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Unconditional Justice:

A study on the effectiveness of EU conditionality within the Eastern Partnership

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Abstract

The thesis explores the efficiency of the EU conditionality within the Eastern Partnership on the cases of the Justice Sector Reform of Georgia and Moldova. The study shows that Georgia's leader status is relative and that the country has gained it focusing on the fight against corruption. The thesis shows that the narrow focus of the Georgian authorities on the petty corruption has contributed to a more holistic effort in the Justice Sector Reform both by the public relations effect and the need to avoid 'image loss' of the Georgian authorities. The presence of the EU mission at the planning phase of the reform in Georgia has given the national authorities more incentives to include more stakeholders in the formulation of the policy. The electoral transfer of power in the case of Georgia has contributed to a sustained effort in reforming the Justice Sector to confirm the goodwill of the new Government and to gain internal legitimacy.

Based on the findings the author formulates a series of policy recommendations. There is a need for a precise mechanism of negative conditionality that would come into force at the first signs of bad performance. This conclusion comes mainly from the case of Moldova, where the freezing of financial support came too late and provoked a political crisis, as well as the alienation of the national authorities.

The EU's direct input to the policy cycle could be most effective at the earliest stages of planning with forming a coalition of international partners to synchronise their agendas and promote a broad inclusion of stakeholders, including civil society.

Introduction

The European Union is a transformative power that was instrumental in promoting reforms in the candidate countries. Many of them have changed from an authoritarian past and an inefficient administration to full members of the union and highly functional states. The pre-accession conditionality imposes significant pressures on the candidates to enact policy change. The domestic costs of these reforms can outweigh the short-term benefits significantly. But as a Hungarian official told Grabbe (2009), 'accession in any conditions is better than no accession'.

Within the European Neighborhood Policy and the Eastern Partnership, the EU conditionality morphs together elements of pre-accession and development. Georgia, Moldova and Ukraine, members of the EaP, have expressed their intention to join the European Union without a clear signal that they would be welcome by the union itself. The limit of the incentives toolkit of the EaP refers to financial and technical support, free trade, association agreements and visa liberalisation.

Nevertheless, as Gromadszki (2015) notes, countries like Georgia are willingly implementing the acquis communaitaire without that perspective, aiming at least at a 'shadow membership'. Georgia and Moldova are the leaders of the Eastern Partnership, both by the rate of implementation of reforms and the incentives EU has provided them. At the same time, both countries present limited progress in some domains, especially in the Justice Sector Reform. This reform process was put as a priority by the EU before the EaP. This position was reiterated for example in the Joint Declaration of the Eastern Partnership (EaP) Summit of 21-22 May 2015 (European Council, 2015).

The Justice Sector Reform is a complex and lengthy process that could benefit from an active input from the European Union and could benefit both parties through increased stability in the region and good governance within the partner countries.

This study focuses on two countries part of the Eastern Partnership: Georgia and the Republic of Moldova. The countries present a series of similarities: comparable size and population, the presence of frozen conflicts on their territory, recent changes in government and a shift towards democratisation, the Soviet legacy and legalistic approaches towards the Justice Sector etc.

At the same time, the perception over their Justice Sector Reform differs, as Georgia has made significant progress, especially in the domain of the Anti-Corruption Policy. Moldova continues to lack behind on this issue and presents signs of worsening of the situation despite the implementation of the Justice Reform Strategy (Parliament of the Republic of Moldova, 2011). The difference in the application of sectoral reforms in the EaP in the context of the countries relationship with the EU is a narrow field of study that modern room for research. Many studies tackle the issue of the EU as a transformative power in general such as Börzel and Risse (2009), Duke and Courtier (2009), Haukkala (2008), Howorth (2016), Vachudova (2003). There are also sufficient studies on the relationship of Moldova and EU: Meister (2011), Costea (2011), Kulminski and Sieg (2014), Nizhnikau (2017), Kleinschnitger and Knodt (2018) et al. The literature on Georgia is also quite sufficient: Berglund (2014) Broers (2005), Loke (2011), Pinzari (2015), Sammut (2016), Weisensee (2010) et al.

A comparative study on the efficiency of the EU conditionality impact on the Justice Sector Reform in the two countries would close the gap and provide insight for policymaking both at European and national level. Two research questions guide this study: a) How efficient is the European Union conditionality within the EaP on the example of the Justice Sector Reform? b) What are the factors that contribute to the in/success of the European Union conditionality within the EaP on the example of the Justice Sector Reform? The research has the following objectives: to study the Justice Sector Reform in Georgia and Moldova; to identify the ways European Union has influenced the Justice Sector Reform in the countries; to analyse the reactions of the national

authorities to the European Union conditionality; to determine possible improvements towards the conditionality mechanisms within the EaP.

This study covers the period starting with the adoption of crucial national policy documents for the Justice Sector Reform: The Criminal Justice Sector Reform Strategy of Georgia (2009) and the National Justice Reform Strategy of Moldova (2011), covering some events before these dates to trace the conditions in which they were adopted.

The thesis is structured in three chapters. The first chapter represents a literature review that analyses the issues of political conditionality, the current debates on EU conditionality, and lays out the complex methodological approach for approaching the research question. The second chapter describes the developments of the Justice Sector Reform in Georgia, the central issues of this process and the main conclusions on the efficiency of conditionality in the case of Georgia and the factors that influence them. The third chapter describes the developments of the Justice Sector Reform in Moldova, the central issues of this process and the main conclusions on the efficiency of conditionality in the case of Moldova and the factors that influence them.

Chapter 1. EU's bargaining power: Review of Relevant Literature

The literature on EU conditionality within the enlargement process is vast and focuses on cases and 'points of no return' that have influenced positive change in the candidate countries. The body of literature leaves little room for improvement and new insight on the issue, but at a closer examination, scholarly debates and gaps of knowledge persist. The specific forms that EU conditionality takes in each case and its effects are of high interest and are viewed from different theoretical approaches.

The two main camps dealing with this issue are the constructivists and rationalists that present significantly different views on the successfulness of EU conditionality. A look that gains traction in the context of curbing Euro-optimism is a rationalist perspective. Moravcsik and Vachudova (2003) describe the relationship between EU and the candidate countries in the context of their national interests and power within the negotiation processes. Every policy change is analysed in a cost/benefit framework and might not be realised without tangible benefits for both parties.

The constructivists oppose by showing that EU enlargement offers more than immediate benefits being oriented at the expansion of the international community (Börzel and Schimmelfennig, 2017). This outcome has normative implications and holistically can outweigh a limited rationalist approach. The debate on the impact of EU enlargement and other forms of conditionality has evolved into a more complex theoretical framework of Europeanisation. Radaelli (2008) defines it as a complicated process involving construction, diffusion and institutionalisation of rules and procedures. He goes on to expand Europeanisation to norms, national discourse, identities and political structures. Moumoutzis (2011) emphasises the second part as the most critical part of Europeanisation. The 'European way of doing things' seems to be end state of this process.

