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VETTING PROCESS - THE ROAD TO INTEGRITY FOR THE REPUBLIC OF MOLDOVA (NIJ TRAINEES AT THEMIS COMPETITION)

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In recent years, there has been a consensus in the public-political sphere of the Republic of Moldova regarding the fact, that institutional reconstruction of the judiciary is the main task and necessary precondition for the successful establishing of the rule of law. In the context of the determination of the Republic of Moldova to join European Union and due to a lack of trust in the justice professionals, the country engaged in an extraordinary evaluation of judges, supported by foreign partners and civil society. One of the major objectives of this reformative measure is to strengthen integrity and accountability of judges and restore confidence in national courts.

This study aims to analyze premises of the extraordinary evaluation of judges, the concept of vetting process of Moldova as an institutional measure, take a closer look at the main steps in initiating and adapting the vetting process as a mechanism of verifying the integrity of judges. At the same time, the presented paper reviews international example of ongoing process of judicial vetting in Albania, and the institutional model used there.

Key-words: judge, judiciary, pre-vetting, vetting, integrity, financial integrity, assessment, assets.

PROCESUL DE VETTING - CALEA SPRE INTEGRITATE PENTRU REPUBLICA MOLDOVA (AUDIENȚII INJ LA CONCURSUL THEMIS)

SUMAR

În ultimii ani, opinia publică din Republica Moldova a ajuns la un consens cu privire la faptul că reconstrucția instituțională a sistemului judiciar reprezintă principala sarcină și condiție necesară pentru consolidarea statului de drept. În lumina dorinței ferme a Republicii Moldova de a adera la Uniunea Europeană și din motivul lipsei de încredere în sistemul judiciar, statul nostru s-a angajat să efectueze o evaluare extraordinară a judecătorilor, sprijinită de parteneri externi și de societatea civilă. Unul dintre principalele obiective ale acestei măsuri reformiste este consolidarea integrității sistemului judiciar și restabilirea încrederii în instanțele naționale.

Acest studiu își propune să analizeze premisele evaluării extraordinare a judecătorilor, conceptul procesului de vetting în Republica Moldova ca măsură instituțională, să examineze mai îndeaproape principalele etape în inițierea și adaptarea procesului de vetting ca mecanism de verificare a integrității judecătorilor. În același timp, lucrarea prezentată examinează exemplul internațional al procesului de vetting în Albania și modelul instituțional utilizat acolo.

Cuvinte-cheie: judecător, justiție, pre-vetting, vetting, integritatea, integritatea financiară, evaluare, averea.

Introduction

In the long river of history, society views lack of integrity as an offence against the public and the legal system. Nowadays, the desire of states to integrate into the European Union, to increase trust in public institutions, to create an investment framework conducive to development, compliance with the integrity criteria in judiciary has become essential.



Circumstances in young democracies represent extremely challenging settings, but also provide unique opportunities for institutional change, where the standard of integrity expected from judges remains to be very high. The Commentary on the Bangalore Principles explains that „Integrity is the attribute of rectitude and righteousness. The components of integrity are honesty and judicial morality. A judge should always, not only in the discharge of official duties, but act also honorably and in a manner befitting the judicial office; be free from fraud, deceit and falsehood; and be good and virtuous in behavior and in character” [5, par. 101]. The term „judicial integrity” is widely used nowadays to denote the requirement that judges conduct themselves with integrity not only in their professional, but also in their private lives as public figures to ensure that there is nothing that can undermine their probity and impartiality in their work.

What measures should respond to threats against integrity in a judicial reform?

One of the initiatives to safeguard judicial integrity is to organize a reform over the personnel (judges) along with institutional reconstruction of the judiciary, known as vetting process. Vetting ordinarily refers to a process of assessing integrity to determine suitability for public employment. The concept of vetting involves the implementation of a process of accountability mechanisms to ensure the highest professional standards of conduct and integrity in public office [4].

1. The premises of the extraordinary evaluation of judges in Republic of Moldova

In recent years, there have been concerns about the independence and integrity of the judiciary in the Republic of Moldova. To restore the public trust in the judicial system an extraordinary evaluation of judges has been initiated. This procedure reflects a commitment to combating corruption within the judiciary, as emphasized by various international bodies, by implementing robust legislative frameworks and fostering a culture of integrity and zero tolerance for corruption at all levels of the court system.

