

Monitoring the process of re-setting the anticorruption system

(October 2017 - June 2018)

For the reference period, in the anti-corruption field, there are several key issues to be mentioned:

- The appointment of the Chair and Vice-Chair of the National Integrity Authority (ANI);
- The appointment of integrity inspectors into service;
- The appointment of the Director and Deputy Director of the National Anti-Corruption Center (NAC);
- The declaration of the unconstitutionality of certain provisions of Law no. 271/2008 regarding the verification of the holders and candidates for public positions (Law 271/2008);
- The declaration of the unconstitutionality of certain provisions of Law no. 132/2016 on the National Integrity Authority (Law No 132/2016);
- The implementation of policy documents in the field.

Appointment of the Chair and Vice-Chair of the National Integrity Authority (NIA)

The competition for the appointment of NIA Chair and Vice-Chair continued with difficulties¹. On October 9,² due to the failure to pass the polygraph test by the candidates Victor Strătilă and Teodor Cârnat, the Integrity Council (IC) decided to announce a new contest to fill the position of the Chair of NIA.³ Later, on November 27,⁴ candidates Rodica Antoci, Francisco Talmaci and Lidia Chireoglo were admitted to the competition. The results of the competition have been validated on December 22⁵, but on December 29,⁶ Rodica Antoci was appointed as the Chair of the NIA.

As for the position of Vice Chair of NIA, on October 23, 2017⁷, Lilian Chisca and Francisco Talmaci were admitted to the contest. The results of the contest were validated on December 6⁸, and Lilian Chisca was appointed as vice-president of ANI on December 21st⁹.

In addition to the fact that the contest lasted for a year, it is worth noting that, despite the regulations in force, the applicants were not checked by the Security and Intelligence Service (SIS) for appointment to office. It is also worth mentioning that the appointments were made despite the inconclusive results of the polygraph test.

The appointment of integrity inspectors into service

By the decision of the CI nr. 02 of February 21, 2018, the Regulation on the contest for filling the position of integrity inspector was adopted¹⁰. The regulation became applicable on April 2, 2018, the date of its publication in the Official Gazette of the Republic of Moldova. The normative act establishes the procedure for organising and conducting the contest, the way of setting up, the composition and attributions of the competition commission, as well as the attributions of other subjects involved in the

¹ See for details the 2018 PromoLex, <https://promolex.md/wp-content/uploads/2018/06/Monitorizarea-modului-de-ocupare-incetare-a-functiei-publice-2017.pdf>.

² Decision of the Integrity Council on the results of polygraph tests, nr. 6 of 09.10.2017, <http://ani.md/sites/default/files/documente/Hotarire.pdf>.

³ Announcement on the repeated contest for the position of Chair and Vice-Chair of NIA published on October 10, 2017, deadline for the application being November 6, 2017, <http://ani.md/ro/node/26>.

⁴ Minutes of the meeting of Integrity Council, nr. 35 of 27.11.2017, <http://ani.md/sites/default/files/documente/Proces-verbal%20nr.%2035%20C8%99edin%C8%9B%C4%83%20Consiliu%2027.11.2017.pdf>.

⁵ Minutes of the meeting of Integrity Council, nr. 38 din 22.12.2017, <http://ani.md/ro/node/30>.

⁶ Decree of the President nr. 543 din 29.12.2017 on appointing Ms. Rodica Antoci in the function of Chair of the NIA, Monitorul Oficial al RM, 2017, nr. 471-472, art. 821.

⁷ Minutes of the meeting of Integrity Council on the admission of the candidates to the contest for the position of Vice-Chair of the NIA, nr. 8 din 23.10.2017,

<http://ani.md/sites/default/files/documente/Hotararea%208%20din%2023.10.2017.pdf>.

⁸ http://www.realitatea.md/ultima-ora--lilian-chisca-a-trecut-testul-la-poligraf-si-va-fi-propus-presedintele-tarii--pentru-a-fi-numit-in-functia-de-vicepresedinte-al-ani_68398.html.

