



EU Enlargement and Moldova: Commitment to Rule of Law and Justice Reform

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Abstract: One year after the Russian invasion of Ukraine, the EU granted the candidate status to Ukraine and Moldova, while putting Georgia on hold towards the EU membership. In Moldova's commitment to faster integration into the EU, the country is facing challenges in reforming its justice system and establishing new judicial institutions. Moldova is undergoing justice reform as one of the main steps toward EU integration, with vigorous efforts to further strengthen the rule of law and combat corruption in the justice system. In 2020, following EU recommendations and support, Moldova's pro-European government ventured into "uncharted waters" by initiating the vetting reform of the justice system, aiming to establish a rule of law country that aligns with EU standards.

This paper will thoroughly examine the ongoing justice reform that Moldova is carrying out as part of its efforts to integrate into the EU. This paper will methodically analyze Moldova's vetting process and justice reform, comparing it with models from countries like Albania to identify potential challenges. It will highlight the ongoing development of the rule of law because of these reforms in safeguarding judicial independence and establishing the state of democracy, while also assessing their impact on constitutional stability and the challenges highlighted by the integration process.

1. INTRODUCTION

As Moldova was granted EU candidate status in June 2022, the pro-European government had to fulfill the nine conditions for the accession process where important emphasis was given to the rule of law and justice reform as two key conditions for the EU integration (*EC Republic of Moldova Report 2023, p. 3*). The implementation of EU conditions has been accompanied by a wave of untrust by the Moldovan public opinion where more than 65% of the people did not trust in their justice system (*Vidaicu, 2021*). As the EU integration process remains the country's most important and challenging endeavor, the judicial reform, required by the EU and supported by the US, has disrupted the foundations of Moldova's old justice system since 2019 (*Mazelliu, 2024*). In a public statement on January 31, 2023, the Deputy Prime Minister of Moldova, Mr. Nicu Popescu, stated that the fulfillment of EU requirements and the establishment of the National Commission for European Integration (NCEI) in April 2022 were the results of steady and reliable actions taken by the current government (*Ministry of Foreign Affairs of the Republic of Moldova, 2023*). According to *Emerson et al. (2023)*, the assessment set by the established commission consisted of nine proposed action plans where five of which deal with the justice reform and rule of law area.

The justice reform in Moldova led by the vetting process, aims to strengthen the rule of law and combat corruption in the justice system. This initiative has sparked diverse opinions within the public and the justice system. The current justice system in Moldova is considered to be controlled by oligarchy and corrupt judges and prosecutors. Media and judicial reform activists have highlighted practices where judges frequently delay hearings indefinitely for wealthy or well-connected defendants, often due to

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personal corruption (ICJ 2019, p.22). To tackle this issue, the government has implemented the justice reform strategy and action plan 2022-2025 which was adopted in 2021. The focus of this strategy is to restore public trust in the judiciary. According to CISR (2024), only 22% of the population are very positive or positive about justice institutions, while 38% are somewhat negative or negative.

2. JUSTICE REFORM AND VETTING INSTITUTIONS IN MOLDOVA'S PROSPECTS TO EU INTEGRATION

The Moldovan government, in its pursuit of a corruption-free system, has initiated the campaign to vetting and 'remove' the corrupted judges and prosecutors via the extraordinary re-evaluation mechanism. International actors have played a significant role in supporting the establishment of new institutions and reforms to ensure a more transparent and non-corrupt system. Since Moldova's vetting reform mirrors the Albanian model, which faced delays and stagnation, decision-makers should learn from Albania's experience to avoid similar issues and ensure timely implementation of Moldova's justice reforms (Mazelliu, 2024). The two-year stagnation of the Constitutional Court and High Court in Albania, along with delays in implementing justice reforms, led the country into a deadlock. The same scenario could occur in Moldova if the authorities do not implement a tailored justice reform and avoid politicizing it. Justice reform is a key aspect of Moldova's path to the EU. The parliament and the ruling party, formerly led by the current president Maia Sandu, have proactively launched this crucial reform to ensure the reliability, trust, and independence of the country's justice institutions (Emerson et al., 2023, p. 17). The vetting process began in April 2022 with the establishment of the Pre-Vetting Commission, the first institution to review the two independent self-governing constitutional bodies that will manage the judicial system in Moldova: the Superior Council of Magistracy (SCM) and the Superior Council of Prosecutors (CSP). OSCE/ODHIR (2023) found that the establishment of the pre-vetting commission was done via a broad public consultation process and is considered an achievement towards systemic judicial reform to alleviate corruption in the justice system, still, there are several gaps in the legislation when it comes to the adequate elaboration of the evaluation criteria made by the vetting institutions (p. 5). In line with the recommendations of the Venice Commission and the positive evaluation from the EU progress report of 2023, the Pre-vetting Commission, composed of three international donor-proposed members and three national members, was established. The Venice Commission's Opinions on Moldova's Vetting Process and Justice Reform were considered in compliance with international standards and countries' constitutional provisions, the most prominent challenge remaining until now is the successful implementation of this reform (Venice Commission, 2022, p. 7).