Talking about the lack of public trust in the judiciary, the next infographic was made according to a national survey [4] conducted in December 2017 for the Superior Council of Magistracy (SCM). 81% of the general population did not trust the judiciary, nor did 81% of people that had contact with the courts; 75% of the general po-

pulation and 83% of those with court experience perceive that justice sector is corrupt; 73% of the general population and 77% of those with court experience believe that the courts will convict an ordinary person of a crime, even if innocent; 79% and 80% respectively consider that the courts will exonerate a rich person who is guilty.

Various international surveys also demonstrated that in Moldova the corruption perception is very high [2]. Notably the Venice Commission expressed its concerns in 2019 about the lack of public confidence in either the honesty or the competence of the judiciary and the need for urgent reforms to address corruption, political influence, and inadequate resources.

In 2018, the International Commission of Jurists (ICJ) carried out a mission to the Republic of Moldova and assessed the factors impeding the effective functioning of the judiciary and its independence, including the disciplinary rules and mechanisms of enforcement to protect against judicial misconduct, as well as the appointment, selection, training and security of mandate of the judiciary. As a result of the mission, the ICJ published the report entitled “Only an empty shell – The undelivered promise of an independent judiciary in Moldova”, highlighting that the public trust in the judiciary decreased in recent years and remains at a low level.

High-profile corruption cases involving judges (“Russian Laundromat” scheme) and allegations of political interference in the judicial system, severely affected the public perception of judges. Also, there have been many protests and demonstrations calling for judicial reform and increased transparency. As a result of these protests government officials and other stakeholders have been forced to take action in order to address citizens’ concerns and ensure that justice is served in a fair and impartial manner.

Despite these efforts, there is still a long way to go in restoring public trust in the judiciary in the Republic of Moldova. Reforms, transparency, and accountability will be essential to address public concerns and ensure fairness of the judicial system.

2. Analysis of the international legal framework for vetting

A number of international instruments were consulted and referred to in the preparation of vetting in the Republic of Moldova. A large majority of the international integrity standards for justice sector institutions are not anti-corruption instruments *per se*, but support a broader agenda of the separation of powers and the right to a fair trial.

The cornerstone of judges' ethics was established, *inter alia*, by the Universal Declaration of Human Rights, the Charter of the United Nations, the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights. In all these instruments of binding character, the right to a fair trial is common point, helping to ensure fair and just societies.

In the European legal landscape, the extension of the fundamental principles of judicial ethics is reflected in the Article 6 of the European Convention on Human Rights. The European Court of the Human Rights (ECHR) explains that the effective protection of all human rights very much depends on the practical availability at all times of access to competent, independent and impartial courts of law which can, and will, administer justice fairly.

Notably, in the second half of the twentieth century there have been remarkable developments on international level to harmonize standards of judicial conduct, which are associated with the topic of judicial integrity. International and regional integrity standards are typically "soft laws" instruments, meaning that they are normative provisions that are not legally enforceable at court. However, these standards give expression to "hard laws" rights set out in international human, political, and civil rights conventions, such as the right to a fair trial and the obligation of authorities not to discriminate, courts may refer to them in judgements that rule on the appropriate behavior of justice officials [3, par. 1.4.3].

In 1985, the Basic Principles on the Independence of the Judiciary outlined essential values for judicial behavior: independence, impartiality, integrity, propriety, equality, competence, and diligence. This document underscores the state's role in ensuring judicial independence, embedding it in the Constitution or law, and advocating fair trial rights for judges during vetting processes.

Internationally, the most comprehensive and well-known document on the topic of judicial integrity is the Bangalore Principles of Judicial Conduct. The Bangalore Principles of Judicial Conduct, recognized globally, emphasize ethical conduct through six principles and recommend independent bodies for judicial disciplinary actions.

Oftentimes, international actors play a crucial role in supporting domestic institutions and contributing to the development of the rule of law within a country. A major contribution to the design of relevant documents has been made by the Office of the UN High Commissioner for Human Rights, which published a guide to vetting: "Mechanisms for regulating the rule of law in

post-conflict countries: Vetting: an operational framework". Also, United Nations Development Program published the Guide to Designing the Vetting Public Employees in Post-conflict Settings to help states design a vetting process.

