

# CAPITALIZING ON JUSTICE IN CONDITIONS OF GOOD GOVERNANCE

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**Abstract:** *The phenomenon of good governance is in a close and indispensable connection with a qualitative and effective justice system. The adversarial discussions between the opponents are oriented towards prioritizing either human rights or justice. Which of the phenomena can be temporarily sacrificed: good governance or justice? Can a justice in the process of transformation be an effective tool to capitalize on good governance in general and human rights in particular? Can good governance be leveraged in the absence of an independent judiciary? These and other questions are examined in the paper, in order to appreciate the interaction between good governance and justice in the conditions of contemporary society.*

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## **Introduction. A need for quality benchmarks in promoting good governance**

Examining the definition of good governance, the conditions for its manifestation, the subjects involved in the process of its realization, we are convinced, in a vast and multifaceted approach, that the phenomenon in question can and must influence justice as well. The corroboration of these two complex dimensions - good governance and justice, imposes the need to capitalize on other characteristics, valid through the prism of contemporary social standards, considering the fact that “the principles of good governance apply to all the powers of the state”<sup>1</sup>. Good governance

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<sup>1</sup> H. Addink, *Good Governance: Concept and Context*, USA, New York, Oxford University Press, 2019, pp.5, Available at:

[https://books.google.md/books?hl=en&lr=&id=JCKQDwAAQBAJ&oi=fnd&pg=PP1&dq=Addink+Henk.+Good+Governance:+Concept+and+Context&ots=GulHFqU\\_C3&si](https://books.google.md/books?hl=en&lr=&id=JCKQDwAAQBAJ&oi=fnd&pg=PP1&dq=Addink+Henk.+Good+Governance:+Concept+and+Context&ots=GulHFqU_C3&si)

requires a qualitative level of governance. “It does matter for the people of a country ‘to be in good hands (i.e., to be administered by an effective government with a high quality of governance) [...]”<sup>2</sup>. In the conditions of contemporary society, good governance, therefore qualitative governance, is the only state under which a complex and dynamic system of fundamental human and citizen rights and freedoms can be achieved. Both good governance and justice, in terms of functionality, have common final objectives: the effective promotion, protection and restoration of human and citizen rights and freedoms.

### **Good governance and justice: conceptual correlations**

The role and the value of justice in the conditions of good governance consists in ensuring legality, especially by carrying out the judicial control of the legal acts issued by the subjects involved in the activity of public administration. “Courts have not only the right, but even the obligation to critically assess the legality of the government's actions”<sup>3</sup>. This is a form of control at request, not an “automatic” one and has a great importance in limiting abuses from the state administration<sup>4</sup>. Such a form of control is essential for guaranteeing legality and human rights, considering the fact that “in ensuring the rule of law, the executive authorities play a huge role: firstly, the number of public servants of the executive branch is greater than all other combined; secondly, the executive authorities, possessing great powers, directly manage huge financial and material and labor resources [...]”<sup>5</sup>.

Representative institutions of justice, exercising the self-governance of the field, should also comply with the requirements of good governance,

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g=c4mmosJ1nEI\_mEkMJCCIDhShyoY&redir\_esc=y#v=onepage&q=Addink%20Henk.%20%20Good%20Governance%3A%20Concept%20and%20Context&f=false (Google Scholar) (Accessed: October 20, 2022).

<sup>2</sup> N.H. Nabin, M.T.H. Chowdhury, S. Bhattacharya, It matters to be in good hands: the relationship between good governance and pandemic spread inferred from cross-country COVID-19 data, *Humanities and Social Sciences Communications* 8, 203, 2021. Available at: <https://doi.org/10.1057/s41599-021-00876-w> (Accessed: October 20, 2022).

<sup>3</sup> M. Pilich, Disobedience of Judges as a Problem of Legal Philosophy and Comparative Constitutionalism: A Polish Case, *Res Publica*, 2021, vol. 27, pp. 593–617. Available at: <https://doi.org/10.1007/s11158-021-09501-8> (Accessed: October 20, 2022).

<sup>4</sup> B. Rrahmani, Judicial control of administration in Kosovo, *Juridical Tribune*, 2018, vol. 8, issue 2, pp. 385. Available at:

<https://www.tribunajuridica.eu/arhiva/An8v2/4.%20Bashkim%20RRAHMANI.pdf> (Accessed: October 20, 2022).

<sup>5</sup> V.V. Goncharov, J. Zalesny, S.Yu. Poyarkov, Legality as a principle of organization and activity of executive authorities in Russian Federation: constitutional and legal analysis, *Revista de Ciencias Humanas y Sociales*, 2020, no.92, p. 889. Available at: Google Scholar. (Accessed: October 20, 2022).

through the principles of citizen participation, social inclusion, transparency, responsibility and professionalism. In this context, the phenomenon of good governance becomes very useful for justice, in particular for the quality and efficiency of justice. However, the value foundation of the concept of good governance, guided by a constructive approach, by tolerance and fairness, will also inspire and substantiate the area of justice, from the perspective of principles, priorities and directions of activity.

We use the term *justice* in a broad sense, as the organizational area of the judicial authority, the system of prosecution bodies, the institution of the legal profession and forms of organization of other subjects that contribute to the realization of justice through functional powers. The restoration of human and citizen rights is one of the basic competences of justice; success in realizing this competence, respecting the principle of celerity and fairness, through real involvement in concrete issues, is an indicator of justice performance.

