

# ACHIEVEMENTS AND FAULTS IN REFORMING THE JUSTICE SECTOR OF THE REPUBLIC OF MOLDOVA: 2012 - July 2014. Translated selected chapters

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## Executive Summary

Since the change of government in 2009, justice reform was among the top priorities in activity programs of all three Government from Chisinau. Although it contains ambitious initiatives, Justice Sector Reform Strategy for 2011-2016 (JSRS) was adopted only in November 2011, more than two years after the change of government. Due to the fact that the Action Plan for implementation of JSRS entered into force with delay, real implementation of the Strategy started only in June 2012. On the other hand, it seems that in the process of implementation of JSRS, Moldovan authorities relied less on their own resources and too much on external assistance. In 2012, there were extremely limited budgetary resources for implementation of JSRS. Shortage of funds delayed the implementation of many activities from the JSRS. The European Union started to support financially the implementation of JSRS in only 2013. Until then the main supporter of the reform was the US Government.

Prosecution service of the Republic of Moldova resembles more the Soviet type prosecution service, with broad powers, which are vaguely regulated by the law, and with a strong hierarchical subordination. There are many prosecution offices in the country with a small number of prosecutors while the staff assisting prosecutors is insufficient. On the other hand, the number of hierarchically superior prosecutors is very high. The powers of the prosecution service, which are too broad, do not make the institution to focus on the main task of a European-type prosecution service - criminal justice. Even if politicians have publicly and constantly declared that they support reform of the prosecution service, in more than 20 years since country's independence, the prosecution service was not reformed substantially. In 2013, a Working Group was created to elaborate the Concept of reforming the prosecution service and the draft amendments to the legislation for implementing this Concept. The Concept and the draft law were elaborated in November 2013. However, the Parliament adopted the Concept only in July 2014, while the draft law was not even discussed so far. The delay in reforming the prosecution service represents, probably, the main outstanding arrear in the implementation of the JSRS. Because of this arrear, EUR 1.8 million from budgetary support provided by the European Union for reforming justice system were lost.

District courts with small number of judges are expensive to maintain and do not provide proper environment for professional growth of judges. Out of 44 district courts of the Republic of Moldova, 29 have less than seven judges, and the workload of judges from different district courts varies by several times. The change of the judicial map represents the first area of intervention provided by the JSRS. In 2014, at the request of the Ministry of Justice, CRJM has launched the Study on optimization of the judicial map in the Republic of Moldova. The Study recommends rethinking of the judicial map by merging and liquidating a number of district courts and courts of appeal in order to enhance the quality of justice and efficient administration of public funds. It seems that the Government has not decided yet how to optimize the judicial map. However, in the summer of 2014, the Government has initiated the liquidation of one court of appeal, apparently, in order to combat corruption. Liquidation of district courts as a tool for combating corruption in the judiciary is not an appropriate measure. Optimization of the judicial map should be implemented only through systemic and long-lasting actions.

A new system of performance evaluation of judges was introduced in 2012 to further increase judges' professionalism. Introduction of this system is a positive step. At the same time, the system of performance evaluation of judges was introduced with some serious deficiencies that can diminish the original intentions. The workload of the performance evaluation Board is very high, affecting its quality, while some evaluation criteria are difficult to assess objectively.

After more than two years of debates, a new law on disciplinary responsibility of judges was adopted in 2014, after the Government assumed political responsibility for implementation of the law. The law contains a number of positive innovations. However, the mechanism for investigating disciplinary offences is very complicated, the fact that can block the activity of the Board responsible for examination of disciplinary cases. Although Venice Commission and OSCE/ODIHR provided their opinion on this draft law, none of their recommendations have been accepted.

Investigative judges (IJ) are specialized judges authorizing prosecutor's requests for conducting criminal investigation actions, special investigation measures and requests for application of procedural coercive measures (e.g. search, wiretapping, seizure of goods, preventive arrest etc.) and are responsible for examining complaints against the actions of criminal investigation bodies. There is a general perception that, because IJ are former prosecutors or criminal investigation officers, they give a too broad margin of discretion to prosecutors and do not react the illegalities committed during criminal investigation. Their activity was often criticized by the European Court of Human Rights (ECtHR). In 2012, the institution of IJ was reformed. Nevertheless, legislative framework and SCM practice may undermine this reform.

By the Law no. 153 of 5 July 2012, the SCM powers in respect of administration of justice system were consolidated. One of the major changes represents the SCM competence to establish the number of judges each court, based on the total number of the positions of judges per system. In 2013, observance of the principle of random distribution of cases was set as SCM priority. SCM has tightened the rules related to random distribution of cases. In 2013 SCM has made several changes in the Integrated Case Management Program (ICMP). In 2013, the failure to comply with the provisions related to random distribution of cases was invoked in two disciplinary proceedings initiated against judges.

In 2012, legislative amendments were adopted to improve the system of court management and the quality of judges' activity. New positions of head of court's secretariat were created and, starting with 2013, each judge is assisted by a legal assistant. In 2014, each judge from district courts was assisted by two persons: a clerk and an assistant. At this field, Moldovan judges can only be envied by judges from other European countries

Until 2013, draft budgets of district courts were elaborated by the chairpersons of courts and sent to the Department of Judicial Administration of the Ministry of Justice (DJA), the fact that dissatisfied SCM. Since 2014, DJA is no longer involved in the management of court budgets, and this task has been totally taken over by the SCM. On the other hand, 2012-2014 years were marked by considerable increase of budget allocations for the court system. In 2013, the budget of courts increased by 57% compared to 2012 and in 2014 - by 44% compared to 2013. In addition to the spectacular increase of the budget of the courts, the justice system also benefited from considerable external assistance.

Generating exact and complete statistical data on criminal justice is a problem in Moldova, because there is no integrated record of such data in the country. Keeping statistics on criminal prosecutions is traditionally assigned to the Ministry of Interiors (Mol). However, the data of the Mol does not include information concerning criminal investigations carried out by other bodies. Moreover, Mol is accumulating information only until finalization of the criminal investigation, i.e. it does not have information about the fate of criminal cases submitted for court examination. JSRS envisages a uniform method of collecting and analysing statistical data related to criminal justice. Regretfully, by September 2014, this activity was still not implemented. Until 2013, statistical reports on the activity of courts were submitted and stored on paper by the DAJ. Although ICMP has a powerful statistical module, until 2013 it was not generating reliable data, because only few courts were introducing in the ICMP information about all cases.

Following the 2012 legislative amendments, SCM has introduced clear criteria for the evaluation of the activity of judges and selection of candidates who wish to become judges or judges who want to be promoted. However, SCM does not feel obliged to follow the score awarded by the Selection Board. In several decisions, SCM did not indicate the reason or criteria that served as the basis for the appointment or promotion of judges, despite the fact that other candidates were proposed for appointment or promotion than candidates who accumulated the highest score. Such practice erodes the trust of judges in the SCM.

