

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

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## Synthesis and Foreign Policy Debates

The newsletter is developed by Mădălin Necșuțu, editor-coordinator

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### Știri pe scurt:



The Minister of Justice, Sergiu Litvinenco, declared on September 28, at the 6th meeting of the European Union - Republic of Moldova Association Council, held in Brussels, that the judicial reforms have already been launched by the current government. The official referred to the amendment of the Constitution to strengthen the independence of the judiciary, the adoption of the law strengthening the capacities of the National Integrity Authority in the field of verification of assets of the civil servants and the possibility of confiscation of the assets that cannot be justified. "We have started the work on the reform of external and extraordinary evaluation of judges and prosecutors, the so-called vetting. We have developed a concept and sent it to all development partners. The essence of the reform is that judges and prosecutors will be evaluated in terms of integrity by external commissions, including foreign experts, and all those who cannot justify their assets will be excluded from the system," Litvinenco said. He added that the Prosecutor's Office of the Republic of Moldova also needs a profound reform.



The Republic of Moldova and Gazprom reached an agreement on October 29 on the extension of the gas supply contract by five years. The delegations of the two parties, which had a meeting in St. Petersburg, agreed on the price formula, the audit of the debt of the Moldova-Gaz in 2022 and the need for further negotiations to establish a payment schedule, announced the Ministry of Infrastructure and Regional Development of the Republic of Moldova. The gas price paid by Chisinau to Gazprom in November will rise to \$450 per thousand cubic meters, while in December a price of less than \$400 is expected. The Minister of Infrastructure and Regional Development, Andrei Spinu, announced that he cannot reveal the calculation formula, because it is a commercial secret. In October, the Republic of Moldova received gas on the basis of a one-month extension of the contract with Gazprom, in insufficient volume. The volume difference was purchased during that period on the spot market, through the Energocom company, at market prices.



The President of the Republic of Moldova was in Paris on November 10 and 11, where she participated in the Peace Forum, an annual event organized under the auspices of the French President Emmanuel Macron, which brings together leaders of states, governments, entrepreneurs in various fields and activists from the whole world in a format of discussions on global topics. "I have attended the opening ceremony of the Peace Forum, along with President Macron, the Vice President of the United States, Kamala Harris, and other heads of state and government. In the panel on women's leadership, we have discussed the issue of gender equality and the problems facing women in politics. Despite the changes for the better in this regard in Moldova, there is still much to be done to reduce social and economic inequities in our country", wrote Maia Sandu on Facebook. During the forum, Maia Sandu also had bilateral meetings with the President of Estonia, Alar Karis, and the President of Iceland, Guðni Jóhannesson.

## Republic of Moldova face to face with the justice system reform



For three decades, the Republic of Moldova has been known for a weak justice system and endemic corruption that has put into the orbit of Eastern European countries with serious problems in this regard. Among the main factors that contributed to this state of affairs are the subordination of justice to the political factor, as well as the widespread corruption among the

magistrates - judges and prosecutors - who even today cannot justify their large fortunes from these positions of civil servants in the poorest state in Europe.

For the most part, the judiciary is still trapped in an old-fashioned mentality from the days of the Soviet Union, when the judiciary was just an executor of the state party and decisions came vertically top down.

With the installation for the first time of a pro-European majority government and relatively young politicians with a different mentality, a new approach is expected in Chisinau. A more democratic one to be able to clean the justice system.

However, this requires time, pragmatism and a lot of will to reform, both on the part of politics and the judiciary. ▶

► The new minister Sergiu Litvinenco, the president Maia Sandu, but also the parliamentarians of the Action and Solidarity Party (PAS) want to change this state of affairs. Currently, under the pretext of the independence of the judiciary and the separation of powers in the state, this caste shows no signs that it would like to take advantage of the window of opportunity offered by the pro-European power in Chisinau and would still like to decide for itself. Such declaratory attempts at reform by magistrates have taken place before, but without success. So the politicians feel compelled to take the fate of this sector into their own hands.

The most important test will certainly be the external evaluation of magistrates, more or less a forced cleansing of the system of corrupt people. Some stubbornly reject such a mechanism that could bring more clarity in the field, but such a measure, according to those in power, is absolutely necessary. On the other hand, there are many voices among the magistrates who claim that, for the time being, there are no clear evaluation criteria, as well as details about who will be part of the commissions that will evaluate the magistrates. Likewise, the question arises who the magistrates expelled from the system will be replaced immediately with, since it is already at this stage undersized and both judges and prosecutors have a hard time coping with the large number of cases.

Therefore, the road of reforms will certainly be a winding one and not exactly easy even for the current government that acts with determination and lots of political will. It will be very difficult for the politicians if there is no cooperation and a common denominator is not found with as many magistrates as possible to be willing to make such radical changes. Reforms have never been easy, but the Republic of Moldova will need them to step on that irreversible path of change in the democratic and European sense.