Nevertheless, it is evident from the international standards and instruments mentioned above that there is no exact formula for designing a vetting process, and States have considerable freedom in defining the process. Developing vetting strategies and implementing them later should be based on the historical and political context of the country, the intended purpose and objectives, the legal and normative framework, as well as the institutional structure.

3. The mechanism for evaluating the ethical integrity of judges

The justice reform initiated in 2021 in Moldova started with setting out an extraordinary assessment of the ethical integrity as well as financial integrity of the judges and prosecutors, the *vetting* process. Based on the rigors of the Constitution and international standards, it was decided that the extraordinary evaluation process should consist of 3 stages:

i. The Pre-vetting.

The evaluation process of candidates to the position of members at the Superior Council of the Magistracy (SCM) and the Superior Council of Prosecutors (SCP), including the disciplinary, career selection and performance evaluation boards within the SCM and SCP - the so-called "pre-vetting".

On March 10, 2022 the Parliament of the Republic of Moldova adopted the *Law no. 26/2022 on some measures related to the selection of candidates to the positions of members in the self-administration bodies of Judges and Prosecutors*, therefore introduced an *ad-hoc* evaluating body to assess candidates for the Superior Council of Magistracy and the Superior Council of Prosecutors in order to ensure their ethical and financial integrity. This evaluation procedure was carried out by an Independent Evaluation Commission outside the already existing framework in Moldova on the integrity assessments.

This process became a mandatory stage that aimed to improve the integrity of members of the Superior Council of Magistracy, the Superior Council of Prosecutors and their Boards, as well as the society's trust in the activity of the self-administration bodies of judges and prosecutors and in the justice system as a whole.

It was considered that a candidate does not meet the integrity criteria if there are serious



doubts regarding his/hers ethical and financial integrity. In case of failure to pass the evaluation, the person will have the right to appeal the evaluation decision to a special panel of three judges of the Supreme Court of Justice. If it accepts the appeal, the panel will cancel the decision and order a new evaluation by the Evaluation Commission. The appeal will not suspend the election.

At this stage, 39 candidates for CSM were tested. The General Assembly of Judges in April 2023 chose a new composition of CSM.

Evaluating of 18 candidates for CSP started on 10 February 2023, the interview stage started in April and ended in July. On August 23, the General Assembly of Prosecutors was announced, but a new composition was not chosen. Prosecutors elected a new composition of the Superior Council of Prosecutors only in December 2023.

ii. Reforming the Supreme Court of Justice.

The reform of the SCJ was necessary in the context of the constitutional amendments that entered into force on first of April 2022, which excluded the requirement for SCJ judges to be career judges. The reform of the SCJ is also necessary in the context of the vetting of the judiciary.

The reform aims to transform the SCJ into an efficient court of cassation, focusing on legal interpretation and harmonizing judicial practice. The new SCJ law reconfigures the structure and jurisdictional competences of this court, reducing the number of judges to 20 individuals, including 11 career judges and 9 judges from among professionals (lawyers, prosecutors, academics). All judges of actual SCJ passed vetting procedure, ensuring the professionalism and integrity of the SCJ.

iii. The extended evaluation process of judges

In addition to the pre-vetting for the Superior Council of Magistracy (CSM) and the Superior Council of Prosecutors (CSP), more comprehensive vetting processes are being implemented to assess the integrity and performance of judges and prosecutors throughout the entire system.

This process will be divided into 2 sub-phases: a) evaluation of judges in higher courts and those in management positions; this includes mandatory vetting for judges at appellate courts, court presidents, specialized prosecutors, and high-ranking officials such as the Prosecutor General and heads of regional prosecution offices. b) evaluation of the other judges and prosecutors. Failure to pass the evaluation will result in the dismissal of the concerned judge. The legal framework for this component of the reform has not been adopted yet.

However, implementation has been slower than expected, and permanent mechanisms to continuously monitor the assets and integrity of these professionals are still being developed.

On April 12, 2024, the Vetting Commission announced that it will check the ethical and financial integrity of the judges of the Chisinau Court of Appeal. To avoid being subjected to the integrity assessment, 20 of the 37 judges from the Chisinau Court of Appeal resigned, leading to an institutional deadlock and complicating the assessment process. Similar risks now threaten appellate courts and prosecutors undergoing vetting.

