



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

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TALKING JUSTICE: COMMUNICATION IN MOLDOVA'S JUSTICE SECTOR

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The Republic of Moldova, a small Eastern European country landlocked between Ukraine and Romania, has a long history of state capture and corruption committed by public officials. Transparency International's 2022 Corruption Perceptions Index ranks Moldova 91st of 180 countries by the perceived level of public-sector corruption, which is below average but significantly better than its 2019 ranking.¹

The judiciary in Moldova is also subject to political subversion. Despite the Constitution guaranteeing an independent judiciary, corruption and **selective justice** (i.e., when the law is selectively applied for political ends) remain pervasive. Media and judicial reform activists have observed that, in high-profile cases, courts **routinely postpone hearings** without legitimate reason, raising questions about the integrity of the proceedings.² For example, courts repeatedly postponed criminal hearings on the indictment of fugitive oligarch Ilan Shor throughout the last year.³ Freedom House selective justice monitoring reports have found that, between 2020 and 2021, the criminal prosecution authority often avoided investigating incidents of political corruption involving representatives of the ruling party.⁴

In addition to selective justice and corrupt judges, the situation is also quite critical when it comes to **civil judicial procedures and remedies**. The European Court of Human Rights (ECtHR) issued rulings 568 times against the Republic of Moldova between 1997 and 2021, ordering payments totaling nearly 22 million euros in damages.⁵ In 2022, there were five times as many appeals to the ECtHR coming from Moldova than the European average, which is indicative of the shortcomings of the domestic legal system.

Drawing from this, comprehensive justice reform is an inevitable and necessary process for Moldovan society, especially given that the EU granted Moldova

candidate status in June 2022, and that the fight against corruption—including in the judiciary—is one of the primary conditionalities for EU accession.⁶

BACKGROUND ON JUSTICE REFORM IN MOLDOVA

During Vladimir Plahotniuc's regime (2014–2019), Moldova experienced a textbook example of state capture, following a similar pattern to what transpired in Georgia under Bidzina Ivanishvili. The paradigm entailed unofficial, personal control over state institutions, media, and business by the wealthiest person in the nation,

acting with complete disregard for state interests while enriching himself and his predatory inner circle.

After the Plahotniuc regime's political collapse in June 2019, the new government alliance of the pro-European Party of Action and Solidarity (PAS) and the pro-Kremlin Party of Socialists (PSRM) pledged to fight corruption and implement judiciary reform measures. However, this alliance quickly fell apart, with PAS being thrown out of power—in part due to its radical justice reform agenda—and the PSRM continuing to rule allowing impunity and corruption.⁷

In 2021, PAS won a majority of seats in Parliament and immediately announced a policy of zero tolerance toward corruption, giving judges and prosecutors another opportunity to improve the integrity of the justice sector. These key actors, however, have done little to take advantage of the opportunity. Indeed, the situation has deteriorated with the Superior Council of Magistracy (SCM) being effectively out of operation for more than a year and a half (until March 30, 2023), and the Office of the General Prosecutor being plagued by corruption and instability. As for the SCM, many experts view its instability as being a result of some judges' desire to block the "purge" of the judiciary and to resist the anti-corruption reforms pushed forward by the PAS government.⁸

Attempting to honor its electoral promise to re-establish the integrity and professionalism of the judiciary and arguing that the judiciary had 30 years to reform itself but failed to do so, PAS triggered the **mechanism of external evaluation of all judges and prosecutors in Moldova**. This process began with the evaluation of candidates for the SCM and the Superior Council of Prosecutors (SCP). The mechanism, however, faced strong resistance from most judges, who claim that it violates the principles of separation of powers and the independence of the judiciary from political forces.

LEGISLATIVE DEVELOPMENTS AFFECTING JUSTICE REFORM

The General Assembly of Judges, which was supposed to take place on December 3, 2021 (for the purpose of selecting the permanent and substitute members in the SCM), was postponed by the Ministry of Justice. In 2022, Parliament adopted two highly controversial laws: one regarding the extension of the mandates of former SCM members for an indefinite period, and a second on the evaluation of candidates for the SCM and SCP, a process called pre-vetting. These laws aimed to deblock the justice sector, as well as evaluate the candidates for a member position in the SCM and SCP, with the purpose of "cleaning up" the system from dishonest and incompetent judges.