*Mădălin Necșușu*

## ***The resilience of the justice system is fierce, but we are prepared, and we have both the patience and the determination to go all the way***



***In an interview with the FES/APE foreign policy newsletter, the Minister of Justice, Sergiu Litvinenco, spoke with us about the priorities of his mandate at the helm of the ministry. The official explained to us in detail about their vision with regard to the priority reforms to be carried out in Moldova, about the extraordinary external evaluation of the magistrates and about a series of public figures who have problems with the justice. We are inviting you to read more about all this in the following interview:***

■ **The case opened against the suspended general prosecutor Alexandr Stoianoglo formed both opinions that the justice reform is on the right track, and that it is a televised show. What prevails most in this case, the rule of law or the public perception of how the act of justice is performed?**

■ **Both dimensions, the rule of law and the public perception of how**

the act of justice is done are not excluded. On the one hand, we see a high demand in society for the act of justice, because the citizens want justice. That is why there is an enormous public pressure when it comes to cases of resonance, and people, disappointed by the lack of finality in most of them, are demanding results. And most often, people want results “here and now.”

On the other hand, in order for the act of justice to be fulfilled, it must take into account the legal procedures and take place in conditions of maximum transparency. The Superior Council of Prosecutors (CSP) did nothing but implement a law, which had been blocked for a long time for reasons we all understand.

The investigation started in perfect accordance with the law, but it is up to the relevant bodies to complete the process. If the suspended prosecutor general is found guilty of committing illegalities, he will have to be held accountable, because no one is above the law.

■ **In your view, is Stoianoglo one of the exponents of the endemic corrupt system in the Republic of Moldova or there are other important pillars of it?**

■ I do not want to comment on Stoianoglo's guilt or innocence, whether or not he violated the law, whether he is corrupt or not. This is up to the justice system. I can only say that during his term as prosecutor he was not efficient, while the institution he led has dragged on - to use a more 'elegant' term.

He failed to build trust in the institution, especially due to the fact that he succumbed to the cases of resonance. People were disappointed, while the big thieves, instead of going to jail, have been leaving the country one after the other. It is the exact opposite of what people expected from the justice system.

Moreover, there is a lot of talk in society about his weakness towards the prisoner Platon, whom he not only released from prison, but also tried to acquit of criminal responsibility on several crimes, and in the end, he let him leave the country. The prosecutor general will probably have to answer

not only for him, but also for "that boy."

***Fears for those  
"in trouble with the law"***

■ **How do you interpret the recent rally by PSRM, led by Igor Dodon, in support of the prosecutor general accused of corruption and abuse of office? Does it seem normal for such a character to be supported by opposition parties?**

■ The support, in my opinion, is determined, first of all, by Stoianoglo's actions. Or, more correctly, his inactions. If you noticed, he did not fight political corruption at all, although that's the biggest problem. He has mistaken the fight with political corruption - which is actually the fight against big corruption or the "sanctioning of big fish" - with the initiation of political cases, which is totally wrong.

Therefore, PSRM's love for Stoianoglo is explained by the fact that he was a good prosecutor, who did not ask them questions, did not cause them problems, even if there are reasonable suspicions in society that things should be different. We do not rule out that there is something else in the middle. For example, the connection of several socialists with the person about whom the people talk is behind Stoianoglo.

■ **At the time of his resignation, Igor Dodon hinted that he might be the next one to be taken by investigators and said he was not afraid of possible detention. Do you think Dodon has something to worry about given the 'Bahamas business', the luxury house he owns from his salary being "also helped by his parents" or his family's business in Russia?**

■ Dodon victimizes himself. We understand his state of mind: he was

a king for a while, then he played the madman, so that, in the end, he became a poor pawn. If he feels guilty, as a chess player, he can probably anticipate certain moves by the judiciary.

But this will be decided only by the investigative bodies and they do not want to comment too much on this case. In a state governed by the rule of law, anyone who violates the law must fear punishment. We want the state institutions to apply the law to anyone who violates it, regardless of position.

***Signals from  
Western partners***

■ **Do you have any feedback from the development partners on the progress of judicial reform? If so, could you share with us some impressions of how it looks from the embassies or from Brussels?**

■ Our partners are fully supporting us. We are in constant communication and they understand very well that we have the mandate of the citizens for change, but also the fact that the Republic of Moldova will not be able to survive as a state without a comprehensive reform of the justice system.

We are in constant discussion, including on the issue of external and extraordinary evaluation, an extremely necessary measure with which they agree. Their wish is not to rush things, because a reform of such magnitude must be thoroughly prepared, both in terms of implementation measures and the way we communicate it to the citizens.

