

# JUSTICE FIRST

Mobilizing Civil Society to Support Judicial Integrity in the Republic of Moldova

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## SELECTIVE JUSTICE AND THE ROLE OF THE NATIONAL INTEGRITY AUTHORITY

by DANIEL GOINIC

Attempts at integrity reforms in Moldova over the last few years have been met with limited success. Corruption and conflict of interest remain prevalent among public officials at all levels. As a result of intentional neglect by political actors and continuing political influence in the court system, the country's existing mechanisms for investigating assets and personal connections of state officials and punishing integrity violations remain unable to effectively deliver justice and accountability.

This brief reviews the current state of Moldova's asset and integrity verification system, with a focus on the National Integrity Authority (NIA). It argues that the NIA's ability to operate effectively and independently is critically weakened by political attempts to interfere and employ selective justice<sup>1</sup> at several levels in the legal system. The brief concludes with recommendations for key government stakeholders to implement reforms that would improve the effectiveness and mitigate the impact of selective justice on the integrity verification process, both within and outside the NIA.

### BACKGROUND - INTEGRITY VERIFICATION AND SELECTIVE JUSTICE IN MOLDOVA

Ensuring integrity in the justice system is a multi-contextual and cross-cutting endeavor. Social trust in government depends on faith in elected officials to carry out their obligations according to public interest, uphold regulations that maintain institutional and professional integrity, identify and eliminate risks of corruption, and impose accountability and appropriate punitive measures on those who violate these standards.<sup>2</sup> Once public trust disappears in the ethical standards of public officials, the moral authority to govern crumbles and democratic governance falters.<sup>3</sup>

As part of existing mechanisms to ensure the system works correctly and public officials do not abuse their positions, Moldovan legislation requires officials to submit to an asset verification process. Despite the fact that Moldova has historically lacked political will for justice reform,<sup>4</sup> Parliament passed two significant laws in 2016 under pressure from conditionality imposed by the European Union and other international partners: the Law on the National Integrity Authority (NIA)<sup>5</sup> and the Law on Declaration of Assets and Interests.<sup>6</sup> These reforms established the NIA and its mandate to ensure public officials' integrity and prevent corruption by verifying their assets and property, identifying conflicts of interest, and applying sanctions to those who violate ethical regulations. While this system is an improvement



on the previous and largely ineffective Integrity Commission,<sup>7</sup> international observers remain unsatisfied with the NIA's efficiency and political independence.<sup>8</sup>

Despite these reforms, Moldova has struggled in practice to build a culture of integrity in the public sector; as a result, corruption remains widespread and public trust in the government is low.<sup>9</sup> In large part, this is due to the fact that corrupt officials remain able to exert political influence on the legal system — not only by obtaining selective justice for themselves, but also by weakening the system's overall capability to identify and punish integrity violations. As the following analysis will describe, the current legislative framework is undermined by significant gaps and loopholes that continue to allow well-connected officials to hide their assets from investigation, while the NIA lacks access to the financial and human resources needed to do its job well. Moreover, the NIA's work has itself been undermined by obstructionist efforts in the judiciary and Parliament.

## THE NIA IN 2020 — CAPACITY GAPS AND POLITICAL CONSEQUENCES

Since 2018, public officials have been required to declare their assets to the NIA electronically, after which the declarations are evaluated and posted online for public review.<sup>10</sup> In response to suspicion by the NIA or an outside request, the NIA can initiate a control proceeding — that is, a formal investigation — into a public official's declarations and issue a fact-finding report if the proceeding identifies wrongdoing. In 2020, the NIA issued 347 reports; of these reports, 210 (60%) identified at least one integrity violation committed by the investigated official. Approximately 50% of identified violations related to a conflict of interest, while 40% related to instances in which officials held multiple incompatible positions simultaneously. Seven percent identified undeclared or illegal assets.