As Moldova undergoes a top-down reorganization of its justice institutions—starting with the Supreme Court of Justice, the SCM, and the SCP—to meet EU *acquis* standards, it is noteworthy that the country is receiving positive remarks for its progress in reforming the justice system and ensuring the rule of law. This positive assessment is largely due to the successful implementation of the pre-vetting process and ongoing efforts to promulgate the law on the Supreme Court of Justice in line with the Venice Commission's 2023 recommendations, focusing on the reform and evaluation of sitting judges of the SCJ and candidates for the self-governing positions of the SCM and SCP (Moldova Report, p. 5; Venice Commission, 2022).

3. LEGAL FRAMEWORK OF THE JUSTICE REFORM IN MOLDOVA IN ESTABLISHING INDEPENDENT SELF-GOVERNING INSTITUTIONS

Moldova has demonstrated its commitment to ensuring the appointment of impartial and qualified individuals to self-governing justice institutions. This involved a rigorous vetting process conducted

by the Pre-Vetting Commission to evaluate the suitability of candidates nominated to these key positions which mandated was extended until the conclusion of the re-evaluation processes of the candidates that filed an appeal in the SCJ and later ordered a revaluation procedure (Mazelliu, 2024, p. 3). The establishment of the self-governing justice institutions intends to guarantee an independent and impartial judiciary system with a more steadfast ‘cleansing process’ such as the vetting of the high-profile judges in the newly reorganized SCJ and other courts. According to the EU Report (2023), Moldova has made good progress in the reform of the justice sector and the SCM and SCP candidates had to undergo vetting based on the corresponding law adopted in line with Venice Commission recommendations (p. 22). Further to this, the parliament has taken action to appoint impartial members to these key institutions by implementing a rigorous vetting process through the Pre-Vetting Commission. The law on pre-vetting candidates for judicial and prosecutorial councils was promulgated in March 2022 in compliance with the Venice Commission Opinion (Law no. 26/2022, Venice Opinion No. 1069 / 2021). The Pre-Vetting Commission, composed of three members proposed by international donors and three national members, was established in line with the Venice Commission’s opinion and received a positive evaluation in the EU’s 2023 progress report. Should be highlighted that the pre-vetting process had positive remarks in its overall process of the evaluation of the integrity of candidates of the self-governing institutions with a need for improvement of the law to guarantee the fairness, credibility, and transparency of the process (OSCE/ODHIR, 2023).

Despite the pre-vetting process being completed on time and receiving general positive evaluations from international bodies such as OSCE/ODIHR in 2023 and the EU Progress Report in 2023, in August 2023, the Supreme Court of Justice (SCJ) reversed 22 out of 28 decisions made by the same *ad-hoc* institution pre-vetting commission. In most cases, the Supreme Court of Justice (SCJ) has found that the Pre-Vetting Commission failed to adhere to due process standards and violates the principle of proportionality. The SCJ ordered the reevaluation of the decisions by the same institution and as a result its mandate was extended until the termination of the revaluation of the reversed decisions (NiT, 2024). Despite the magistrate contesting the lack of transparency in the vetting process for certain individuals (Rusnac, 2023), the work of the pre-vetting commission and functionality of the justice reform was highly regarded and evaluated by international partners for demonstrating professionalism in their challenging work (US Dep of State, Moldova 2023 Human Rights Report). During a time of concern for the justice system, the pre-vetting commission effectively vetted candidates for the self-governed institutions and with no delays the SCM started vetting the judges and candidates of the Supreme Court of Justice. The US Department of State Moldova Human Rights Report (2023), found that authorities passed several laws authorizing vetting of candidates to judicial and prosecutorial oversight bodies, as well as of judges and prosecutors. These efforts were designed to weed out corruption in the judicial system. In April 2024, the General Assembly of Judges after several months of failed attempts elected a fully vetted Superior Council of Magistrates, which is competent to manage the appointment, functioning, and discipline of judges.