As of March 2023, all applicants for the positions of members of the SCM have passed through this pre-vetting filter. The candidates appeared before a commission made up of national and international experts, who evaluated them based on two criteria: ethics and integrity (including reviewing their assets and those of their relatives). Out of 28 candidates from the body of judges, only five passed the pre-vetting process.⁹ While most failed the evaluation due to integrity issues or deviations from the code of ethics, some decisions made by the Pre-Vetting Commissions have been declared void by the Supreme Court of Justice (SCJ). On August 1, 2023, the SCJ annulled 21 decisions made by the Pre-Vetting Commission on the failure of candidates for the SCM and the SCP and ordered their re-evaluation.¹⁰ Chair of the Parliamentary Legal Commission Olesia Stamate mentioned that the recent action taken by certain corrupt factions within the system is an attempt to obstruct the thorough evaluation of judges and prosecutors.¹¹ Similarly, the United States and EU Delegation issued a joint statement on August 4, in which they declared that they "highly appreciate" the way the pre-vetting process was carried out and that the members of the evaluation committee "demonstrated their professionalism and conscientiousness."¹²

The Association of Judges of the Republic of Moldova and the Association of Judges "Voice of Justice" do not agree with the outcome of the pre-vetting process. They argue that the decisions of the Pre-Vetting Commission raise several questions regarding the independence and integrity of the process itself. Some judges who have previously ruled against the interests of certain politicians and who have been critical of the interference of politicians in the judicial system did not pass this pre-evaluation process, allegedly because of technicalities.¹³

After the evaluation of candidates for the SCM, all judges of the SCJ were due to undergo an extraordinary external evaluation that would assess their assets and personal interests. However, before the start of this procedure, they resigned one by one (20 out of 25 judges resigned by February 2023).¹⁴ As a result, the activity of the SCJ was practically blocked, preventing the examination of the appeals submitted by the SCM candidates who did not pass the pre-vetting process, as well as the examination of high-level corruption proceedings. The situation improved after the SCM held a contest to temporarily fill vacant positions of the SCJ in May 2023. Out of 14 magistrates who entered the competition, seven received the green light for the transfer, thus unblocking the SCJ's work.¹⁵ The crisis of magistrates at the SCJ remains an unresolved issue. Only seven vacant positions out of 13 were filled in almost two months, with these being the result of temporary transfers of magistrates from other courts.

The Pre-Vetting Commission completed the evaluation of candidates for the SCP in July. Out of the 18 candidates registered in the competition for the position of member in the main self-administration body of prosecutors, the Pre-Vetting Commission issued eight decisions of promotion and ten non-promotion decisions. All candidates who passed the assessment agreed to the publication of the Commission's decisions, in contrast to the candidates who did not pass the assessment, of which only five out of ten agreed to publication.¹⁶

THE OSCE AND COUNCIL OF EUROPE

In September 2022, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) issued an opinion on the new Moldovan law regulating the selection of candidates for the self-administration bodies of judges and prosecutors. ODIHR welcomed the continuous efforts of the Moldovan authorities to strengthen the justice system in the country.¹⁷ However, the authors expressed their concern that the introduction of an *ad hoc* mechanism (the Pre-Vetting Commission) might curtail the authority of judges and prosecutors to freely select SCM and SCP members from among their peers, reducing their choice to the pre-vetted candidates.¹⁸

ODIHR concluded, that in general, personnel changes are insufficient to turn perceived ineffective or “complicit” judiciaries into trustworthy arbiters and reliable guarantors of rights, if not accompanied by the necessary structural changes, including means to strengthen judicial independence, proper judicial training, and a culture shift within the judiciary.

