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**INDEPENDENCE OF JUDGES AS A GUARANTEE OF FAIR JUSTICE IN CRIMINAL PROCEEDINGS
IN THE REPUBLIC OF MOLDOVA²**

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SUMMARY

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This article examines the principle of judicial independence as a fundamental pillar in ensuring the right to a fair trial in criminal proceedings in the Republic of Moldova. The authors analyze the procedural dimension of the independence of magistrates through the lens of art. 26 and 27 of the Code of Criminal Procedure, emphasizing the role of the judge as an impartial arbitrator detached from the prosecution. Particular attention is paid to the institution of the investigating judge and the efficiency of judicial control over procedural coercive measures applied in the criminal investigation phase. The paper also examines the impact of recent legislative reforms - including the elimination of the initial 5-year appointment term and the implementation of external integrity assessment procedures (Vetting) - on the consolidation of the decision-making autonomy of the courts. The mechanisms that protect the judge from pressure exerted by criminal investigation bodies are evaluated, as well as the role of random assignment of cases. In conclusion, the authors emphasize the need to maintain a fragile balance between functional immunity and individual responsibility of the magistrate, an imperative condition for fully restoring society's trust in the act of criminal justice.

Key words: independence of judges, criminal trial, investigating judge, fair trial, justice reform, Vetting, judicial immunity.

INDEPENDENȚA JUDECĂTORILOR CA GARANȚIE A UNEI JUSTIȚII ECHITABILE ÎN PROCEDURILE PENALE DIN REPUBLICA MOLDOVA

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REZUMAT

În prezentul articol este cercetat principiul independenței judecătorilor ca pilon fundamental în asigurarea dreptului la un proces echitabil în cadrul procedurilor penale din Republica Moldova. Autorii analizează dimensiunea procesuală a independenței magistraților prin prisma art. 26 și 27 din Codul de procedură penală, subliniind rolul judecătorului de arbitru imparțial și detașat de funcția de acuzare. O atenție deosebită este acordată instituției judecătorului de instrucție și eficienței controlului judiciar asupra măsurilor procesuale de constrângere aplicate în faza de urmărire penală. Lucrarea examinează, de asemenea, impactul reformelor legislative recente - inclusiv eliminarea termenului inițial de numire de 5 ani și implementarea procedurilor de evaluare externă a integrității (Vetting) - asupra consolidării autonomiei decizionale a instanțelor. Sunt evaluate mecanismele care protejează judecătorul de presiunile exercitate de organele de urmărire penală, precum și rolul repartizării aleatorii a dosarelor. În concluzie, autorii accentuează necesitatea menținerii unui echilibru fragil între imunitatea funcțională și răspunderea individuală a magistratului, condiție imperativă pentru restabilirea deplină a încrederii societății în actul de justiție penală.

Cuvinte-cheie: independența judecătorilor, proces penal, judecător de instrucție, proces echitabil, reforma justiției, Vetting, imunitate judiciară.

Introduction. In the modern criminal justice system, judicial independence is not simply an element of state structure, but the only effective mechanism for protecting individuals from unjustified state coercion. In the context of the implementation of the Strategy for Ensuring the Independence and Integrity of the Justice Sector of the Republic of Moldova, the issue of judge autonomy in decisions on imprisonment or the evaluation of prosecution evidence is particularly pressing. We emphasize that independence in this context should not be viewed as a corporate privilege of the judiciary, but as a fundamental citizen's right to an objective, impartial, and fair trial.

The relevance of our study stems from the need to analyze how international standards of independence are being integrated into the national criminal procedure framework during a period of large-scale reforms. The

authors proceed from the premise that without genuine procedural freedom of judges, the adversarial principle cannot be implemented, since any pressure from criminal prosecution authorities undermines the legal protection of trial participants. In this paper, we attempt to critically assess the current mechanisms for ensuring judicial autonomy and their effectiveness in protecting human rights in the Republic of Moldova.

Results and discussion.