Asset declarations are reviewed by integrity inspectors,<sup>11</sup> who are competitively selected based on the results of rigorous merit-based testing and must demonstrate their lack of compromising political affiliations. These strict requirements, combined with relatively low salaries, means in practice that few experienced candidates apply and even fewer are accepted to become integrity inspectors, leading to perpetual understaffing and weak overall capacity. As of January 2021, only 19 inspector positions were filled out of a total of 43 available.<sup>12</sup>

Only a small fraction of fact-finding reports are issued against officials with significant political influence. Although the NIA has initiated several control proceedings against high level officials (for example, former Presidents,<sup>13</sup> MPs, judges, and prosecutors), only 4% of NIA reports issued in 2020 ultimately identified

integrity issues on such cases. In contrast, approximately 45% of NIA reports related to integrity violations committed by lower-level officials such as mayors and local councillors.<sup>14</sup>

The NIA's relatively weak oversight of high-level authorities is partly due to the body's low capacity and the lack of political will in Parliament to strengthen integrity-related legislation, which allows well-connected officials to use a variety of schemes to hide their assets and avoid investigation. Many such officials register properties and other assets in the name of relatives, third parties, or a cohabitating partner. These relationships — especially cohabitation — are very difficult for the NIA to identify and prove.<sup>15</sup> Others use loopholes in current legislation to drastically under-declare the value of their property.<sup>16</sup> In one famous case, a judge declared the value of a luxury Porsche car at 11,000 lei (approximately \$600), claiming that she had purchased the car for that price because it was damaged.<sup>17</sup>

In addition, past precedent suggests that NIA inspectors may themselves act selectively toward integrity violation notifications depending on political interests. In 2018, the NIA refused to open a case into former Democratic Party leader Vladimir Plahotniuc, agreeing to do so only in 2019 after Plahotniuc fled the country and his party lost power.<sup>18</sup> Two years later, the investigation is still in progress. In another case, the NIA investigated Shor Party MP Violeta Ivanov — who at the time was a presidential candidate in the November 2020 presidential elections — at the request of the Prosecutor's Office.<sup>19</sup> Despite the fact that the NIA completed their investigation and cleared Ivanov of wrongdoing before the elections on September 28, the fact-finding report was only publicized on January 26, 2021 — long after the elections were held. Regardless of whether this was due to nefarious intentions or lack of capacity, this incident impacted public perception of Ivanov,<sup>20</sup> and demonstrated that the NIA's failure to conduct and publicize investigations in a timely manner carries real-world political consequences.

## SELECTIVE JUSTICE IN HIGH-LEVEL INTEGRITY CASES

In principle, the higher public profile of prominent political officials such as MPs should make it easier for NIA inspectors to identify integrity violations. Journalistic investigations are regularly published that raise credible suspicions regarding MP assets, including real estate holdings and large donations.<sup>21, 22, 23</sup> In addition, MPs from both the opposition and ruling coalition regularly submit requests to the NIA to verify assets of their peers. Civil society analysts have independently analyzed the asset declarations of MPs and found that such officials regularly understate the value of their property and fail to declare valuable goods.<sup>24</sup>

Despite the high number of credible notifications based on journalistic evidence and civil society analysis, anti-corruption authorities still appear to react inconsistently to these notifications. In 2020, the NIA registered over 60 requests to investigate MP asset declarations, however, as of late March 2021, it published fact-finding reports on only 13 of these, finding violations in seven cases.<sup>25</sup> None of these cases have yet resulted in real consequences for perpetrators as of this report's publication.

In other cases, NIA reports calling for punitive action are obstructed by the court system and other public institutions. Given that NIA investigations by their nature threaten to expose public corruption, these cases are common targets of political interference and selective justice. According to an interview with current NIA President Rodica Antoci, "some public institutions are reluctant to collaborate with NIA including in the process of obtaining vital information needed by the NIA to investigate highly politically-sensitive cases, such as the possession of goods outside the country."<sup>26</sup>