■ **If Romania demands it and the Moldovan courts don't oppose it, does the Republic of Moldova intend to extradite the former deputy Cristian Rizea to Romania? What are**

### the current conditions for him to be referred to the law enforcement agencies across the Prut?

■ Cristian Rizea's story is known, and I've answered this question before. He challenged Dodon's withdrawal decree. Despite the fact that there are two cases pending initiated by the Ministry of Justice - one on the recognition of the sentence in Romania if he were a citizen of the Republic of Moldova, and another on the extradition to Romania following his final conviction there if Rizea were a citizen of Romania and would not hold the citizenship of the Republic of Moldova -, the courts do not want to go further since there is no clarity on the case with the citizenship.

So, at this moment, since there is no clarity with regard to the legality of Dodon's decree aimed at withdrawing the citizenship of the Republic of Moldova, both cases are being delayed. However, in principle, I do not see how a Romanian court decision cannot be implemented either through extradition or recognition.

### Preparations for the external evaluation of magistrates

■ How do you assess the beginning of this judicial reform and how do you see its prospects? What will the next steps be and what do you think is the sensitive area of the justice sector that needs to be reformed?

■ People have high expectations from the justice reform, and the PAS won the election largely because of its commitments to clean up the state and do justice to the citizens of the Republic of Moldova.

We must recognize that the resilience of the system is fierce, but we are prepared, and have both the patience and determination necessary to go

all the way. The first steps were taken through legislative adjustments, which allowed us to hold certain state institutions accountable. We are now in the process of preparing for the launch of the external and extraordinary evaluation of prosecutors and judges.

■ There is a lot of discussions about the extraordinary external evaluation of judges. Will this include all magistrates, will it extend to prosecutors? When will it start and what are the expected results?

■ The idea of this reform is very simple. By way of derogation from the general rules, the evaluation of judges and prosecutors will take place in accordance with a special procedure, by setting up commissions including foreign experts, who will evaluate judges and prosecutors in terms of integrity. And those who will not pass the integrity test will be removed from the system.

For example, those whose castles have a price that exceeds their income several times or who have luxury cars and other goods whose origin cannot be justified will be removed from the system. I am referring to the real assets they own, not just those that are formally inscribed on them. Also the assets registered on the magistrates' relatives, but which actually belong to them. Among other things, even international fora recognize the legitimacy of such reforms where justice systems are rotten and corrupt or have been used for political purposes. Such as their capture during Plahotniuc's time.

Who will be evaluated? I wish everyone was. Obviously, we have to start with the helmet, and then go down. Among other things, we want to establish integrity verification

procedures even for those who want to access the system, not just for those who are already there.

■ What other priority measures will be taken as part of the justice reform?

■ We have an ambitious programme set right from the first day of government. Even so, there may be some adjustments along the way.

For example, we are thinking, more recently, to implement, until the external evaluation, a preliminary evaluation procedure for judges and prosecutors aspiring to positions in the Superior Council of Magistracy (SCM) and the Superior Council of Prosecutors (CSP) - a so-called „pre-vetting” -, so that only those who pass the integrity test can access the SCM and CSP through the general assemblies. The aim is for only candidates without integrity issues to reach the general assemblies of judges and prosecutors.

Another important project is the law that tightens the sanctions for the political and electoral corruption that we are finalizing and will propose soon to the Government and the Parliament.

We are also thinking of streamlining the institutional framework for the fight against corruption by creating a single institution to fight the high-scale corruption according to the DNA model in Romania.

Reform of the Supreme Court of Justice is also needed. But also many other things we have to do in order to achieve the objectives for which the people of the Republic of Moldova voted for us - to establish a fair justice system.

■ Thank you!

## Editorial

# Courageous people and people of integrity will make the difference in the justice reform and the fight against corruption

Failure of the vote of no confidence against the Minister of Justice in the Moldovan parliament from the end of October was an opportunity for Minister Sergiu Litvinenco to remind, from the legislature tribune, about the vision of the new government with regard to the steps to be taken in the justice sector reform. The latter is the most more important area, which, once brought to normal, will contribute to the proper functioning of the rule of law. The next steps in the reform of the judiciary have been reconfirmed, namely how the evaluation mechanism of prosecutors and judges is seen. The new government has high expectations from this mechanism, hoping that it will remove corrupt and compromised people from the system and bring in competent and honest prosecutors and judges. The impact of the reforms remains to be seen.



**Editorial by Cornelia Cozonac,  
director of the Center for Journalistic  
Investigations of Moldova (CIJM)**

The haste with which the Moldovan government is acting has raised criticism or doubts about the immediate results of the launched reform. The government is not even hiding it - it wants to put into practice the promises with regard to the fight against corruption made in the election campaign, which brought the leader of PAS Maia Sandu to the helmet of the state, and then, has ensured the success of the political party, which managed to obtain a comfortable majority in the Parliament. The early parliamentary elections of 11 July 2021 gave a clear and strong mandate to the pro-reform forces to implement an ambitious anti-corruption agenda, improve the justice system and fight poverty, in compliance with the Moldovan commitments under the Association Agreement with European Union.

