CULTURA ȘI CONȘTIINȚA JURIDICĂ PROFESIONALĂ – PREMISE ALE EFICIENȚEI ȘI CREDIBILITĂȚII ORGANULUI DE INSPECȚIE JUDICIARĂ

PROFESSIONAL LEGAL CULTURE AND LEGAL CONSCIOUSNESS – PREMISES OF THE EFFICIENCY AND CREDIBILITY OF THE JUDICIAL INSPECTION BODY

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Abstract

Inspecția Judiciară din subordinea Consiliului Superior al Magistraturii exercită competențe de analiză, verificare și control în domeniul eticii și disciplinei judiciare, al activității organizatorice a instanțelor de judecată, al etapelor prealabile pornirii urmării penale în privința judecătorilor etc. Există multipli factori pasibil a afecta calitatea și eficiența activității organului de inspecție judiciară și credibilitatea entității numite, acești factori fiind de diferită natură și provenind atât din exteriorul, cât și din interiorul Magistraturii. Pentru înlăturarea pericolelor ce pot submina esența bunei autoguvernări judecătorești – participarea organului de inspecție judiciară în acest proces fiind inerentă – sunt necesare eforturi consolidate din partea tuturor actorilor sistemului judiciar. Cultivarea și promovarea unui nivel înalt de cultură și de conștiință juridică profesională în rândul judecătorilor și al celorlalți reprezentanți ai sistemului reprezintă una din premisele de bază a eficientizării activității inspectorilor judiciari și sporirii credibilității organului de inspecție judiciară.

Cuvinte-cheie: organ de inspecție judiciară, independența Justiției, autoguvernare judecătorească, cultură juridică, conștiință juridică, eficiență.

Introduction. In the conditions of the Republic of Moldova the Judicial Inspection is a specialized body subordinated to the Superior Council of Magistracy in an organizational aspect, being functionally independent [1, art. 71 para. (1) letter d)].The necessity to increase its social credibility has the rationale in the role and value of the judicial inspection body in streamlining the activity of the Judicial Authority, through the exercise of particular competencies of analysis, verification and control in the field of judicial ethics and discipline, organizational activity of courts, preliminary stages of criminal prosecution against judges etc. The level of social trust in institutions that ensure judicial self-governance – the judicial inspection body being an element of the mentioned system – depends in a great measure on the quality and efficiency of judicial self-governance activity, on the image of the concerned entities, on the integrity of its members. Acquisition, maintaining and displaying a high level of legal culture and legal consciousness by all the actors of the judicial system is indispensable, pursuing the purpose to affirm a joint psychological state by all the magistrates and other professionals that […] contribute in realizing justice [2, p.72, 111]. Creating the conditions for promoting professional legal culture and legal consciousness within the judiciary are first-class premises for manifesting the integrity of the concerned subjects and for the protection of the independence and impartiality of the whole system. The judicial power needs increased protection and guarantees in the trichotomy of state powers, because „it is the judiciary as a separate state power that stands in protection of the main values that modern societies have developed over the centuries" [3, p.48].„Once the judges are appointed, their performance affects public attitudes towards judicial institutions, as well as political institutions in a broader sense, the state of the rule of law, and can be even connected to economic.

performance”[4, p.2079]. For these reasons, judicial independence and impartiality are fundamental values in contemporary society, their protection representing inherent exigencies of a consolidated Justice. The obligation to guarantee these values rests, first of all, on the Judicial Authority, through self-administration activity, Andreas Lienhard and Daniel Kettiger mentioning that „the independence of the courts in their institutional form assumes that courts are self-governing, i.e. that the courts carry out the tasks of court management largely on their own, with their own resources, and separately from the central administration”[5, p.9]. The judicial inspection body, being a part of the judicial power and, implicitly, an exponent of judicial self- governance, has an essential value in the process of guaranteeing the independence of Justice and in ensuring the balance between the independence and the responsibility of Justice. For these reasons, we insist on the necessity to preclude the factors that undermine the good functioning of the judicial inspection body, primarily through the prism of professional legal culture and legal consciousness, in accordance with quality and efficiency criteria. Highlighting the issues. There are several factors that may negatively influence the activity of judicial inspectors, irrespective of the legal system (understanding a legal system with a similar entity as the national judicial inspection body): pressures inside the Judiciary; undue outside interference; lack of a permanent and performant communication – at a professional level – among different actors of the judicial system; lack of an adequate collaboration between the judicial inspection body and exponents of the executive power; lack of a consistent communication policy with the public. These factors – in relation with the Judicial Authority – are real perils for the independent and efficient functioning of the judicial inspection body and can be eliminated through mechanisms of legal and normative regulations, the conduct, the culture and consciousness of the actors of the judicial system being crucial.