A slightly different approach to Europeanisation links the policy change to a broader EU

framework that determines the domestic difference (Ladrech, 2010). This emphasis on the decision-making logic seems to weigh in more to the intergovernmental side of the debate. In an opposing view, Burzel (1999) defines Europeanisation as a shift from domestic policies to European policy-making. Similarly, Risse, Cowles and Caporaso (2001) emphasise the construction of a new structure of governance and associated institutions, norms and interactions between actors needed for that to happen.

The different ways that the authors define Europeanisation show that the theoretical framework is an evolving one and can adjust to both more massive approaches as needed. Its usefulness is dictated by the need of framing the ongoing changing EU conditionality oriented both at integration and closer association. The concept provides logics of development of relationships, as well as means and possible outcomes for the named processes.

The ENP framework does not provide one of the most significant incentives of the European integration process – the accession to the European Union. This factor weakens the interactions between EU and the partner states from an intergovernmental approach and provides fewer incentives for the creation of the new governance structures and norm translation. As a result, other frameworks can be useful in analysing the efficiency of the conditionality and the effects of ENP.

One of the approaches towards the relationships within ENP and the rationale behind it for the actors included in the policy can be securitisation. Braspenning-Balzacq (2005) defines it as a rule-based practice-oriented against a real or perceived threat effectively introduced in the public discourse. He argues that securitisation depends on its audience, context and intensity of power. The security issues for both selected case is high on the political agenda as they perceive the relationship with the European Union as a proxy for ensuring their security. At the same time, the elites do not necessarily present the political will to implement the actual reforms. The post-Soviet states have a tradition of ‘symbolic policy practices' (Orru and Rothstein, 2015) as the states shop around the policy measures that need to be implemented and ignore those that have higher

transaction costs. The selective compliance with the EU-led reforms come from a legalistic tradition that cannot easily be overcome.

These issues are even more rooted in the case of EU external governance. Extending the adoption of EU style rules to non-members presents a series of theoretical and practical problems linked to this 'inside-out' approach (Lavenex, 2004, p.683). For example, Barbe, Costa, Herranz and Natorski (2009) conclude analysing a series of cases including Ukraine and Georgia that the rule compliance for the third-countries depends on the incentive system and legitimacy. The results are highly dependent on the bilateral negotiations rather than the rule transference. Continuing this idea Dimitrova and Dragneva (2009) on the example of Ukraine conclude that the rule transference depends on pre-existing conditions, actors and relationships at the internal and external level for the partner country.

1.1. Political Conditionality

Political conditionality is a contested multilevel concept that does not have a unified definition used by scholars, international organisations and states. Initially, conditionality only covered the harmful elements of the phenomenon – the threat of termination or termination of aid in the event of not fulfilling the linked conditions (Stokke, 2013). This position towards conditionality does not adequately reflect the phenomenon but shows the logical linkage between aid and meeting the criteria put forward by the donor. These criteria can vary from promoting civil and political rights to reforming the public administration or economy and were strictly viewed as potential sanctions for the recipients of aid. Fierro (2003) distinguishes first generation conditionality as those conditions linked to economy and second generation conditionality – to political and legal changes. The third generation of conditionality criteria may refer to environment and labour rights, as well as other trade-related criteria (Mckenzie and Meissner, 2017).

Political conditionality has also evolved beyond the harmful toolkit (Koch, 2015, p.98)

that it may still use expanding itself to a different series measures, including positive reinforcement – ‘more for more' approaches or political support to the implementing state actors. This myriad of complex actions has led to more nuanced definitions of conditionality that may encompass voluntary implementation and "reinforcement by reward" (Schimmelfennig and Sedelmeier, 2004a).

Based on these evolutions, the discussions on conditionality have also shifted from a logic of consequentialism towards to the logic of appropriateness. Kelley (2010) show how the combined membership conditionality and norm-based diplomacy have aided to effective intervention in Latvia, Estonia, Slovakia, and Romania policies towards minorities. The countries' ‘fear' of not being accepted into the union outweighed internal opposition towards a more inclusive approach towards ethnic minorities. In this case, the candidate countries can be viewed as utility-maximisers that have adopted the requested policy change as its costs were lower than the benefits. Kelley (2010) also argues that norm-based diplomacy without the external incentive of possible EU membership is not effective enough for a real change in ethnic politics.

The second group of authors orient conditionality towards the goals of socialisation. Kenneth Waltz (2010) defines socialisation through the imitation of preponderant behaviours in a non-hierarchical international system. This definition is further expanded in the view of the interaction of the emerging powers with the dominant international norms both by accepting and ignoring them (Xiaoyu, 2012). By extrapolating this two-way perspective in the conditionality context, the learning and norm transference is a mutually influenced and contextualised process. This definition can explain some of the differences in the effectiveness of conditionality within ENP and for EU in general. The logic of appropriateness (March and Olsen, 2011) adds to the discussion the reliance on shaming and praising, as well as the natural tendency to adjust behaviours not necessarily related to external incentives.

As the debate is ongoing, Koch (2015) offers a relatively comprehensive definition of conditionality as the instrument used by a 'donor' oriented at the adjustment of the behaviour of the 'recipient' by creating a relationship based on a set of positive and negative incentives.

Describing the taxonomy of conditionality, most authors (Koeberle, 2005; Koch, 2015; Koeberle, 2005; Stokke, 2013) describe two types of political conditionality – 'ex-ante' and 'ex-post'. The ex-ante conditionality represents some criteria to be fulfilled before the conclusion of an agreement, a relationship or disbursing financial aid. The ex-post conditionality describes an ongoing relationship that demands the realisation of some conditions during its implementation. Ex-ante conditionality is generally limited by the tools predefined to attempt in getting the needed aid and may not be based on a clear legal basis to confirm it. At the same time, it has a holistic positive effect as the recipient has the added incentive of signing the following accords and thus becoming a more legitimate partner of the donor. The ex-post conditionality presents a more complex system of monitoring the implementation. It is mostly based on a 'roadmap' for the implementation of conditionality. At the same time, ex-post conditionality follows existing relationships that may present strategic interests outside the conditionality terms and a complex system for its evaluation. As a result, 'sanctioning' for not following the conditions may not be as easy as in the case of ex-ante conditionality based on the prevalence of other interests or the procedures of signalling the non-conformity to them.

Another classification of conditionality describes the types of mechanisms used to realise the conditions. The rewards for the compliance with the requirements represent a form of positive conditionality, while the punitive measures in the case of non-compliance represent a negative kind of conditionality (Fierro, 2003). The two main types of classification of conditionality offer a framework for the analysis of conditionality within ENP on the selected cases and provide tools for a better understanding of the causes of compliance and non-compliance in each case.

