



May 2023

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To: The Group of Independent Lawyers and Democracy Index - Georgia

Re: Online Discussion: Ongoing Judicial Reforms in Moldova on the Way to EU Integration (May 5, 2023),

Problem statement

As part of the European Union's enlargement policy's 'Association Trio,' Moldova, alongside Ukraine and Georgia, has been pursuing EU membership for several years. In March 2022, considering the Russian aggression in Ukraine, the Trio applied for EU membership, marking a crucial step in their integration into the EU's judicial, economic, and political landscape.

In the pursuit of EU integration, all three countries have experienced significant challenges in implementing the required judicial reforms. In case of Georgia, this was considered one of prerequisites that made unable granting it candidate status by the EU at this stage.

This discussion overview (output document) delves into Moldova's journey, examining the successes and hurdles in its path towards comprehensive judicial reform and EU integration, and the lessons learned, so far.

The necessity and justification for the „newest” reform

The need for judicial reform in Moldova became glaringly evident in the wake of several scandals. From 2009 to 2018, the judicial system was exploited, with some peculiar examples making headlines in the global press: the 2009-2011 'Russian Laundromat' scheme² which cleaned more than \$20 billion through the justice and banking system of Moldova, the 2014 Bank Fraud which siphoned 12% of the country's GDP³, or the annulment of the 2018 local elections⁴, won by an opposition candidate.

The judiciary was instrumental in all these scandals: judges certified fake debts and issued illegal judicial ordinances in the laundromat case, played a crucial role in suspending national bank orders that allowed the bank fraud to happen, and annulled the 2018 election based on flimsy reasoning.

¹ The author would like to thank Ion Guzun and Iulian Groza for their extensive contributions during the online discussion.

² <https://www.occrp.org/en/laundromat/the-russian-laundromat-exposed/>.

³ <https://www.nytimes.com/2015/08/11/opinion/bring-moldova-back-from-the-brink.html>.

⁴ <https://www.rferl.org/a/moldovans-protest-nullification-chisinau-mayoral-election/29316498.html>.



Despite these issues, judges' integrity checks and performance evaluations were consistently marked as "excellent," indicating a disconnect between perceived performance and actual accountability. Moreover, the system was never keen to be outspoken about the problems from within. In 2019, the International Commission of Judges reported that many judges „*lived in fear and were hesitant to express opinions contrary to the judicial hierarchy*”, leading to internal pressure and a flawed accountability system.⁵ This situation necessitated the implementation of robust judicial reforms.

The 2021 parliamentary elections in Moldova provided the needed impetus for change. The new governing party, committed to anti-corruption and judicial reform, initiated a major overhaul in the justice system. This move heralded a new era in Moldova's quest for comprehensive justice system reforms, demonstrating a renewed commitment to aligning with the EU's prerequisites for membership.

Key undergoing judicial reforms

Following the 2021 elections, Moldova embarked on an ambitious journey to overhaul its judicial system. The ongoing reform strategy, set to conclude in 2025, hinges on three pillars: judicial independence, efficiency, and accountability. The impact of this current reform is yet to be fully evaluated, but key reforms underway are presented further below:

Reform of the Superior Council of Magistracy and „Pre-vetting” mechanism

The Superior Council of Magistracy (High Judicial Council), the body overseeing the selection, promotion, discipline, and administration of justice, has undergone significant changes. The Council now comprises twelve members, half of which are non-career judges representing civil society, academia, or think tanks. In order to serve on the new Council, candidates undergo an integrity check by an International independent Commission (Pre-vetting Commission)⁶. The Commission is assessing financial and ethical integrity. Minor infractions, such as a failure to declare a dormant bank account, are overlooked, but more serious ethical violations can result in disqualification.

This robust process has seen only 20% of candidates succeed in 2022, signalling the stringent scrutiny applied in this reform. A similar process is underway for the High Council of Prosecutors.

Reform of the Supreme Court

Concurrent reforms in the Supreme Court are also underway. The reform entails creating a cassation court, focused on ensuring uniformity of judicial practice, reduction in the number

⁵ <https://www.icj.org/wp-content/uploads/2019/03/Moldova-Only-an-empty-shell-Publications-Reports-Mission-reports-2019-ENG.pdf>

⁶ <https://vetting.md/en/>.



of judges⁷ and an expansion in the profile of eligible candidates to include non-career professionals to serve at the SCJ⁸. These changes align with constitutional amendments made in 2020. Prospective Supreme Court judges also will have to pass an external evaluation by another international committee (similar to the Pre-vetting) assessing their financial integrity, ethical compliance, and professionalism.