⁹ Decree of the President nr. 507 of 21.12.2017 on appointing Lilian Chișca in the function of Vice-Chair of the NIA, Monitorul Oficial al RM, 2017, nr. 451-463, art. 784.

¹⁰ Minutes of the meeting of Integrity Council nr. 2 of 21.02.2018 on the adoption of the Regulation on the contest for filling the position of integrity inspector, Monitorul Oficial al RM, 2018, nr. 113-120, art. 488, <http://ani.md/ro/node/168>.

process of organising and conducting the contest. The contest itself was launched on April 12th¹¹, the deadline for submission of applications was May 4th. The contest was announced for 9 positions, to which 43 submissions were submitted¹². During the meeting of May 15th, the Commission for organising and conducting the competition to fill the role of integrity inspector did not admit 11 of the 43 candidates. The reason given was the inappropriateness of the persons concerned to apply for the integrity inspector¹³.

The written test for candidates was held on May 21, with 30 candidates being presented, of which only 10 passed it¹⁴. Latterly, on May 28, six candidates passed the interview¹⁵. The results of the contest were announced on June 11, 4 candidates being announced as winners¹⁶.

It is noteworthy that NIA has 76 positions/units (integrity inspectors, civil servants, technical personnel). The staff limit and the structure of NIA was set on February 8, 2018, by Parliament's Decision no. 09¹⁷. It is not clear why the contest was only launched for 9 integrity inspector functions. The staff of the Integrity Inspectorate (ANI subdivision invested directly with control functions) consists of 43 units (integrity inspectors)¹⁸. An eventual cause could be a budget inappropriate for the wage conditions of integrity inspectors, and the budget is not revised by Parliament. According to the annual budget plan 2018, NIA was allocated 5 573.2 thousand lei, which is by 327.4 thousand lei less than the 5 900.6 thousand lei allocated for 2017¹⁹. Obviously, the 4 employed Integrity Inspectors can not meet the needs of the NIA is not met and the perspective of efficiently verifying the declarations of wealth and personal interests is seriously jeopardized. We recall that the control activity was suspended from August 2016, with ANI remaining virtually inoperative for two years.

Appointment of the Director and Deputy Director of the National Anti-corruption Centre (NAC)

The competition to fill the position of director of the NAC was organized and carried out by Parliament's Legal Commission, Appointments and Immunities²⁰. It is worth mentioning that, in fact, the legal provisions regarding the competition have not been developed²¹. Regulation on the competition for the selection of the candidate for the position of director of the National Anticorruption Centre, approved by the Decision of the Legal Commission, appointments and immunities of Parliament, CJ no. 197a of 18.10.2017²², contains only two points. These refer to the requirements submitted to the candidate as well as the procedure for submitting the dossiers.

The contest was announced on October 19²³, the deadline for submission of the files was November, 29. There were 6 participants in the contest²⁴, the winner being Bogdan Zumbreanu, who is appointed

¹¹ NIA announces a contest for filling the position of special public function of integrity inspector starting with April 12, 2018, <http://ani.md/ro/node/307>.

¹² <http://ani.md/ro/node/319>.

¹³ <http://ani.md/ro/node/328>.

¹⁴ <http://ani.md/ro/node/329>.

¹⁵ <http://ani.md/ro/node/334>.

¹⁶ <http://ani.md/ro/node/342>.

¹⁷ Decision of the Parliament nr. 09 din 08.02.2018 on the adoption of the structure and number of staff members of the NIA, Monitorul Oficial al RM, 2018, nr. 48-57, art. 125.

¹⁸ NIA organigram, <http://ani.md/ro/node/14>.

¹⁹ NIA, Activity Report of NIA for January – March 2018, p. 7, <http://ani.md/ro/node/147>.