1.2. EU conditionality literature review

The European Union has a solid history of applying conditionality both in pre-accession and partnership frameworks. The enlargement of the EU has shown that the union can effectively contribute towards capacity and state building, as well as democracy strengthening.

Pridham (2006) posits that EU's position is to assert its capacity to contribute to democratisation. His view is that EU's pressure and incentive system overweigh the faulty ability to implement reforms of the post-Communist countries. This optimist position is contradicted in a sense by Kochenov that shows that the Copenhagen Criteria were not followed by a clear implementation methodology, except building on the acquis communautaire. Without a precise and tested method, the results that the countries get can be considered at best spurious. Conditionality has to go beyond a legal framework and into a complex mechanism of implementation that can be adapted and replicated in different cases for it to prove useful.

Grabbe (2005) shows that the EU has used its conditionality mechanism to support candidate countries in positive change. At the same time, she accepts that in different cases the power of influence of EU has differed, both at country and policy level. Shimmelfennig and Sedelmeier (2004b) describe a theoretical model to explain this situation through an application of game theory to the conditionality relationships.

Vachudova (2005) offers another theoretical explanation comparing the incentives system versus the active conditional activity from EU. She observes that EU preferred in the case of the most recent enlargements, the union has relied on the attractiveness of the membership without using the leverages of the financial incentives and sanction systems. EU discredits the use of negative conditionality in the view of Vachudova.

Heather Grabbe (2005), on the over side, sees both positive and negative conditionality as useful tools that EU uses. Other studies place the critical role on the communist legacies of the states within the EaP that influence their administrative capacity and institutional choices (Pop-

Eleches, 2007).

For the goals of this thesis, I use a rational institutional framework, accepting that they can diverge from a strict rational choice, to explain the differences in the two selected cases. But for the enrichment of the debate, I analysed a series of constructivist views on European conditionality. For example, Barbara Lippert (2001) defines EU conditionality using idea framing. She describes the actual process through the five stages of Europeanization and argues that the EU is an effective driving force for administrative reform. She accepts the possibility of different reactions and specific conditions for implementation but considers that in the case of the CEEC-5, the EU membership perspective prevails over petty national interests. She also makes an interesting point that the Europeanization does not lead to uniformity, but instead upholding a series of standards.

Although I chose the first model as a conceptual framework for my thesis, I show the limitations of its explanatory power and contribute to expanding possible measures for improving the EU's strategy.

1.3 Theoretical framework and methodology

I use the theoretical framework of my thesis to explain the core reasons, characteristics and differences of the selected cases of Justice Sector Reform in the context of the relationship with the European Union. I chose to focus on the model described by Schimmelfennig and Sedelmeier (2004c). They represent three methods of rule adoption based on two logical streams. , and the logic of consequence is at the base of the rationalist perspective.

Based on these two logical streams, the authors describe three explanatory models – the external incentives model, the lesson-drawing model and the social learning model. The first model applies a game theory view towards the actions of an EU partner versus the system of incentives and penalties the union provides. Conditionality is the most crucial element of this

model, and it follows norm adoption as means to obtain benefits (visa liberalisation, free trade, financial incentives etc.) or to avoid penalties (removal of support, a range of sanctions). EU mostly orients itself towards a positive model of conditionality offering more incentives rather than a punitive one – negative conditionality. This model bases itself on the economic premise that the actors are rent-seeking and utility-maximisers. The partners assess the benefits from implementing the policy change and determine whether the overweight the costs of implementing it within the conditions and timeframe that EU proposes.

The other two models follow the logic of appropriateness and present a view close to the constructivist theory. The social learning model focuses on identities, norms and values. The actors choose their course of actions based on their ethos and most appropriate alternatives presented before them. The lesson-drawing model is oriented towards efficiency and problem-solving. The goal of the implementation of policy change according to this model is a practical implementation of the policy rather than outside incentives.

I chose the model that Schimmelfennig and Sedelmeier prefer – the external incentives model with clarifications and describing the limitation in each case. For the two compared elements, there is a need for distinguishing aspects of applying this model.

Both countries have already received the most complying incentives that EU can offer without the perspective of accession – the Association Agreements, Free Trade Agreements and visa liberalisation. The incentives toolkit that the union continues to hold includes financial incentives and non-material incentives related to legitimacy, status and internal support towards European Integration. Each decision that the authorities make after receiving the best incentives consider, even if not outwardly, the implementation costs versus the possible benefits. Amongst the elements that they find are also the speed of implementation of policy change. This issue is linked to the cycle of application and getting results compared to the domestic costs and political periods that politicians face. This framework is used to describe Georgia and Moldova's Justice Sector Reform efforts and their consequences.

The methodology used to resolve the research questions is based on the Most Similar System Design. The analysis was done in a threefold process described by Beach (2017): developing a theory on causality and the links between cause and effect; a detailed analysis of the openly available empirical data on the cases using the approach; and establishing patterns through the comparative study of the selected cases. As described above, the facts present numerous similarities and differences in the result of the Justice Sector Reform. The hypothesis that I formulate is that the difference between the two cases are as follow: the presence of the EUJUST Mission in Georgia at the moment of the formulation of the Strategy in Georgia, the electoral change in power and coming to power of the opposition Georgian Dream Party; the narrow focus of on the Anti-Corruption reform of the Georgian authorities; the significant participation of the civil society in the reform process in Georgia.

Chapter 2. Justice Sector Reform in Georgia: Apparent successes

Georgia is the success story of the region in the domain of Anti-Corruption. One the most visual elements of the Georgian fight against the corruption was the construction of a new building for the Ministry of Interior with glass walls to show how seriously they take the issue of transparency. At the same time, the relationship with EU was not as smooth. Although Georgia signed the Association Agreements in 2014, the sought-after visa liberalisation regime came later than in the case of Moldova only in 2017. Also, the Justice Sector Reform is not an even success for Georgia, the independence of the judiciary continues to remain a serious issue that does not show signs of improvement.

2.1. Key Developments in the Judicial Sector Reform in Georgia

Georgia's progress in the Judicial Sector Reform also shows a complicated picture. It is considered to be one of the success stories of the EaP regarding the fight against corruption. The progress concerning corruption according to Nations in Transit index went up from 6 to a steady 4.5 from 2012 until today. The Transparency International Index shows a move from 20 to 56, changing its place from one of the most corrupt stats compared to Afghanistan to a place comparable with Central European countries. It is notable that the scores have stayed comparably the same since 2012, but this does not diminish the progress that Georgia has made in the fight against corruption. Before the Rose Revolution, Georgia was perceived as one of the lowest performing countries in the domain of corruption in the former Soviet Union. The state was using the corruption mechanisms to further its goals (Freedom House, 2004). After the revolution, the fight against corruption has become a primary goal of the new Government. The efforts to tackle corruption were large-scale targeting both current and former government officials. The staff of the Ministry of Interior was cut in half counting, not more than 22.000 persons. The next step was to fire over

15.000 police officers, and the newly hired personnel gained better payment (Bertelsmann Stiftung; Jones, 2015; Cheterian, 2008). The most prominent example was the sacking of the traffic police. The entire personnel was changed to ensure a profound reform and stop the petty corruption on the roads.