Good governance presupposes the active involvement of the civil society in this process and, at the same time, both justifies and validates connections of the civil society with justice. The connection is not an equivalent of the direct involvement in the administration of justice, as can happen in the area of public administration. The connection of justice with civil society, under conditions of good governance, is mainly expressed through forms and ways of monitoring the functionality of justice in realizing the competence regarding the effective protection and restoration of human and citizen rights and freedoms. Good governance, oriented towards the affirmation and the consolidation of the supremacy of law, literally dictates certain quality conditions in relation to the activity of justice and the act of justice, but also in relation to the monitoring of justice by the civil society. Integrity and professionalism of the subjects exercising the monitoring and the impartiality of the monitoring itself, are fundamental principles for enhancing the performance of justice, inspired by the essence and objectives of good governance.

In the same conditions, of the expression of good governance, requirements of integrity and professionalism are also assigned to magistrates (judges and prosecutors), with an emphasis on conduct and professional skills. In the same way, the principles and dimensions of good governance - decision-making transparency, citizen participation, professionalism, responsibility, equity and social inclusion (including women<sup>6</sup>), integrity, efficiency and the supremacy of law - also form the

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<sup>6</sup> S.A. Dar, A.A. Shairgojri, Role of Women in Good Governance, *Journal of Social Science*, 2022, vol.3(4). Available at: <https://doi.org/10.46799/jss.v3i4.360> (Accessed: October 20, 2022).

foundation of justice, from an organizational point of view, but especially from an operational point of view. They do not undermine or contradict the principles of justice, but contribute to the inclusion of the justice pillar into the complex mechanism of achieving good governance at the national level.

### **Justice, self-governance of justice and good governance: a need for uniform conceptual interpretations**

In order to harmonize the activity carried out in the field of justice with the overall activity exercised by other subjects under the conditions of good governance, there is a need to promote a standardized interpretation of the main directions of action on this segment - of ensuring an efficient, solid governance, focused on the priority protection of human rights.

**Decision-making transparency.** With reference to justice, decision-making transparency covers both the way of organization and the way of functioning. In the organizational aspect, decision-making transparency refers to state policies oriented towards the elaboration of normative acts aimed at the self-administration of justice. In the context of the Republic of Moldova, we note: The Law on the Superior Council of Magistracy<sup>7</sup>, The Law on the organization of courts<sup>8</sup>, The Law on disciplinary liability of judges<sup>9</sup>, The Law on selection, performance assessment and career of judges<sup>10</sup>.

The conditions of good governance presuppose the proactive involvement of the civil society in the self-governance of justice, ensured through the Councils for the Judiciary at the national level of each state, or, in the Republic of Moldova - by the Superior Council of Magistracy and the Superior Council of Prosecutors, as distinct organizational and

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<sup>7</sup> Law on Superior Council of Magistracy, no.947 of 19.07.1996, *Official Gazette of the Republic of Moldova*, 22.01.2013, no.15-17. Available at:

[https://www.legis.md/cautare/getResults?doc\\_id=133033&lang=ro#](https://www.legis.md/cautare/getResults?doc_id=133033&lang=ro#) (Accessed: October 20, 2022).

<sup>8</sup> Law on judicial organization, no.514 of 06.07.1995, *Official Gazette of the Republic of Moldova*, 19.10.1995, no.58. Available at:

[https://www.legis.md/cautare/getResults?doc\\_id=133014&lang=ro#](https://www.legis.md/cautare/getResults?doc_id=133014&lang=ro#) (Accessed: October 20, 2022).

<sup>9</sup> Law on disciplinary liability of judges, no.178 of 25.07.2014, *Official Gazette of the Republic of Moldova*, 15.08.2014, no.238-246. Available at:

[https://www.legis.md/cautare/getResults?doc\\_id=133038&lang=ro#](https://www.legis.md/cautare/getResults?doc_id=133038&lang=ro#) (Accessed: October 20, 2022).

<sup>10</sup> Law on the selection, performance assessment and career of judges, no.154 of 05.07, *Official Gazette of the Republic of Moldova*, 14.09.2012, no. 190-192. Available at:

[https://www.legis.md/cautare/getResults?doc\\_id=133035&lang=ro#](https://www.legis.md/cautare/getResults?doc_id=133035&lang=ro#) (Accessed: October 20, 2022).

functional structures. Beyond monitoring by the civil society, decision-making transparency in the self-governance of justice also means a degree of public communication, which should be a professional and effective one. Transparency also involves explaining the adopted decisions, in a clear and accessible way to the public. In the contemporary world, any institution, any system of democratic institutions has a tendency to communicate with the society - a reality that must be accepted and improved both at the level of judicial self-governance bodies and at the level of the courts. Communication could be provided both directly or “computer-mediated” or “digitally-mediated”<sup>11</sup> and able to ensure visibility as a prerequisite for transparency and efficiency of justice. “Communication visibility refers to the outcomes of activities through which actors strategically or inadvertently: (a) make their communication more or less available, salient, or noticeable to others, and (b) view, access, or become exposed to the communication of others, as they (c) interact with a particular sociomaterial context”<sup>12</sup>. Press releases, releases prepared by public relations officers working within public authorities are often points of reference for journalistic investigations and for various practical and scientific interpretations. Only through communication, the *fake information* phenomenon can be prevented and combated.

In turn, the principle of transparency in the field of justice is in close connection with another set of principles, specific to civil procedure, criminal procedure (publicity, orality, contradictoriness, solemnity, etc.).