²⁰ Report PromoLex 2018, pp. 33-34, <https://promolex.md/wp-content/uploads/2018/06/Monitorizarea-modului-de-ocupare-incetare-a-functiei-publice-2017.pdf>.

²¹ Provisions regarding the appointment of the director and deputy director of the CNA are in Art. 8 of the Law no. 1104/2002 on the National Anticorruption Center.

²² Decision of the Legal Commission, Appointments and Immunities "On the announcement of the contest for the selection of the candidate for the position of director of the National Anticorruption Center", CJ no. 197a of 18.10.2017, <http://www.parlament.md/LinkClick.aspx?fileticket=0YeX3pU9UUc%3d&tabid=248&language=ro-RO>.

²³ Announcement regarding the competition for the selection of the candidate for the position of director of the National Anticorruption Center, <http://www.parlament.md/Actualitate/Concursuripublice/tabid/248/ContentId/3426/Page/0/language/ro-RO/Default.aspx>.

on 15 December 2017 as Director of the NAC by the Parliament Decision no. 286²⁵. It is worth mentioning that Parliament's webpage practically does not contain information about this competition. Applicants were exempted at the filing stage of their presentation of the vision of the NAC development strategy. Similarly, the written test was dropped. Regardless of the regulations, neither the civil society representatives, nor the representatives of the academic media were involved in organising and conducting the contest.

Regarding the Deputy Director of the CNA, Lidia Chireoglo was appointed to this position on May 11, 2018. The nomination was made on the proposal of the Director of NAC, following the contest organized and carried out by this institution.

Declaring the unconstitutionality of certain provisions of Law no. 271/2008

By the Constitutional Court's Decision no. 32 of December 5, 2017²⁶, some provisions of Law no. 271/2008 (Articles 5 (e) and 15 (2), (4) and (5)) were declared unconstitutional in the part relating to the examination of candidates for the position of judge and judges who are already holding these positions. In our opinion, the arguments of the Constitutional Court are not sufficiently convincing.²⁷ We will only refer to one - the political dependence of the verification body, information and security service (ISS). It is noteworthy that, whenever it is convenient, the national institutions resort to this argument - the lack of political independence of an authority. With reference to this argument, starting from appointment, political dependence can equally be accused of judges, vice-presidents and the president of the Supreme Court of Justice. These, also, are appointed by the Parliament. In the same way, the independence of the Constitutional Court could also be disputed. We recall that two of the six members of the Constitutional Court are also appointed by the Parliament.

Law no. 271/2008 has deficiencies, including the advisory Vs. compulsory nature of ISS opinions or the mode of contesting the actions of ISS. The imperfections of the legal provisions are also proven by the many cases of appointment of judges, or their promotion despite the risk factors identified by the ISS²⁸. However, legislative shortcomings could be overcome by legislative amendments²⁹.

In our opinion, in the case of judges and candidates for the position of judge, checking their past is justified and timely. This was also one of the issues assessed in the year 2016 by the Group of States Against Corruption (GRECO) in the fourth round of evaluation. GRECO was deeply concerned about the fact that some of the candidates for whom risk factors have been identified are called judges.

In this context, GRECO recommended that actions be taken to ensure that persons who pose risks of integrity are not appointed or promoted to the office of judge³⁰. The RM is to comply with the recommendation and communicate the GRECO activities by January 31, 2018.

Declaring the unconstitutionality of certain provisions of Law no. 132/2016

²⁴ Victor Mosneag, About the six candidates for CNA director: a political affiliate, one targeted in an investigation, another dismissed for incompetence, <https://www.zdg.md/stiri/stiri-justitie/detalii-despre-cei-sase-pretendenti-la-functia-de-director-al-cna-un-afiliat-politic-unul-vizat-intr-o-investigatie-altul-demis-pentru-incompetenta>.

²⁵ Parliament's decision on the appointment as director of the National Anticorruption Center, nr. 286 din 15.12.2017, Monitorul Oficial al RM, 2017, nr. 440, art. 735.

