of the mechanism of extraordinary evaluation*

#### ➤ *Opportunities*

This mechanism could be the solution to overcome the current severe situation in the justice sector. Through the proposed mechanisms of verification of the integrity and professionalism, we ensure that the actors in the sector are thoroughly verified and after the verification they return into the system with an advance of trust and support from society.

The application of verification mechanisms by the IMM, EC and SBA will **provide us with an important practice** of verifying wealth and interests, establishing minimum standards of integrity and professionalism, which can be taken over by the current structures involved in preventing and combating corruption - NIA, Anticorruption Prosecutor's Office and NAC.

The authorities that will go through the extraordinary evaluation process - applied, first of all, to the people with management positions in these authorities - will ensure a higher level of trust, but also new tools at hand to effectively investigate acts of corruption, illicit enrichment or defective declaration of held assets.

#### ➤ *Risks*

The extraordinary evaluation should be analysed very carefully and **developed in detail before it starts**. Otherwise, it may fail. Careful planning with realistic

terms and cost assessment, along with the involvement of the Government and development partners, are absolutely necessary. Initiating the evaluation without taking these factors into account will discredit the process, and the results will be minimal or, even worse, the mechanism will be used to exclude integer actors and agents of change. Such a mechanism applies only once, which is also confirmed by numerous opinions of the Venice Commission.

The extraordinary evaluation process will inevitably contribute to **increasing the number of cases** pending before both prosecutors and judges. The first to pass the assessment will be exposed to an additional workload, and it must be distributed according to priorities, so as not to affect the main processes in the country.

The political support, but also the support of development partners is essential throughout the extraordinary evaluation. The interference of political actors, in particular, when narrow group' interests will be at stake, should be avoided both through legal instruments and through public monitoring and reporting. Otherwise, the extraordinary assessment mechanism will be used to **influence actors in the judiciary** and, through them, **to constrain political competitors and secure illegal income streams**.

### *The timeframe of the intervention*

Once the minimum conditions to start the extraordinary evaluation process are met, it can take between five and seven years. Albania's practice, considered the best reference example, demonstrates that it takes at least one year to structure the intervention framework and another five years to initiate and complete the extraordinary evaluation process.

## Expert opinion

# Dragoş Lucian Ivan: „Justice crumbled in paper tied up with strings or Justice completed through digitalisation?”



**T**he draft Strategy for ensuring the independence and integrity of the justice sector for the years 2020-2023, developed by the Ministry of Justice, is built on three key directions: 1) Independence, responsibility and integrity of the actors in the justice sector; 2) Access to justice and the quality of justice; 3) Efficient and modern administration of the justice sector. This last point has become even more important now, during the pandemic, when it was clear that the widespread use of technology in the field is only a matter of time. The challenge is not a purely “Moldovan” one as evidenced by the [article](#) signed by the Romanian lawyer Dragoş Lucian Ivan in the *Spotmedia.ro* de. From his position as a practitioner, university professor, scientific researcher and trainer in various legal education projects, the author offers us a vision of a “justice completed through digitalisation” - a reality that will certainly reach the Republic of Moldova soon. See below a summary of key ideas.

### Reforms that can no longer be postponed

„We all understood the importance of digitalisation during the pandemic,

which forces us to adapt. We are talking about digitalisation at European level, important funds allocated by the EU to make the member states more innovative. Billions of euros have been proposed by the European Commission

to member states to implement reforms and investments that improve the lives of citizens and help us be better prepared for the next challenges.

(...) Unfortunately, it was not only during the pandemic that I encountered situations that proved to me that the Justice is not congruent with the level of the citizens’ expectations. Every time I reached the [Trade Register](#), I saw a queue meandering past the building, through the parking lot, towards the street, with people who had submitted the documents digitally, but the solution had to be picked up physically. The image is repeated in front of many [courts](#).

The state of emergency revealed both the frustration caused by the structural problems of the Romanian legal system, and new problems that could certainly be avoided by investing in modernization, technology and digitalisation of simple activities. There was a constant excuse that there was no money. We now have an opportunity to carry out long-term reforms with grants and loans as the European Commission encourages digitalisation. There is finance, now we need a strategy. But where are we?

[Europe’s Digital Progress Report \(EDPR\) din 2017](#), published by the European Commission, underlines that Romania was on the last place out of the 28 member states of the European Union,

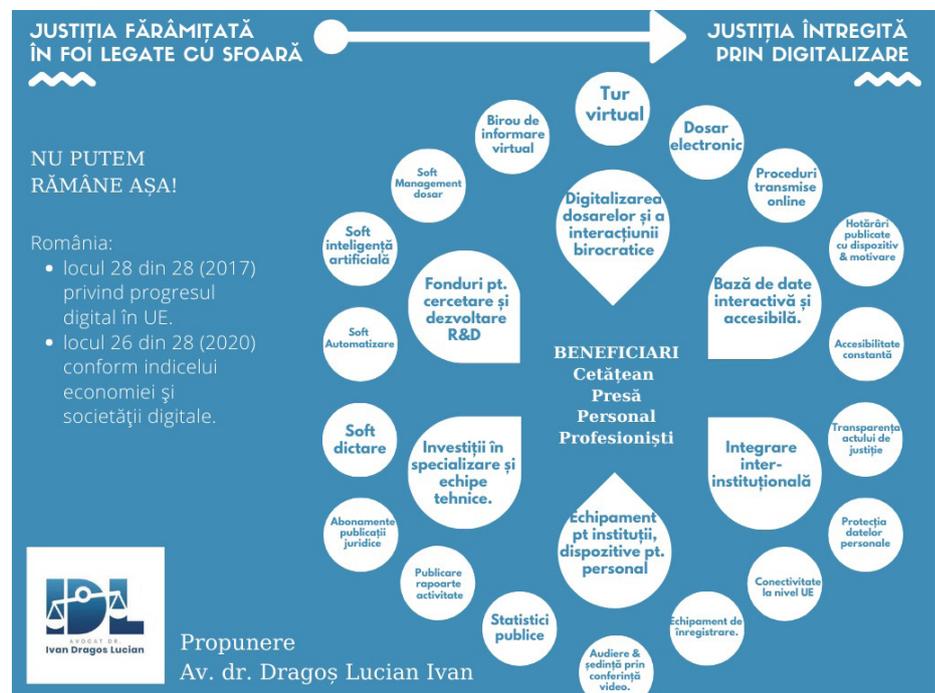
according to the Digital Economy and Society Index (DESI). In 2020, it ranks 26<sup>th</sup> out of 28, at a tiny value distance compared to the last places occupied by Greece and Bulgaria.