We attest a similar situation in relation to the prosecutor's office. There is a need for communication policies and strategies in the activity of the Superior Council of Prosecutors (in the legal systems in which such a structure operates, distinct from a Council for the Judiciary that is responsible for the overall segment of the judiciary's self-governance) and, to the same extent - at the level of all the components of the prosecution institution. Transparency does not interfere with data confidentiality, with regard to certain cases under the management of the prosecutor's office or of the courts, the principle of legality being the basis of the delimitation of public data from private or secret data. The format and content of the communication – choice of the specialist in charge of public relations –

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<sup>11</sup> M.Z. Yao, R. Ling, What Is Computer-Mediated Communication?—An Introduction to the Special Issue, *Journal of Computer-Mediated Communication*, 2020, vol. 25, pp. 4–8. Available at: doi:10.1093/jcmc/zmz027 (Accessed: October 20, 2022).

<sup>12</sup> J.W. Treem, P.M. Leonardi, Bart, van den Hooff, Computer-Mediated Communication in the Age of Communication Visibility, *Journal of Computer-Mediated Communication*, 2020, vol. 25, issue 1, pp. 44–59. Available at:

<https://doi.org/10.1093/jcmc/zmz024> (Accessed: October 20, 2022).

must be the point of reference in providing explanations and arguments, which are clear and accessible to the public.

This category of civil servants - specialists in public relations, as a rule, is ignored, both in terms of professional training and in terms of social guarantees (they have a symbolic salary). Whereas, in the contemporary reality, where, along with the category of *hard skills*, that of *soft skills or* “expanded competencies”<sup>13</sup>, based on communicative skills<sup>14</sup>, acquires specific contours and distinct value in shaping organizational culture<sup>15</sup>, the respective position in the staff of public authorities, including the judiciary, is to be rethought and revalued. Contemporary society, being an informed and trained one, with strong intentions of knowledge and evaluation, feels the need for qualified communication with the judiciary and with all the public authorities and state institutions. Transparency is a principle able to establish and build bridges of communication between the concerned subjects, as well as to contribute, in this way, to strengthening trust in state agents.

### ***Citizen participation (participation of the civil society).***

Another principle of good governance, which is to be properly implemented in the justice sector as well, is that of citizen participation and of the civil society participation. Apparently, the involvement of the civil society in the self-governance of justice would be reflected only from the perspective of the composition of the Councils for the Judiciary (in many legal systems Councils for the Judiciary admit civil society representatives in their composition). It is also the case of the Republic of Moldova, with reference to the Superior Council of Magistracy and the Superior Council of Prosecutors, including the specialized bodies that operate under the authority of the respective authorities.

However, civil society participation has a complex content. For instance, in Ukraine “civil society organisations active in the judicial sphere have given [...] impetus to judicial reform”<sup>16</sup>. Also, representatives

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<sup>13</sup> J.E. Rebele, E.K. St. Pierre, A commentary on learning objectives for accounting education programs: The importance of soft skills and technical knowledge, *Journal of Accounting Education*, 2019, vol. 48, p. 72. Available at:

<https://doi.org/10.1016/j.jaccedu.2019.07.002> (Accessed: October 20, 2022).

<sup>14</sup> S. Vasanthakumari, Soft skills and its application in work place, *World Journal of Advanced Research and Reviews*, 2019, vol. 03(02), pp. 67-68. Available at: DOI: <https://doi.org/10.30574/wjarr.2019.3.2.0057> (Accessed: October 20, 2022).

<sup>15</sup> A. Masduki, et al., Impact of hard skills, soft skills and organizational culture: lecturer innovation competencies as mediating, *Journal of Education, Psychology and Counseling*, 2020, vol. 2, no.1, pp. 101-121. Available at: <https://ummaspul.e-journal.id/Edupsycouns/article/view/419> (Accessed: October 20, 2022).

<sup>16</sup> G. Mykhailiuk, Current Challenges for the implementation of Constitutional Reform on Judiciary in Ukraine on its way towards European integration, *Journal of*

of civil society should initiate and maintain common communication platforms, aimed to detect, analyze and (self-) evaluate problems and vulnerabilities in justice, in order to find and design solutions to overcome or prevent them and ensure decision-making transparency.

Another manifestation of the principle, under the conditions of a judiciary engaged in achieving good governance, aims at the representation of legal professions (lawyers, for example) in the composition of the Councils for the Judiciary. In this way, the solid weight of the legal profession, as an institution and of the judicial self-governance entities, responsible for the implementation of policies regarding the enhancement of the performance of the judiciary, is *ab initio* recognized.

In the context of the Republic of Moldova, the President of the Union of Lawyers from Moldova should be part of the self-administration bodies of judges and prosecutors, with the limitation of his/her powers in deciding on the magistrates' access in profession, promotion, other aspects of their professional career, which should be assigned exclusively to magistrates and to civil society representatives. Precisely in such conditions, an interaction between liberal professions and public professions in the field of justice is possible, in order to capitalize on the components of good governance oriented towards the self-administration of justice. Regrettably, national legislative regulations are oriented towards diametrically opposed policies. The exclusion of the President of the Union of Lawyers from the composition of the Superior Council of Prosecutors is a regrettable one, limiting the perspectives of capitalizing on good governance in the local social reality.

**Professionalism.** Another principle, characteristic of both good governance and justice, is professionalism. “[H]igh professional standards of a judge are prerequisites in preserving the Right to a fair trial”, “[t]herefore, a strong attitude towards fairness must be included in the professional standards of judges”<sup>17</sup>.

Neglecting professionalism would be able to generate real errors, with serious, sometimes irremediable impact on human rights. The lack of professionalism leaves its mark on the effectiveness of other dimensions as well, such as that of civil society participation.