Judges in the Republic of Moldova cannot be prosecuted, detained, arrested or searched without the SCM consent. On 5 July 2012, legislation was adopted allowing criminal prosecution and of judges without the SCM consent at the initiative of the General Prosecutor and only in cases of suspicion that acts of

passive corruption and traffic of influence were committed. In other cases, the SCM consent is still required. Although the law envisages that SCM shall examine request of the General Prosecutor within maximum five days, examination of the request in relation to judges Eugeniu CLIM, Aureliu COLENCO, Valeriu HARMANIUC and Ala NOGAI is pending for several weeks already.

Until 2012, the appeal system in Moldova was quite complicated. It included many exceptions under which certain criminal and civil cases were examined on their merits by the courts of appeal. As a result, the work of the courts of appeal was hindered, and practitioners were confused about the competence of examination of certain cases, especially administrative cases. According to amendments introduced in the Civil Procedure Code and Criminal Procedure Code in 2012, all cases are examined on their merits by the district courts. However, a number of special laws, which envisage the right of courts of appeal to examine cases as first instance court have not been amended so far. Moreover, instead of narrowing the competence of the SCJ in civil cases, the 2012 legislative amendments have expanded its competence.

JSRS envisages creation of a mechanism that would guarantee uniformity of judicial practice and observance of the principle of legal certainty. The 2012 legislative amendments allow the SCJ to effectively unify judicial practice. During 2012-2014, the SCJ was quite active in issuing recommendations for judges, designed to make the judicial practice uniform. However, these recommendations are not always observed. Sometimes, the SCJ itself deviates from its own recommendations.

Insufficient reasoning of court decisions, regardless of the court, was and remains, probably, alongside corruption, the most serious problem of the Moldovan judicial system. The magnitude of this problem stems from cases lost by the Republic of Moldova at the ECtHR. The size of court decisions increased lately. However, description of the positions of the parties often represents the largest part of the court decision. Grounds on which judges are basing their solutions are usually spelled laconically and without touching upon all the key issues of the case. SCJ has tolerated or even generated such practices. However, in the past two years, the SCJ started to motivate better its decisions, although the number of poorly motivated SCJ decisions is still very high.

Until 2013, judges in the Republic of Moldova had the lowest salary among the Council of Europe member states. Corruption in the justice system cannot be abolished without providing civil servants with an income that would enable their decent living. Salaries of judges were increased in two stages, in 2013 and in 2014, by more than 100%. Salaries of judges will further increase by 10% in 2015 and by 10% in 2016. Judges also receive annually material assistance in the amount of one monthly salary and an bonuses that should not exceed one monthly salary in the course of a year. The practice of providing bonuses to judges is discouraged by the Venice Commission.

Until 2013, judges had low salaries; however they enjoyed considerable pensions and allowances. At the age of 50 years, the judge was acquiring the right to a special pension in the amount from 55% to 80% of the average monthly salary of a judge in office, which was paid regardless of whether the judge resigned or continued to exercise his/her office. Moreover, the pension was recalculated if the salary of judges increase. The Law on the Status of Judge also envisaged the right of judges to unique dismissal allowance, which was equal with his average monthly salary multiplied to the number of years worked as a judge. Although salaries of judges increased in 2014, most of judges' benefits were preserved. Only dismissal allowance of judges was reduced by 50%. Reduction of this allowance determined 39 judges to resigned before the entry into force of the law concerned. Massive exodus of judges endangered activity of some small courts, where 2-3 judges left (e.g. District courts Briceni and Rezina). The activity of the Comrat Court of Appeal was completely blocked.

On 23 December 2013, Parliament passed the Law no. 326, which increased criminal penalties for corruption. Although corruption offenses are punished more severely, limiting the interdiction for public officials to hold public offices could significantly reduce the effect of these provisions. Harshening the sanctions for corruption in December 2013 is welcomed. However, the ban for public officials convicted for corruption to hold public offices for maximum 15 years is too mild and it should be introduced for a longer period of time or even for life.

The Law on testing professional integrity was adopted on 23 December 2013 in order to combat corruption within the state structures. Although the text of the law has undergone positive amendments in the Parliament, some of its provisions can significantly diminish, or even contravene to the purpose of adopting the law. For instance, members of Parliament and Government do not fall under this law.

Moldovan judges cannot be criminally prosecuted, detained, arrested or searched without the consent of the SCM. Prosecutors and the Ministry of Justice claim that this procedure hinders the fight against corruption among judges. The new legislation adopted on 5 July 2012 allowed criminal prosecution and criminal liability of judges without consent of the SCM, at the initiative of the General Prosecutor, and only for suspicions of committing acts of passive corruption and traffic of influence. SCJ challenged this legislation in the Constitutional Court. On 5 September 2013, Constitutional Court declared these provisions constitutional, with exception of the legislation allowing for detention, forced bringing, arrest and search of the judge without involvement of the General Prosecutor. In July 2014, Government proposed to the Parliament to apply all coercive measures against judges only with the consent of the General Prosecutor or of the first-deputy General Prosecutor. Money laundering and illicit enrichment were also added to the offenses for which consent of the SCM is not required. After Government assumed political responsibility on 21 July 2014, this initiative became a law and came into force on 8 August 2014.

The fight against corruption would be illusory without effective mechanisms of investigating individual cases of corruption. Investigation of corruption cases is a difficult and delicate process, and collection of evidence is especially complicated. In such cases evidence can often be collected only through special investigation measures, especially, through interception and recording of communications. On 28 June 2013, Parliament adopted the Law no. 158, in force from 19 July 2013, which excluded the possibility of prosecutors to intercept suspects without informing them in advance. In such circumstances, special investigation measures have no effect. On 29 April 2014, Parliament adopted the Law no. 39, in force from 27 June 2014, restoring the legislation to the situation existing prior to 28 June 2013.

In addition to tightening penalties for corruption, professional integrity testing and simplifying immunity of judges, some other anti-corruption measures have been introduced, such as limiting the ex-parte communication of judges, the polygraph checking of the candidates for the position of judge and prosecutor, extended confiscation and illicit enrichment. Although the introduction of these measures is saluted, they contain deficiencies that can make them inefficient. For example, the current text of the Criminal Code makes effective implementation of extended confiscation practically impossible.

Constitutional Court has examined the constitutionality of a number of initiatives envisaged for implementation of JSRS. The activity of the Constitutional Court from the recent years can be criticized by some and praised by others. It is however indisputable that, starting with 2011, Constitutional Court has become much more proactive, especially when it comes to the interests of judges. Given the importance of some rulings of the Constitutional Court for the judicial reform and for combating corruption, four rulings of the Constitutional Court are analysed in details in this Study, namely: the ruling that declared liquidation of specialized courts unconstitutional, the ruling that examined the decrease of judges' pensions, ruling on the interpretation of the presumption of legality of property, and the ruling on the immunity of judges.

The list of topics that deserved to be analysed in this Study is bigger than 30. These issues can be subject of our analysis in the next Study, which will be elaborated by the CRJM in 2015.