The reforming of the Supreme Court of Justice of Moldova and vetting of the sitting judges of the same court, aimed at creating a more independent judiciary in line with EU standards. The Vetting Commission concerning the external evaluation of judges and candidates for the position of judge of the Supreme Court of Justice (SCJ) was constituted on the 15th of June 2023 and effectively started the evaluation process for the sitting judges on July 23rd (Vetting Commission Annual Report, 2024). Before the commencement of the process of the Vetting Commission for the re-evaluation of SCJ judges and candidates, 20 out of 25 sitting Supreme Court judges resigned with the claim that the process was politically motivated, and the process posed a risk

of disrupting the justice system (Necsutu, 2023). The same situation occurred with the judges of the Court of Appeals: by May 2024, 17 judges from the Chisinau Court of Appeal had stepped down even before the vetting process began. The situation with the Supreme Court of Justice of Moldova is not an isolated case. Several years ago, Albania faced a similar scenario, where the entire justice system was disrupted due to the resignation and dismissal of vetted judges, causing significant bottlenecks (Lukic, 2019).

4. LESSONS LEARNED FROM THE ALBANIAN JUSTICE REFORM MODEL

As the government of Moldova is actively working to fulfill the conditions set by the EU—including the establishment judicial map, effective implementation of the justice reform, and ensuring the full operability of self-governing institutions like the SCM, SCP, and the Supreme Court of Justice—it also aims to strengthen the infrastructure and human capacities of the National Institute of Justice and improve the efficiency of the Superior Council of Magistracy and the Superior Council of Prosecutors (EU Moldova Report, 2023, p. 22). To promote a more effective and resilient justice reform process, Moldova should consider sharing experiences with Albania, a leading country in this type of reform.

In contrast to the Albanian model, Moldova has established a more diffuse vetting model where the re-evaluation of the magistrate's profile is vested in three institutions instead of one, as in the case of Albania (Mazelliu, 2024, p.4). In the case of Moldova, the appeal organ is designed to be the Supreme Court of Justice, meanwhile, in Albania, the vetting appeal organ was established as the Special Appeal Chamber part of the Constitutional Court (Vorpsi et al., 2019, p. 591). Unlike Albania, where vetting institutions are constitutional bodies enshrined in the Constitution, Moldova's vetting institutions are established by Parliament with a qualified majority. However, their operation and any changes to their governing legislation on the evaluation mechanisms and criteria are subject to the political will of the ruling party and the influence of international partners on domestic policy (Republic of Moldova., Law on the Supreme Court of Justice, 2023). In alignment with the Albanian justice reform model, Moldovan authorities have similarly reorganized their Supreme Court of Justice. While in Albania, one-fifth of the judges are drawn from outside the judicial system, Moldova mandates that 9 out of 20 judges be non-magistrates, selecting from distinguished lawyers, professors, or prosecutors (Mazelliu, 2024). As in the case of Albania, the enactment of the new law governing the Supreme Court of Justice in Moldova constitutes a pivotal advancement in the ongoing reform of the country's judicial system, particularly in reducing the influence of the President and the Minister of Justice over the judiciary (Vorpsi et al., 2019). The constitutional amendments in Albania, which facilitated the establishment of judicial institutions and vetting bodies, including the International Monitoring Operation (IMO), an international mechanism that oversees the vetting process, are regarded by scholars as a significant step in strengthening the authority of these institutions as enshrined in the constitution (Anastasi, 2021). The goal of reducing the influence of politics on the judiciary is a crucial step in reforming justice. Anastasi (2021) emphasizes the need to establish a new culture that is detached from politics and to create a legal framework that aligns the judicial culture of the country with European standards.

As regards the role of the International Monitoring Operation (IMO), this organ is established as a constitutional monitoring organ, comprising international partners, to oversee the vetting process in collaboration with the Public Commissioners during the reevaluation procedure of the Independent Qualification Commission (IQC) and the Appeal Chamber (AC) (Bara & Bara, 2020). Similar international assistance mandated by law is present in different countries. Furthermore,

the IMO's authority is *prima facie* as an advisory organ, as its competence is to issue recommendations (Mazelliu & Mitllari, 2022, p. 73).