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*Contemporary European Research*, 2018, vol.14, issue 1, pp.43. Available at: [http://ekmair.ukma.edu.ua/bitstream/handle/123456789/15851/Mykhaylyuk\\_Current\\_challenges\\_for\\_the\\_implementation\\_of\\_constitutional\\_reform\\_on\\_judiciary\\_in\\_Ukraine.pdf?sequence=1](http://ekmair.ukma.edu.ua/bitstream/handle/123456789/15851/Mykhaylyuk_Current_challenges_for_the_implementation_of_constitutional_reform_on_judiciary_in_Ukraine.pdf?sequence=1) (Accessed: October 20, 2022).

<sup>17</sup> M. Šimonis, Effective Court Administration and Professionalism of Judges as Necessary Factors Safeguarding the Mother of Justice – The Right to a Fair Trial, *International Journal for Court Administration*, 2019, vol.10, no.1, pp. 50, 56. Available at: DOI: 10.18352/ijca.294 (Accessed: October 20, 2022).

At the national level, we note a relevant connection between the involvement of the civil society and judicial self-governance in the context of the change in the conceptual composition of the Superior Council of the Magistracy of the Republic of Moldova, in the sense of establishing a numerical parity between judicial and non-judicial members<sup>18</sup>.

Another connection we reveal in the context of the recent adoption of the Law on some measures related to the selection of candidates for the position of member in the self-administration bodies of judges and prosecutors<sup>19</sup>. The law regulates the derogatory way of selecting candidate judges and prosecutors, who are to be presented to the respective Professional Assemblies, which will vote for the election and appointment of representatives in the Judicial Councils (Superior Council of Magistrates and Superior Council of Prosecutors). It is obvious and indisputable that the representatives of the civil society in the composition of the mentioned commissions should meet certain conditions of integrity and professionalism. Because the accession of judges to the composition of the Superior Council of the Magistracy depends directly on the results of the evaluation by the respective independent commission<sup>20</sup>. The independent commission for the evaluation of the candidates' integrity, with a composition of civil society representatives and international experts, is to pay particular attention to the criteria of integrity and professionalism when evaluating the files of judges and prosecutors.

At the same time, starting from the idea that the members of the Superior Council of Magistracy and the members of the Superior Council of Prosecutors - representatives of the professional body and representatives of the civil society have the same status, confirmed by their statutory rights and obligations, then the selection conditions, through the prism of the criteria of integrity and professionalism, should be the same. It would be appropriate for the candidates from among civil society representatives to be preliminarily evaluated by the same independent commission, in order to reduce the risks of political influence in relation to

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<sup>18</sup> Art.3 of the Law on the Superior Council of Magistracy, no.947 of 19.07.1996, *Official Gazette of the Republic of Moldova*, 22.01.2013, no.15-17. Available at: [https://www.legis.md/cautare/getResults?doc\\_id=133033&lang=ro#](https://www.legis.md/cautare/getResults?doc_id=133033&lang=ro#) (Accessed: October 20, 2022).

<sup>19</sup> The law regarding some measures related to the selection of candidates for the position of member in the self-administration bodies of judges and prosecutors, no.26 of 10.03.2022, *Official Gazette of the Republic of Moldova*, 16.03.2022, no.72. Available at: [https://www.legis.md/cautare/getResults?doc\\_id=130320&lang=ro](https://www.legis.md/cautare/getResults?doc_id=130320&lang=ro) (Accessed: October 20, 2022).

<sup>20</sup> Art.3<sup>1</sup> para (1) letter c) of the Law on the Superior Council of Magistracy, no.947 of 19.07.1996, *Official Gazette of the Republic of Moldova*, 22.01.2013, no.15-17. Available at: [https://www.legis.md/cautare/getResults?doc\\_id=133033&lang=ro#](https://www.legis.md/cautare/getResults?doc_id=133033&lang=ro#) (Accessed: October 20, 2022).

the parliamentary majority. Obviously, the decision-making capacity regarding the designation of candidates representing civil society will belong exclusively to the Parliament. But assigning the competence to select these candidates not to the Juridical, Appointments and Immunities Commission of the Parliament of the Republic of Moldova, but to the respective independent commission for evaluating the integrity of judicial candidates (for the composition of the Superior Council of the Magistracy) would objectively and logically fit into the reform policies of justice. The proposals for normative regulation in the field of self-governance of justice are aimed at making the subjects involved in the development and implementation of public policies in the field responsible.

**Principle of responsibility.** Good governance, oriented towards the promotion, achievement and effective restoration of human rights and freedoms, requires the accountability of civil servants and public officials. “Central to the principle of accountability is information sharing and transparency [...], accountability [...] [being] hard to achieve [...] in the absence of access to information”<sup>21</sup>.

Accountability and, above all, responsibility are inherent principles for judges and prosecutors. Currently, the functions of judge and prosecutor, in many legal systems forming a common entity - of magistrates, are based on increased requirements of integrity. By relevance, integrity in the judiciary is often equated with professionalism, which leads us to make certain conceptual delimitations, from a theoretical point of view. The harmonious interaction between these two categories - integrity and professionalism - are more proof of a level of professional legal culture, of the ability to combine professional-legal knowledge with the ability to interpret the law, of the flexibility to adapt in a spirit of integrity to conditions of work and often hostile realities, of the ability to persuade and communicate and even to empathize, without affecting the decision-making process itself. Centrality of empathy with human as a social being can and must be “cognitively managed” through “emotion management”, certain recommendations being possible to encompass in “codes of professional conduct”<sup>22</sup>, especially for judges, for whom impartiality is a fundamental principle and value of the professional activity.

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<sup>21</sup> S. Nag Ninad, Government, Governance and Good Governance, *Indian Journal of Public Administration*, 2018, vol. 64, issue 1, pp. 122-130. Available at: <https://doi.org/10.1177/0019556117735448> (Accessed: October 20, 2022).