To help in the development of the Criminal Justice Reform Strategy (Parliament of Georgia, 2009), the European Union has deployed the EUJUST Themis Mission. The EUJUST Themis mission in the European Union has multiple purposes both at internal and external dimensions. Both the Council and the Commission recognised the need for a more significant presence on the EU in Georgia because of the enlargement of the Union and the close relationship with the Caucasus country. The EU-Georgia Action Plan (EEAS, 2006) also points out that the rule of law is a crucial issue that needs to be dealt with through the reform of the justice system. The closeness to the region determines a more focused effort of the European Union shown both in the European Neighborhood Policy (ENP) and the European Security Strategy (European Council, 2003). The securitisation of the EU is seen through ensuring the security of its neighbours. Amongst the methods for that envisioned by the ESS are the promotion of good governance, conflict prevention, fight against organised crime and ensuring a rule-based international order. Providing stability and a well-functioning state manages the EU risks and threats and the potential problem spill-over to the union ranging from human trafficking to the activation of frozen conflicts. Thus, ESS explicitly sets the task of promoting good governance in all the bordering states. Amongst the risks that the ESS describes state failure, organised crime and regional conflicts are relevant for both cases I analyse. The progress made in Georgia under the Shevardnadze has done little to reform the weak state emerged after the collapse of the Soviet Union. Lynch (2006) considers that the new government after the revolution had to deal with a failed state in the sense of administrative capacity, legitimacy and control over the territory. One can theorise over the motives behind establishing the Eurojust mission; Sierra argues that it came from Georgia's role as a transit country

for energy and commerce. Some other arguments come from the need for support for the new government that has declared an openly pro-European orientation.

The mission initially had only nine EU legal experts and a mandate of 12 months (EEAS, 2004). It had three phases of activity: assessment, drafting and implementation planning. The mission had to rely on the Georgian authorities for the last two stages. The support of the post-revolution Government was not constant, and the political will might have been missing in some periods. Nevertheless, the mission has brought together the Georgian stakeholders of the criminal justice sector and has promoted dialogue amongst them to come up with the National Strategy for Criminal Justice Reform. The Strategy, while far from perfect, came as a consensus document orienting the Georgian Justice Sector towards European standards. Amongst the more significant problems that the mission has encountered was the lack of experience of the newly appointed Georgian officials and the bureaucratic limitations that arise from the EU procurement procedures. Another example was the corruption in getting into the higher education institutions (Cheterian, 2008). This practice has been recently stopped, and students do not have to worry about these fake impediments to their studies. The focus of the anti-corruption reform though remained petty corruption, and this was presented as an apparent result of the Rose Revolution.

The administration of the ousted President Shevardnadze was overgrown with sinecures and bloated organisational structures. Studies show that over half of the government employees have been employed through corruption schemes (Jones, 2015). This situation has not improved instantly. Allegations of corruption of high-level officials have remained a problem throughout 2007-2010 (Freedom House, 2007, 2008, 2009, 2010).

Tackling high-level corruption was a more laborious task, as cronyism continued to be a wide-spread phenomenon in Georgia (Mitchell, 2006). Nevertheless, some businesspersons, a minister and a deputy minister were charged with corruption in 2010-2011. To deal with corruption issues, an Anti-Corruption Council was formed with the participation of civil society groups. Amongst

the measures to ensure transparency that was taken was the online publication of the assets of public officials, as well as public jobs.

A big problem of the Justice Sector Reform was the continued practice of selective justice. The Saakashvili government was using the justice system against the opposition, as well as the businesspersons that had competing interests. The high-level corruption continues to be an instrument of the political power (Loke, 2011). Saakashvili's cronies owned a big part of the business power in the country and would benefit from preferential treatment from the regime.

After Saakashvili lost the power in 2012, the Georgian Dream party had weaker political control over the justice sector. It has initiated a crusade against the former administration, targeting even the former president, but tends to ignore the current faults. In 2013, the state created an Inter-Agency Anti-Corruption Coordination Council with the participation of the executive, judiciary and civil society representatives.

The new administration presents the same elements of cronyism and nepotism and is reasserting the control over the justice sector anew. It is important to mention that in the first period of the Saakashvili period, anti-corruption was a more prominent issue on the government agenda, realising a power jump on anti-corruption matters. During the Georgian Dream period, anti-corruption efforts have been maintained, and there are right premises that it will continue to have similar success.

The more significant issue of the Justice Sector Reform of Georgia is ensuring the independence and impartiality of the court system. Compared to the progress in the anti-corruption domain, the independence of the judiciary has stagnated in the period 2006-2016. There is definite progress since before the Rose Revolution, but the current state of the judiciary does not meet the criteria for real independence. In the Saakashvili period, with the notable exception of annulling the Parliament Election of 2013, the judiciary continued to be under a lot of political pressure. The Public Prosecutor, appointed by the President, was a loud voice that would not be opposed by the

judiciary. The Supreme Court had politically motivated appointments and until 2006 was under the ‘supervision' of the Prosecutor's office (Jones, 2015).

To promote the independence of the court system, the state has continuously raised salaries and improved the physical infrastructure of the court system. These measures did not result in greater autonomy, as the judiciary remained controlled by the government (Pinzari, 2015). A significant part of the judges has had resigned because of the state giving them incentives to do so or just forcing them out of the system. This system of ‘renewing' of the courts' personnel did not contribute to their independence but has made them more obedient because of the fear to be taken out of the system. This insecurity in the judges' status has contributed to the political targeting of the opposition and several businesspeople.

The Constitutional Court of Georgia has also gone through several changes. Since 2007, the President cannot directly appoint judges to the Constitutional Court but maintains a level of influence on the appointments. The situation was so severe that, in 2007, the EU Rule of Law Mission deemed that none of the appointments to the Constitutional Court met the criteria of independence (Berglund, 2014).

In the domain of criminal justice, the situation is also complicated. The state could not guarantee fundamental human rights and especially the right to a free trial. The rate of conviction and imprisonment in 2007 doubled from 6.000 to 13.000. Torture and inhumane conditions were a constant phenomenon in Georgian prisons.

To curb this phenomenon, the pre-trial and trial detention terms were decreased by half. The High Council of Justice gained a more prominent role in appointing the judges and the candidates needed to undergo a particular course to increase their professional level (Jones, 2015).

The problems in the criminal justice system continued and, primarily, the persons that were not favourably regarded by the government were treated inhumanely, with disregard to fundamental human rights. For example, a former defence minister and a close aide to the former President were illegally detained for an extended period.