Similarly, a October 2022 joint opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law of the Council of Europe (CoE) states that while the “pre-vetting” of candidates and integrity checks carried out by assessing asset declarations are “quite common and uncontroversial in principle”, an extraordinary evaluation could be justified only in “exceptional circumstances.”¹⁹ In this regard, the CoE reaffirmed several previous recommendations made to the Moldovan authorities on the need to uphold the constitutional framework, particularly the provisions relating to the independence of the judiciary, and to implement a vetting system only after the exploration of all other avenues for judicial accountability. Such avenues could have included means to strengthen judicial independence, proper judicial training, and measures to promote a change of culture within the judiciary.²⁰

COMMUNICATION IN MOLDOVA'S JUSTICE SECTOR

A frequent criticism regarding the implementation of justice reform in Moldova is the absolute lack of

collaboration between the government and judges.²¹ Justice reform activists, as well as judges, raise the following criticisms:

1. The design of justice reform legislation was not subject to inclusive, extensive, or effective consultations, and lacked involvement from civil society. Even when consultations did take place, they did not happen in a timely or reasonable manner.
2. There is no structured or viable mechanism for communicating with litigants, judges, or prosecutors when implementing the reform. For example, judges are not involved in working groups, although they should be as they best understand the practical ramifications.
3. There is an increased reluctance from both parties (the government and judges) to make concessions, often resulting in very antagonistic dialogue.²²

While the picture seems gloomy, improved communication is possible but only when the government and the justice system are ready to see each other as equal partners. Moldova already has two professional Associations of Judges, full of vocal judges, and the government thus has the responsibility to ask them what vision they have, what problems they experience, and what solutions they see. It is also vital to give judges enough time to provide input and feedback, as a period of two or three days, or even a week, is insufficient to formulate and communicate a reasoned opinion.

On the other hand, representatives of the judiciary must accept that justice reform is inevitable and that polarizing criticism and accusations do not contribute to constructive dialogue. Rather, they are extremely dangerous for society and democracy because they damage public trust in both the government *and* the judiciary.

HOW SOME JUDGES SEE JUSTICE REFORM

In March 2023, I interviewed three judges: Association of Judges “Voice of Justice” President Victoria Sanduta, Criuleni First-Instance Court judge Ion Malanciuc, and Cahul First-Instance Court judge Marina Rusu.

Sanduta, who previously served as a judge in the Chisinau Court, argues that there have been more setbacks in the justice sector than improvements. She believes that the composition of the Pre-Vetting Commission has raised serious doubts in society, both regarding the national members and the international members. These doubts are the result of claims that these members were personally involved in various scandals and have impressive wealth, suspicious connections, and political links. Sanduta voices concern

that “no one has publicly checked and made public the personal data of the members of the Commission, what wealth they have, how it was obtained, and what conflicts of interest exist. In addition, the results of the evaluation of judges are disastrous: they removed judges who enjoy respect and impeccable reputation in society, who have nothing to do with corruption in the judicial system.”

Criuleni judge Ion Malanciuc states that the justice reform process, in the last year particularly, has been relatively slow. One of the basic causes, he says, is that the authors of the reform lack a complete picture of the reality in the justice sector, as well as the necessary expertise to promote changes in a field so vast and complex, and with such a major impact on society. In his view, they are not ready to admit that, in some areas, they might not have the necessary skills and they should, therefore, engage a wider circle of parties in the discussions and the identification of solutions.

Cahul judge Marina Rusu explains that the reform was based on the creation of *ad hoc*, exceptional procedures to clean up the justice system using a slogan that the system cannot self-clean or regulate itself. Thus, the concept of the reform is based only on an exceptional procedure rather than a stable internal mechanism that would ensure transparency and accountability in the long term. Rusu argues that compared to the internal mechanism—the Evaluation Board, the Selection Board, and the Disciplinary Board—the Pre-Vetting and Vetting Commissions do not have access to databases, do not have a strong, separate secretariat skilled enough to carry on with its duties, and do not have the help of external experts (unlike the previously mentioned boards) and are, therefore, placed at a significant disadvantage. Rusu is also critical of the manner and pace at which the reform is being implemented, stating that “in two years, the legal rules governing the judicial system have been changed five times, which makes the legal framework unpredictable and changes the rules *during* the game.”