## 2. Modification of the judicial map

*Nadejda HRIPTIEVSCHI*

The courts with a small number of judges are expensive to be maintained and do not provide an appropriate environment for judges' professional growth. Out of 44 courts from the Republic of Moldova, 29 courts have less than seven judges. The workload of judges from different courts varies several times. For example, in 2012, the annual number of cases per judge ranged between 24 and 1,145.

The modification of the judicial map appears among the objectives of Moldovan Government since 2009<sup>1</sup>. This activity is also provided in the JSRS, being the very first area of intervention of the Strategy. In 2011 the Parliament and the Government have taken several steps in this regard, but for now these measures seem to be taken in a hurry also for reasons other than optimization of the judicial map.

By Law no.163 of July 22, 2011<sup>2</sup> specialized courts were abolished, namely the Economic District Court, the Military Court and the Economic Court of Appeal. However, apparently as a compromise solution with the judges, the Economic College of the Supreme Court of Justice (SCJ) was maintained. On February 9, 2011 the Constitutional Court declared Law no.163 unconstitutional, mainly due to poor justification of proposals for abolishing specialized courts<sup>3</sup>. On March 6, 2012 the Parliament adopted Law no.29 which ceased the activity of the Economic Court of Appeal, whereas the Economic District Court was reorganized into Commercial District Court and the material jurisdiction of the latter was significantly reduced.

The Legal Resources Centre from Moldova (LRCM) in collaboration with SCM and the Ministry of Justice prepared the Study on optimization of the judicial map in the Republic Moldova. The study does not recommend to reduce or increase the judge's positions, but to reallocate the existing 504 positions. It recommends to rethink the judicial map by merging and abolishing several courts and courts of appeal, to enhance the quality of the delivery of justice and administer efficiently public funds. The study proposes three scenarios for merging the courts, depending on the minimum number of judges per court: five, seven or nine. Depending on the scenario, from 10 to 25 courts are to be merged. Due to low workload, it is advisable to abolish specialized (military and commercial) courts. The study also recommends establishing three courts of appeal for the regions: South, Centre and North or modifying the territorial jurisdiction of five courts of appeal existing in February 2014<sup>4</sup>.

It seems that the Government has not decided yet how it will optimize the judicial map. However, in the summer of 2014 it has initiated the abolishment of a court of appeal. By Law no.177 of July 25, 2014, adopted following the assumption of responsibility by the Government, the Bender Court of Appeal was abolished and the localities placed under its jurisdiction were transferred into the jurisdiction of the Chisinau Court of Appeal. The information note to the draft law states as the main argument the low workload of this court in comparison to other courts of appeal. Even though formally the main reason invoked was the low workload, other reasons related to the judges from the Bender Court of Appeal were also discussed behind the scenes, discussions which were fueled including by certain statements of public officials<sup>5</sup>. Even

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<sup>1</sup> See, for example, the Activity Program of the Government of the Republic of Moldova "European Integration: Freedom, Democracy, Welfare" 2009-2013, which provides among its priority actions "abolishment of economic courts with the transfer of competences thereof to common law courts with specialization by boards/sections, as the case may be". In addition, the Activity Program of the Government "European Integration: Freedom, Democracy, Welfare" 2011-2014 provides among its priority actions "abolishment of specialized courts with the transfer of duties thereof to specialized boards/sections of common law courts; reform of the judicial map to strengthen the management capacity of courts and ensure a more efficient use of available resources".

<sup>2</sup> Law no. 163 of July 22, 2011 on amending and supplementing certain legislative acts.

<sup>3</sup> The Constitutional Court, Decision of February 9, 2012 on the constitutionality check of certain provisions of Law no.163 of July 22, 2011 on amending and supplementing certain legislative acts.

<sup>4</sup> The Study is available at: [http://crjm.org/wp-content/uploads/2014/06/2014-Studiu-Optimiz- HartaJud-MD\\_ro-web.pdf](http://crjm.org/wp-content/uploads/2014/06/2014-Studiu-Optimiz- HartaJud-MD_ro-web.pdf)

<sup>5</sup> See, for example, the declarations of the Secretary General of the President's Apparatus made on June 3, 2014 for *Ziarul*

if the abolishment of the Bender Court of Appeal is justified in terms of the workload, the law regarding its abolishment has a number of shortcomings. The law provides for the transfer of localities from the jurisdiction of the Bender Court of Appeal into the jurisdiction of the Chisinau Court of Appeal, but doesn't stipulate the transfer of judges and court staff of the abolished court to the Chisinau Court of Appeal, leaving the process to the discretion of the SCM. This omission may create the impression that, in fact, the abolishment of the Bender Court of Appeal aims at excluding the judges of this court from the system, and not at increasing the efficiency of the judicial map. Another problematic issue is related to the moment of termination of activity of the Bender Court of Appeal, which pursuant to the law is the date of publication of the law. The cessation of activity of a court is an extremely complex process which cannot be completed in an instant or a day without major problems. The sudden transfer of case files will require the re-examination of cases from the very beginning in the Chisinau Court of Appeal. On the other hand, it will introduce a state of uncertainty and chaos among the parties involved in these cases, inconveniences which can only reduce the popularity of the justice sector reform and the trust in judges and politicians.

**The abolishment of courts as a method of fighting corruption in the judicial system is not an appropriate measure and, most likely, it generates side effects and decreases the confidence in the justice sector reform. The optimization of the judicial map can only be systemic and long-lasting. The recommendations of the Study on optimization of the judicial map cannot be implemented separately. Either the entire judicial map is adjusted or the partial adjustment will bring no beneficial effects.**

### 3. New mechanism for performance evaluation of judges

*Nadejda HRIPTIEVSCHI*

Performance evaluation of judges is a new system that was introduced in 2012 to help raise the professionalism of judges. We believe that the introduction of this system and the abrogation of the old system of attestation is a positive step in creating conditions for enhancing the quality of the delivery of justice. However, the judges' performance evaluation system was introduced with some serious shortcomings that could diminish the initial intentions and expected results of the system.

The judges' performance evaluation system was introduced by Law no.154 of July 5, 2012 on the selection, performance evaluation and career of judges, in force from December 14, 2012. In 2013 the SCM adopted the Regulation on the organization of activity of the Judges' Performance Evaluation Board<sup>6</sup> and the Regulation on the criteria, indicators and procedure of evaluation of judges' performance<sup>7</sup>. The performance evaluation of judges aims at determining the level of judges' professional knowledge and skills, as well as the ability to apply the required theoretical knowledge and skills in the practice of the profession of judge, at determining the weaknesses and strengths of judges' work, at stimulating the tendency to upgrade professional skills and at increasing the efficiency of judges' activity at the individual and court level<sup>8</sup>. According to the conclusions of an analysis report on the judges' performance evaluation system of the Republic of Moldova<sup>9</sup>, for now it is not yet clear whether the aims of the new system for performance evaluation of judges are sufficiently clear and fully translated into practice.

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*National Newspaper*, "Decided! The Bender Court of Appeal was abolished" available at <http://ziarulnational.md/decis-curtea-de-apel-din-bender-a-fost-lichidata/> (last accessed on August 14, 2014).

