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JUDGES FROM
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APPLICATION

***regarding the discussion within the EAJ conference of the problems faced by the
judicial system in the Republic of Moldova***

O. A. "Association of Judges from the Republic of Moldova" respectfully requests that the problems faced by the judicial system in the Republic of Moldova be discussed within the EAJ conference.

The 2020 presidential elections in the Republic of Moldova were won by Maia Sandu. On July 31, the governing party PAS, previously led by Maia Sandu, voted for the Law on the external evaluation of judges and prosecutors for political reasons.

The Association of Judges believes that the extraordinary evaluation of judges can only take place if there is the genuine intention of the politician to give up influences on justice, the full involvement of development partners and civil society and a massive popular support. All these conditions must be met cumulatively. In the absence of these preconditions, there are minimal chances that the eventual evaluation will be successful.

The Association of Judges from the Republic of Moldova considers the activity carried out by the Pre-Vetting Commission and the vetting process to be an abusive violation of the constitutional provisions, the legal norms and an inadmissible interference in the procedural guarantees granted to the magistrates in

order to ensure their independence and impartiality in exercising their professional activity.

We emphasize the serious violation of the Pre-Vetting Commission in the professional activity of judges. The Commission does not fully exercise its competence to investigate the state of facts *ex officio*, it does not sufficiently investigate the facts, there is a violation of the right to a reasoned and impartial decision, the right to an effective hearing, the right of access to the administrative file, the right to be effectively involved in the evaluation procedure, the right to effective collaboration in clarifying the factual situation and the right to a decision without discretionary errors in the assessment of the evidence, and as a result this leads to the adoption of erroneous solutions regarding the judges.

The only intended effect seems to be the substitution, in important positions, of some people with others. In this sense of ideas, we reiterate that, according to the European Commission for Democracy by Law of the Council of Europe (Venice Commission), legislative changes must not be *ad hominem*, in other words - they must not seek to replace the holders of specific positions under the pretext institutional reform.

The Association of Judges from the Republic of Moldova considers the process of external evaluation of judges as a constitutional violation, in this context the Venice Commission gave its opinions on the Law on pre-vetting in which it was stated that for such a reform of the system it is necessary grounds and a broad national consensus, or in the current conditions such a reform of the judicial system is not necessary and opportune.

We emphasize serious legality issues regarding the decisions of the Pre-Vetting Commission, both on the dimension of substantive and procedural legality.

In support of this statement, the Supreme Court of Justice annulled all the decisions of the Pre-Vetting Commission and ordered the re-evaluation of the candidates, because it was found that the Pre-Vetting Commission admitted both procedural and substantive violations.

When examining the cases, the Supreme Court of Justice detached itself from any influence, including politics, and put objective facts and laws in the balance of justice, taking into account the Supremacy of the Law, the Separation of Powers in the State, the dignity of man in general and that of judges and prosecutors in particular. The decisions of the Supreme Court of Justice are irrevocable, binding and to be executed according to the law.

After the pronouncement of the Supreme Court of Justice decisions, public attacks on the judges followed, from the political actors (the president of the country, the prime minister, the minister of justice). The Association of Judges from the Republic of Moldova notes with regret, that recently, the politician exceeded the permissible limits of freedom of expression and, with derogation from the provisions of art. 120 of the Constitution, question the legality and validity of irrevocable decisions of the Supreme Court of Justice.

The recent events and statements that have crossed the public and international stage compel us to express our position in a clear and firm way.

The fundamental principle of democracy emphasizes the importance of separation of powers in the state. Each of these – legislative, executive and judicial – must exercise its role autonomously, without interference, respecting the constitutional provisions and the democratic principles that are the basis of the Republic of Moldova.

We note with regret generalizing statements and slanderers addressed to judges.

These, in addition to being a direct attack on the fundamental principles of the rule of law and the independence of the judiciary, also affect public confidence in the integrity of the judicial system.

It is vital that representatives of the executive and legislature recognize and respect the independence of the judiciary, considering that their role is to enact and implement laws, but not to influence or criticize judicial decisions.

A.O "Association of Judges from the Republic of Moldova" considers inadmissible the interference of politics, government, interest groups and the mass media in the activity of judges, with derogation from the provisions of art. 120 of the Constitution of the Republic of Moldova, question the legality and validity of some irrevocable decisions of the Supreme Court of Justice. We regret to note that the separation of powers - the major principle of democracy, according to which power is distributed among the three branches of government - the legislative power, the executive power and the judicial power, is being vehemently violated. We emphasize that in accordance with art. 120 of the Constitution, irrevocable judicial acts are binding for all legal subjects, and the questioning of irrevocable decisions, through the involvement of politicians, through which the acts issued by the Supreme Court of Justice are criticized, represents nothing more than a serious interference in the administration of justice.