### Difficult task

The fight against corruption in the Republic of Moldova is not an easy task. The extremely corrupt system has so far swallowed up everyone who tried to change it. And there were not a few. The question is whether the current government will be able to learn from the previous mistakes, come up with a new fighting tactic, avoid slippages and excessive politicization of reform processes, but most importantly, will have enough brave, competent and honest people to destroy this corrupt system. The right people would be the basis for success in the justice reform and elimination of corruption.

Legislation and institutions are tools through which professionals can carry out reforms. The results of the reforms will depend proportionally on how skilfully they will handle the instruments.

First of all, there must be honest people in the Superior Council of Magistracy, and the future composition of this structure is extremely important for the smooth running of the reform. Here the voice of judges and their courage inside the system will make the difference, excluding those who do not deserve to remain in the system and promoting those who can change things. Let's see if we have that critical mass in the judiciary determined to change things. This refers also to the prosecutor's office; the change should come from within the system.

Removing the corrupt and incompetent from state institutions, and especially from the justice system will not be an easy task, but the cleaning up will happen as it is inevitable. But who will replace the corrupt ones? This is going to be the hard part of the reforms.

### Political subordination of magistrates

For years there have been staff reshuffles; the communist government from 2001 to 2009 has forced many prosecutors and judges to leave the system, as well as other state institutions; then Plahotniuc's government came and swept away part of the staffing on which the system was based, operating with arrests and made-up cases, and replacing them with people loyal to the party leader. I'm not saying professionals did not stay in the state structures, otherwise this state would not exist anymore, however, many honest people now who have been dedicated to their profession and who stayed in state structures, have Damocles's sword hanging over their heads - they are treated with suspicion for the simple fact that they worked during previous governments. Now, from the rostrums of the leadership, it is clear to them that they have to leave. Many of them did the impossible, working honestly, and fulfilling their mission.

They have now become the most vulnerable to the new government, and some, even if they have not made compromises, have been forced to leave, because the new political order demands it and because they are trying to find faults with those who have worked with the previous governments. However, also some who have made compromises have also left and I know that the boomerang could reach him. But who stays in the system?

There are officials, including in the justice system, who have done well along the time, and not because they have always been the best, but

because they knew how to act next to the new leaders. Or because they were part of Plan B and C of those who run the corruption mechanism, from which, for the time being, no nut has fallen. And they, according to the plan, must remain in the system, sabotage, monitor from the inside what and how it is being done or skilfully take certain actions in order to compromise the good intentions of the reforms. I do not know if this is taken seriously by the new government.

But even the division into ours and yours, "he who criticizes us is against us," does not seem to me a good attitude in the starting point of the cleaning up. Getting out of the election campaign and the euphoria of winning the election, getting down from the barricades and giving unconditional confidence to the people in the system would be, perhaps, the best way to success.

### **Need for fresh energy**

It is the people who will carry out the reforms. Competent and honest. Sufficient in number to make the changes. And the justice system should be represented by people of integrity, that cannot be influenced by the political power at the executive and legislative level. Without enough people of integrity in the justice system the reform will fail. Let's not run before we can walk. The road paved with good intentions will not be sufficient without people, many people of quality. The people who worked in the election campaign for the party and who now have to be rewarded, are not enough and not even those who expressed their intention to work pro-bono in order to tick in their CVs or really challenged to test their skills and knowledge.

External evaluation of prosecutors and judges is one of the tools with which the current government wants to clean up the justice system in which to bring competent people. The evaluation process will at best begin in a year, no matter how much the current political decision-makers want a rapid process. At least these are the calculations of the experts in the field.

The detention and investigation in a criminal case for abuse of power and a few other charges of Prosecutor General Alexandr Stoianoglo seems to be part of the policy of cleaning up the justice system, launched by the current government, even though from the official tribunes they say the process is not politically influenced.

Criticized by many human rights defenders, the manner in which the detention happened still raises disputes. In Stoianoglo's tenure, high-profile corruption cases have made no progress. He was appointed by Igor Dodon as general prosecutor, after the Government led by Maia Sandu was dismissed through a vote of no confidence, which had tried to prevent the capture of the prosecutor's office by Igor Dodon. Consequently, the cases involving Dodon and PSRM have been closed or put on the dead line. The flirtation of the head of the prosecutor's office with the controversial businessman Veaceslav Platon has left a heavy mark on the image of the prosecutor's office in general. Why the general prosecutor Alexandr Stoianoglo was not evaluated and possibly dismissed legally as it was announced is not clear yet.