2.2. Main issues of the Justice Sector Reform in Georgia

The period 2010-2012 was characterised by a worsening of the situation in the domain of criminal justice. Reports showed a high number of political detainees, and their number increased before the 2012 elections. The change in government has caused a shift in perspective on the criminal justice. The Georgian Dream government has called for a 'restorative justice' approach, that has been oriented mostly against the former governance party (Freedom House, 2013).

Nevertheless, the Georgian Dream government has made efforts to ensure the independence of the court system and the Prosecutor's Office. The appointments to the High Council of Justice were shifted from political actors towards the courts themselves and to the civil society. The Prosecutor's office has been separated from the Ministry of Justice and reshaped as an independent body (Bertelsmann Stiftung, 2014). The Georgian Dream government has also implemented the long overdue measure of appointing the judges for life. The judge had to undergo a 3-year trial period and then selected for life.

Some of the positive steps in the criminal justice reform were an amnesty that has targeted the overpopulation of the Georgian prisons and the discovery of many wrongdoings of the former government officials (Freedom House, 2014). These measures focused even the former President Mikheil Saakashvili, that was recently convicted in absence with his property on the territory of the country. It can be assessed that the intensity of the persecution of political rivals was lower compared to the former government actions. The conviction rate had also gone down from the unrealistic 99% to over 80% in 2012. A notable case of the justice sector functioning is the trial against the pro-Saakashvili TV channel, Rustavi 2, that was ordered to close by a national court. The Constitutional Court has subsequently overturned this decision showing a degree of political independence from the government.

The judicial independence reform hence represents the more significant flaw for the Georgian Justice Sector, Jones considering it the 'invalid' reform. Some studies show that the political

influence over the Justice Sector is the legacy of the Saakashvili period. But the situation today shows that the judges continue to serve as proxies of the governing party, especially in politically sensitive cases.

Conclusions for Chapter 2

Although Georgia has realised a series of successes in promoting the Justice Sector Reform, the general situation is stagnant and may lead to a negative trend in the future. Amongst the factors for the limited influence of the EU on this process, is the focus of EU on strengthening the state rather than promoting the rule of law. This resulted from the aftermath of the Rose Revolution and the carte blanche that ensued (Mitchell, 2006). A second factor was the lack of negative conditionality. Börzel (2016) considers that the priority for EU was the strengthening of the state remaining silent to the abuses that the Saakashvili administration was pursuing. The situation is similar with Moldova in a way that they would sign the Association Agreements and pursue European Integration despite limited success in the reform process. A third element was the complicated internal situation where leaders had to deal with the maintaining of statehood rather than promote deep reforms (Freyburg et al., 2015). A fourth factor was the lack of a sophisticated toolkit of incentives for the better performers of the EaP. Korosteleva(2011) shows that putting them in the same basket with outsiders like Belarus curbs their enthusiasm and limits the attraction of the European Integration.

Nevertheless, some notable elements should be evidence as to why Georgia has maintained a better score than Moldova. The Georgian Dream Party coming to power had to re-establish trust and good relationships with the European Union and took a series of actions on the Justice Sector Reform. This strategic necessity came both from the need for external and internal legitimacy, as the population continues to support European Integration.

Also, the policy of small steps oriented towards petty corruption rather than more deep reform measures has created traction for other initiatives and a public image of ‘success story' that the authorities avoided losing.

Chapter 3 Justice Sector Reform in Moldova: Fragmented political will

The Justice Sector Reform is the most critical element of Moldova's relationship with the European Union and one of the domains that the country has been criticised the most by the European Union.

On October 11, 2016, the European Union has declared that it freezes the funding towards the support of the Justice Sector Reform due to an insufficient commitment to reforming the justice sector in the period 2014-2015. Amongst the factors that led to the freezing of funds, EU invoked the inadequate allocation of funds and personnel, leading to the conclusion that the Moldovan authorities have not fulfilled the EU's conditions for the continuing of the financial support 'loosing' over EUR 28 million (EEAS, 2017a).

This situation has been widely analysed by the local media and political commentators leading to differing conclusions. The Ministry of Justice has claimed that the poor implementation of the Justice Sector Reform has been a consequence of faulty politics in the period 2014-2015 (Pendea, 2017), implying that the new government has taken a series of measures to further it. It noted amongst its successes the adoption of the new Law on the Prosecutor's Office, the approval of the law package on integrity, the modification of the Criminal Code on the frauds relating to foreign funds and the elimination of the political influence over the nomination of the judges of the Supreme Court.

Another crisis has happened recently when the European Parliament (2018) has adopted a resolution on the political crisis in Moldova following the invalidation of the mayoral elections in Chișinău. The decision recommended the suspension of the funding towards Moldova invoking amongst other reasons the deterioration of the rule of law, concerns over the independence of the judiciary and its use as a tool of political pressure.

The immediate reaction of the Moldovan Government to this crisis was a bitter one. The Prime-Minister of Moldova, Pavel Filip (2018), has declared that the failure of the justice sector

reform is shared with the development partners. The spokesperson of the governing Democrat Party (Ciobanu, 2018) has announced that EU risks a plunge in popularity amongst the population of Moldova and that it partners with opposition parties.

An uneven development characterises the relationship between the Moldovan authorities and EU on the Justice Sector Reform, blame shifting and excessive politicisation of the issue on the Moldovan side. In this chapter, I analyse the main events of the Justice Sector Reform in Moldova starting with 2012, the main factors that influence the relative lack of success of the reform process and the possible explanations of these developments.

3.1. The main developments of the Justice Sector Reform in 2012-2018

The current Justice Sector Reform in Moldova starts with the adoption of the Justice Sector Reform Strategy on November 25, 2011. The adopted text was a set of principles and goals without clear, measurable objectives which lead to the elaboration of an Action Plan for the implementation of the Strategy on February 16, 2012. This somewhat extended period has conducted to discrepancies in reporting on the implementation of the Strategy according to Gribincea (2014). As the implementation of the Strategy depended on the external financial support, there were little actions taken in the first 1.5 years while there was no support from EU. This second delay has led to the prolongation of the implementation of the Action Plan until 31st December 2017.

The Government estimated the costs of implementation of the reform at around EUR 125 million (State Chancellery of the Republic of Moldova, 2016). The main contributor to this budget was EU that provided over EUR 60 million, almost half of the needed sum. Over EUR 58,2 million were supplied as direct budget support. This choice by EU has generated a series of problems, as it was not directed at capital investments or concrete projects, but towards the increasing of personnel costs and other related payments.

Cocirta (2009) demonstrates that the Moldovan authorities have failed to realise the EU conditionality requirements. The poor performance led to the suspension of the third instalment of payments in September 2014 with the reduction of the second instalment. EU has already realised that the Moldovan authorities needed a clear negative message on the Justice Sector Reform.