On the contrary, the initiation of this process in the absence of at least one of these conditions, will either introduce chaos into the judicial system without any tangible improvement, or will even increase the influence of the executive or legislature on justice.

On March 17, President Maia Sandu requested the Parliament and the Government to create the Anti-Corruption Court, "a specialized court to investigate cases of grand corruption and corruption in the justice system".

In our opinion, the concept of the Project of the creation the Anti-Corruption Court raises constitutional issues. In accordance with art. 115 of the Constitution, justice is administered through the Supreme Court of Justice, through the appeal courts and through the judges. According to the law, specialized judges can work for certain categories of cases. The establishment of extraordinary courts is prohibited. The organization of the courts, their competence and the court procedure are established by organic law.

The creation of an Anti-Corruption Court is not a cost-effective one in the Republic of Moldova, taking into account its socio-demographic indicators, we consider that this initiative is very expensive and will not allow a random distribution of files, while judges from ordinary courts go through the process assessment, there is no impediment for judges to be entrusted with a large corruption case.

"Association of Judges from the Republic of Moldova", believes that the project is not sufficiently substantiated, in the process of its elaboration, the requirements of the legislation were ignored. The development of the Project was not preceded by any research study, nor by any ex ante analysis. By virtue of art. 25 of Law no. 100/2017, the drafting of normative acts must be preceded, depending on the importance and complexity of the respective projects, by conducting research studies for the purpose of substantiating the necessity or lack thereof regarding the initiation of the drafting of a normative act.

The research studies are carried out for the thorough knowledge of the social-economic realities to be regulated, of the relevant normative framework, of similar regulations in the legislation of other states, including the countries of the European Union. The research study is carried out by the subjects from whom the proposal to initiate the elaboration of the normative act comes.

To carry it out, the respective subjects can request the assistance of other public administration authorities. The information and recommendations obtained as a result of the research studies are included in the informative note.

These requirements must be respected especially in the case of the Draft Law on the Anti-Corruption Court of the Republic of Moldova, through the Draft proposing, in fact, the creation of an "anti-corruption justice" parallel to the general criminal one, as a result of which the entire architecture of the Judiciary will be distorted. The proposed concept will generate essential problems, the vision of the authors not being clear in overcoming them. For example - which will be the competent court to judge a contest of crimes, one of which is a crime of corruption.

Obviously, under such conditions, it is imputable to interfere with fundamental rights, such as - free access to justice (art. 20 of the Constitution) and the right to a fair trial (art. 6 of the ECHR).

Moreover, the number of corruption cases is not an impressive one, which is why, even from this perspective, the Project is not justified. For example, in 2019, 333 corruption cases were examined and resolved by the courts

The corruption crimes are not of a complexity that would justify the establishment of specialized courts. In general, the establishment of specialized courts is justified only if the field is so complicated that the judges really need special knowledge and experience to deal with the case. Corruption cases can be easily examined by common law courts, which often deal with much more difficult cases.

An argument against the Project is the recognized general practices – the division of jurisdiction into sub-branches of law or file categories is less suitable for states with a small population and a low level of activity. In such states, for reasons of quality and efficiency, but also for financial reasons, it is recommended to limit the number of specialized judges to general jurisdiction and administrative jurisdiction.

We believe that the creation of the Anticorruption Court could increase the risks of corruption in judging corruption cases and related to corruption. In general, with reference to the concept of the Project, the argument of ensuring increased integrity is not plausible. There are categories of files, in which the pressure on judges is much greater - exceptionally serious crimes, in which the penalty of life imprisonment is applicable, or cases, in which considerable or essential damages are estimated.

Integrity should be a general value of the Judiciary, and it will be required of every judge. Litigants should not be accustomed to the idea that there are cases where the integrity of the judge matters less.

Specialization usually breeds a sense of belonging to an elitist caste, and loyalty to a narrow corporation is often stronger than attachment to the general public interest. Or, precisely the increased risk of corruption was the reason for the relatively recent abolition of economic courts. Moreover, obviously, the smaller the number of judges competent to judge a certain category of cases, the more predictable the results of a possible random distribution of files, making it easier to appoint loyal people as judges, but also the pressure on them.

The Association of Judges from the Republic of Moldova, with regret notes that the extraordinary evaluation through the Prevetting Commission and the creation of an Anti-Corruption Court, represents nothing more than a political and swindling club of the political system directed against the judicial system.

Therefore, we respectfully request the inclusion and resolution of the problems faced by the judicial sector in the Republic of Moldova, within the EAJ meeting, only by consolidating the joint efforts of all (public authorities from all branches of state power, litigants, non-governmental organizations in the field, etc., we can ensure the protection of the rights and freedoms of magistrates, their honor

and dignity, acting promptly against any actions that could affect the independence, impartiality and credibility of judges.

With great respect and gratitude,

**Victor
Sandu,**

**President of
the Association of Judges from the Republic of Moldova**