According to the practice until now, when a new government was established, negotiations were held with the Attorney General. The latter resigned, but got some guarantees instead. These were not widely discussed, but they existed. Alexandr Stoianoglo aspired to remain in office, he even went to war with the government, crossing the "red lines", as the Minister of Justice himself put it, but also

with the European community, accusing a former EU ambassador of conspiratorial actions. The government has not tried to negotiate this time, even though some advisors suggested such a tactic as a solution to make the attorney general leave.

Only after it was clear that there will be no negotiations, backstage agreements, and especially after the detention of the prosecutor general, followed by the detention of his deputy - prosecutor Ruslan Popov - the prosecutors in the system understood that others may follow. And resignations have started, even though they were presented as a disagreement with what is happening in relation to their superiors at the General Prosecutor's Office.

Tactically, starting the fight against corruption and reforming the judiciary through a process of maximum intensity, the detention of the Attorney General being unprecedented, is a very good action. However, the slippages or mistakes admitted in a hurry or intentionally will not be able to be justified.

### **Penalised mistakes**

I'm leaving the procedural details to the professionals in the field. My expectations have been for the case against the Attorney General to be prepared very well, down to the smallest detail. But, from the very beginning, another name appeared in the order for the criminal investigation, which shows that the text of the order was copy-pasted from another procedural act and hastily copied with the name of the person in that act.

This is to me disqualifying for a prosecutor who is appointed to deal with the case of the prosecutor general. In such cases, maximum professional diligence is expected from prosecutors in the preparation of all documents and in the taking of all procedural measures. All the more so as this case is a relevant and important one for the further fight against corruption.

Beyond that, the allegations do not seem serious enough not to fail during the criminal prosecution process or in a trial. I wish I wasn't right. Some of the defenders have invoked several procedural violations and slippages in the process of detention and pre-trial detention of the Prosecutor General. It is known that in many cases prosecutors intentionally commit certain procedural violations which then, in the trial, lead to the acquittal of the accused person.

There are techniques and procedures already in place in this regard, which some defenders are talking about. In the case of Prosecutor General Alexandr Stoianoglo, his acquittal and victimization respectively, will only help him in a possible relaunch in his political career, which he has subtly announced about in his last Press conference.

Condemning a former prosecutor general for concrete crimes would certainly be the hard part of a justice reform, and a clear signal that the fight against corruption has begun. But this must be taken care of by the judiciary and not by the politicians.

Competent and people of quality will change things and bring them back to normal. But they must be encouraged, selected, and promoted through a depoliticized to the maximum process. The process should also be democratic and transparent, based on competitiveness criteria. Mistakes, defiance of constitutional norms and the rule of law will be penalized and nothing will justify them, even the results in the justice system reform and the fight against corruption.

# We have “old-fashioned” judges in the SCM, with lots of life and work experience, but unfortunately, they come from the Soviet era

*Victoria Sănduță, judge and founder of the “Voice of Justice” Association*

**T**he judge Victoria Sănduță gave us an interview about her assessment of the justice system reform launched by the pro-European power in Chisinau, including the strengths and weaknesses of this reform. We have discussed about the judicial system and the mentality of some Moldovan judges, but also about the external evaluation of magistrates, a hot topic that gives rise to diverse opinions.

■ The proceedings initiated against the suspended Prosecutor General Alexandr Stoianoglo has somewhat divided the public opinion in the Republic of Moldova. What do you think about this?

■ As a lawyer and especially as a judge, I have to say that the rule of law should always prevail. I am not saying this only from my position of someone who's holding a function of public dignity but also as a lawyer.

I wouldn't like to say anything about this concrete case of the Prosecutor General before he is brought to justice. Until there is an irrevocable decision on this case, no judge should make judgments.

I've been asked how to fight corruption among civil servants, especially high-ranking ones. If corruption is so widespread and



the degree of corruption is so high, if those who must enforce the law and obey it are the ones who break it, how can you fight them? My opinion is that we need to treat those with high positions in the same way as ordinary criminals, using only legal instruments.

Even though we sometimes find it easier to use the same tools that criminals have used, we should not resort to such procedures. Offenders must be brought before the law and tried accordingly. And they must be punished according to the law, if they are guilty.

But I am afraid that if we apply the same unethical methods with noble intention, we will do nothing but set an example to others who will be

ingenious enough to use them. This is how we get to selective justice.

Everyone must obey the law, even if it is difficult. This is the only way to achieve rule of law.

## **Old problems in new times**

■ If you were to briefly characterize some of the biggest current problems of the justice system in the Republic of Moldova, what would they be?

■ The deplorable situation of the judiciary, of which I am a member, is linked to the systemic problems caused by the Superior Council of Magistracy (SCM).