HOW SOME JUDGES VIEW COMMUNICATION IN THE JUSTICE SECTOR

Regarding the communication between the government and judges, Sanduta argues that the government acts without due consideration for judges' opinions, with the former failing to invite the latter to consultations either at all or in a sufficiently timely manner. She furthermore maintains that, even when the judges criticize the draft laws, the government does not heed the criticism as it “operates with the notions ‘we cannot modify it,’ ‘we do not give in,’ ‘the Venice Commission recommended,’ etc., although it is necessary to mention that for the most part, the recommendations of the Venice Commission, in this reform, were not taken into account.”

Malanciuc claims that the communication between the government and judges is very ineffective: “The root cause is that both camps do not respect the basic principles of dialogue. Namely, you should not only express your opinions, grievances, and demands, but also try to listen to the opinions, grievances, and demands of the opposite side, including being aware of the need to identify a compromise that satisfies both camps.” Communication between the two camps could improve if the parties would renounce their antagonistic positions and guild self-interests—especially in the case of judges—and realize the need to identify solutions in the interest of society.

Rusu sees two key communication problems: First, judges are not used to communicating with the government and do not have experience in initiating and creating a constructive dialogue on equal terms to achieve a common goal. Second, the government believes that justice reform is possible without the active involvement of the judicial system and that any criticism is classified as opposition to the reform itself. Constructive dialogue is possible only when both parties are certain that the other party is acting in good faith and when they are ready to pursue common interests.

THE GOVERNMENT PERSPECTIVE ON JUSTICE REFORM

In March 2023, I contacted ex-Minister of Justice Sergiu Litvinenco, who oversaw justice reform from August 2021 until February 2023. He challenged my questions, countering with “What do I have to do with the justice reform? I am a physical person. Ask those who are carrying out the reform. I have nothing to do with the reform.” Nonetheless, when Litvinenco resigned in February 2023, he publicly stated that he was proud of the long-awaited reform that he had coordinated over the past two years and stated, “That is precisely why both I and my colleagues wanted these transformations to be irreversible, and that [Moldova] would never again end up in a situation where the law would be defied, and justice – stepped on.”²³

Chair of the Parliamentary Legal Commission Olesea Stamate asserts that Moldova lacks a significant body of impartial and unwavering judges that can bring about systemic reform. “Nothing has happened in terms of internal reform since Maia Sandu delivered the message at the SCM meeting in 2019. Judges who want the system to change are those who do not want to be seen as a corrupt component of the system, but they are few and cannot effectively counter those who want the system to be preserved.”²⁴

In February 2023, Chief of the Anti-corruption Prosecutor's Office, Veronica Dragalin, declared that

justice cannot be upheld with corrupt prosecutors and judges, noting that “these corrupt people, who are still in the justice system to this day, are the most dangerous.” Dragalin stated that a top priority in 2023 is to remove them from the system as quickly as possible and to “arrest them, prosecute them, convict them, and send them to prison.” Dragalin’s promise seems to resonate the most with the Moldovan population, likely because she is not a politician like Litvinenco or Stamate and because her achievements as a federal prosecutor in the United States inspire hope in an increasingly hopeless population.²⁵

On March 2, European Commissioner for Justice Didier Reynders visited Moldova and said that it is important for the authorities to “open a real dialogue with the judges,” referencing the mass resignations of magistrates. Reynders stated that such situations also developed in other states where the government sought to implement justice reform and that a deadlock of a few weeks or even months does not signal the end of the process. Reynders stressed that Moldova “need[s] to ensure a high quality of reforms,” and that “it will be very important for Moldova to fulfill all the conditions for respecting the rule of law before becoming an EU member state.” Reynders added that “the authorities should not make any kind of concessions in this process.”²⁶ His visit sends a clear signal that the EU is standing by Moldova in its desire to generate a real change in the justice system.