1. The Procedural Content of Independence. Unlike its general legal status, procedural independence is specified in Articles 26 and 27 of the Criminal Procedure Code of the Republic of Moldova, which oblige judges to obey only the law and their own internal convictions. This fundamental provision precludes any possibility of receiving direct or indirect instructions from higher courts or the court's administrative leadership regarding

the classification of an act, the choice of a preventive measure, or the determination of the type and amount of punishment. We believe that the internal independence of judges in criminal proceedings is a guarantee against "accusatory bias," whereby a higher court cannot dictate the logic of a decision before it is rendered.

A crucial step in the institutional strengthening of this principle was the elimination of the five-year "probationary period" for judges in 2021. From a criminal procedure perspective, this innovation eliminates the risk of a judge being forced to "accommodate" the position of the state prosecution. Previously, the waiting period for reappointment to a lifetime mandate created fertile ground for hidden pressure: a judge might be wary of issuing acquittals or rejecting prosecutorial motions for arrest, lest they become perceived as "conflict-prone." Now, by being appointed immediately before reaching the age limit, a judge gains the necessary immunity from political pressure.

An additional guarantee here is the principle of the immutability of the bench (Article 31 of the Criminal Procedure Code of the Republic of Moldova) [1]. We note that independence in a criminal case is impossible without a judge's confidence that they will not be removed from the proceedings if an interim decision is rendered that is "inconvenient" for the criminal prosecution authorities. Thus, the combination of a lifetime mandate and procedural prohibitions on interference creates an environment in which justice can be administered based on adversarial proceedings rather than administrative subordination.

2. Judicial Review and Institutional Guarantees in Criminal Proceedings. The authors emphasize that true independence is ensured by a clear division of procedural roles, in which the court is completely distanced from the prosecution. This is reflected in the following institutions:

1) The institution of the investigating judge as a guarantor of the legality of the pre-trial stage.

In pre-trial proceedings, it is the independent judge who acts as the primary filter against procedural abuses. We note that the exclusive competence of the investigating judge to authorize preventive measures and special investigative measures (wiretaps, searches, etc.) prevents criminal prosecution from becoming an instrument outside of procedural pressure. Judicial review here is the only barrier protecting the individual's right to freedom and privacy from the arbitrary exercise of power by law enforcement agencies.

2) Free evaluation of evidence and autonomy of inner conviction.

Article 27 of the Criminal Procedure Code of the Republic of Moldova enshrines the most important principle: no evidence has a predetermined force for the court. In our opinion, this guarantees the complete independence of a judge's internal convictions from the conclusions set forth in the prosecutor's indictment. A judge is not bound by the results of departmental oversight or the position of the state prosecutor, which allows for the restoration of the balance of power in adversarial proceedings. Any attempt to impose on the

court the "necessity" of admitting evidence without its comprehensive review is a gross violation of the autonomy of the judiciary.

3) Institutional protection through the Superior Council of Magistracy (SCM).

In the context of criminal proceedings, the SCM acts as a "shield" protecting judges from the unlawful initiation of disciplinary proceedings. The authors point out the existing risk of disciplinary complaints being used by parties to proceedings as a pressure tool to remove an "inconvenient" judge or force them to recuse themselves. The SCM's status as a guarantor of independence precludes the possibility of interference by the executive branch or the prosecutor's office in matters of holding a judge accountable for their legitimate procedural position.

3. System of Guarantees for the Status of a Judge. The legislation of the Republic of Moldova provides a set of guarantees that make independence a reality:

A judge cannot be transferred, promoted, or demoted without their consent, except in cases of disciplinary action. Judicial immunity in Moldova is functional: a judge cannot be held liable for an opinion they express or a decision they make unless their guilt in criminal misconduct is proven by a final judgment [2].

According to the practice of the Constitutional Court of the Republic of Moldova, a judge's adequate remuneration is not a privilege, but "compensation for limitations and responsibilities." The legislation prohibits arbitrary reductions in judges' salaries, as this is considered an indirect pressure on their independence [3].

The legislation of the Republic of Moldova ensures the independence of judges through the principle of irremovability, functional immunity from prosecution for legal decisions, and financial security. The Constitutional Court of the Republic of Moldova defines decent remuneration as compensation for restrictions, and the ban on reducing salaries serves as a preventive measure against external pressure [3].