Analysis of potential perils. Pressures inside the Judiciary concerning the activity of the judicial inspection body is dangerous for the process of exercising independently the duties by the judicial inspectors. When we invoke possible pressures from inside the Judiciary, we refer to actors of the judicial system in a broad sense as: members of the Superior Council of Magistracy, members of specialized bodies subordinated to the Council, judges, mainly those with managerial functions. „Judges, just like any other group of actors, can have shared interests which can be translated into the composition of the judiciary. Indeed, they are not inevitably harmful – they may be based on reasonable, even virtuous, expectations about the role of the judiciary. Nevertheless, there is a substantial amount of evidence suggesting that actors within judiciaries may prove to be as dangerous as political actors, although their interests may manifest in different ways" [6, p.2101]. Judicial inspectors can be under pressure especially in cases of: examining plaints on judicial conduct that may represent disciplinary offences committed by judges; verification the request of the Prosecutor General concerning the initiation of the criminal prosecution or exercising particular criminal procedural actions against judges; verification the ground of rejecting the candidates proposed by the Superior Council of Magistracy for the position of judge, chief or deputy chief of court; verification the correctitude of distribution of cases in courts [7, p.5.1 letters b), d), e), f), h)] (although, the dangers cannot be neglected in the context of exercising other duties by the judicial inspectors). The mentioned aspects refer to judges` career in a wide acceptance, with a potential negative impact on their appointment or promotion in function and with serious implication on their disciplinary liability or criminal accountability. For these reasons, judges` attempts to influence judicial inspectors may be of a great variety. In risky situations for their careers, judges` conduct may exceed the limits of an ethical conduct or even of a legal conduct, probably contrary to their own legal consciousness formed over time, the self-preservation tendency prevailing. In such cases the legal consciousness of other actors of the judicial system should manifest – that of the judicial inspectors under undue influence or pressure, their functional independence, the

independence and the impartiality of the Judicial Authority representing a corollary of the process of exercising justice and judicial self-government.

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Having certain interests, members of the Superior Council of Magistracy also may put pressures on the members of the Judicial Inspection, in such conditions when the competence of appointment of the judicial inspectors, the same as of the chief judicial inspector and the application of disciplinary sanctions rest to the named Council [8, Art. 71 par. (4); p.3.1 letters b), c)]. At the same time, „[…] it is necessary to take into account the liquid nature of judicial self-governance and its responsiveness to political, social, and cultural changes" [9, p.1571]. The level of legal culture and legal consciousness – in a general acceptance and in a particular professional one – influence the conduct of judicial representatives in a noticeable measure, especially in legal systems that cannot enjoy solid democratic traditions, the case of the Republic of Moldova being eloquent. Pressures from outside the judicial power – exercised by the executive power, the legislative power, by groups of political or economic interests – is another peril that may affect the efficiency of the activity of the judicial inspection body. Taking in consideration that the Judicial Inspection exercises primary verifications, the binding decision being adopted by the Superior Council of Magistracy (with several exceptions in cases of verification and examination of plaints referring to judicial conduct that may represent disciplinary offences committed by judges[10, Art. 22 par. (1), art. 29 par. (3)]), it is expected the outside pressures to be made through the members of the Superior Council of Magistracy or through judges. Unfortunately, remarks David Kosar (in the context of the social and legal reality of Poland, but it is actual in relation with the national legal system too), „politicians always find some judges who are willing to cooperate with them, no matter how obvious the intentions of the judicial reform are. […] Each judicial self-governance body simply has to protect its turf against the political actors as well as against judges and other judicial self-governance bodies.