<sup>6</sup> See the SCM Decision no. 59/3 of January 22, 2013 on approving the Regulation on the organization of activity of the Judges' Performance Evaluation Board.

<sup>7</sup> See the SCM Decision no.212/8 of March 5, 2013 on approving the Regulation on the criteria, indicators and procedure of evaluation of judges' performance. The Regulation was amended by SCM Decision no.796/34 of November 5, 2013.

<sup>8</sup> See Art. 12 para.(1) of Law no.154 of July 5, 2012 on the selection, performance evaluation and career of judges

<sup>9</sup>Assessment of the Performance Evaluation of Judges in Moldova, OSCE/ODIHR, June 27, 2014, available at <http://www.osce.org/ro/odihr/120214?download=true>.

The Judges' Performance Evaluation Board<sup>10</sup> was established as a collegial body with sporadic activity, and not as a permanent body, or at least in such a way that some of its members would work on a permanent basis. The membership of the Evaluation Board is not remunerated. The members of the Board who are civil society representatives receive for each attended meeting an allowance equivalent to one twentieth (1/20) of the salary of a judge of the Supreme Court of Justice. The members of the Evaluation Board who are judges remain in their position of judge and do not receive remuneration for their work in the Board, but only benefit from a reduction of the workload for the judge's position. Initially, it was decided that the judges, members of the Evaluation Board, would be assigned cases in the amount of 75% of the workload of an ordinary judge, and subsequently the workload was reduced to 50% to allow the members of the Evaluation Board who are judges to cope with the workload as members of the Board<sup>11</sup>. The activity of the Evaluation Board is ensured by SCM Secretariat's assistance. During 2013 and the first half of 2014 the secretarial activity for the Evaluation Board was performed by one person.

The Board started its activity in March 2013. Pursuant to the law, it is to evaluate all judges within two years from the entry into force of Law no.154, that is until December 14, 2014. In 2013 the Board adopted 140 decisions and in the first half of 2014- over 150 decisions. During 2013, 124 judges were evaluated<sup>12</sup> in connection with the applications submitted for participation in contests for advancement to an administrative position, promotion to a hierarchically superior court, re-confirmation in the position, transfer to another court and in connection with the ordinary assessment provided by law. Within the same period, a member of the CSM initiated the performance evaluation of a judge<sup>13</sup>, based on Art.13 para.(6) point c) of Law no.154 on the selection, performance evaluation and career of judges. This is a large workload, especially given that the system is new to the Republic of Moldova and many issues are not yet sufficiently clear. In fact, the Evaluation Board didn't have time for reflection and setting rules, but had to start its activity immediately, solely on the basis of law and the CSM's regulations.

The heavy workload, especially caused by the overly narrow two-year term provided by Law no.154 for the first cycle of ordinary assessment of all judges, negatively influences the performance of the Evaluation Board itself. The analysis conducted by the OSCE/ODIHR in 2014 on the system of performance evaluation of judges concludes that the activity of the Board is to be improved as regards the justification of its decisions, which are usually briefly justified and do not explain the way the score and the rating for each judge is estimated, thus creating the impression of a subjective and sometimes inconsistent system. In particular, it is recommended to specify the reasons for granting a particular rating in every decision of the Board and indicate specific recommendations to improve the performance of the evaluated judge, which the latter could actually use. As long as the decisions of the Evaluation Board will contain no specific recommendations for the judge and no justification for the granted rating, there is a risk that the assessment process will turn into a formal mathematical exercise, with no value for the judges' activity. It is also advisable to improve the way interviews with evaluated judges are organized. So far, the interviews organized by the Board were quite brief, lasting between 15-30 minutes, more formal than focused on the essence of evaluation. The Evaluation Board should use the interview to clarify especially the qualitative indicators of assessment, as well as the quantitative indicators which are not sufficiently clear, for instance, the percentage of judgments quashed for reasons not imputable to judges. The OSCE

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<sup>10</sup> Pursuant to Art.17 of Law no.154, the Judges' Performance Evaluation Board (hereinafter the Evaluation Board) is vested with the following competences: it examines the files of judges subject to evaluation, the documents submitted by them and the documents related to them, organizes and conducts interviews with the judges subject to evaluation, adopts decisions on the judges subject to evaluation, appoints the members of the Board responsible for monitoring the activity carried out by evaluated judges during court hearings.

<sup>11</sup> See the SCM Decision no.613/26 of August 20, 2013 and Decision no. 811/34 of November 5, 2013.

<sup>12</sup> The Judges' Performance Evaluation Board awarded 34 ratings "excellent", 64 ratings "very good", 23 ratings "good", 2 ratings "satisfactory" and one rating "fail".

<sup>13</sup> Information Note on the activity of the Judges' Performance Evaluation Board in 2013 -  
<http://csm.md/files/Hotaririle%20CEvaluare/2013/notainformativaCE2013.pdf>.

analysis also concluded that the performance evaluation system is not clear enough for judges and recommended to the Evaluation Board to develop guidelines on the application of the Regulation on the criteria, indicators and procedure of evaluation of judges' performance.

At the level of legal framework, the judges' performance evaluation system has also some shortcomings. We want to emphasize the matter from the law concerning the possibility for the SCM to initiate the dismissal process, as a result of judge's failing the performance evaluation<sup>14</sup>. Dismissal of a judge should not be possible after the judge's first performance evaluation failure. The judge should be given at least one chance to improve his activity. The provision regarding the possibility of dismissal only after failing two extraordinary assessments, following the failure of an ordinary evaluation, is consistent with international standards on judge's independence, whereas the dismissal after the first failure is not. Thus, Art.23 of Law no.154 is to be amended, to bring it in line with international standards. Similar recommendations have been made by the OSCE/ODIHR<sup>15</sup>.

The performance indicators established by the regulation on the evaluation procedure and criteria pose some problems as well. The SCM amended this regulation on November 5, 2013, merely partially solving the existing problems. Namely, we welcome the change in the manner of grading judges, evaluated by indicators relating to disciplinary misconduct and violations of ECHR judgments. At the same time, the introduction of indicator 10.1<sup>1</sup> in the regulation is not clear, namely: *"The number and percentage of judgments/rulings quashed from those examined, with presentation of confirmatory extract from the ICMS"*. This is only a quantitative indicator, which is dangerous to be applied, without taking into consideration the reasons for quashing the judges' decisions. Such an indicator may lead, indirectly, to the establishment of a hierarchical control over judges by higher courts. Therefore, we recommend the SCM to exclude this criterion.

**In conclusion, we welcome the introduction of judges' performance evaluation system in the Republic of Moldova and appreciate the efforts made by the SCM and the Board to implement the new system. At the same time, we recommend to analyze the practice of the Evaluation Board, including in terms of the impact of its decisions, including in light of the recommendations made by various actors on this topic, and to change the legal framework to achieve the performance evaluation goals set out in the law.**

#### 4. Modification of judges' disciplinary liability mechanism

*Nadejda HRIPTIEVSCHI*

A new law on the disciplinary liability of judges was adopted recently<sup>16</sup>. The law includes a series of positive innovations, as well as some issues that may create difficulties in the implementation process.