4. Reforms and Integrity Review (Vetting). A distinctive feature of the current stage in Moldova is the process of "vetting" and "pre-vetting" - reviewing the ethical and financial integrity of judges and candidates for the Supreme Council of Magistrates. While these procedures raise debate about the balance between control and independence, legislators view them as an extraordinary measure to purge the system of corrupt elements and restore public trust [4].

External evaluation (Vetting) aims to create a corps of judges whose independence is not compromised by hidden assets or ties to dubious interest groups.

The independence of a judge is inextricably linked to compliance with the Code of Judicial Ethics. Judges are obliged to avoid any situations that could create the appearance of a conflict of interest. In Moldova, interference in the administration of justice is a criminal offense (Article 303 of the Criminal Code of the Republic of Moldova) [5]. An important element is the automated case assignment system (PIGD), which eliminates human error and the influence of the court president on which judge will hear a particular dispute.

An analysis of Moldovan legislation shows that the country has created a solid regulatory framework to ensure judicial independence. However, the transition from formal (*de jure*) to *de facto* independence requires not only laws but also the development of a strong judicial system capable of withstanding internal and external pressure.

Strengthening the autonomy of the Supreme Court of Magistracy, completing the cleansing process, and ensuring stable funding remain priorities for ensuring the right of every Moldovan citizen to a fair trial.

In recent years, the Republic of Moldova has become the scene of a legal experiment unique in the European space: the introduction of mechanisms for the extraordinary evaluation of judges and candidates for key positions in the justice system. These measures, known as "Pre-vetting" and "Vetting," were a response to systemic crises of confidence in the judiciary and the need to purge the judiciary of individuals whose wealth does not correspond to their official income.

The first stage of the reform was the "Pre-vetting" procedure, regulated by Law No. 26/2022 [6]. Its purpose was to vet candidates for membership in the Superior Council of Magistracy (SCM) and the Superior Council of Prosecutors.

The procedure is carried out by a specially created Pre-vetting Commission, consisting of three national experts and three international experts appointed by development partners. The main criteria for the vetting are:

- Ethical integrity: absence of serious violations of ethical and professional conduct rules, and absence of suspicion of corruption.
- Financial integrity: the candidate's expenses and assets (and those of their family members) must be in line with their declared income over the past 15 years.

A distinctive feature of the process is its public nature—candidate interviews are broadcast live, ensuring an unprecedented level of transparency previously uncharacteristic of the conservative judicial system.

The logical continuation of the reform was the full-fledged "Vetting," initiated by Law No. 65/2023 [7] and Law No. 252/2023 [8]. Unlike the preliminary screening, this procedure applies to sitting judges of the Supreme Court of Justice (SCJ), court presidents, and judges of the appellate courts.

The assessment process involves several stages:

1. Information Collection: The Assessment Committee analyzes asset declarations, bank accounts, tax service data, and even information from investigative journalists.

2. Request for Clarification: If discrepancies are discovered (exceeding the threshold of 20 average salaries in the economy for a given period), the judge is required to provide evidence of the legal origin of the funds.

3. Interview: A face-to-face meeting during which committee members ask questions about questionable financial transactions or professional conflicts.

4. Decision: The Committee prepares a report recommending passing or failing the assessment.

Failure to pass the assessment entails severe sanctions:

- Dismissal from judicial office.
- Ban from holding judicial, prosecutorial, or other senior government positions for a period of 5 to 7 years.
- Loss of the right to receive special severance pay and a special pension (lifetime annuity).

The debate around "Vetting" in Moldova is heated. Proponents of the reform argue that this is the only way to break the cycle of mutual responsibility and corruption within the system. Opponents and some members of the judicial community express concerns that such vetting could be used by the executive branch as a tool to "tame" unruly judges, potentially undermining the principle of institutional independence.