Shadow reports on the implementation of the Action Plan showed a 56% implementation in 2012 and over 60% in 2013 (Postica, Stamate and Postica, 2013). The monitoring indicates that the main issues were a formal initiation of the Prosecutor's Office reform, the limited implementation of the Criminal Justice Reform as well as other formal measures taken by the Government and Parliament.

It is worth noting that many of the goals of the Action Plan were linked only to legislative change. A similar approach was taken during the reform of the Anti-Corruption Agency (Gamurari and Ghinea, 2014). After four steps of reform, it has been switched thrice between the authority of the Parliament and Government without the improvement of the actual performance of the organisation.

The ENP Country Progress Report for 2014 (High Representative of the European Union for Foreign Affairs and Security Policy, 2015) praises the adoption of legislative and policy acts but shows concerns over the impact and implementation of these decisions. One of the lowest performing domain was the reform of the Prosecutor's Office. It lacked independence, showed poor training and capacity to deal with the overwhelming number of cases.

The authorities have easily found motives for the lack of implementation of the Strategy, stating in the annual report for the implementation of the Strategy for 2014 (2015) that it came as a result of the political instability and change of four governments over a short period. At the same time, the government instability has been provoked by internal squabbles in the governing coalition. The Government was claiming these motive for the poor performance was represented by two out of three members of this alliance. The Liberal Democrat Party has been forced out after corruption allegations against its leader, Vlad Filat. Moreover, in the Parliament, most of the

former Liberal Democrats have migrated to the Democrat Party which became the most significant player in Moldovan politics. This political carousel could only be used as a pretext for explaining the lack of reform in the Justice Sector.

In 2016, the Parliament has adopted most of the legislative acts for the enactment of the Prosecutor's office reform, as well as the Integrity Agency. But, this legalistic approach towards the reform did not provide a useful framework for capacity building and showed a limited commitment of the Moldovan authorities towards the reform process according to an EU joint analysis (EEAS, 2016).

Another critical factor was the 'political activism' of the Constitutional Court that has deemed some of the acts adopted during the reform process unconstitutional. The Court has intervened in a domain where there are still many faults – the selection and the promotion of judges. The problems in this domain have also been recognised by the European Council meeting from February 2016.

For the period 2014-2016, a shadow report by the Institute for European Policies and Reforms (Groza et al., 2017) shows the realisation of the goals of the Strategy at 30% in 2015 and 63% in 2016. The authors recognise that the implementation of the declared goals does not ensure long-term change and further advanced planning is required.

International scoring systems reflect the negative tendencies. For example, Freedom House Democracy Score went down from 4.89 to 4.93 (Gotișan, 2017). The apparent political pressures over the court system have been widely discussed in the aftermath of the 2016 Presidential and 2018 local elections. The first clear sign of concern over the situation from the Republic of Moldova was the EU Parliament Resolution on the political crisis in Moldova following the invalidation of the mayoral elections in Chișinău (2018). Before this document, the approach was to focus on positive developments to ensure the continuance of the reform processes even at a slower pace.

The former Minister of Justice, Alexandru Tănase (2018) has accepted that the Justice Sector Reform has mostly failed and has put forward a series of principles for a new Justice Sector Reform. He declared that amongst the successes of the reform was the changing of over 30% of the judges and the adoption of much needed legislative acts. Nevertheless, most of the critical functions in the Justice Sector are held by the same people, and the declared objectives haven't been attained. He quotes a series of motives for the reform failure like the resistance from inside the justice system, insufficient finances and human resources.

It is interesting that the European Union highlighted two of the faults invoked by the former Minister of Justice upon freezing the financial aid. If analysed in complexity, the misallocation of resources may come from the overestimation of the capacities of the Moldovan authorities by both their leadership and their partners. The initial Strategy was formulated overly optimistic to obtain more financial aid. In the first years of implementation, it has become clear that it could not be realised in the needed period, but the authorities have chosen to maintain an optimistic discourse to continue receiving it.

The failures that followed have been explained by shifting the blame amongst following governments and governing coalitions. The reform has changed from the initial goals to realise political purposes and to fit the actual administrative capacity to implement the reform processes.

3.2. The main issues for the implementation of the Justice Sector Reform

One of the most evident policy failures of the Justice Sector was the Prosecutor's Office reform. It had two declared goals in ensuring the political independence of the institution and its professionalisation. One of the first measures envisioned for guaranteeing the freedom of the Prosecutors was the shift towards self-government of the institution through the Superior Council of the Prosecutors.

The reform process was started through the adoption of the Conception for the reform of the Prosecutor's Office (2014). Although it was adopted in the form of a law, this act resembles a white paper rather than an actual normative act. It was initially approved by the Parliament on June 3rd, 2014 and sent for feedback to the Venice Commission (2015). After input from the Venice Commission, on 25.02.2016, the Parliament has adopted a new law on the Prosecutor's Office. The delay in the adoption of the law can be explained by the necessity to select a new Prosecutor General according to the new rules. The elected Prosecutor General, Eduard Harunjen is considered a representative of the interests of the ruling Democrat Party (Ziarul de Garda, 2016). The President Timofti approved the candidate during the last days of his mandate to the chagrin of the President Dodon elected days after the nomination of Harunjen.

Another central issue of the new law on the Prosecutor's office adopted in 2016 has made an apparent effort to ensure the independence of the organisation from political influence. The primary governing body of the Prosecutors represents the Superior Council of Prosecutors that includes the Prosecutor General, the Minister of Justice, the head of the Superior Council of Magistrates, the Prosecutor of the Gagauzia Region, five representatives of the prosecutors' offices and three representatives of the civil society. The selection process of the civil society representatives is quite peculiar. The Parliament should select each of them, the President and the Academy of Sciences. This situation leads to an intransparent way of selection of these members. For example, the President has proposed the ex-judge of the Constitutional Court, Dumitru Pulbere. At the same time, it is unclear how the selection procedure has taken place, although the law states the necessity of a public selection. At the date of the nomination of the candidate, on the site of the President, there was still an announcement on the prolongation of the term for the potential candidates.

The over-representation of state officials in the Council, as well as the faulty mechanism of selection of the civil society, lead to a politically dependent behaviour of the organisation. As a result, there are numerous reports on the failure of the reform of the Prosecutor's office.

Another complex issue in the process of the Justice Sector Reform is the creation and reform of the National Center for Integrity morphed into the National Authority for Integrity. Law created the National Integrity Commission in 12/19/2011, entered in force at 03/01/2012. Its function was to ensure the integrity of the personnel of the public services and the prevention of corruption through the control over the assets, personal interests, conflict of interests, incompatibilities and restrictions of the said personnel (CNI, 2015).

