



STATEMENT

ONLY THE GOVERNMENT AND THE JUDICIAL SYSTEM ARE RESPONSIBLE FOR FAILURES IN THE JUSTICE SECTOR

11 July 2018

The member organizations of the National Platform of the Eastern Partnership Civil Society Forum, signatories to this Statement, express their deep concern and indignation regarding the current Government's shrinking from the responsibility for the failure of the justice sector reform and shifting it to the development partners and civil society.

On 5 July 2018, the European Parliament adopted [a resolution on the political crisis in Moldova following the invalidation of the mayoral elections in Chisinau](#). The European Parliament, among other things, expressed its grave concern over the further deterioration of democratic standards in Moldova, as well as regarding the lack of independence of the judiciary, urging the European Commission to suspend budgetary support and macro-financial assistance for the Republic of Moldova. The [High Representative for Foreign Affairs and Security Policy/Vice-President of the European Commission, Federica Mogherini](#), confirmed the decision to put on hold the disbursement of the first tranche of the macro-financial assistance reserved for the Republic of Moldova.

On 6 July 2018, the Ambassador of the European Union (EU) and the ambassadors of EU member states to Chisinau met with the Prime Minister Pavel Filip and the members of the Cabinet to inform them about the EU position after the invalidation of elections in Chisinau. After the meeting, [the Delegation issued a brief statement](#).

[On 7 July 2018, the Cabinet of the Republic of Moldova issued a press release](#) with its own clarifications regarding the meeting of 6 July. According to the press release, the resolution of 5 July 2018 is wrongful towards the Government and is politically charged, noting that „[...] all commitments to receive EU funding have been fulfilled, and the decision to suspend the funding is unjustified and represents an interference into the internal policy of the Republic of Moldova”. Moreover, the press release states that the Prime Minister has called the attention of the EU Ambassadors to the fact that **„if things are not going as they have to in the justice sector, it is the responsibility of both the Government and the European partners as well as of the representatives of civil society who participated in the implementation of the justice sector reform”**. The Prime Minister also noted that the information sent by the EU Delegation to Chisinau to the European officials is incomplete and asked for „this approach to be revised and notes sent to be objective”.

In this context, we express our grave concern and indignation regarding:

- the way in which the Cabinet and the Government as a whole has chosen to react to the resolution of the European Parliament of 5 July 2018 and to the EU position on the invalidation of the election results in Chisinau municipality expressed by the EU Ambassadors accredited to the Republic of Moldova and the unprecedented language to which a high-ranking official of the Republic of Moldova has resorted, making unfair accusations regarding the way of the EU Delegation to Chisinau is informing the European officials, even giving instructions to foreign diplomats regarding what kind of information they should send to the EU institutions. We should note that such worrying communication practices are

inadmissible in accordance with diplomatic customs and do not comply with the spirit of bilateral relations and values set forth in the Association Agreement between the Republic of Moldova and the European Union, endangering good relations with a key partner for the sustainable development of the country, as well as

- the Government's shrinking from the responsibility for the state of affairs in the justice sector, shifting the responsibility for the failures of the justice sector reform to development partners and civil society representatives. The remarks about the responsibility of the European partners and civil society for the lack of progress in the reform of the justice sector are unacceptable, as progress has not been achieved mainly due to lack of political will or, even worse, due to a bad political will. The Prime Minister's tendentious statements that the justice sector reform has failed due to the involvement of civil society suggest a lack of respect for a fundamental principle of any democracy - transparency in decision-making processes through the involvement of civil society, as well as the lack of a clear understanding of the role of civil society in a democratic society and the quality of decisional transparency in the Republic of Moldova. Making decisions of public interest without the involvement of civil society is an attribute of the authoritarian regimes.

We have to draw Government and public opinion's attention to the fact that the responsibility for justice sector reforms rests only with the national authorities - the Parliament, the Government and, to a large extent, with the judiciary. The Cabinet, the parliamentary majority and the current Government as a whole bear the greatest responsibility for not promoting systemic reforms and policies aimed at ensuring the independent functioning of the judiciary and law enforcement institutions that are free from the influence of affiliated economic and political groups. They also bear responsibility for not using all the tools available to the Government and the Parliament to prevent the enforcement of court decisions that attack the fundamental right of citizens to elect and be elected. Dangerous practices have been instituted in the judiciary, and political influence on judges and prosecutors, a common phenomenon for the entire state apparatus, has increased.