However, the Council of Europe's Venice Commission, in its opinions, recognized that in exceptional situations (such as a captured state), such radical measures are permissible, provided that procedural guarantees and judges' right to appeal to the Supreme Court of Justice are respected [9]. Thus, Moldova's "vetting" represents an attempt at a radical overhaul of the justice system, where purity of ranks is seen as a necessary foundation for subsequent genuine independence.

Despite the stated goals of cleansing the system, the pre-vetting and vetting mechanisms in the Republic of Moldova have been harshly criticized by the legal community, the opposition, and international experts. The main focus of criticism is whether the commissions have become a tool for the political selection of "loyal" judges under the guise of a fight for integrity.

The critical analysis begins with the procedure for forming the evaluation commissions. According to Laws No. 26/2022 and No. 65/2023, national members of the commissions are nominated by parliamentary factions in proportion to their number of mandates. Under a monolithic parliamentary majority, this effectively means that the selection of "judges above judges" is carried out by representatives of a single political force.

• Risk: The lack of consensus between the government and the opposition regarding the appointment of commission members undermines confidence in their impartiality. This raises suspicions that experts are selected based on personal loyalty to the ruling party, rather than solely on professional criteria.

The participation of foreign experts in commissions is presented as a guarantee of objectivity. However, critics point out that international members often lack a deep understanding of local specifics and the legislative context, relying instead on information prepared by the commission secretariat. The secretariat, in turn, is staffed by personnel who often have ties to government-affiliated NGOs. Thus, an international presence can serve as a kind of "democratic façade" to legitimize decisions made in the interests of the current political agenda.

The most pressing issue is the accusation of a selective approach. Moldovan legal circles are actively discussing cases in which candidates with obvious gaps in their asset declarations passed the filter (so-called "convenient candidates"), while undesirable judges were

subject to extremely strict, sometimes formalistic, criteria.

- Example: The resonant decisions of the Supreme Court of Justice, which in August 2023 overturned 21 decisions of the Pre-vetting Commission, citing serious procedural violations and bias. This became legal confirmation that the commissions often exceed the legal framework, acting as political tribunals.

A critical look at the reform also reveals the risk of "institutional shock." Mass resignations of judges of the Supreme Court of Justice and the Courts of Appeal in response to the launch of vetting led to the paralysis of many judicial proceedings. Opponents of the reform argue that the climate of pervasive suspicion and the threat of public vilification through broadcast interviews are forcing the most independent and professional judges to leave the system, leaving room for those willing to conform to retain their positions.

The absolutization of political control over the evaluation process creates a dangerous precedent. If a judge's independence is made contingent on approval by a body formed by politicians, this does not solve the problem of the "captured state" but merely changes the beneficiaries of this capture. To minimize political bias, it is necessary to:

1. Ensure genuine participation of the opposition and civil society (without ideological segregation) in the formation of commissions.

2. Introduce clear, mathematically sound criteria for property valuation that preclude subjective interpretations of "ethical integrity."

3. Ensure unconditional enforcement of court decisions reviewing commission verdicts.

7. Criminal Law Aspects of Ensuring the Independence and Accountability of Judges

The criminal legislation of the Republic of Moldova serves as a dual instrument: on the one hand, it protects judges from external pressure, and on the other, it serves as a mechanism for holding judges accountable for abuse of power.

Article 303 of the Criminal Code of the Republic of Moldova ("Interference with the Administration of Justice and Criminal Prosecution") is a direct guarantee of independence.

- Objective aspect: includes any interference in the consideration of cases with the aim of impeding a comprehensive, complete, and objective investigation of the circumstances or achieving an unlawful judicial decision.

- Subject: the law defines a qualified element (Part 3 of Article 303) if the act is committed by a person using their official position. This is critically important in the context of "political engagement," as politicians attempting to dictate decisions to judges formally fall under the purview of this article.

However, in practice, this article is "dormant." In recent years, the number of convictions under Article 303 has decreased. The scope of Article 303 of the Criminal Code of the Republic of Moldova is negligible, demonstrating the latency of pressure on judges and the ineffectiveness of criminal law protections for their autonomy.