For things to be different, there are two main conditions: the desire for reform and the need for performance. Inertia can be shaken by the digitalisation of cases, data and bureaucratic interaction. This would reduce the direct contact with the court staff for communications, pick-ups, making copies, filing documents and consulting documents. Any entry or exit from the system will become part of a national database that will allow consultation, modification, information management, monitoring and communication. (...) The series of structural solutions would be completed with an inter-institutional integration that would allow for obtaining, for example, by the court, of information such as criminal and fiscal records, data from the population registry, without delaying for months the proceedings or requiring expenses on the part of the litigant.

### **The imminence of digital communication tools**

The almost generalised presence of digital communication tools would allow for the court hearings to be held by videoconference, live broadcast, recording, and video files to be made available to the public and the media on the official websites of the courts. (...) We can acknowledge the need to equip the police stations, courtrooms and places of institutional interaction with equipment that allows not only the connection of devices such as phones and laptops, so that video evidence, arguments, defenses, written notes, and presentations are provided to those present in the room, but also the recording of these interactions in order to prevent acts of corruption or abuse. (...)

The quality of regulations will depend



on an investment programme in the specialization of magistrates, lawyers, executors, prosecutors, and court reporters in the use of new technologies, but also in the creation of positions for IT specialists, to provide them with ongoing support. Against the background of these investments, it would be necessary to adopt concrete measures to regulate remote work in court, resulting in the elimination of unjustified postponements and in increasingly shorter deadlines. Last but not least, the institutional reform would aim at allocating, for the first time, funds for research and development in the justice sector.

These funds would support partnerships with the business sector, companies with digital solutions, as well as civil society inclined to develop innovation through software applications, statistics, events, projects and procedures to ensure sustainable development. Digitalisation requires internal structural transformations of norms, legislation, institutions, mentalities, habits and work practices. In practice, these reforms would penetrate procedures and lines of implementation. (...)

To nuance the discussion, I will provide some examples of procedures and steps in the area of criminal law that can be subject to digitalization, without the danger of affecting the protection of human rights and fundamental freedoms.

#### **1. Improving communication for the citizens**

- Communication by electronic means (App, Email, SMS) of the case related information.
- The criminal investigation case in electronic format would allow easier supervision of the investigation by higher bodies; the parties would have access and the possibility to challenge the criminal investigation documents and it could be established when, if and by whom they were accessed. Transparency also helps prosecution - some parties can no longer invoke abuse/ lack of time to consult the case.
- Streamlining the preliminary chamber stage where only technical issues regarding the legality of the indictment and evidence are discussed.

➤ Complaints, denunciations, filtering procedures in extraordinary legal remedies, appeals against insurance seizure, requests of detainees during execution that do not involve administration of evidence can be carried out much more efficiently through digitalisation.

➤ Using artificial intelligence to analyse the face, physical reactions of the person and data. At the moment we rely only on the experience of those who investigate. We have few such specialists and few cases receive such attention. However, through artificial intelligence, a larger number of cases, perhaps all of them, can be analysed in more detail, saving hours of work, time, resources and providing specialised help to the investigators not yet so experienced.

## 2. Communication with the citizens and media

➤ Creating a virtual tour for each court and a virtual office that will provide public and contact information, useful tips, guides and the possibility to make appointments (day, time). Generalization of the publication of the activity reports of the courts

and prosecutor's offices, but also of the courts' jurisprudence, in order to harmonize the jurisprudence and avoid judicial errors.

➤ Ensuring the use of personal data filtering software from documents produced in courts and prosecutor's offices, and the compatibility of various computer programmes used by them.

➤ Regularly measuring the quality of justice, including by taking into account the satisfaction of the beneficiaries of this public service.

➤ Publishing online entirely not only the operative part of the judgement, but also their motivation.

## 3. Support for judicial staff

➤ Access to databases containing up-to-date legislation, jurisprudence and legal materials. It is said that there is a danger that the motivations will become centered on jurisprudence (Case law) and less principle-based, but in fact we would have more well-justified decisions.

➤ The digitalised case will allow remote work, away from the narrow, unsanitary offices and a reduction in the physical space required in a court.

➤ A voice recognition and rendering software to be able to dictate legal acts.

➤ A case management software in progress, with notifications and to-do list.

➤ Document automation software, research templates.

➤ A software based on artificial intelligence that analyses all existing decisions in the system to provide solutions to motivate the decision of the judiciary in order to support predictable case law and professionalism.

Instead of conclusion, I will say that simple digitalisation, without vision and without encouragement of constant innovation, leaves a minimal mark on justice. Digitalisation is not a moment in time, but a continuous process that, once started, can directly and visibly improve services for citizens and propel the principles of justice among citizens.

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