Below we present just a few illustrative examples of the justice sector's state of affairs:

- 1) Contrary to the provisions of the Justice Sector Reform Strategy (2011-2016), until now the Constitution of the Republic of Moldova has not been amended to increase judges' independence. The amendments were supposed to annul the initial appointment of judges for a period of 5 years, often transformed into a loyalty test to the system, and the composition of the Superior Council of Magistracy had to be modified to enhance its independence and accountability. Following the amendment of the Constitution, a series of amendments that would have excluded the group interests in the Superior Council of Magistracy were supposed to be made;
- 2) Contrary to the provisions of the Strategy, a genuine reform of the Supreme Court of Justice (SCJ) has not been carried out. The role of the SCJ and its powers have not been analysed, and the way of appointment of judges to the SCJ has not been improved;
- 3) Even though in 2012 the legislation was amended to ensure the appointment and promotion of judges based on merits, in practice, judges continued to be appointed and promoted without clear criteria and most of them were appointed and promoted at the mere Superior Council of Magistracy's discretion;
- 4) The extensive use in the justice system of intimidation practices or exclusion from the system of whistle-blowers, including judges who publicly speak about the problems in the judiciary or take decisions inconvenient to the Government, including by prosecuting such judges;
- 5) Since 2016 we have noticed an unprecedented phenomenon in the judiciary of the Republic of Moldova - the examination of high profile cases entirely in closed hearings. Closed hearings are an attribute of an inquisitorial and dependent judiciary. Although there have been numerous statements and public appeals to stop this practice, the phenomenon continues. Such practices

further lower the trust of citizens in the judges' decisions and raise doubts about the independence of the judiciary;

- 6) More than USD 20 billion („laundromat case“) were laundered through the judicial system of the Republic of Moldova. Although the Superior Council of Magistracy knew about this phenomenon and informed the Prosecutor's Office in 2012, since then it has promoted judges involved in money laundering (4 out of 16 accused later) and the Prosecutor's Office announced the criminal prosecution of judges only in September 2016;
- 7) About USD 1,000,000,000 or circa 13% of the country's GDP were stolen from the banking system of the Republic of Moldova. The competent national authorities were aware of these fraudulent schemes, but did nothing or acted insufficiently to prevent the fraud. Over four years, not a single leu (MDL national currency) out of those stolen through the bank fraud has been recovered. Moreover, the main suspect of the banking fraud, who is sentenced by the first instance court to imprisonment, is neither imprisoned nor his assets are seized, and his case is delayed for years, which shows unequal and selective practices of delivering justice in the Republic of Moldova;
- 8) Moreover, the application of selective justice is noticed in the case involving the former Mayor of Chisinau, who was suspended from office by court decisions, the case of whom is still pending, in dissonance with the judicial practice in other cases;
- 9) And finally, an unprecedented case that is illustrative, is cancelling by court decisions of the mayor's election results in Chisinau municipality of May-June 2018, won by an opposition leader. The court reasoned the decision to cancel the election results on assumptions about the impact of about 250,000 views on the social network Facebook on 12,643 people who voted on 3 June 2018 (the difference between those two election candidates). The courts reached these conclusions disregarding the electoral principles established by the Constitutional Court. Moreover, for the first time since the independence of the Republic of Moldova, the common law courts interpreted the call to vote on Election Day as „election campaigning“, totally ignoring the previous practice and good international practices in electoral matters. The decision to invalidate the election was upheld by the panel of judges headed by the Chairperson of the Supreme Court of Justice, appointed on 3 May 2018 by the current parliamentary majority.

The press release of the Government of the Republic of Moldova of 7 July 2018 states that the Government will remain firmly committed to the European path, the only viable strategic direction for modernizing the country.

In this context, we recall that the fundamental values on which the European Union is based, shared by all Member States and assumed by the Republic of Moldova under the Association Agreement with the EU, are: human dignity, freedom, democracy, equality, the rule of law and human rights.

Therefore, we urge the Government and all the authorities of the Republic of Moldova to respect these values, to abandon the practices established in recent years that are contrary to these values and to ensure the implementation of these values into life in the interests of the citizens of the Republic of Moldova.

Signatories:

**Legal Resources Centre from Moldova
Institute for European Policies and Reforms
Association of Independent Press
Transparency International Moldova
Institute for Development and Social Initiatives „Viitorul”
"MilleniUM" Training and Development Institute**

Foundation for Development
Eco-Tiras International Association of River Keepers
BIOS Public Association
Expert-Grup
Association Terra-1530
Centre for Policies and Reforms
Foreign Policy Association
Institute for Public Policy
Association for Efficient and Responsible Governance
Foundation for Education and Development
Est Europe Foundation
Centre for Independent Journalism
Labour Institute
Association of Professional and Business Women
National Youth Council of Moldova
Ecological Movement from Moldova
National Association of European Trainers from Moldova
International Centre "La Strada"
National Environmental Centre
National Roma Centre
Union of Organizations for Disabled from Moldova
Association for Rehabilitation of the Disabled from Moldova
Promo-LEX Association

(the list is open for signing)