The Commission started its activity in 2013 due to an extended period in which the NIC was constituted. The Commission initiated 143 control in 2013 and doubled its results in the next two years (Prohnitchi, Kalughin and Pirvan, 2017). The difference in results can be explained by poor support from the government and the setting up of the declaration processes. Prohnitchi also shows that the public reporting of NIC was faulty and presented in different documents different numbers. At the same time, the Commission met a specific resistance from the judiciary that was slow in analysing their reports and did not have regular practices in their revision.

Another issue was the understaffing of the Commission caused by the modest payment of the inspectors. In 2016, when the reform of the Commission was initiated, it had only 24 employees, this being invoked as a severe problem for its performance in its Strategic Development Programme (CNI, 2015).

The reform of the Commission initiated to tackle its poor performance has resulted in underwhelming results. It took almost two years for the new National Authority for Integrity to become functional through the selection of the Director of the institution. As a result, the number of controls in 2016 has reduced by a third and reduced even further in 2017. The reform has caused controversies over the integrity of the former Director of the Commission. The rounds of change show an unwillingness of the government to provide conditions for an integrity agency to function, but pressed by external factors like public opinion or international donors.

A third failed element of the Justice Sector Reform can be considered the implementation of the National Anti-Corruption Strategy (2016). Presenting the report on the implementation of

the NAS, the National Anti-Corruption Centre (NAC) has declared that it has realised over 79% of the Strategy. Initially, the Strategy had two general objectives – the transformation of the corruption activities into risky and disadvantageous behaviour and developing a ‘zero tolerance' attitude towards corruption in the society. NAC has reported that the limited realisation of the Strategy was caused by the tardive reform of the Prosecutor's Office; the lack of cooperation between national and local authorities and the lack of political will in promoting the criminal justice reform. This somewhat honest evaluation of the performance in the implementation of the Strategy should be completed by the political influence over the Anti-Corruption Centre and the lack of credibility of the institution from the society caused by the mishandling of the billion-dollar theft from the banking system.

In the aftermath of the implementation of the NAS and the adoption of a new strategy, the deputy chief of the National Anti-Corruption Centre, Cristina Tarna, has resigned claiming that the agency is turning into the advocate of businesspeople focusing only on petty corruption (Esanu, 2017). She also argued that the transfer of the newly formed Criminal Goods Recovery Agency from the NAC to the Ministry of Finance would further limit the capabilities of the agency.

The motives claimed by the deputy chief of NAC seem valid, but the agency also suffers from an image crisis. The last Barometer of Public Opinion (2018) showing that over 22% of the population trust the organisation and over 33% distrust it. This situation is continued for an extended, and the subsequent reform waves did not contribute to solving it.

Conclusions to the Chapter 3

Amongst the causes of the relative failures of the Justice Sector Reform, I have identified several motives. The political influence over the reform process results from the application over the developments the post-Soviet model of transition. The Soviet model used informal corruption ties to make itself more efficient and has been acquired by the new business elite to be applied to

the new realities. The emerging elites preferred a weak rule of law to further their goals during the privatisation process and the following development of the economic system.

The new elites came from the Soviet nomenclature, the organised crime and emerging political clans that used their power to further economic interests. In the early 2000s, the Voronin clan formed around the figure of the President and the successor of the Communist party (The Economist, 2009). In the aftermath of the 2009 parliamentary elections, this clan has been gradually changed to several groups gathered around businesspeople that benefited from the privatisation from the 90s. The 3 main groups represented in the Parliament were centered around Vlad Filat (Liberal Democrat Party), who became the Prime-minister, Mihai Ghimpu (Liberal Party), who received the function of the President of the Parliament, and Vlad Plahotniuc – a shadow leader of the Democrat Party, who came to the light in the aftermath of the 1-billion-dollar theft from the banking system.

This 'theft of the century' was possible due to the political domination and control over the Justice Sector (Voronovici, 2015). According to a secret agreement signed by the governing Alliance for European Integration, each party got one organisation of the sector. The Liberal Democrats got the Ministry of Interior; the Democrats received the appointment of the Prosecutor General and the Liberal – the director of the Information and Security Service. This division can be traced to the further developments in the prosecution of the most significant criminal case for the Moldovan Justice Sector and the following conviction of the ex-Prime Minister, Vlad Filat.

This case describes the systemic faults of the Moldovan Justice Sector. It became possible due to the slow reaction of the National Bank, the National Anti-Corruption Centre and the Anti-Corruption Prosecutor. Moreover, there was a politically motivated bailout that has doubled the losses and has transferred the burden to the national budget.

The reaction of the international partners was very revealing to their assessment of the situation in the Republic of Moldova. Thorbjorn Jagland (2015), the Secretary-General of the Council of Europe declared that the endemic corruption and prevalence of oligarchs in Moldova

might amount to state capture. Stefan Fule (2012), the former Commissioner for Enlargement, has highlighted that the democratic institutions, mainly law enforcement agencies have been privatised and serve oligarchic interests.

One can draw a parallel between the Justice Sector Reform in Moldova and some Latin American countries. Calderon (Calderón and Flórez, 1998) reveals that clientelistic relationships and corrupt schemes develop an alternative conflict resolution scheme. Political opportunism and personal gain become more important than promoting democratic governance.

It is essential to analyse the actors behind the promotion of the Justice Sector reform, especially after mentioning that one of the members of the coalition that adopted the Strategy has been convicted in the billion dollar theft. The local actors' motivation to promote it came from the incentives given by the Association Agreement and the DCFTA with the European Union. It should be mentioned that most of the legislative actions taken by the Parliament were adopted in the period December – February, before the reporting deadlines towards EU. This shows the limited political will and lack of ownership from the authorities on the issues.

This hypothesis is confirmed by a report by the European Court of Auditors (2016). The Court describes that the situation in Moldova shows limited evidence of progress. The macroeconomic and political instability, as well as the limited administrative capacity in Moldova, diminishes the European Commission conditional leverage.

The initial approach ‘more for more’ applied to the Moldovan case has shown limited efficiency. After getting the incentives from signing the Association Agreement and the visa liberalisation, the Moldovan authorities have diminished their efforts in realising the Justice Sector Reform. The declared goal of the governing alliances in the 2012-2016 period was still European Integration, but the downward tendencies that the country showed prove otherwise. The 2015 ENP report (2015) clearly states that Moldova is facing the most profound democratic crisis in the last period affecting the capacity of the state organisations.

The underlying motive behind this shattered commitment towards the Justice Sector Reform can be found the consensus behind the reform process. The conditionality behind the Association Agreement caused the Justice Sector Reform to become a priority for the Moldovan authorities. The political campaigns since 2009 have mostly focused on poverty eradication and European Integration. Moreover, as I showed earlier, the elites behind the parties that formed the governing alliances had obscure business interests to protect. A functional Justice Sector could have turned on them, as the example of Romania shows with an independent Anti-Corruption Agency – the National Anti-Corruption Department.