²⁶ Constitutional Court Decision no. 32 of 05.12.2017 on the objection of unconstitutionality of certain provisions of Law no. 271-XVI of December 18, 2008 regarding the verification of the holders and candidates for public positions (verification of judges by the Information and Security Service) (sesisation nr. 115g/2017), Monitorul Oficial al RM, 2018, nr. 40-47, art. 14.

²⁷ Promo-LEX report, 2018, pp. 15-18, <https://promolex.md/wp-content/uploads/2018/06/Monitorizarea-modului-de-ocupare-incetare-a-functiei-publice-2017.pdf>.

²⁸ Anastasia Nani, Victor Moşneag, Judges with nine lives, <https://anticoruptie.md/ro/investigatii/justitie/judecatorii-cu-noua-vieti->.

²⁹ Report on the assessment of the level of implementation of anticorruption instruments in the judiciary, CAPC, 2017, pp. 52-53, http://capc.md/files/RAPORT%20DE%20EVALUARE_FINAL_2.05.2017_versiune%20finala.pdf.

³⁰ Moldova's Evaluation Report adopted by GRECO at its 72nd Plenary Meeting, Strasbourg, 27 June - 1 July 2016, §§ 98, 101-102,

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c9b1a>.

On April 10, 2018, the Constitutional Court declared unconstitutional the text "and who passed the simulated (polygraph) behavioural detector test" in Art. 11 par. (12) of the Law no. 132/2016³¹. Thus, the result of the polygraph test is no longer mandatory for the position of Chair and Vice–Chair of NIA. In fact, by this provision the text of the law is brought into line with the international and national standards in the field³². The Constitutional Court has held that the contested provisions may contribute to the selection of persons with no integrity problems for position of the Chair and Vice-Chair of the NIA and prevention of corruption within this institution. However, the legal provisions cited have been declared unconstitutional, starting from the uncertainty in some cases of the results of the polygraph test³³, but also from the legal provisions, according to which the results of the polygraph test are presumptive and indicative and can not constitute incontestable evidence in any procedure. From this perspective, the requirement of positive support for the polygraph test was considered a disproportionate measure, affecting the right to participate in the administration of public affairs and the right to work.

Nevertheless the Constitutional Court has not been able to remove all the deficiencies in the field. Without an essential review of the relevant legal framework, it is impossible to make this anticorruption instrument more efficient³⁴.

Implementation of policy documents in the field

Authorities report on the implementation of the National Integrity and Anti-Corruption Strategy for 2017-2020 with a considerable delay. In the spring of 2018, the monitoring groups of the strategy implementation process hear the first report in this regard.³⁵

Regarding the Justice Sector Reform Strategy for 2011-2016³⁶, the authorities have, in fact, recognized the failure in this process³⁷. A concept of the so-called Little Justice Reform³⁸ was presented by the Ministry of Justice. Thus, in the view of the authority, in order to ensure fair justice, the reform is to be based on: reforming the judiciary and assessing the integrity of all judges; restructuring the judiciary (finalizing the judicial map reform); strengthening accountability mechanisms for judges; strengthening the independence of the judiciary; increasing the efficiency and transparency of the judiciary; the reform of the system attorney services and the Constitutional Court.

The problem, however, is that authorities are so discredited in these efforts that reforms can no longer be treated seriously. Alexandru Tanase, the Minister of Justice, who launched the idea of the Small Justice Reform, after a massive media scandal, resigned³⁹. There was an audio recording in the public space where he spoke amicably with Veaceslav Platon, who was later convicted in the bank frauds file.

³¹ Constitutional Court Decision no. 6 of 10.04.2018 on the objection of unconstitutionality of some provisions of Law no. 269 of December 12, 2008 regarding the application of the simulated behavior detector test (polygraph) and Law no. 132 of 17 June 2016 on the National Integrity Authority (polygraph test) (Sesisation nr. 147g/2017), Monitorul Oficial al RM, 2018, nr. 157-166, art. 76.