The establishment of IMO as a constitutional monitoring body, with the involvement of international partners, is intended to certify the vetting process and the justice reform *per se* alongside the Public Commissioners during the re-evaluation process of the Independent Qualification Commission (IQC) and the Appeal Chamber (AC) (Hackaj, 2020, p.30). The uniqueness of this institution is seen in the form of its constitutional establishment and not via a legal act, taking into consideration that the competencies vested in the organ are merely soft ones through issuing recommendations (Shkurta, 2017).

On the contrary to the Moldovan justice reform, it's important to note that the Albanian model involved a simultaneous reorganization of the justice institutions and the implementation of a vetting process for all magistrates at every level (Vorpsi et al., 2019). In Moldova, the only institutions established as part of the justice reform were the SCM and SCP, the Pre-Vetting Commission and reorganization of the SCJ (Minzarari, 2022). In contrast, Albania introduced several new institutions, which enabled a more coherent distribution of powers in the election, promotion, and disciplinary processes for magistrates. It's important to note the establishment of the High Inspectorate of Justice, Special Court for Corruption and Organized Crime and Special Prosecution Office, SCM and SCP and the Judicial Appointment Council, which play a crucial role in evaluating the moral and professional qualifications of candidates for positions in institutions such as the Constitutional Court and the High Inspectorate of Justice (Vorpsi et al., 2019, p. 538). In Moldova, the responsibility for the professional and moral evaluation of Constitutional Court judges is not entrusted to a single authority as in Albania. Instead, this task is shared among the institutions responsible for appointing CC judges, namely the President, Parliament, and the Superior Council of Magistrates (Constitution of the Republic of Moldova, art. 136). Establishing a similar institution as implemented in Albania would help diminish the political influence and establish clear and unified professional and moral criteria over the appointment of Constitutional Court judges and other supervisory bodies within the justice system, thereby enhancing the independence of magistrates (Gorza et al., 2019, p. 50).

It is important to highlight that Moldova's vetting process may face future challenges similar to those in Albania, such as challenges to the decisions of the vetting organs before the ECtHR, where several cases have been unsuccessful for the country in maintaining due process standards (Mazelliu, 2024). Additionally, in Moldova, vetting process decisions made by the Pre-Vetting Commission, SCM, and SCP can be appealed to the Supreme Court of Justice (SCJ). This could lead to a deadlock if the SCJ faces a shortage of judges due to the vetting process itself and the potentially high number of cases it needs to review. According to Anastasi (2018), implementing anti-deadlock mechanisms should be a top priority for these reforms. This would offer a solution in cases where the responsible bodies fail to act in accordance with the law, as outlined in the Albanian constitution for the appointment of constitutional judges and other government judicial officials (p. 7).

5. CONCLUSION

As Moldova is finding its fate in an arc of instability and on the edge of invasion from Russia, its pro-European government is making every effort to advance the country's progress toward EU integration (de Waal et al., 2024). As the incumbent government faces pressure from all sides, justice reform and establishing the rule of law remain top priorities for both the ruling party and the country, as these are key conditions for EU-Moldova integration. Moldova is reforming its

judicial framework and has consulted the Venice Commission on key laws, including those related to the Supreme Court of Justice, the evaluation of judges and candidates, the Prosecutor's Office, and the disciplinary liability of judges. However, it must ensure a transparent and merit-based process for appointing members to the main judicial and prosecutorial bodies. The fulfillment of the remaining conditions, especially those related to justice reform and the rule of law—such as the establishment of anti-corruption institutions and the implementation of anti-corruption reforms—remains a critical hurdle on the country's path toward EU integration.

As the EU itself is trying to get together its agenda towards the EU integration of the WB and Eastern countries, Moldova is facing great challenges ahead toward ensuring the rule of law standards and full effective control over the capture institutions including here those of the justice system. The government should make every effort to gain full control over state institutions and processes due to a judicial system that is influenced by high-level corruption that is still informally controlled by non-vetted judges and oligarchy. Although the legal framework officially follows European best practices and rule of law standards, it hampers the government's efforts to address these issues. Since justice reform is Moldova's top priority, authorities should carefully navigate its implementation and apply lessons learned from Albania's model.

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