Another factor in explaining the policy failure of the Justice Sector Reform areas Sobjak (2015) describes the unrealistic expectations of EU. The Union looks at its partners for 'success cases' and offers high political and financial gains. But it doesn't necessarily factor in the administrative capabilities and transaction costs for the national authorities. In the absence of a clear perspective of accession, the elites may choose current benefits over long-term perspectives in the European Integration.

The bureaucratic mechanisms of EU technical assistance also offer limited manoeuvrability in the case of underperformance of the national authorities. EU reacts only to large-scale crises – in the case of Moldova, the political turmoil caused by the billion-dollar theft and the subsequent reaction of the Justice Sector and the Government and the legitimacy crisis caused by the court annulment of the results of the local elections in Chisinau. The holistic leverage mechanism is more efficient in the case of the pre-accession where the candidate's perspective overweighs the costs of implementation. But in the case of EaP, a small step policy oriented towards direct contacts with different actors may prove more efficient.

Analysing the implementation capacity of national authorities in Western Balkans, Boskovic (2015) claims that governments in societies transitioning to democracy lack the ability to manage complex reform processes. They often suffer from government instability and lack of experience in managing the relationship with different stakeholders to implement reforms

effectively. The authorities might perceive changes as a transactional cost for a good relationship with international donors rather than an actual necessity. This often shows in the formal approach towards the creation and activity of working groups involving societal actors. These groups action results mostly in analytical reports and not change.

The UN Rule of Law tools for post-conflict states manual (2006) describes any profound reform as creating tensions between the pre-existing established relationships and the outside intervention. The rulebook recommends the build-up of the reform activities capitalising on the small successes to influence the more sensitive areas. In contrast, the European Union has found that in the case of Moldova the reform actions did not lead to significant changes triggering the first suspension of funding (EEAS, 2017b).

The Moldovan case can be used in the broader debate on the reform process. I argue that according to Cohen and Levinthal taxonomy (1990), the Moldovan Justice Sector Reform has only led to limited political evaluation. The relative failure of the policy did not result in a broader reassessment of the policy measures, but into a blame shifting game. In the case of the former Minister of Justice Tanase the blame was put on political instability and resistance from within the Justice Sector. The Prime-Minister Filip, in turn, declared that the failure should be ‘shared with the international partners'.

The subject of policy learning in the analysis of the EU activities and the Moldovan authorities is a crucial one and should result in a universal perspective on realistic programming prioritising fewer and less costly changes. The alternative takes the shape of parallel overoptimistic planning that could only bring another ‘degree' of failure. Moreover, the risk of alienation of different actors and continued formal implementation of the ‘second wave' reform is higher than the original processes.

Another critical issue of the implementation of the Justice Reform Strategy is the implementation of coalition shape and proposed leadership. The Strategy depicts the Ministry of Justice as the ‘flagman' for the implementation of the Strategy without providing it with the

necessary mechanisms and legitimacy to act the role. Most of the actions provided by the Strategy relied on the interinstitutional cooperation between the Parliament, NAC, the Constitutional Court and other agencies and societal actors. In the case of Western Balkans, predictable applicable to Moldova, Boscovic (2015) shows that limited consultations and periods for public debates distort the planning process. The Moldovan Strategy provides a similar case with lack of coherence between the different subthemes of the reform.

As a result, each state agency has developed individual sectoral reforms that sometimes conflicted between them. The planning complexity expands considering the parallel positions of various international partners and the Government Programs of five subsequent Prime ministers. Pressman and Wildavsky (1973) believe that the planning interaction with minimal misshaping can lead to systemic failures.

The Ministry of Justice, as a result, had to navigate a series of adjacent interests without flat-out political capital and legitimacy. The ministers of justice had to argue that their demands stemmed from international partners demands and, especially, the Association Agreements. They had to adjust to differing priorities of the Governments and governing coalitions reshaping the actions to motivate the political actors to support them. The result of this instability was the shrinking of the windows of opportunity for the adoption of the instruments for the realisation of the reform as well as the capacity to monitor and reinforce actual change.

Another issue with the coalition for the Justice Sector Reform was the adversarial relationship between the state actors and civil society. An example of exclusion of the civil society from the processes was the nomination of the Prosecutor General, Eduard Harunjen. He was nominated and appointed in less than 24 hours. The civil society has subsequently raised concerns over the rushed process and the lack of the public debates over the candidate and his integrity (Amnesty International Moldova et al., 2016).

Moreover, in the respective period, the Government proposed a draft law to control the financing of the civil society (Popsoi, 2017). It remained only ‘a scare’ as it was withdrawn. But it also added to the distrust between the civil society and the Government.

The Justice Sector Reform presented a series of issues relating to the planning, dealing with the interinstitutional interaction and political interests, as well as the misrepresentation of principal actors at all the stages of the public policy cycle.

Conclusions

This study has undertaken an effort to assess the Justice Sector Reform in Georgia and Moldova in the context of the EU conditionality. It has made a point to analyse the specific influence of conditionality in the case of the relative leader Georgia and Moldova who is falling behind. Based on the selected theoretical framework, the author has highlighted the factors that shaped the decisions on the implementation of the reform in both cases and their relationship with the incentives toolkit that EU provided through the tools of EaP and ENP.

Most of the decisions fell under the Schimmelfennig and Sedelmeier 'external incentives model' with notable exceptions that could not be explained stricto sensu by this model and would better fit the social learning or lessons drawing models.

Before continuing to concrete conclusions and recommendations, I want to address a series of limitation of this study. The study does not address exogenous factors for the reform process, mainly the role of the Russian Federation and political phenomena except several election cycles. The study took on an ambitious goal to compare a broad policy domain – Justice Sector Reform. A survey on sectoral policy domains could show different results, especially if the Anti-Corruption policies of the two countries were compared. The conclusions could also benefit from a quantitative analysis perspective.

The primary hypotheses of this study have been largely confirmed. The narrow focus of the Georgian authorities on the petty corruption has contributed to a more holistic effort in the Justice Sector Reform both by the public relations effect and the need to avoid 'image loss' of the Georgian authorities. The presence of the EU mission at the planning phase of the reform in Georgia has given the national authorities more incentives to include more stakeholders in the formulation of the policy. The electoral transfer of power in the case of Georgia has contributed to a sustained effort in reforming the Justice Sector to confirm the goodwill of the new Government and to gain internal legitimacy.

Also, based on the findings, I can formulate a series of recommendations for making European conditionality more efficient. There is a need for a precise mechanism of negative conditionality that would come into force at the first signs of bad performance. This conclusion comes mainly from the case of Moldova, where the freezing of financial support came too late and provoked a political crisis, as well as the alienation of the national authorities.

The EU's direct input to the policy cycle could be most effective at the earliest stages of planning with forming a coalition of international partners to synchronise their agendas and promote a broad inclusion of stakeholders, including civil society.

I consider that there is still room for further research, mainly through analysing the same cases through the social learning model and lesson drawing model.

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