Unfortunately, the judiciary has been obedient to politics during its 30 years of independence. I don't want to completely blame this system. Recently, Freedom House has launched a study in the Republic of Moldova according to which the main problem in the ex-Soviet space has been the legal education of the judiciary. And this starts right from the faculty years, where the emphasis is put on the rigid interpretation of the law rather the spirit of the law, and here I am referring to the promotion of social equity and the protection of human rights.

■ Unfortunately, several negative things happened in the Moldovan judiciary, when resounding highly motivated decisions were adopted. People in bad faith have used the law to their advantage to actually justify the abuses. They claimed that the decisions had been made in accordance with the law, but in fact, the spirit of the law had been neglected. This resulted in selective justice.

■ When the Republic of Moldova gained independence 30 years ago, those in charge of affairs in this state, including in the judiciary, did not fully understand what independence means. First of all, I think there is a problem with the lack of legal education. We have "old-fashioned" judges in the SCM, with lots of life and work experience, but unfortunately, they come from the Soviet era. During that time, the judiciary did nothing but fulfil the orders of the executive, ie the Communist Party. The judges were then only executors, they did not represent an independent power, and when they were given independence, they simply did not

know what to do with it. And they behaved the same as before.

■ The new lawyers are trained based on the European standards. Thus, several international organizations have invested a lot in training the young generations of lawyers. My generation also benefited from such trainings.

■ When I entered the judicial system, I was struck by the post-Soviet reality and so the first clashes occurred. I've been hinted that I am subordinate to the chair of the court whom I have to ask permission, and that he has the right to advise me, more precisely to tell me how to proceed on certain cases. And when some tried to do so, I asked them to leave my office as I did not need their advice.

I am currently a trainer in ethics at the National Institute of Justice. When it comes to the topic of consultations, I tell my students to pay attention to what is written in the Code of Ethics. The judge has the right to consult with other fellow judges on the cases he/she has in the procedure, but only on legal issues and not on solutions. In fact, the judge with the case is the one who can initiate the consultation. No one else has the right to offer consultation on a particular case.

### ***Judges should be more vocal***

■ **How do you assess the progress of the judicial reform? Could you share with us some impressions about this very important aspect?**

■ At the moment I don't see any reforms in the judiciary. There is a total stagnation. I must admit, however, that there was an

amendment of the Constitution, which eliminated the five-year threshold for young judges, after which the SCM had to confirm their appointment for a period until reaching the retirement age limit, ie 65 years.

The "Voice of Justice" Association I'm leading was created out of the desire to inform the citizens, but also my fellow judges that they should be vocal. Judges should speak up when the principles of democracy and the rule of law are in jeopardy, when the fundamental human rights and freedoms are violated, even if they have to criticise the law.

For example, a judge does not have the right to be politically affiliated or have political sympathies. However, the magistrates must cooperate, according to the Constitution, with the legislative power. They are really obligated to. When lawmakers come up with a bill that could jeopardise the rule of law or violate human rights, judges should be the first to signal this. Precisely for this purpose we have created the "Voice of Justice" Association. The latter was founded by only three judges and, unfortunately, after two years since establishment, no other fellow-judges joined it. This is explained by the fact that judges are reluctant to associate and adopt a vocal position. The majority think the judge should sit in the deliberation room and only draft decisions. And this would be his/her communication with the public. However, many of these decisions are rigidly and formally formulated, so that no one understands them.

Getting back to the reforms, I've said above it was beneficial to

eliminate the 5-year threshold for young judges who depended on the arbitrary decision of the SCM on keeping them or not in the system. Apart from this measure, however, there are no other improvements to the judiciary, because, at the moment, everyone is focused on the General Assembly of Judges which is planned to take place on December 3<sup>rd</sup>. It should be mentioned that the General Assembly has not been convened for more than two years.

I would like to point out that the judiciary has always changed with great difficulties, compared to the other powers in the state. There is a danger that the assembly planned for December will not take place, like the previous assembly, due to the dubious inertia of the SCM whose members simply do not want to leave their seats. So far, the pretext for not organizing the Assembly has been the pandemic. However, the advocates, for example, who are about 2,000 to 3,000 in number, have found ways to meet online, and have even created a voting mechanism for various decisions to be made.

The judiciary that has to elect its members in the SCM has not created any similar mechanism. If they somehow try to find an excuse not to convene on December 3<sup>rd</sup>, they will enter the grey area, because there will be a dubious situation in which the current members of the SCM will be holding power illegally, with their mandates already expired.

■ **There has been a lot of talk about the extraordinary external evaluation of judges. What are the strengths and weaknesses of this mechanism? Do you think it will finally be started in the form that**

**the ruling PAS party and President Maia Sandu want?**

■ I would like to get back to the rule of law and say that I don't believe in external evaluation, because that would mean being done by another power, which again means obedience. So, the essence does not change.