HOW TO IMPROVE COLLABORATION IN MOLDOVA’S JUSTICE SECTOR AND THE EFFECTIVENESS OF REFORM

Effective communication in the Moldovan justice sector is essential for transparency, accountability, and public trust. It enables judges to inform citizens about their rights, legal procedures, and access to justice, fostering understanding and participation. Communication between judges, politicians, and among judges themselves supports judicial independence, collaboration, consistency in legal decisions, and the efficient functioning of the justice system.

To establish a viable mechanism for effective communication with judges, the government should place a special focus on **assigning respected judges with public policy experience to all justice reform working groups**. These judges should have an impeccable reputation, strong leadership qualities, and the authority to represent the ideas and concerns of their peers. To ensure the meaningful inclusion of judges in the activity and results of the working groups, the meetings should be public, and there should be quotas for the composition of working groups.

Another solution to improve the communication between the judges and the government would be to introduce an independent arbiter—such as the Constitutional Court—that is outside the three powers of the state to facilitate equidistant dialogue between the government, the parliament, and judges on an equal footing as partners without threats or accusations.²⁷ For constructive communication, all parties must put aside pride and polarizing threats, such as those of former Minister of Justice Sergiu Litvinenco that “you are either with us, or against us” and President Maia Sandu’s statement in November 2020 that “either you get on the reform train, or you stay at the station.”²⁸

Further, it is critical to **amplify the support of citizens for the justice reform process**. Public support for the process is currently low as there is the perception that nothing will change. This perception is evident from multiple surveys. For instance, according to a recent survey conducted in February 2023 by IMAS²⁹, an increasing number of citizens hold the belief that little to no progress has been made in tackling corruption within the judiciary. This sentiment has grown over time, with 62% of citizens expressing this opinion in February 2023, compared to 55% in April 2022. When it comes to the overall effectiveness of the fight against corruption, a significant majority, 68%, consider it a failure, while 24% view it as a success. These findings indicate a growing concern among citizens regarding corruption within the judiciary and a lack of confidence in the current anti-corruption efforts. On the same note, a survey carried out in June 2023 by the CBS-AXA company found that 31% of Moldovans think that the most important step that the Republic of Moldova must take to join the EU is carrying out a meaningful and comprehensive justice reform.³⁰

To galvanize public support, the government should enhance its communication through regular press conferences updating the population on reform progress. Government efforts to challenge stereotypes would also help citizens see people in the judiciary system as more than merely thieves who need to be kicked out and better distinguish corrupt judges from those who are honest and credible. It would also be productive to involve members of the justice sector in the public communication of the justice reform progress (for instance, Open-Door Days at Courts, “Coffee with a Judge” events, and sports activities with the participation of judges and litigants).

Justice reform is a long and difficult process, as is the reform of legal education. The government must accelerate its efforts to improve the quality of formal and non-formal legal education and to keep informing citizens about the principles of the rule of law and democracy so that they can participate in the public debate on reform. One way to increase awareness and demand for

accountability in Moldova would be the introduction of legal education in the school curriculum, emphasizing the student-centered approach, building reasoning skills, and knowledge of rights and due process as opposed to purist, letter of the law legal understanding.³¹ The establishment of student legal literacy clubs offers another way to effectively engage young people in improving society for themselves and others.

Lastly, the government maintains that it has a mandate from the people, and so must reform the judiciary. Moldova has a community of judges, 80% of which is already renewed, and **civil society and the press must encourage judges to actively participate in and support reform.** It is crucial to strengthen the role of independent media as a public watchdog in the government's implementation of reform. It is also imperative to strengthen the role of CSOs as public educators, to inform the population about

a wide range of justice-connected topics. The government should also understand that the media and civil society are genuine catalysts for democracy and development, and therefore include them substantively in all stages of the reform process.

Rome was not built in a day. Justice reform measures are immensely complex, and their results will not be seen in a matter of days, weeks, or months. However, to take the next step toward the EU, Moldova must clean its judiciary of the corrupt elements that allowed the laundering of tens of billions of dollars through Moldovan judges and the capture of the state by the regimes of Plahotniuc and Dodon. The voice and involvement of both the judges and government, as well as civil society and the media, is critical. It is now for Moldovan society to prove that strength comes from integrity and that the voice of corruption cannot be louder than one's moral compass.

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