If it fails, it may be captured by political forces, abused by judicial elites, or become inconsequential. If it succeeds, it may improve the efficiency and transparency of the judiciary, and in the long term perhaps also public confidence in courts, judicial independence, and judicial accountability" [11, p.1593, 1611-1612].

In turn, the activity of the Minister of Justice – which is a political position – should be prudent enough in relation with all the exponents of the judicial system, for not being appreciated as interference in the exercise of the act of justice and in the judicial self-government. In accordance with the national legal framework, the Minister of Justice has the mission to analyze the situation and the problems in the fields of the managed activities, to elaborate efficient public policies in particular areas, to monitor the quality of the policies and of the normative acts and to propose justified interventions of the state, that should offer efficient solutions in the areas of competence. The Minister of Justice, as the chief of the named Ministry [12, p.5, 9], should exercise representative and managerial attributions in the mentioned fields and should not admit undue interference in the activity of the judicial power, respecting the principle of separation and collaboration of powers in the state and that of independence of the judicial power. The Minister of Justice is an ex officio member of the Superior Council of the Magistracy and it as a questionable issue; it may be appreciated as a factor of pressure on judicial independence. Diminishing the role of the Minister of Justice (both with the role of the Prosecutor General that is an ex officio member of the Superior Council of Magistracy [13, art.3 par.2]) has been recommended by the international institutions since 2011, in the context of the analysis of pertinent legal framework of the Republic of Moldova [14, p.26] (in force in2011 but current in essence). Recently, the Venice Commission invoked the named recommendation with the occasion of analyzing the Draft Law on modification and completion of the Constitution of the Republic of Moldova [15, p.8].

In general, international institutions do not welcome the situation of holding by the Minister of Justice of competencies in the field of judicial control, judicial organization, and disciplinary liability of judges. The Council for the Judiciary should supervise the organization of the inspection service so that inspection is compatible with judicial independence. This is particularly important where inspection services belong to the executive [16, par.79]. Although, „the wide role of the Ministry of Justice in judicial governance may sometimes be a lesser evil, since it is the "the devil we know", Minister's abuses are more visible, and it is easier to mobilize people against them" [17, p.1593]. There are other possible undue interferences – those exercised by economic or political exponents (political parties, subjects with political positions, the head of state, groups of interests) on the Judiciary – and they can be dangerous for the independence of Justice and for its good governance too. The role of legal consciousness of the representatives of the Judiciary is essential in the described circumstances: their conduct should emanate from the conviction and the psychological attitude from the inside that only an independent and a consolidated Justice is able to confirm the decisional capacity in the area of Justice self-governance, to prevent and operatively eliminate […] particular imperfections of the judicial system; traditional negative manifestations […], such as decision-making disability, decisional inconsistency, corruption, incompetence, lack of responsibility concerning judges should not be tolerated"[18, p.72, 111].

The composition of the judicial inspection body – in substantial and nominal aspects– is another factor that may contribute to increasing the efficiency and credibility of the body concerned or, on the contrary, may be a threat to its independence. When we invoke the substantial composition of the judicial inspection body, we underline that it should be represented entirely or preponderant by judges, international recommendations on this issue being very clear. A judge who neglects his/her cases through indolence or who is blatantly incompetent when dealing with them should face disciplinary sanctions.

Even in such cases, […] it is important that judges enjoy the protection of a disciplinary proceeding guaranteeing the respect of the principle of independence of the judiciary and carried out before a body free from any political influence, on the basis of clearly defined disciplinary faults: a Head of State, Minister of Justice or any other representative of political authorities cannot take part in the disciplinary body. The Council for the Judiciary is entrusted with ethical issues; it may furthermore address court users' complaints. In order to avoid conflicts of interest, disciplinary procedures in first instance, when not addressed within the jurisdiction of a disciplinary court, should preferably be dealt with by a disciplinary commission composed of a substantial representation of judges elected by their peers, different from the members of the Council for the Judiciary, with provision of an appeal before a superior court [19, par.63, 64]. According to the modifications made in 2018 [20, art. III] in the legal framework of the Republic of Moldova the substantial composition of the Judicial Inspection does not correspond to the criteria stated, one of the conditions to candidate for the position of judicial inspector being to have not exercised the position of judge in the last three years[21, art. 71 par. (3)]. The modification of law has been proposed by the Ministry of Justice that invoked the necessity to avoid, in such a manner, conflicts of interests [22, p.16].