The adoption of the law was a rather difficult process, which could mean either lack of political will to create an appropriate legal framework to impose disciplinary liability on judges, or an excessive interest in maintaining the status-quo or disagreement at the conceptual level between policy-makers on certain aspects of the law. It is certain that the drafting and adoption of the law lasted more than two years, the draft law being in Parliament for more than half a year, a period during which the opinion of the European Commission for Democracy through Law (Venice Commission) was sought. Finally, the Government

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<sup>14</sup> See Art. 23 para.(1) and (2) of Law no.154.

<sup>15</sup> See the Opinion on Law of the Republic of Moldova on the selection, performance evaluation and career of judges, drafted by OSCE Office for Democratic Institutions and Human Rights (ODIHR), June 13, 2014, available at <http://www.osce.org/ro/odihr/120210?download=true>.

<sup>16</sup> Law no.178 of July 25, 2014 on the disciplinary liability of judges

assumed the responsibility for the draft law and it was adopted in the version sent by Government as early as on October 29, 2013<sup>17</sup>.

The most important positive aspects introduced by the new law refer to the following. The list of disciplinary offenses was improved. The list of disciplinary sanctions was modified and set out clear consequences thereof, which will contribute to enhancing the effectiveness of applied sanctions. The limitation period for judge's disciplinary liability was also extended to two years, this will provide sufficient time to investigate the submitted notifications. There were established rules of form and procedure regarding the notification of actions that may constitute disciplinary offenses, thus separating them from petitions and providing clear rules on submittal and examination of notifications. The composition of the Disciplinary Board and the way it is constituted have been changed. Thus, the composition was reduced from 10 to 9 members, of whom 5 are judges, thereby a body was established, made up of judges as the majority of members. Also, the status of other four members was extended from full law professors to civil society representatives. The election of judges to members of the Disciplinary Board takes place at the General Assembly of Judges, thereby giving judges the opportunity to elect their colleagues to the disciplinary body, following relevant international recommendations. The members of the Disciplinary Board who are civil society representatives, appointed until now by Order of the Minister of Justice, without any contest, from now on will be appointed by the Minister of Justice after a public contest. The public contest will be organized by a selection committee which also includes the SCM representatives. The new way of electing the members of the Disciplinary Board offers more guarantees of independence to its members, if it is strictly observed. Another significant change is that the validation of the decisions of the Disciplinary Board by the SCM was cancelled, this should contribute to strengthening the role of the Disciplinary Board and to increasing the clarity of disciplinary proceedings.

The law also contains a few issues which could negatively affect its smooth implementation. Some of them have been mentioned in the joint opinion of the Venice Commission and OSCE/ODIHR of February 14, but were not reflected in the final text of the law<sup>18</sup>. The LRCM expressed its disagreement on some matters of principle of the law and drew up a series of proposals to amend the law, which were also not taken into consideration<sup>19</sup>. These are as follows:

- a) The examination procedure of disciplinary cases includes the stage of examining the admissibility of notifications for initiating disciplinary cases. This stage complicates unjustifiably the examination procedure of a disciplinary case and decreases its efficiency. Moreover, the regulation of this procedure raises questions about the impartiality of the Disciplinary Board. Thus, the decision on admissibility of a notification is to be taken by the admissibility panel, made up of three members of the Disciplinary Board. Subsequently, the same members participate in the examination of the disciplinary case. The participation of the same members in the examination of admissibility of the notification and in the examination of the disciplinary case, in fact, affects the impartiality of the members of the Board;

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<sup>17</sup> The draft was developed by a Working Group established by Order of the Minister of Justice on September 13, 2012. The draft was approved by Government Decision no.831 of October 28, 2013 and sent to Parliament for consideration, as a matter of priority, on October 29, 2013, registered with no.423. The Parliament voted the law in the first reading on November 14, 2013. The draft was placed on the Parliament's agenda for a second reading for December 23, 2013, but it was withdrawn and the opinion of the European Commission for Democracy through Law (Venice Commission) was sought. The joint opinion of the Venice Commission and [OSCE Office for Democratic Institutions and Human Rights \(OSCE/ODIHR\) no. 755/2014](#) was published on March 24, 2014. On July 21, 2014 the Government adopted Decision no.610 on assuming the responsibility for the draft law on disciplinary liability of judges. The President promulgated the law on August 11, 2014. Law no. 178 of July 25, 2014 was published in the Official Gazette on August 15, 2014 and will enter into force on January 1, 2015.

<sup>18</sup> The opinion is available at: <http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282014%29006-e>.

<sup>19</sup> For details see Opinion on the draft law on disciplinary liability of judges, LRCM, March 31, 2014, available at <http://crjm.org/wp-content/uploads/2014/04/CRJM-opinie-lege-rasp-discipl-jud1.pdf> and Proposals for amending the draft Law no.423 on disciplinary liability of judges, LRCM, April 17, 2014, available at [http://crjm.org/wp-content/uploads/2014/02/2014-04-17-PrLege-RaspDisc-Judecatori\\_CRJM.pdf](http://crjm.org/wp-content/uploads/2014/02/2014-04-17-PrLege-RaspDisc-Judecatori_CRJM.pdf).

- b) The law grants limited competences to Judicial Inspection, which could negatively affect the quality of checks as well. Namely, under the law, the Judicial Inspection only checks the notification, prepares a report and submits the whole file to the admissibility panel of the Disciplinary Board. The Judicial Inspection should have the competence to dismiss disciplinary proceedings, if there are no signs of disciplinary misconduct or initiate disciplinary proceedings. Especially the absence of possibility to dismiss disciplinary proceedings will create useless work for Judicial Inspection and admissibility panel. On the other hand, if the admissibility panel is overloaded with notifications, it could examine the files submitted by the inspection formally.
- c) The procedure of examining a disciplinary case by the Disciplinary Board involves problems concerning impartiality of its members, due to the fact that the disciplinary case is presented, pursuant to the law, by one of the members of the Disciplinary Board, called reporter on the case. In the current regulation it appears that the member of the Disciplinary Board is both prosecutor and judge, which is contrary to the right to a fair trial.
- d) The judges' access to justice on disciplinary cases may raise signs of incompatibility with Art. 6 of the ECHR. The new law stipulates three degrees of jurisdiction for disciplinary cases, comprising the Disciplinary Board, the SCM and the SCJ (a panel made up of five judges). However, only the Disciplinary Board and the SCM may examine the case in matters of procedure and fact, since the appeals on the SCM's decisions are examined by the Supreme Court only in the part referring to the issuance/approval procedure<sup>20</sup>.