Selective justice is also manifested by the fact that NIA fact-finding reports are regularly challenged in court at various levels, occasionally reaching the Supreme Court of Justice (SCJ). There is substantial evidence that politically-influential officials targeted in NIA reports are treated with unfair leniency by the courts and other public offices. An analysis of SCJ judgements from the period 2014-2018 found that NIA reports were annulled disproportionately when they related to high-ranking officials, suggesting they either had better lawyers, or judges were more lenient with them.<sup>27</sup> Moreover, several of these rulings contradicted each other or established legal benchmarks. For example, in one case, a court annulled a fact-finding report issued against a Chisinau judge who had failed to declare two plots of land, two cars, several bank accounts, and numerous shares in companies. The court accepted the judges' argument that "he did not understand" how to properly declare his assets and so had "made mistakes" in his declaration.<sup>28</sup>

Other illustrative cases of ineffective NIA reports in 2020 include those identifying inconsistencies in the declarations of a group of Party of Socialists of the Republic of Moldova (PSRM) MPs. The NIA noted that one MP failed to declare their primary house of residence, another failed to declare a property worth over \$240,000,<sup>29</sup> and others made large political donations disproportionate to their official earnings.<sup>30</sup> Suspecting that the MPs obtained this money fraudulently, the NIA requested the Prosecutor's Office open illicit enrichment and money laundering cases. In other cases from the same period, the NIA found 600,000<sup>31</sup> and 830,000<sup>32</sup> lei (\$34,000 and \$47,000) discrepancies in the declarations of two Democratic Party MPs, and requested their unjustified assets be confiscated. Despite the NIA's recommendations urging action, the courts have yet to begin a formal examination of any of these cases.

In a final noteworthy case from 2020, a former Democratic Party MP was cleared of integrity violations after a Chisinau court ruled that the position of MP is not ethically incompatible with other positions or legal activities, as long as the official is not paid.<sup>33</sup> This ruling contradicts previous SCJ precedent, which concluded that the status of public official is incompatible with any second position, even when the official does not collect a salary.<sup>34</sup> The Chisinau judge who issued the decision, incidentally, is himself currently on trial for alleged embezzlement.<sup>35</sup>

It is worth noting that courts have also annulled entire fact-finding reports for purely procedural reasons.<sup>36</sup> Several fact-finding reports were annulled in 2020 on the grounds that they were signed by integrity inspectors rather than NIA management.<sup>37</sup>

Even when the NIA successfully wins these cases, officials often face no or delayed consequences because court proceedings on integrity cases targeting high-level officials are often long in duration, and punitive measures cannot be implemented until the case is fully closed. Particularly in politically-sensitive cases, judges are known to artificially extend the consideration of cases — ostensibly to protect defendants and/or to wait for changes in political power that will provide support to the judge's ruling. For instance, a prominent PSRM MP challenged a fact-finding report brought against him in court in July 2020. For over nine months afterwards, no court hearings took place. The SCJ had yet to rule on the case when the Constitutional Court ruled to dissolve Parliament in April 2021.

## DIRECT POLITICAL ATTACKS ON NIA INDEPENDENCE

Despite the institution's weaknesses and dependence on the politically-compromised court system, recent attempts by Parliament to further handicap the NIA show that officials perceive the body to be a threat to their interests. On December 16, 2020, the Socialist and Shor Parties unilaterally pushed through the adoption of a draft law amending the Law on the NIA in a rushed and highly controversial twelve-day process.<sup>38</sup> The amendment drastically shortened the timeframe allotted to the NIA to carry out control proceedings from three years to one year following the conclusion of officials' mandates; it also limited the statute of limitations to discipline officials to one year. Given the NIA's existing capacity difficulties, this change significantly weakened the body's ability to investigate public officials and made it nearly impossible for officials to be dismissed for integrity violations. In addition, as ongoing investigations would be subject to these new provisions, in practical terms the new amendments forced a large number of investigations to close prematurely.