The formation of such an institution as the Judicial Inspection– part of the judicial self-governance system – of other professionals than judges is a threat to judges` independence and to the independence of Justice, the essence of the judicial self- governance being undermined. The judicial self-administration is the right and real ability of courts and judges to solve the problems of judiciary functioning independently and responsible.

The judicial self-administration shall be performed on the principles of representativeness and eligibility of the judicial authority bodies, as well as the liability of the judicial administrative organs to properly exercise the delegated functions[23, Art. 231 par. (2), (3)].

By exclusion of the judges from the composition of the Judicial Inspection are affected the principles of representativeness and eligibility of judicial authority bodies and the capacity of judges to intervene in the self-governance activity and to affirm in professional career are suppressed. The inclusion of the representatives of the civil society in the composition of the judicial inspection body is welcome, Andrei Negru promoting the idea of a mixed control, as a form of manifestation of the principle of justice consolidation that should contribute to increasing the quality and the efficiency of Justice. Simultaneously, the author insists on the representativeness of the civil society on professional criteria; the appointed persons must improve their knowledge and prove the performance in the field of law [24, p.23-24]. In the same conditions, judges have to prevail numerically in the componence of the judicial inspection body in correlation with non-judicial members. Or at least a numerical equality between judges and non-judicial members should be ensured (such a formula being considered acceptable by the Venice Commission in correlation with the componence of the Superior Council of Magistracy of the Republic of Moldova in exceptional situations, such as high level of perceived corruption in the judicial system, lack of trust in the Judiciary [25, par.81]). Preserving the right of judges to access the Judicial Inspection is explained through the contribution they can bring to its good functioning, based on the empirical element, in correlation with their professional activity. Nobody knows better the imperfections of the national justice than professionals in this area [26, p.90]. At the same time, the presumptive level of judges` professional legal culture and legal consciousness is high, taking in consideration that their activity is related to the protection of human rights. The nominal composition of the judicial inspection body is examined in the context of factors that may affect the quality, the efficiency and the credibility of its activity from the perspective of the integrity of its members.

Appointing a person with integrity problems for the position of judicial inspector would decrease significantly the social trust in the capacity of the judicial inspection body to carry out effective investigations. In the eyes of a neutral observer a judicial inspector appointed from among judges or former judges that indicated in their declarations of wealth data about a good bought at an unjustified low price or about a donation of a large sum of money received from parents that are retired and have worked all their lives for a modest wage can only undermine the image and the credibility of the judicial inspection body; this fact would inevitably affect its efficiency. Such a circumstance is a real peril for the good functioning of the judicial inspection body; the level of professional legal culture and consciousness of the concerned judge is compromised, even if his or her level of professionalism is not called into question. The explanation lies in the fact that „public confidence in the judiciary is determined mainly by the perceived trustworthiness of the courts and judges, which is influenced not only by their performance, but also by their reputation (the record of past deeds), and appearance. […] As suggested by Van de Walle and Bouckaert, performance has a certain impact on confidence, but the existing level of confidence may also have an impact on perceptions of performance"[27, p.2117, 2125-2126]. The lack of a permanent and performant communication – at a professional level – among different actors of the judicial system is another factor that can affect the efficiency of the judicial inspection body, the latest events referring to public conflicts among representatives of the judicial system of the Republic of Moldova being eloquent in this sense. Communication at the professional level should be permanent. Reducing the degree of interaction among actors of the judicial system (judges, members of judicial self-governing bodies, lawyers, prosecutors, notaries, mediators, executors, judicial assistants) to day-to-day activities is not sufficient for maintaining the professional cohesion within the Judiciary, this fact inevitably affecting the efficiency of judicial self-governing bodies, in the same way as the efficiency of the judicial inspection body.