**Although we welcome the adoption of the law on disciplinary liability, we draw the attention of decision-makers to the need to monitor how it is implemented and consider the expediency of changing the problematic aspects in terms of compatibility with relevant international standards, in particular Art. 6 of the ECHR. We also recommend to consider the expediency of amending the law, in order to strengthen the role of Judicial Inspection, by granting it a greater degree of independence and competences to dismiss or initiate disciplinary proceedings and present the accusation in disciplinary cases during their examination by the Disciplinary Board.**

## 6. Improving the efficiency of courts' administration

*Ion GUZUN, Nadejda HRIPTIEVSCHI*

By Law no.153 of July 5, 2012, the competences of the SCM were strengthened in terms of administration of the judicial system. One of major changes is that the SCM was granted the competence to determine the number of judges per court. Until 2013, the number of judges was established in the Annex to Law no.514 of July 6, 1995 on judicial organization. Determining the number of judges per court by the SCM is an important step towards strengthening the role of the SCM for a more efficient administration of the judicial system. Thus, the SCM can track the workload in various courts and respond more quickly to the needs to appoint judges in a court where the workload is higher. The SCM has also taken other measures to improve the efficiency of courts' administration, such as random assignment of cases and determination of the workload of certain categories of judges.

### *a) Determining the number of judges per court*

The number of units of courts and courts of appeal was approved for 2013 by the SCM Decision no.68/3 of January 22, 2013. The SCM approved the staff-limit of 97 judges' positions and 492.5 staff units for courts of appeals, 340 judges' positions and 1,849.5 staff units for courts and 3 judges' positions for the

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<sup>20</sup> See Art. 25 of Law on the SCM

Military Court. On January 1, 2014, there were 54 vacancies in the judicial system, compared with 48 vacancies on January 1, 2013.

In order to execute Art.21 para.(4) of Law no.514 on judicial organization, the SCM has developed and approved the Regulation on the criteria for determining the number of judges in courts<sup>21</sup>, among which are: the workload per judge for the last three years; the annual average workload per judge in the country; the complexity of cases; the number of judges per capita; the number of inhabitants per court district; the number of cases specific to the respective court and district etc. Thus, by its Decision no.307/12 of April 2, 2013, the SCM ruled to redistribute the number of judges. The judges of the Commercial District Court were offered to be transferred to vacant positions of judges in common law courts of the municipality of Chisinau<sup>22</sup>. During 2013, the SCM decided to temporary transfer some judges from courts with a smaller workload to courts with a higher workload<sup>23</sup>.

### ***b) Random assignment of cases***

The mandatory random case assignment in courts was introduced by Law no.247 of July 21, 2006. The task of ensuring the random assignment of cases was given to the court president. The purpose of this measure was rather to combat irregularities in the process of case assignment in courts than to improve the efficiency of courts' activity. Pursuant to Art.22 para.(1) point f) of Law no.514 on the status of judge, failure to comply with the provisions on random case assignment constitutes disciplinary misconduct.

In 2013 the SCM established the observance of principle of random case assignment as priority and took a number of important actions in this regard. By its Decision no.110/5 of February 5, 2013, the SCM adopted the Regulation on the manner of random assignment of cases for examination in courts. During 2013, the SCM made several changes concerning the use of the Integrated Case Management System (ICMS).<sup>24</sup> These changes referred to establishing the percentage of cases to be assigned to judges who also exercise other functions in the judicial system, and to automated assignment of the case immediately after its registration in the system by the procedural record and documentation division/section/service (only in pilot courts).

In November 2013 Version IV of the ICMS was implemented, which includes the module of random assignment of cases without human factor involvement, based on degrees of complexity of cases, the statistical module and the courts' performance evaluation module, as well as the module for transferring cases registered in the ICMS from one court to another. The gradual improvement of the new version by integrating additional modules also included the personal data protection module. The new version has been adjusted to changes in the legislation and regulations adopted by the SCM.

The President of the SCJ, who is an ex-officio member of the SCM, announced on several occasions that disciplinary proceedings would be initiated against judges who did not use the ICMS or audio record the court hearings<sup>25</sup>. In 2013, the failure to comply with the provisions on random case assignment was invoked in two disciplinary proceedings.<sup>26</sup>

The Disciplinary Board discovered a dubious practice of random assignment of civil cases and taking over for examination of requests contrary to the legal requirements in which the judge fulfilled his

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<sup>21</sup> The Regulation on the criteria for determining the number of judges in courts, approved by the SCM Decision no.175/7 of February 26, 2013. The Regulation on the criteria and procedure of transfer of judges in case of redistribution of judges' positions, reorganization or abolishment of courts was approved by the SCM Decision no. 644/31 of October 16, 2012.

<sup>22</sup> The SCM Decision no. 307/12 of April 2, 2013 on approving the number of units of courts and courts of appeal for 2013.

<sup>23</sup> See the SCM Decision no. 85/4 of January 29, 2013, the SCM Decision no. 157/7 of February 26, 2013.

<sup>24</sup> See the SCM Decision no.613/26 of August 20, 2013.

<sup>25</sup> "The judges who had an unsatisfactory work record in the first 6 months of the current year risk to be sanctioned", <http://despre.csj.md/index.php/despre-curtea-suprema-de-ijustitie/mass-media-si-relatiile-cu-publicul/124-ijudecatorii-care-au-inregistrat-o-activitate-nesatisfacatoare-in-primele-6-luni-ale-anului-curent-risca-sa-fie-sanctionati>.

<sup>26</sup> The SCM Disciplinary Board, Activity Report of the Disciplinary Board for 2013, p.16, available at [http://old.csm.md/files/Hotarirele\\_CDisciplinar/2013/raportCD2013.pdf](http://old.csm.md/files/Hotarirele_CDisciplinar/2013/raportCD2013.pdf).

established role<sup>27</sup>. Subsequently, the Service of Intelligence and Security notified the SCM about the information related to fraudulent mechanisms detected during random case assignment in courts. The SCM authorized the Judicial Inspection to conduct a check and prepare an information note based on check results.<sup>28</sup> The SCM has not returned to this topic and has not adopted a decision in this regard.

### *c) Workload of judges*

With regard to judges' workload, the SCM adopted several decisions by which the ICMS was changed and set a reduced workload for the number of cases registered in courts, as follows:

- a) court presidents - 50%<sup>29</sup>,
- b) court vice-presidents - 75%,
- c) presidents of courts and courts of appeal from municipalities of Chisinau and Balti - 25%,
- d) judges who are members of the Judges' Performance Evaluation Board to an extent of up to 50%,
- e) judges who are members of the Disciplinary Board, Board for Selection and Career of Judges and of the Evaluation Board -75%<sup>30</sup>.

On May 15, 2014 the SCM established a reduced workload for several judges of the SCJ, as follows:

- a) President of the SCJ - 10%,
- b) vice-presidents of the SCJ - 50%,
- c) deputy chairs of the SCJ Boards - 70 %,
- d) judges of the SCJ who are members of the Disciplinary Board and Board for Selection and Career of Judges - 70%.<sup>31</sup>

On the other hand, on March 4, 2014, the SCM decided that judges exercising the duties of an investigating judge would also receive other categories of cases to the extent of 50%<sup>32</sup>, without taking into consideration that the workload of these judges differ substantially from one court to another<sup>33</sup>.