We have been fighting for the independence of the judiciary no matter which party was in power. I don't think that 30 years after independence we should go back in time. This external evaluation is doomed to failure because it will only aim to gain electoral credit without having in mind the long-term effect of it.

We don't know if this mechanism will have a positive effect. It could be something like "after us, the flood!". Politicians may say that the external evaluation must be done, because everyone "wants blood", but following this evaluation we may have multiple cases lost at the ECHR on the grounds that the criteria of this evaluation are not clear. Who is going to evaluate and who has the supreme power to position himself/herself above the Constitution? Who can say who is good and who is bad?

We have European mechanisms that have been implemented for 10 years in the justice system. We have these mechanisms, but the problem is that we did not have people with the necessary legal education.

***External evaluation, a problem that should be carefully analysed***

■ **But the politicians can also say that the judiciary has had so much**

**time to reform itself and hasn't?**

■ Exactly, that's what I'm saying too, namely that we all need to have a little patience because things will change by themselves. Because the generations of judges are changing, and they will start implementing precisely these correct mechanisms for the functioning of justice.

But if we look for "super-people" who will be part of these ad-hoc evaluation commissions that will be dealing exclusively with this issue, I see a problem. Now there are no even criteria developed for such an external evaluation to be discussed and tested whether they can withstand, and we also have no defence mechanisms.

The evaluation mechanism should also be provided with an automatic replacement mechanism, otherwise all Moldovan courts will be blocked. At the moment, they are examining about 300,000 lawsuits a year. That means 300,000 cases.

If, after the external evaluation, let's assume, half of the judges, ie about 200 judges, are expelled from the system, what will happen with the volume of cases? Will this not violate the reasonable term for resolving cases in court and, implicitly, the fundamental rights of the people waiting for their cases to be resolved?

The politicians have to think about this too, namely that the whole system can be blocked. Those who will be fired will not be able to be replaced immediately by new judges. And what is the guarantee that the new ones will be better and fairer?

■ **Thank you!**

## Expert Opinion

# Justice reform, between challenges and absolutely necessary measures

**Nadejda Hriptievschi, Founder and Director of the Justice and Human Rights Programme at the Center for Legal Resources of Moldova (CRJM)**

**The current government has declared justice reform and the fight against corruption as key priorities. Although these areas have been included among the priorities of other previous governments, without great results, the current political context and approach, but also the emphasis on these priorities, give hope for important sustainable results, provided that the statements will be translated into action.**

We have a stable parliamentary majority and a president with similar views in these areas. Any judicial reform takes time, so the coincidence of mandates together with the parliamentary and governmental stability, at least for the next four years, are particularly important factors for the success of reforms. It is important to think carefully about the reform actions, neither in a hurry, nor too slowly, and to ensure a good implementation, the latter being practically the problem of all previous reforms.

The approach to the justice reform and the fight against corruption with combined emphasis on both the institutions and the human factor/ justice staff and anti-corruption institutions, at least as we can understand from the draft Government Action Plan for 2021-2022, are also promising. However, it depends on how the planned actions will be implemented.

### **Important actions for the future**

Among the most important actions in the justice and anti-corruption announced by the Government are the constitutional changes on the judiciary, reviewing the role of the Supreme Court of Justice (SCJ) and creating an effective mechanism for external evaluation of judges and prosecutors.

On 23 September 2021, the Parliament adopted the Law no. 120 on the amendment of the Constitution on the judiciary, which will enter into force on 1 April 2022.

Among the most important amendments is the exclusion of the initial term of appointment of judges for five years, judges will be appointed from the beginning until reaching the age limit. This change should help to strengthen the independence of judges, eliminating potential avenues of influence, especially hierarchical one, on new judges in the early years of their careers. The appointment of SCJ judges by the Parliament was excluded, and all judges will be appointed by the President of the country, at the proposal of the Superior Council of Magistracy (SCM), with the possibility of rejecting once the candidacy proposed by the SCM. This change excludes an important lever of political influence over the judiciary and should help strengthen the independence of both the SCJ judges and the system as a whole. The composition and appointment of SCM members has been changed. Namely, the legal members of the SCM (the Minister of Justice, the General Prosecutor and the President of the SCJ) were excluded. The SCM will be composed of 12 members, of which six judges and six persons who enjoy a high professional reputation and personal integrity, with experience in the field of law or in another relevant field, who do not work in the legislative, executive or judicial bodies and are not politically affiliated. The SCM judges will be elected by the General Assembly of Judges, representing all levels of the courts, while the other members will be appointed by Parliament through competition, based on a transparent procedure, according to



the principle of meritocracy, with the vote of three-fifths of elected deputies.