<sup>22</sup> B.S. Bergman, Different roads to empathy: stage actors and judges as polar cases, *Emotions and Society*, 2019, vol. 1(2), 163-180. Available at: DOI: <https://doi.org/10.1332/263168919X15653390808962> (Accessed: October 20, 2022).

Professional-legal integrity is not a finality achieved when obtaining a higher education diploma. Integrity has only its beginning in legal education, it finds its theoretical explanation and argumentation in this compartment of professional development, the praxiological support being confirmed and improved in professional legal training and it shows its continuity throughout the professional life. Integrity has a complex content and must not be affected by the political conjuncture. It can be severely damaged if used as a fighting tool against opponents. Likewise, integrity cannot be used to hide certain political and legal interests.

In our opinion, integrity cannot be ensured solely through legal professionalism. Legal culture, complex in essence, justifies the need to correlate legal integrity and professionalism through another philosophical and legal concept – responsibility, as a constitutive element of legal consciousness. Namely, professional-legal responsibility, as a psychological and legal phenomenon, contributes to the configuration of legal integrity and professionalism. All these concepts of philosophical-legal origin confirm the interaction between the professional legal culture and the professional legal conscience of the magistrate, contributing substantially to the strengthening of decision-making transparency, to the prevention and combating of corruption in the judiciary. Moreover, along with the concept of legal culture, the doctrine reveals another concept, less analyzed – that of “judicial culture”, based on “an ethical dimension, encompassing professional values and standards for judicial performance”, “a legal dimension” and “an institutional dimension”<sup>23</sup>, professionalism and responsibility being tangential to each of these dimensions.

Responsibility, perceived as function and quality, in the legal sense would mean the ability of the subject to hold the function and the quality of assuming legal and other consequences for a certain conscious behavior (action or inaction). Responsibility exceeds the limits of legal capacity and is only partially regulated by legal norms. In a psychological sense, responsibility characterizes the individual or the collective, and reflects the attitude towards the conscious and independent activities aimed at realizing the values impregnated in the social environment. We believe that we cannot talk about a legal, moral, religious or other kind of responsibility, simply because the corresponding norms are based on the same value system. A subject is responsible both within the limits of the profession, and outside these limits, in any field of social life.

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<sup>23</sup> E. Mak, N. Graaf, E. Jackson, The Framework for Judicial Cooperation in the European Union: Unpacking the Ethical, Legal and Institutional Dimensions of ‘Judicial Culture’, *Utrecht Journal of International and European Law*, 2018, 34(1), pp.31. Available at: DOI: <https://doi.org/10.5334/ujiel.452> (Accessed: October 20, 2022).

In the context of approaching the professional responsibility of magistrates, it is necessary to emphasize the extended area of professionalism, especially in the conditions of persistent tendencies to diminish the value of justice in the trichotomous structure of state power. Public intentions with a declarative nature regarding the justice reform, the fight against judicial corruption, the need to strengthen the decision-making capacity regarding the judicial act serve as the basis for establishing a latent, well-calculated control over the process of joining the profession, professional training of the magistrate, career promotion, thus affecting the independence of the judiciary. However, any reform process needs to be clear, simple and with minimal political interventions. The limitation of social guarantees, the unclear pressures exerted by promoting inconsistent reforms or by mimicking reforms, crowding the media space with contradictory information, the lack of an adequate level of professionalism of certain subjects responsible for capitalizing on the reform in justice, generate the opposite effect: deficient professionalism, dependency, injustice. Such effects can be observed both in the national legal reality, regardless of the government and political color, as well as in the legal reality of the European space. The experiences of Poland, Hungary and Romania are equally eloquent.

The legislative interventions of 2016-2017 in the justice sector in Poland denote accentuated tendencies to politicize this branch of power, through the involvement of the legislature, the President of Poland and the Minister of Justice - the same Prosecutor General in the administration of justice<sup>24</sup>. The assignment to the Seimas of the power to appoint the members of the National Council of the Judiciary seriously affected the independence and credibility of this body of judicial self-administration; changes in the disciplinary procedure for judges question judicial independence itself<sup>25</sup>.

Although there is an attempt to place responsibility for these vulnerabilities in the area of justice, we are certain that responsibility must be assumed, proportionately, by all the branches of the state power.

“While judges can play their part in sustaining public confidence in the judiciary, there is little they can do against a government bent on cementing its own power. [...] Judges serve as a crucial check on the

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<sup>24</sup> G. Borkowski, O. Sovgyria, Current judicial reform in Ukraine and in Poland: Constitutional and European legal aspect in the context of independent judiciary. *Access to Justice in Eastern Europe*, 2009, no.2(3). Available at:

<https://doi.org/10.33327/AJEE-18-2.3-a000011> (Accessed: October 20, 2022).

<sup>25</sup> A. Duncan, J. Macy, The Collapse of Judicial Independence in Poland: A Cautionary Tale. *Judicature*, Bolch Judicial Institute, 2020-2021, vol.104, no.3, pp.40-50. Available at: <https://judicature.duke.edu/wp-content/uploads/2020/12/DUNCANv2-compressed.pdf> (Accessed: October 20, 2022).

executive and legislative branches, and yet they rely, to an extent, on the respect of those branches to retain their independence”.<sup>26</sup>

Romania and Hungary have also proved to be “fragile rule of law frameworks”: “[...] dimensions of judicial independence that still required to be integrated in the legal and broader legal-cultural, political, and societal frameworks of Hungary and Romania appear to be the personal independence and irremovability of judges, independent decision-making process and autonomy of judges within the judicial organization and the constitutional independence of the judiciary”.<sup>27</sup>

Honest justice cannot exist in a corrupt society, the statement being true also in the opposite sense. Any reform process is characterized by complexity. It is true, the overall effort and financial support is considerable. But only in this way there are chances for the development and completion of a genuine reform with effective social impact. This is in agreement with European recommendations in the field<sup>28</sup>. The reduction of the budget of the judicial authority, the extension of the retirement limit of judges (by invoking special pensions), the ongoing fight against corruption in the field of justice have become topics of electoral politics. They are attempts to exploit latent intentions of political control over the jurisdictional sphere.