**The changes in the legislation with regard to the SCM competences were beneficial for ensuring a smaller workload for courts where judges have an extremely high number of cases under examination. The SCM has not yet fully exploited the possibilities provided by these changes. We recommend the SCM to take measures to uniform the workload per court.**

**It is also unclear why such a reduced workload was established for some judges with administrative functions, as long as there is a court administrator in each court. We recommend the SCM to review the workload set for judges with administrative functions, as well as for judges exercising the duties of an investigating judge.**

**Although random case assignment is compulsory since 2006, the SCM began to take important measures to ensure the implementation of this principle only in 2013. Nevertheless, although the SCM received clear indications from the Disciplinary Board and the SIS concerning serious violations in the random assignment of cases in courts, it has not adopted firm measures in this regard. We recommend the SCM to take a clear and prompt stand to sanction the abuses which occur during random case assignment and to inform the public on the measures taken.**

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<sup>27</sup> *Idem*, p.20

<sup>28</sup> The SCM Decision no. 643/27 of September 17, 2013

<sup>29</sup>By the SCM Decision no.550/19 of July 1, 2014, the workload for the president of the Ungheni court was set at 25%.

<sup>30</sup> The SCM Decision no. 811/34 of November 5, 2013, the SCM Decision no. 613/26 of August 20, 2013, the SCM Decision no. 260/9 of March 11, 2014.

<sup>31</sup> The SCM Decision no. 448/15 of May 15, 2014.

<sup>32</sup> The SCM, Regulation on random assignment of cases for examination in courts, approved by the SCM Decision no. 110/5 of February 5, 2013, available at [http://csm.md/files/Acte\\_normative/regulament\\_dosare.pdf](http://csm.md/files/Acte_normative/regulament_dosare.pdf).

<sup>33</sup> Legal Resources Center from Moldova, Policy Document "Reallocation of investigating judges: recommendations for every court", September 2014, available at <http://crim.org/wp-content/uploads/2014/09/Doc-politici-nr.-2-realloc-JI.pdf>.

## 7. Establishing the positions of court secretary and judicial assistant

*Nadejda HRIPTIEVSCHI*

A number of significant changes were introduced in the courts administration system by Law no. 153 on amending and supplementing certain legislative acts of July 5, 2012, in force from August 31, 2012. In particular, we mention the introduction of positions of judicial assistants and heads of court secretariats. The introduction of these positions is useful for the judicial system, as it should help to relieve judges and to better administer courts. However, achieving these objectives in practice could be problematic due to the manner in which the positions of judicial assistant and head of court secretariat are regulated.

Pursuant to the law, "the judicial assistant is a court employee who assists the judge in the exercise of his duties. Every judge is assisted in his work by a judicial assistant."<sup>34</sup> As regards the SCJ, each judge of this court is assisted by 3 judicial assistants<sup>35</sup>. Thus, the law has established that judicial assistants are to be assigned to concrete judges, assisting the judge in all types of cases. Another approach was also discussed within the working group that developed the draft Law no.153, namely to employ judicial assistants per court, without assigning them to a particular judge. In such a way, judicial assistants could specialize in different areas and assist different judges, depending on the type of the case. Given the increasing complexity of different types of cases and the high workload of judges, the specialization of judicial assistants could help to improve the performance of courts. Within a representative survey for the judicial system, conducted in 2013, 62% of respondents judges agreed with the possibility of specialization of judicial assistants<sup>36</sup>. The experience of the Netherlands concerning the distribution of judicial assistants per court proved to be positive for the system, an example which could be studied in more detail for the Republic of Moldova as well<sup>37</sup>.

As to the distribution of judicial assistants within the SCJ, the draft approved by the Government provided for allocation of one judicial assistant to every judge of the SCJ, similarly to other courts<sup>38</sup>. After debates in Parliament, the draft law was amended and the final version provided for three judicial assistants for every judge of the SCJ. The allocation of three judicial assistants per judge was not substantiated. Several NGOs, including the LRCM<sup>39</sup>, questioned the reasonableness of this provision, given that the competence of the Supreme Court of Justice had been limited, and that first instance courts and courts of appeal were dealing with the largest and most complicated workload. After a period of more than two years from the adoption of this provision, it would be useful to conduct a cost-efficiency study to analyze the expediency of the number of judicial assistants at the SCJ, based on its experience and workload.

Introduction of the position of head of court secretariat should contribute to a more clear delimitation of the function of court administration in organizational and financial terms, from that of delivery of justice, allowing the court president to distance himself from the technical functions of court administration, including those related to financial management. The law has provided that the heads of secretariat are appointed by the court president. After a period of two years from the adoption of this provision, the

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<sup>34</sup> Art. 47 of Law no.514 of July 6, 1995 on judicial organization.

<sup>35</sup> Art. 4 para.(2) of Law no.789 of March 26, 1996 on the Supreme Court of Justice.

<sup>36</sup> For details see the Study "Specialization of judges and feasibility of creating administrative courts in the Republic of Moldova", Legal Resources Centre from Moldova, Chisinau, February 2014, p. 43-44, available at: <http://crim.org/category/publications/justitie/>. The survey covered all courts from the country. A total of 283 judges participated in the survey (210 from district courts; 8 from specialized district courts; 53 from courts of appeal, 9 from the Supreme Court of Justice and 3 did not indicate the court).

<sup>37</sup> For details see the abovementioned study, at reference 18. The experience of the Netherlands shows that the distribution of judicial assistants by teams per court, contrary to the distribution per judge, has two major advantages, namely, it allows for specialization of judicial assistants and it avoids "the simple hierarchical structure", that is to say the excessive adjustment of the judicial assistant to the working habits of the judge he/she is working for.

<sup>38</sup> See Government Decision no. 112 of February 21, 2012 on approving the draft Law on amending and supplementing certain legislative acts, subsequently registered in Parliament with no.392.

<sup>39</sup> See the public appeal on the need for public and qualified consultation of proposals on the civil procedural law reform, on the status of judge and on ensuring the activity of several courts of July 4, 2012, addressed to Parliament.

appropriateness of this provision could be analyzed in comparison with the appointment of heads of secretariat by Department of Judicial Administration, which would enable a more clear delimitation of financial and organizational aspects from those related to delivery of justice.

**In conclusion, we welcome the introduction of positions of judicial assistant and head of court secretariat and recommend to evaluate how these positions are carried out in practice, in order to establish the appropriate distribution of judicial assistants per judge, the number of judicial assistants at the SCJ and the mode of employment of heads of court secretariats.**

## 8. Drafting and execution of the judicial system's budget

*Ion GUZUN, Vladislav GRIBINCEA*

Until 2013 the draft budgets of courts were developed by court presidents and sent to the Department of Judicial Administration (DJA) of the Ministry of Justice. Subsequently, the DJA submitted the draft budgets of all courts (except the budget of the SCJ) to the Ministry of Finance. The Ministry of Finance could reduce the amounts proposed in the budgets. Thereafter, these amounts were included in the Annual Budget Law. It seems that the size of sums allocated for investments from the court budget depended mostly on the ability of the court president to convince the representatives of the Ministry of Finance about their necessity.