³² Monitoring the employment / cessation of public functions in 2017, Promo-LEX, Chişinău, 2018, p. 20, <https://promolex.md/wp-content/uploads/2018/06/Monitorizarea-modului-de-ocupare-incetare-a-functiei-publice-2017.pdf>.

³³ It is the provisions of art. 22 par. (1) lit. j) of Law no. 269/2008 on the application of the simulated behavior detector test (polygraph).

³⁴ Report on the assessment of the level of implementation of anticorruption instruments in the judiciary, CAPC, 2017, pp. 54-60, http://capc.md/files/RAPORT%20DE%20EVALUARE_FINAL_2.05.2017_versiune%20finala.pdf.

³⁵ Parliament's Decision no. 56 of March 30, 2017 regarding the approval of the National Integrity and Anticorruption Strategy for the years 2017-2020, Monitorul Oficial al RM, 2017, nr. 216-228, art. 354.

³⁶ Law no. 231 of 25.11.2011 for the approval of the Justice Sector Reform Strategy for 2011-2016, Monitorul Oficial al RM, 2012, nr. 1-6, art. 6.

³⁷ Ministry of Justice, The Small Reform of Justice, General Considerations, <http://justice.gov.md/pageview.php?l=ro&idc=714&>.

³⁸ Ministry of Justice, The Small Reform of Justice, Strategic Directions, Concept, <http://justice.gov.md/pageview.php?l=ro&idc=715&>.

³⁹ The reasons put forward by Alexandru Tanase for resigning from the post of minister and leaving the public service <https://www.zdg.md/stiri/stiri-justitie/motivele-invocate-de-alexandru-tanase-pentru-demisia-din-functia-de-ministru-si-iesirea-din-serviciul-public>.

More seriously, the recent events in the new local elections for the mayoralty of Chisinau have shattered any illusions about the independence and integrity of justice sector. Andrei Nastase's notorious case has demonstrated the profound politicization of the Judiciary, which not only raises questions as to the effectiveness of national anti-corruption mechanisms but also signals serious problems in ensuring democracy in the Republic of Moldova. In essence, Andrei Nastase's case has shown that whatever the electoral performances of one or another candidate can be overturned by unjust and allogical court judgments. This can not be without prejudice to any electoral exercise, and the current government can not be entrusted with reforms.

Final statements:

- The authorities rather mimic, than actually implement, reforms. The process of institutionalisation of NIA lasted practically two years, of which almost a year took the competition procedures to fill the positions of the Chair and Vice-Chair of NIA;
- In spite of compulsory regulations, important anticorruption tools are not applied - candidates for the positions of Chair and Vice-Chair of the NIA have not been subject to ISS verification;
- The authorities are tempted to abandon verification procedures for certain categories of functions. Declaring the unconstitutionality of the legal provisions on the verification by the ISS of holders and candidates for judges could serve as a precedent for other categories of public officials who are tempted to gain a more lenient employment and promotion status;
- Anti-corruption tools remain confusing and inefficient. This is the case for the polygraph test. Both the Chair and Vice-Chair of the NIA were appointed to positions despite the inconclusive results of the polygraph test, it being obvious that in such cases the test failed and needs to be repeated;
- Even if the integrity inspectors have lasted less (4 months) for the contest procedures, the four appointed integrity inspectors will not cover the need to control the wealth and personal interests. Obviously, under such conditions, any statements regarding the successful institutionalization of NIA can only be treated as an insult to common sense and reason;
- The contest procedures are discredited, the authorities being tempted to quit from several procedures (written test, training of representatives of civil society and the academic environment) - this is the case for the replacement of the position of director of NAC;
- the experiences of implementing policy documents have failed to consolidate the image of the real reformer of the Government, and the Năstase case is just the beginning of a profound political and values crisis that can no longer be overcome by analyzes, conceptions, strategies and plans actions.

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