One of the most controversial articles in the context of independence is Article 307 of the Criminal Code of the Republic of Moldova – "Issuing a ruling, sentence, decision, ruling, or order in violation of the law."

- Interpretation issue: The line between a "judicial error" (which must be corrected on appeal) and a "clearly unjust decision" (a criminal offense) is extremely thin.

- Risk to independence: In the context of reforms, charges under Article 307 are often used as a tool to pressure judges whose decisions displease the prosecutor's office or political authorities.

- Position of the Constitutional Court: In its decisions, the Constitutional Court of the Republic of Moldova has repeatedly emphasized that a judge cannot be held accountable for the substance of their decision unless direct intent to violate the law or a selfish motive is proven [10].

A criminal analysis of independence is impossible without examining Article 324 ("Passive Corruption") and Article 325 ("Active Corruption") of the Criminal Code of the Republic of Moldova.

- Specifics: Judges, as subjects of corruption crimes, are subject to increased sanctions. A judge's independence is de facto nullified upon accepting a bribe, as they become dependent on the bribe-giver.

- Connection with Vetting: Vetting procedures often reveal "unjustified assets," which should formally lead to the initiation of cases under Article 330/2 of the Criminal Code of the Republic of Moldova ("Illicit Enrichment").

Article 330/2 has become a key tool in the fight against corruption in the Moldovan judicial system. It provides for liability if a person's assets significantly exceed their legal income.

- Criticism: Criminal law analysis reveals a conflict between this article and the presumption of innocence. Judges are effectively obligated to prove the legitimacy of their resources, which, in the context of politicized audits, can be used to remove undesirable personnel. It's important to maintain a balance: the fight against corruption must not degenerate into a "witch hunt" that undermines the independence of honest judges.

Conclusions. Following the analysis of the constitutional and criminal procedural framework, the authors conclude that the independence of justice in the Republic of Moldova remains, for the most part, a theoretical aspiration, seriously affected by systemic deficiencies and cyclical political influences. Although the legal norms provide a formal shield for the judge, practical reality has demonstrated that the mechanisms for ensuring autonomy have frequently been flawed, serving more as instruments of control than as protection of the act of justice.

Summarizing the issues addressed, we propose the following conclusions:

1. *Vitiation through political subordination:* The recent history of the Republic of Moldova shows that criminal justice has often been used as a lever of pressure, where the independence of the judge has yielded to group interests. This vulnerability was fueled by a Superior Council of Magistracy that, in critical periods, operated under the guise of political docility [11].

2. *Failure of formal guarantees:* Functional immunity and impunity, although enshrined in law, were not enough to stop the phenomenon of “justice on demand”. The processes for promoting and sanctioning judges were often lacking in transparency, being used to reward loyalty or to purge inconvenient magistrates [12].

3. *The paradox of the cleaning reforms (Vetting):* Although the Vetting and Pre-vetting processes are presented as extraordinary measures to clean up the system, they carry the inherent risk of being perceived as new forms of political interference. There is a fine line between filtering integrity and ideological subordination of the judiciary, and the taint of this process can lead to a new stage of capture of judicial institutions [13].

4. *Impact on criminal justice:* In criminal proceedings, the lack of genuine independence transforms the judge from an impartial arbiter into a simple validator of the prosecutor’s actions. This state of affairs directly compromises the right to a fair trial and discourages respect for fundamental human rights [14].

The systemic analysis of the reforms initiated in the justice sector of the Republic of Moldova reveals a structural failure in achieving the objective of establishing an autonomous judiciary. The authors conclude that the process of ensuring the independence of judges has been seriously flawed by political interference, transforming the declared intention of cleaning up the system into a mechanism of control and subordination of magistrates to the current political exigencies.

It is certain that *de jure* independence will not become *de facto* as long as the political class sees the judicial system as an instrument of power, and not an equal authority. For the Republic of Moldova, the stake is not only changing the laws, but also eliminating the culture of subordination, without which no reform, no matter how radical, will be able to guarantee truly fair justice. The current course has substituted old forms of dependence with new control mechanisms, transforming the principle of separation of powers into a legal fiction that endangers the democratic foundation of the state.

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