Responsibility of judges is a finality of the judicial reform. And, in the absence of a typical legal architecture for justice, which must inevitably include institutional and individual independence, in the absence of a corresponding system of social guarantees, of a transparent system of initial and continuous training, career promotion, this goal becomes an illusory and unachievable one. Similarly, the principle of responsibility and accountability of judges ensures stability of the independence of the judge. The absence of responsibility, as a feature that accompanies any human action, attracts vice and error, mistake, which, in turn, demands accountability<sup>29</sup>. The responsibility of the judiciary is to be preceded by an

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<sup>26</sup> A. Duncan, J. Macy, The Collapse of Judicial Independence in Poland: A Cautionary Tale, *Judicature*, Bolch Judicial Institute, 2020-2021, vol. 104, no.3, 2020-2021, pp. 46, 48. Available at: <https://judicature.duke.edu/wp-content/uploads/2020/12/DUNCANv2-compressed.pdf> (Accessed: October 20, 2022).

<sup>27</sup> P.M. Gyöngyi, *Judicial Reforms in Hungary and Romania. The Challenging Implementation of EU Rule of Law Standards*, Thesis to obtain the degree of Doctor from the Erasmus University of Rotterdam, 2019, pp.206. Available at: <https://repub.eur.nl/pub/124331/> (Accessed: October 20, 2022).

<sup>28</sup> Recommendation (94)12 of the Committee of Ministers on the Independence, Efficiency and Role of Judges, Strasbourg. Available at: <https://rm.coe.int/cmrec-2010-12-on-independence-efficiency-responsibilites-of-judges/16809foo7d> (Accessed: October 20, 2022).

<sup>29</sup> L. Barac, Răspunderea și Responsabilitatea – garanții ale independenței justiției [Accountability and Responsibility – guarantees of the independence of justice]. Available

analysis of the relevant issues. Depending on the field, on the specialization, the problem can be of a different nature, being necessary to be solved accordingly: for instance, through the lens of criminal justice, civil justice, administrative litigation and even through the lens of constitutional jurisdiction. Even if “judicial quality is not only limited to the quality of the decisions or the existences of appeal and higher courts”, “the existence of a High Court, Supreme Court and/or Constitutional Court must be seen in the light of judicial quality”<sup>30</sup>.

As factors that could contribute to enhancing responsibility of the national judiciary and, as a result - to increasing the quality of the judicial act and trust in the judiciary, we mention: a) the existence of a coherent and qualitative legislative system; b) implementation of transparent measures and mechanisms for access and promotion in the professional career; c) organization of a representative system of (self-)administration of the judicial authority and of the prosecution institution; d) recognizing and guaranteeing the possibility of (self-)reforming the judiciary, including through collaboration between the judiciary, the competent ministry (Ministry of Justice in the case of the Republic of Moldova) and civil society; e) initiating and strengthening a constructive dialogue on justice issues; g) strengthening the legislation aimed at fighting corruption; i) emphasizing the value of justice by boosting a professional social climate in the field; j) strengthening the activity of professional associations in the sphere of justice; f) the organization of an analytical, scientific-practical center in the field of the organization and operation of justice.

To identify the factors that would contribute to the process of enhancing the responsibility of judges, in order to strengthen their decision-making capacity, we believe that it would be opportune to capitalize on certain reform objectives, primarily focused on the promotion of the rule of law and human rights. It would be the same wave of approach reflected in the *Global Governance Indicators*, which specify dimensions of governance (“voice and accountability”, “political stability and absence of violence”, “government effectiveness”, “regulatory quality”, “rule of law”, “control of corruption”)<sup>31</sup> and basic principles of justice, as a sector of governance (non-formal conflict resolution processes, equal

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at: <https://www.juridice.ro/166521/raspunderea-si-responsabilitatea-garantii-ale-independenei-justitiei.html> (Accessed: October 20, 2022).

<sup>30</sup> P. Albers, *The assessment of court quality: a breach of the independence of judiciary or a promising development*, Council of Europe, 2008, p.2. Available at: <http://sites.estvideo.net/laurens1/web-content/pdf/courtqualassessment3.pdf> (Accessed: October 20, 2022).

<sup>31</sup> Worldwide Governance indicators. Available at: <https://archive.ph/eypt> (Accessed: October 20, 2022).

access to justice for all citizens, human rights incorporated in the national practice, court collaborators are responsible, clarity in the administration of justice, efficiency of the legal system)<sup>32</sup>.

**As a part of good governance mechanism, justice should be approached in a wider context**

If previously we addressed only the aspect of self-governance of justice in the conditions of good governance, the indicators and principles in the field of justice characterize Justice as a whole.

**Non-formal conflict resolution processes.** Non-formal conflict resolution processes aim to reduce the workload for judges and courts, by capitalizing on alternative forms of dispute resolution, such as, for instance, the case of mediation, as a form of social justice. Mediation is carried out through social conciliation and allows magistrates to focus on particular cases, thus strengthening the quality of the judicial act and saving public funds.

Another way would be the involvement of local leaders, representatives of civil society, who would be able to contribute to the solution of certain problems, disputes.