On June 14, 2024, the Anticorruption Prosecutor's Office informed about the resignation requests submitted by 10 prosecutors in connection with the vetting process. According to the press release, this situation creates a major risk for the institution's activity, given the direct impact on the ability to manage high-level corruption cases.

However, legal experts argue that these departures are not a surprise, the CSM and CSP must develop plans to mitigate these risks and prevent the blocking of court processes.

4. The analyses of vetting in a young democracy of Europe: Albania's Experience

In the landscape of young European democracies, Albania stands out with its robust efforts to reform its judicial system through the process of vetting. The international community has largely praised Albania's vetting process as a model for other countries struggling with judicial corruption. By analyzing Albania's experience with the vetting process, which began prior to Moldova's, we can identify both positive and negative aspects and draw relevant conclusions for our own country.

The vetting process in Albania, a crucial aspect of its democratic development, aims to ensure the integrity, competence, and impartiality of its judiciary. It is late and applies to approximately 800 judges, prosecutors, and certain legal advisers at the Constitutional and High Courts. It is in the interest of those who wish to remain in their current positions to successfully complete the vetting process.

Initially, Constitution of Albania established that the vetting process will be completed in five years (i.e. by 2022) in the first instance by the Independent Qualification Commission (IQC) and then in nine years in the second instance (i.e. by 2026) by the Special Appeal Chamber (SAC). However, due to the complexity and volume of cases, as well as challenges in implementation, the timeframe

has extended beyond the original projection. As of the current situation, the process is still ongoing, with the IQC and the SAC continuing their evaluations of judges and prosecutors [1].

Despite the extended timeline, significant progress has been made in evaluating a substantial portion of the judiciary. A significant number of judges and prosecutors have been dismissed, leading to a cleaner, more accountable judiciary. Public confidence in the judicial system, although still fragile, has shown signs of improvement.

It is evident that completing the comprehensive vetting process in Moldova will take considerable time. However, this should not deter us, as we have the potential to achieve positive outcomes and establish an integral and trustworthy judicial system.

The European Union views vetting as a critical step towards Albania's EU accession aspirations. The process has set a precedent, demonstrating that even deeply entrenched judicial corruption can be addressed through determined and well-structured reforms. In case of Republic of Moldova, the vetting process also plays a pivotal role in the country's aspirations for accession to the European Union. It is a critical component of Moldova's efforts to align its judiciary with EU standards of transparency, accountability, and independence.

Conclusions

The Republic of Moldova, driven by its determination to align with European standards and achieve integration into the European Union, has embarked on a comprehensive set of structural reforms in different sectors. Key focuses include justice, anti-corruption measures, the promotion of human rights and fundamental freedoms, and ensuring the rule of law.

Although there are several national institutions and mechanisms that aim to prevent and combat corruption, however, the unprecedented crisis in the justice sector required the implementation of a new mechanism. Actually, despite all the obstacles, the vetting process remains the biggest reform of the judiciary in Moldova.

Vetting can help fulfill society's desire to enhance judicial integrity. However, it is crucial for states to strike a balance between the objectives of vetting as a matter of public interest and the preservation of judges' rights and freedoms. In this context, analyzing the national practice of the Pre-Vetting Commission we underline that vetting should guarantee the preservation of the right to a fair trial, impartial process, independent and legally constituted court, and the respect for the privacy and family life of individuals involved.

Vetting is only acceptable as an exceptional mechanism in order not to affect the stability of judicial mandates. Therefore, the Assessment Commission must be independent so that there is no risk of a new vetting being organized with the change of political power.

Although vetting may seem like a solution to achieve integrity among professionals in the legal field, nevertheless, based on the experience of other countries, we find that integrity is a value that must be continuously strengthened. Vetting is a solution for extraordinary situations, to eliminate the factors that damage the system, however it does not guarantee that the vetted professionals will meet the integrity criteria throughout their career. To strengthen the integrity, more measures are needed than a simple exclusion from the system of harmful factors. It is imperative that we emphasize continuous professional development, increased social guarantees, salary growth, and consequently, the prestige of judiciary.

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