In turn, it is possible to enhance professional communication only in the conditions of a high level of professional legal culture and legal consciousness. The lack of an adequate collaboration between the judicial inspection body and exponents of the executive power (referring to the Security and Intelligence Service, National Anticorruption Center and National Integrity Authority) may significantly undermine the efficiency of judicial self-governing system, including the judicial inspection body, as part of the mentioned system. As a result of exclusion the right of the Intelligence and Security Service to exercise verifications on judges at the phase of their appointment or promotion in career [28], can be noticed a tendency to suppress any form of collaboration between the named Service and judicial bodies. A similar tendency to distance the Judiciary from representatives of the executive power is noticed in correlation with the National Anticorruption Center, which has the competence to assess professional integrity of judges[29], in the conditions when, functioning under the Anticorruption Prosecutor`s Office, the National Anticorruption Center is a genuine criminal prosecution body[30, art. 253 par. (1) p. 3), art. 2701] and carries out investigations against judges too. The lack of an effective communication is noticed inclusively between judicial bodies and the National Integrity Authority, referring to data from the declarations on wealth and personal interests of judges that are public and sometimes seem to be distorted, at least in the eyes of a neutral observer. Taking in consideration the competencies of the national judicial inspection body is clear that there are tangent points among the activities of the three mentioned institutions. We opt for the promotion of a prudent, consistent and open collaboration among the concerned exponents, each of them continuing to exercise verifications in the areas assigned by law: the National Anticorruption Center – in the field of preventing and fighting against corruption among judges, the Intelligence and Security Service – in the field of state security and the Judicial Inspection– in the field of judicial ethics and discipline.

The collaboration with National Integrity Authority, in turn, should be promoted for strengthening professional integrity of judges and institutional integrity of courts. Such a form of collaboration may be ensured in the context of suitable conditions for the propagation of legal culture among the representatives of the named entities and of a high level of legal consciousness not deformed by social and political events that emerge in society at a certain historical stage of development. The lack of a consistent policy of communication with the public is another factor that may damage the image and the credibility of the judicial inspection body. Efforts for increasing transparency of the Judicial Inspection are made at the national level – through publication of the activity plans and of the control acts, organizing the audience of citizens – but they are not sufficient. We consider that the Judicial Inspection should react promptly to public information about the conduct of magistrates and to publicly express its official attitude regarding the respective information. „People from their opinions on the performance of the judiciary (e.g., perceived and experienced fairness and independence of judiciary; delays; costs; level of corruption; agreement with specific rulings; etc.) mostly based on how it is presented in the media, and, to a lesser extent, on their direct or indirect experience with judges and courts" [31, p.2125-2126].

Recap. Examining potential perils for a good functioning of the judicial inspection body, we find that the decisive impact in the process of eliminating them can have the promotion of legal culture among all the actors of the judicial system and the formation of a legal consciousness - both at individual level and in professional groups - in accordance with such values as independence, impartiality, integrity, quality, efficiency and credibility of Justice. Professional legal culture and consciousness are fundamental values in the context of good judicial self-governance and of the consolidation of Justice.

A judicial inspector with a high level of professional legal culture and consciousness has enough capacity and mechanisms to contribute to the protection of his own independence and that of the institution he is representing: everyone is able to stop undue interferences or to inform the competent bodies regarding such actions, if a genuine process of self-control and self-purification of the judicial system is really wanted. Encouraging individual and collective behavior in the direction of respecting legal and ethical standards and of the creation of a general trustworthy professional and interprofessional climate should be a fundamental strategy in the administration of Justice. The consolidation of Justice is possible only as a result of joint efforts of all the representatives of the judicial system, through the prism of synergy – regarding courts, judicial self-governing bodies, and professional groups. Andrei Negru remarks that the consolidated Justice presumes a close interaction of such principles as judicial independence, the separation and collaboration of powers in the state, impartiality and irremovability of judges, which would obstruct phenomena of interference in the field of Justice. We refer to certain mechanisms of ensuring the consolidate Justice status, realized through self-administrating institutions in the discussed area, able to eliminate interferences of different nature in the process of realization of Justice [32, p.70].

Conclusion. As a conclusion, we notice that the premise of the efficiency and the credibility of the judicial inspection body is the professional legal culture and legal consciousness of all the actors of the judicial system. The culture and the consciousness should be perceived as fundamental values that accompany – like a golden thread – the whole activity of the representatives of the Judiciary, including the members of judicial self-governing bodies and of the judicial inspection body too. Neglecting these values can only distort the true mission of Justice in the contemporary society and undermine the essence of the Rule of Law.

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