### **Need for a concerted effort and will**

The constitutional amendments adopted on 23 September 2021 are important and have the potential to make an essential contribution to strengthening the independence and accountability of the judiciary. However, their success depends to a large extent on both the political will and the judiciary. These changes have been on the public agenda at least since 2015. The Parliament has failed to adopt them previously twice, which is a clear signal of a lack of political will to exclude some important levers of influence over judges. The adoption of these changes at the very beginning of the mandate shows a clear political will to strengthen the independence of the judiciary. However, this message needs to be further supported and demonstrated both in the process of drafting and adopting amendments to legislation to implement constitutional changes and, perhaps most importantly, by organizing a genuine contest by Parliament to appoint non-judges in the SCM. Here I should probably open the parenthesis. Until the entry into force of the constitutional

amendments (April 1, 2022), Parliament has to appoint three law professors to the SCM under current legislation, as currently only one law professor is a member of the SCM, whose term expires in mid-December, while the other two professors have resigned previously. Without the professor-members of the SCM, the latter risks not having a quorum, given that the term of office of some judges-members will expire soon.

But the most important factor for the success of constitutional changes is the will of the judiciary. Judges now have a unique opportunity to strengthen their independence, firstly through exemplary individual behaviour, and secondly, by electing worthy judges in the SCM and SCM affiliated colleges: the College for the Selection and Career of Judges, the College of Evaluation of Judges' Performance and the Disciplinary Board. The first two colleges are not currently operational due to a lack of members. The General Assembly of Judges is scheduled for 3 December 2021. According to the recent legislative changes, judges will no longer elect an equal number of judges from each level of jurisdiction for the SCM, but will elect four judges from the first instance, one from the courts of appeal and one from the Supreme Court of Justice. Also, for the first time, the candidate judges can campaign. This should allow judges to make a more informed choice and contribute to the choice of correct and appropriate judges for their respective positions. These things obviously can only happen if there is a critical mass of fair, honest and professional judges, who really want to be both independent and accountable, and, respectively, choose colleagues worthy to represent them in the self-governing bodies. Otherwise, the changes listed above will have no practical impact or will have either a very modest or delayed impact. A fair and independent SCM is essential for any reform and, conversely, if it is not independent and fair, it is the biggest

obstacle to any reform. This also refers to the colleges, if they do not work properly, we cannot have promotions based on merit, nor the accountability of judges who break the law.

The reform of the Supreme Court of Justice (SCJ) is another key reform to be promoted in the first half of next year, according to the Government's Action Plan. The planned reform involves reviewing the powers of the SCJ in order to turn it into a court of cassation in order to ensure the uniformity of judicial practice. This reform is important given the role of the SCJ in the judiciary and the gaps in its work for many years. No judicial reform will be successful if the SCJ does not ensure fair and uniform judicial practice.

### **External evaluation, a huge challenge**

The establishment of an external evaluation mechanism for judges and prosecutors is probably the most debatable and complicated reform of the Government's Action Plan for 2021-2022. The creation and implementation of such a mechanism can only take place in exceptional circumstances, when other mechanisms are not effective, and is to be very well justified and in line with constitutional and European standards. The complexity and duration of the implementation of such a mechanism depends in particular on the evaluation criteria and the number of persons evaluated, as well as on the number and performance of the bodies/ authorities involved. In 2019, the Government, led by the current President, initiated a similar mechanism that had to be reviewed by the Venice Commission and subject to further consultations. The lessons of that time seem to be taken into account by the current government, as it results from the statements and actions taken so far. For

example, the Minister of Justice stated that the development of such a mechanism will be carried out in close collaboration with the development partners, who will actively participate by supporting the implementation of the mechanism, including the delegation of foreign experts and their financial support. The intention to consult both the concept and the draft law according to the rigors of the legislation was also emphasized, thus ensuring a genuine participation of all interested parties. In fact, the Ministry of Justice has already announced the collection of suggestions on the concept of external evaluation of judges and prosecutors until 5 November 2021. This should be followed by the public consultation of the draft concept of external evaluation of judges and prosecutors. The involvement of all stakeholders at the consultation stage of the draft external evaluation concept is particularly important to ensure the development of an appropriate and achievable concept within a reasonable period of time.

The Government's Action Plan includes other important actions in the field of justice and anti-corruption. However, I believe that the three directions of reform set out above have the greatest potential for impact, both positive and negative, depending on how they will be implemented. Likewise, various trials are currently taking place that have the potential to influence the implementation of the announced reforms in justice and anti-corruption, such as the upcoming elections in the self-governing bodies of judges and prosecutors, the prosecution of the suspended Prosecutor General and other cases of resonance, the way in which the National Integrity Authority will implement the recent legislative changes regarding integrity. These processes should be monitored and analysed in parallel with the announced reforms.

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