Equally important is the psychological training of the collaborators of the police bodies, at the sector level, in order to train conflict resolution skills not only in the framework of procedural actions. However, the purpose of their activity is not limited only to the identification of delinquents, but first of all to prevention. “[...] It can be assumed that police officers face situations that are highly emotionally charged and they could be overwhelmed by those emotions. Works on emotion regulation and cognitive abilities would help [...] police officers in their daily duty”<sup>33</sup>. The training of specific skills, which would help them react adequately in risk situations and be more effective, in terms of performance, would be necessary from the beginning at the stage of higher education<sup>34</sup>.

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<sup>32</sup> T. Saptefrati, Buna guvernare: caracteristici, dimensiuni și metode de evaluare [Good governance: characteristics, dimensions and assessment methods], *Administrarea Publica [Public Administration]*, 2015, nr. 3(87), pp. 25. Available at: <http://aap.gov.md/files/publicatii/revista/15/3.pdf> (Accessed: October 20, 2022).

<sup>33</sup> S. Cojean, N. Combalt, A. Taillandier-Schmitt, Psychological and sociological factors influencing police officers' decisions to use force: A systematic literature review, *International Journal of Law and Psychiatry*, 2020, vol. 70, 101569. Available at: <https://doi.org/10.1016/j.ijlp.2020.101569> (Accessed: October 20, 2022).

<sup>34</sup> V. Bondarenko, I. Okhrimenko, I. Tverdokhvalova, K. Mannapova, K. Printenko, Formation of the Professionally Significant Skills and Competencies of Future Police Officers during Studying at Higher Educational Institutions, *The Romanian Journal for Multidimensional Education*, 2020, 12(3), pp.246-267. Available at:

<https://doi.org/10.18662/rrem/12.3/320> (Accessed: October 20, 2022).

**Access to justice for all the citizens.** The principle of access to justice for all the citizens is closely connected with the administrative and functional architecture of the legal profession. The efficiency of the organization, the clarity in the administrative actions, the theoretical and practical value of the intellectual heritage of the legal profession constitute the condition that supports, for the most part, free access to justice for all the citizens of the state. An efficient monitoring of case categories, of the interaction between lawyers working on a contract basis and lawyers providing legal aid guaranteed by the state, access to legal training, direct access to the profession, the ability to organize a constructive dialogue with public authorities responsible for monitoring the implementation of policies in the field of justice, the ability to influence certain reforms in different branches of law, identifying and skillfully solving problems, deficiencies faced by justice, even “[e]ducating clients and opponents”<sup>35</sup> - all these are capabilities inherent to the lawyers corps, as representatives of the liberal profession in the justice sector. The role of lawyers in protecting human rights is substantial.

**Human rights incorporated in national practice.** Effective justice also requires a periodic and continuous reassessment of the legal and legislative system. In the legal system of the Republic of Moldova the priority of international regulations in the field of human rights is enshrined <sup>36</sup> (Universal Declaration of Human Rights <sup>37</sup> , European Convention on Human Rights <sup>38</sup> and its jurisprudence). Republic of Moldova, as a state that intends to become a candidate for joining the European Union, needs to adjust the legal system with the EU *acquis* and one of the essential areas belongs to human rights and freedoms. A new approach is needed for the process of adopting normative acts and for the subjects involved. In the same way, new training requirements for future judges, prosecutors and exponents of other legal professions are taking

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<sup>35</sup> J.K. Robbennolt, V.D. Amar, The Role of Lawyers and Law Schools in Fostering Civil Public Debate, *Connecticut Law Review*, 2021, 451, vol.52, no.3, p. 1105. Available at: [https://opencommons.uconn.edu/law\\_review/451](https://opencommons.uconn.edu/law_review/451) (Accessed: October 20, 2022).

<sup>36</sup> Art.4 of the Constitution of the Republic of Moldova, no.1 of 29.07.1994, *Official Gazette of the Republic of Moldova*, 29.03.2016, no.78. Available at:

[https://www.legis.md/cautare/getResults?doc\\_id=128016&lang=ro#](https://www.legis.md/cautare/getResults?doc_id=128016&lang=ro#) (Accessed: October 20, 2022).

<sup>37</sup> Universal Declaration of Human Rights, adopted by the UN General Assembly in Paris on 10 December 1948. Available at: <https://www.ohchr.org/en/universal-declaration-of-human-rights> (Accessed: October 20, 2022).

<sup>38</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 1950. Available at: [https://www.echr.coe.int/documents/convention\\_eng.pdf](https://www.echr.coe.int/documents/convention_eng.pdf) (Accessed: October 20, 2022).

shape, with an emphasis on the axiology of human rights. Maybe “the introduction of so-called transitional justice mechanisms”, including “the process of replacing old staff” examined in the context of the justice reform in Georgia could also be useful for the reality of the Republic of Moldova<sup>39</sup>.

***The court staff is accountable.*** We believe that we are in the area of responsibility, not of accountability in the narrow sense. Confusion of terms generates ambiguities including in practical terms. The conscious attitude towards the activity carried out, the opening of justice as a public service are valuable indicators of justice under the conditions of good governance. The requirement does not only concern magistrates, as recipients, but all officials in the field of justice. The Judicial Councils, the judicial managers must be concerned with building a true organizational responsibility. If organization of justice is not logically grounded, the functional responsibility of individual magistrates will undoubtedly suffer. The judicial map, legislative stability, career stability, attractive social guarantees, decision-making transparency of the Judicial Councils, their coherent and legal activity, the adequate workload of judges and its evaluation can contribute to strengthening the decision-making responsibility of judges and prosecutors. However, the litigant must have a positive attitude towards the agents of the judiciary and towards the justice service in general. Court departments (chancellery, archives, etc.) also need to be involved, as recipients, in the implementation of functional accountability policies, as they are where the formation of the first perceptions and attitudes in relation to justice begins.