Full-Vetting of Judges and Prosecutors in key positions

Perhaps the most significant reform is the introduction of 'full vetting,' which mandates that every judge and prosecutor in Moldova holding a key position (court chairperson, or chief prosecutor) to pass an external evaluation. In case of full-vetting, failure to pass this evaluation will result in dismissal from the system by the respective High Council, representing a significant shift towards accountability within the judicial system.

Establishment of an Anti-Corruption Court

In March 2023, the President of Moldova has proposed the establishment of an anti-corruption tribunal to expedite high-profile corruption cases. While the specifics of this tribunal are yet to be defined, the proposal represents a significant step towards addressing entrenched corruption within the Moldovan judiciary. This reform is expected to take effect in the fall of 2023, despite the potential high costs associated with the establishment of such a court. The specifics of the tribunal are not yet known, and several voices see potential risks due to Moldova's small size and lack of vetted judges.

Summary of findings and lessons learned, so far.

Moldova's journey of judicial reform, initiated post-2021, has been a tumultuous one, marked by both substantial progress and significant challenges. The ambitious overhaul of the legal system, while necessary, has revealed issues and hurdles that need to be addressed to ensure a genuine and honest transformation.

⁷ The experience of countries such as Estonia and Finland suggest that supreme judicial bodies with many judges do not efficiently standardize judicial practice. Before SCJ had 33 judge posts, but only 21 were filled. Moreover, from a study conducted by CEPEJ, in countries with three tiers of jurisdiction, the number of judges in the supreme courts typically represents 4%-6% of the total number of judges. Accordingly, the new SCJ law suggested that the CSJ should be composed of 20 judges, reflecting this percentage and the recent decrease in the number of active judges.

⁸ The Supreme Court law reflects a mixed model, common across Europe, consisting of career judges and specialists from other legal professions. This model adheres to European standards and has been acknowledged by the Venice Commission. Notably, one does not necessarily need to be part of the judiciary to become a judge at the Supreme Court in many European countries. Supreme Court positions are open to university professors, lawyers, prosecutors, and administrative service members. For instance, in Finland, Supreme Court judges often have diverse legal backgrounds, including experience from courts, legislative drafting, academia, and legal practice. The mixed competence could improve this new role of SCJ of ensuring uniformization of judicial practice.



Parallel reforms due to slow start

The reforms faced a slower start than expected due to difficulties in finding suitable individuals to serve on evaluation bodies. This led to simultaneous rather than sequential implementation of reforms, causing a high turnover and resignations in the Supreme Court (more than 80% of SCJ judges resigned in early 2023). The resignations created a case backlog, including for challenging the decisions of the Pre-vetting Committee and blocking the Supreme Court's activity. This issue was temporarily addressed by transferring judges from district courts and courts of appeal to the Supreme Court.

Shortage of Skilled Professionals and limited human capital

The scarcity of skilled professionals to serve on national vetting committees and secretariat and to perform financial checks and investigations has slowed down the reform process. This shortage of human capital, which spans across the public sector, private sector, and civil society organizations, has hindered the comprehensive implementation of the reform. The situation is further exacerbated by limited communication about the reforms, resulting in low public support.

Pressure on the current system workload and lack of incentives

The resignations and slow pace of the Supreme Court reform have led to a strain on the judiciary, with remaining judges dealing with an amplified workload. The reform process might have been more successful if it had offered incentives, such as increased salaries or extra benefits, for judges to undergo the evaluation.

Role of Venice Commission and European Union

The Venice Commission and the European Union (EU) play critical roles in Moldova's reforms. The Commission, while acknowledging the need for radical solutions in cases of extreme corruption, has been critical of full vetting⁹, given the potential loss of jobs. The EU, on the other hand, has emphasized the need for Moldova to complete essential steps of comprehensive justice reform before moving forward, with a significant focus on justice sector reform¹⁰.

Role of Civil Society and Non-State Actors

Civil society organizations and non-state actors have been instrumental in supporting the Justice Secretary Forum and Moldova's EU accession process. They play three primary roles: monitoring public policies, developing policy proposals, and advocating for these proposals. This involvement is critical in scrutinizing and developing reform initiatives in Moldova.

⁹ [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2023\)005-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2023)005-e).

¹⁰ <https://www.consilium.europa.eu/en/policies/enlargement/moldova/>.