Several MPs who sponsored or supported the amendment were under an ongoing NIA investigation or were previously targeted in fact-finding documents issued against them.<sup>39</sup> This, combined with the unusual speed with which such sensitive legislation was forced through Parliament and over the NIA's objections,<sup>40</sup> strongly suggests that MPs intended to threaten the NIA's functional independence and shield themselves from liability. Civil society organizations widely criticized the bill, arguing it compromised the fight against corruption and endangered the country's relationship with international partners.<sup>41</sup> Opposition parties also challenged the Law's constitutionality; as of this report's publication, the amendment is suspended pending review by the Constitutional Court.<sup>42</sup>

On January 22, 2021, a group of MPs from the Democratic Party registered a new draft law proposing more amendments to the Law on NIA.<sup>43</sup> Without providing justification, they proposed the creation of a provision whereby it would be possible for a state official to challenge the NIA's decision to initiate a control proceeding, making it possible to annul a control solely on procedural grounds. The new draft law would also prohibit integrity inspectors from notifying the Prosecutor's Office or the State Tax Service about potential crimes exposed by a control proceeding until the fact-finding report is finalized, which can be significantly delayed by court proceedings. The amendment was passed in the first reading on March 12, but was not voted on in the final reading before the Constitutional Court dissolved Parliament in April 2021. The fate of the law will remain in limbo until a new Parliament is elected in July 2021.

## CONCLUSIONS AND RECOMMENDATIONS

Ensuring the integrity of public officials is a critical first step in fighting corruption and restoring public trust in the democratic process. This is especially true for highly visible and influential politicians, whose conduct sets an example for society as a whole. In the short run, reempowering the NIA and creating a stronger legal framework around integrity verification will check officials' ability to ignore integrity regulations with impunity. However, due to the NIA's dependence on the courts to finalize and enforce its judgements, lack of judicial independence and the practice of selective justice will continue to thwart its efforts. In the long run, restoring judicial independence is necessary for Moldova's integrity verification system to be able to deliver true accountability.

To ensure the NIA remains a viable mechanism for the country to verify officials' integrity, the **Constitutional Court** should immediately strike down laws recently passed by Parliament that limit the body's activities.

These amendments are clearly intended to prevent the NIA from effectively investigating integrity violations — including by several of the MPs who participated in their passage.

The **NIA** should be more efficient and independent in investigating politically-influential officials, particularly MPs, judges, and prosecutors. It should increase the number of control proceedings it initiates by implementing randomly-selected investigations of high-ranking officials. The NIA should also work more closely with investigative journalists and civil society, accepting their notifications and coordinating to gather information. Where possible, it should also prioritize the selection of new inspectors and request a raise in inspector salaries to ensure it has the manpower to process investigations quickly and effectively.

**Civil society and independent media** should continue to do their important work independently investigating integrity cases and reporting possible violations to the NIA. Civic actors should closely monitor integrity cases and keep officials and judges accountable by drawing public attention to cases where the guilty are allowed to arbitrarily avoid investigation or punishment.

**Parliament** should readdress integrity reform laws, including Law No. 132 on the National Integrity Authority (June 17, 2016) and Law No. 133 on the Declaration of Assets and Interests (June 17, 2016) to close loopholes and improve the working environment for the NIA. The NIA should have greater latitude to determine the real market value of goods during control procedures by hiring independent appraisals, and should not be limited by a statute of limitations to begin investigations. It should also allocate the NIA additional resources to close its current capacity gaps. Additionally, MPs should stop seeking to influence law enforcement institutions or the judiciary, and cease attempts to pass laws that undermine the rule of law and the independence of public institutions.

In the long run, the **Government and the courts** must act to adopt and rigorously implement judicial reforms recommended by Moldova's international partners and civil society, particularly those that aim to restore the independence of the judiciary and make it more difficult for politicians and other officials to exert undue influence over the court system. Such reforms include those in line with the existing draft Strategy for Ensuring the Independence and Integrity of the Justice Sector (2021-2024), which must be adopted in the final reading following July 2021 parliamentary elections. Until these fundamental reform issues are addressed, selective justice will continue to be a serious obstacle to the NIA's ability to bring accountability and integrity to the Moldovan justice system.

## ENDNOTES

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