***Clarity in administration of justice.*** In the context of clarity in administration, we refer, first of all, to the way of formation and to the functional powers of the Judicial Council (such as is, in the Republic of Moldova, the Superior Council of Magistracy, the Superior Council of Prosecutors and their subordinate bodies). In terms of good governance, it is essential that the policies developed and coordinated with the Ministry of Justice are followed by logical, fair implementation, without political influences. The Superior Council of Magistracy is the guarantor of the independence of the judicial authority. We do not intend to initiate a discreditation of the reform process in the national justice sector (with reference to the legal system of the Republic of Moldova) but emphasize the proactive role that the Superior Council of the Magistracy should have

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<sup>39</sup> T. Erkvania, B. Lebanidze, *The Judiciary Reform in Georgia and its Significance for the Idea of the European Integration*, Policy Brief, Georgian Institute of Politics, 2021, no 31, p.5. Available at: <https://new.gip.ge/wp-content/uploads/2021/01/GIP-Policy-Brief-31.pdf> (Accessed: October 20, 2022).

in carrying out this system of reforms. Clear conditions for career access and promotion, for occupying managerial positions, the development of integrity policies and their uniform and consistent application, the establishment of the procedure for the defense of professional reputation, ensuring transparent communication regarding the stages implemented and/or in progress of policy implementation - are priority objectives which are in logical connection with the principle of clarity in the administration of justice. However, under conditions of good governance, judicial control and the validation of the supremacy of law are inseparable from the independence, impartiality, accessibility, fairness, timeliness and competency of the judicial authority – “central values” which confer uniqueness to courts, in comparison with other public organizations and ensure that “[c]ourts do not operate in the «blind»”<sup>40</sup>.

**Efficiency of the legal system.** As an indicator of good governance, efficiency fits harmoniously, along with other indicators, in the affirmation of the supremacy of law and the rule of law, “viewed as a political ideal, a mechanism for curtailing the abuse of power as well as a mechanism for ensuring that society upholds certain values, for example, human rights” <sup>41</sup> . Consistency and coherence of normative-legal regulations, effective interaction of state authorities and institutions in the sphere of law enforcement, clarity and quality of legal norms are elements characterizing efficiency. “Law has to be rooted in culture in order to be legitimate”<sup>42</sup>. As a strong point that should be emphasized, the supremacy of law can justify, in certain situations, the prevalence of moral norms and not of legal norms. “[I]n the exercise of office, and not outside the sphere of their duties, judges should take into account overriding moral values

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<sup>40</sup> P. Albers, *Quality of courts and judiciary: European experiences and global developments*. Council of Europe, pp.3. Available at:

<http://sites.estvideo.net/laurens1/web-content/pdf/quality.pdf> (Accessed: October 20, 2022).

<sup>41</sup> S. Greenstein, Preserving the rule of law in the era of artificial intelligence (AI), *Artificial Intelligence and Law*, 2022, vol. 30, 291–323. Available at: <https://doi.org/10.1007/s10506-021-09294-4> (Accessed: October 20, 2022).

<sup>42</sup> M. Ugo, Foreign Inspired Courts as Agencies of Peace in Troubled Societies. A Plea for Realism and for Creativity, *Global jurist Topics*, 2002, vol. 2(1), Paper presented at the United Nations Conference *Rebuilding Legality. The Case of Somalia*, held in Rome December 11-13, 2001. Available at:

[http://repository.uchastings.edu/faculty\\_scholarship/1146](http://repository.uchastings.edu/faculty_scholarship/1146) (Accessed: October 20, 2022).

that should be implemented by the legal order, and not the values or declarations guiding the government policies”<sup>43</sup>.

The policies promoted by the government in this area are quite promising, at least at the national level. The adjustment of the legislation to the Administrative Code of the Republic of Moldova, including the amendments to the content of this Code, the revision of the procedural-criminal legislation (vital regulations for strengthening the functional activity of the Prosecutor's Office, especially in the criminal investigation department), of the legislation regarding the organization and operation of the legal profession, of the judicial authority, of other normative acts in important social fields. Such processes must be complex and objective; otherwise, would be created an impression of conjunctural reforms aimed at establishing political control.

**Conclusion.** Justice is a key element for strengthening and achieving good governance. It is correct that the reform and social development processes start with the modernization of justice. Judicial failures can compromise the very nature of good governance. At the same time, reforms must be carried out simultaneously in all areas of public life, placing emphasis on the need to increase integrity only concerning the representatives of the judicial authority being an erroneous approach, capable of generating doubts in the consistency and correctness of the adopted and promoted policies. In the hope that the reform process at the national level (regarding the Republic of Moldova) will expand its areas and dimensions of valorization, we express optimism in the capacity of affirmation of a functional state of law, in an area liable to be equated with good governance as genuine form of caring for society and not just a “buzzword” or “fashionable” concept<sup>44</sup>.

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<sup>43</sup> M. Pilich, Disobedience of Judges as a Problem of Legal Philosophy and Comparative Constitutionalism: A Polish Case, *Res Publica*, 2021, vol.27, pp.593–617. Available at: <https://doi.org/10.1007/s11158-021-09501-8> (Accessed: October 20, 2022).

<sup>44</sup> L.K. Ghosh, Good Governance in Public Administration, *International Journal of Mutidisciplinary Educational Research*, 2021, vol.10, issue 12(4), pp.39, 44. Available at: DOI: <http://ijmer.in.doi./2021/10.12.66> (Accessed: October 20, 2022).

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