Upcoming challenges

In a bid to overhaul Moldova's legal system, the country's renewed Superior Council of Magistracy (SCM) has embarked on a journey marked by progress, controversy, and a myriad of challenges.

The new SCM has grappled with holding meetings with minimal members and making decisions without full representation, since the General Assembly of Judges failed to elect new members for the SCM. The resignation of 80% of Supreme Court judges within two months exacerbated these challenges, forcing the SCM to temporarily transfer seven judges to the Supreme Court. This quick decision-making, coupled with unfamiliarity among SCM members, added complexity to the process.

Moreover, upcoming systemic reforms in the judiciary, changes to the criminal procedure code, and the establishment of specialized anti-corruption courts pose additional challenges. Coupled with increasing resignations and stagnant salaries, these factors risk leaving the justice system understaffed and overburdened.

Issues raised by the audience.

The discussion revolved around the ongoing judicial reform in Moldova, focusing on the vetting process, judicial corporatism, and the potential establishment of an anti-corruption court. Other key questions included the success indicators of the reform, challenges encountered, and the rights (due process) of judges during the vetting reform process. A summary of the points raised, and the responses given is provided below:

1. **Success indicators of the reform:** Restoration of trust in the judiciary in Moldova could be a primary success indicator of the reform. A decrease in arbitrary decisions and judgments from the European Court of Human Rights, which has previously criticized Moldova, could also be expected. Nevertheless, the results will be seen only on the long run.
2. **Vetting process and judicial corporatism:** The experts acknowledged the existence of judicial corporatism in Moldova, evident previously in the evaluation, selection, and disciplinary exercises. They also recognized cases of corruption within the judiciary. Though the lack of convictions was attributed to factors such as the statute of limitations, it can also be attributed to judicial corporatism.
3. **Establishment of an anti-corruption court:** The participants discussed the proposal of an anti-corruption court, expressing various views, including reservations due to its potential implications on the current justice system. Instead, they suggested forming specialized panels or committees of judges focused on anti-corruption, or proceeding with the full vetting, which has a similar output result.



4. **Pre-vetting process and resignations in the Supreme Court:** Mass resignation of 80% of the Supreme Court judges during the pre-vetting process could be seen as evidence of the necessity of such measures. However, caution is necessary against applying the same stringent standards universally, as it could potentially lead to a collapse of the judicial system due to a lack of capacity.
5. **Human resource shortages in the judiciary:** the perception of the judiciary as a difficult profession to enter without connections, coupled with low salaries that don't match the workload or pressure. Cleansing and rebranding the judiciary, guaranteeing independence, and raising salaries were seen as potential solutions.
6. **New structure of the Supreme Court:** The panel discussed the new structure of the Supreme Court, which includes both career judges and lay members from various legal professions. They believe this structure will provide a broader perspective when deciding paramount cases.

Throughout the discussion, the participants also touched on various challenges, including the capacity of the system, the trust of remaining judges in the reform process and the government, and the introduction of new blood into the system. They also expressed hope for both Moldova and Georgia to progress in their aspirations to join the EU.

Main recommendations

- The journey towards comprehensive judicial reform in Moldova has been anything but smooth. The ongoing reform process, however, signals a renewed commitment to reshape the justice system based on the principles of independence, efficiency, and accountability. The road ahead is undoubtedly fraught with challenges, but with political will and sustained efforts, Moldova may yet achieve its aspiration of EU membership.
- Moldova's judicial reform journey has been inspired by similar endeavours in Albania and Ukraine, with necessary modifications based on feedback from the Venice Commission. The EU plays a pivotal role, urging Moldova to finalize these essential judicial reforms before proceeding to the next phase of negotiations. While these reforms are significant, their successful implementation and the resilience of the Moldovan judiciary system will be the real test of the reform process.
- Despite the challenges, Moldova's reform process represents a significant step towards establishing an independent and accountable judiciary that regains public trust. The journey is still at its beginning, and the nation anticipates gaining wisdom and experience over the coming years. Addressing the current challenges, including human capital shortage and integrity issues, is crucial for the successful implementation of these reforms.



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- While the journey is fraught with difficulties, from controversies in the selection process to staffing challenges and systemic reforms, the determination to uphold justice within the SCM and the broader judicial system remains undeterred. Cooperation from other state institutions, donor support, and the active role of civil society are crucial for the successful implementation of these major reforms. The ultimate goal of establishing an independent, accountable judiciary that regains public trust is the driving force behind these efforts.