It seems that this practice is not in line with Art.121 para.(1) of the Constitution, which provides that the financial resources of courts "are approved by Parliament and are included in the state budget." That is why the courts' budget for 2009 was sent directly to Parliament, voted by a Parliament Decision<sup>40</sup> and subsequently included in the Budget Law. To ensure greater financial autonomy of courts, the Parliament introduced amendments to Art.22 of Law no.514 on judicial organization. For the time being, the respective law provides that "the financial means necessary for the good functioning of courts shall be approved by Parliament, at the proposal of the Superior Council of Magistracy (SCM), and included in the state budget. These means cannot be reduced without the consent of the SCM and shall be allocated on a regular basis."

The SCM is against DJA's involvement in the drafting of courts' budgets for the reason that it is a subdivision of the Ministry of Justice. In its Decision no.561/23 of July 30, 2013, the SCM found that there was double management of courts' budgetary funds by the DJA and SCM, which creates a situation of institutional conflict. A draft amending the Law on judicial organization was to review the DJA's status and responsibilities. It provides, inter alia, the exclusion of the DJA's competence with respect to analysis of judicial statistics and taking over by the SCM of full responsibility for control over district courts and courts of appeal in organizational and financial matters. The draft was to be adopted in 2013, but it has not been adopted until now. However, it seems that even without this legislative change, the DJA is no longer involved in the management of courts' budgets. As from 1 January 2014, the management of courts' budgetary funds was taken over by the SCM.

Pursuant to the annual activity plan of the SCM, the process of drafting and approval of courts' budgets, which are subsequently sent to the Parliament of the Republic of Moldova for approval, takes place every year in months March-May.<sup>41</sup> In 2014 the SCM adopted the methodology of courts' budget planning and a unified procedure for budget drafting for 2015<sup>42</sup>.

Traditionally, the Budget Law provides the budget of district courts and courts of appeal separately from that of the SCJ. In 2013 the budget of all courts of all levels was 268,894,000 MDL, of which

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<sup>40</sup> Parliament Decision no.183-XVI, of July 10, 2008.

<sup>41</sup> See the SCM Decision no. 148/6 of February 12, 2013 on the Activity Plan of the SCM for 2013.

<sup>42</sup> Available at <http://www.csm.md/noutati/485-in-atentia-instantelor-ijudecatoresti-suport-informativ-pentru-elaborarea-propunerilor-de-buget-pentru-anul-2015-si-estimarilor-pentru-anii-2016-2017.html> .

49,423,400 MDL were allocated for capital investments. The courts' budget for 2013 was with 115,003,100 MDL (57%) higher than in 2012.

For 2014, the planned budget of courts of all levels is 344,777,200<sup>43</sup> MDL (315,661,400 MDL for district courts and courts of appeal and 30,115,800 MDL for the SCJ), being increased to 364,250,300 MDL<sup>44</sup> (333,948,600 MDL for district courts and courts of appeal and 30,301,700 MDL for the SCJ). The courts' budget for 2014 is with 95,356,300 MDL (35%) higher than the budget for 2013 and with 210,359,400 MDL higher than the courts' budget for 2012.

Besides the spectacular growth of the courts' budget in 2012 and 2013, the justice system benefits from substantial external assistance. A first tranche of 15 million EUR, out of a total of 60 million EUR granted by the EU for the JSRS implementation, was allocated in November 2013. The second tranche in the amount of 13.2 million EUR was received in August 2014. Other 8.8 million USD are offered by the USA as assistance for institutions involved in the reform. During 2013, the courts received technical assistance from donors, including for improvement of working conditions and training of court presidents in drafting the court's budget<sup>45</sup>.

With regard to staff expenses, 420 positions of judicial assistant and about 50 positions of court administrator were introduced in 2014. Also, there was a gradual increase in salary of judges from all court levels. In 2013 the position's salary of a judge was raised by 35%. Starting with 2014, the method of calculating the salaries of judges was changed, thus leading to their substantial increase. The salaries of judges will gradually increase by circa 10% in 2015 and 2016<sup>46</sup>. Civil servants employed in courts will also receive increased salaries as from 1 October 2014.<sup>47</sup>

As regards the execution of budget expenditure, there have been registered unused balances of financial means.<sup>48</sup> In 2013, the non-execution of budget was as follows: work remuneration - 98.6%, investment works -73%, capital repairs in the amount of 96.8%, fixed assets - 93.3%<sup>49</sup>.

**The SCM has developed and started to implement a budget drafting practice in a uniform manner and based on the performance of courts. The MOJ's efforts to increase the justice sector budget, including with salary increases for judges and staff, cannot be neglected. The SCM and MOJ are to make joint efforts to clarify the DJA's place and role, so as to avoid overlaps of competences. At the same time, the SCM and MOJ are to prioritize the capital investments for courts for the coming years, once the optimization of the number of courts was announced.**

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<sup>43</sup> Law no.339 of December 23, 2013 on the state budget for 2014, Annex 1.

<sup>44</sup> Law no.182 of July 25, 2014 for amending and supplementing Law on the state budget for 2014, no.339 of December 23, 2013

<sup>45</sup> See the SCM Decision no.172/7 of February 26, 2013.

<sup>46</sup> For details regarding the size of judges' salaries, see Section 19 of the Study.

<sup>47</sup> For details regarding the salaries of civil servants from courts, see Section 21 of the Study.

<sup>48</sup> See the SCM Decision no. 268/10 of March 19, 2013 and the SCM Decision no. 382/15 of April 30, 2013.

<sup>49</sup> The SCM Decision no. 97/3 of January 28, 2014 on the information of Ministry of Justice on ensuring the organizational, administrative and financial activity of courts for 2013. In 2012, in comparison with 2011, there was a better use and assimilation of financial resources allocated to courts. Thus, in sections "Basic expenses", "Current expenses", "Capital Investments", "Capital repairs" and "Fixed assets", the budget was executed at about 99%. As regards the state of execution of courts' budget for 2012, see the SCM Decision no. 99/5 of February 5, 2013.

## 9. Keeping of judicial statistics

*Nadejda HRIPTIEVSCHI, Vladislav GRIBINCEA*

Generation of accurate and complete statistical data on criminal justice is a problem in the Republic of Moldova, since there is no integrated record-keeping system for such data. Keeping of statistics on criminal investigations is traditionally attributed to Ministry of Internal Affairs (MIA). However, MIA data do not include information on criminal investigations carried out by other bodies, such as the National Anti-Corruption Center (NAC), the Customs Service or the Prosecutor's Office. Moreover, MIA accumulates data only until criminal investigation is completed, that is to say it has no information about the fate of criminal case files submitted to the court for examination. On the other hand, the information system of the Prosecutor's Office InfoPG contains data only about the activity of prosecutors, in other words, it doesn't include a lot of data referring to the activity of criminal investigation officers. The InfoPG does not contain detailed information about the fate of criminal case files sent to court either. The information system of courts (ICMS) contains data regarding the fate of criminal case files sent to court, but it does not include data on criminal cases that do not reach the court.

The lack of aggregate statistical data on criminal justice creates space for abuse and does not enable a proper assessment of the efficiency of prosecutors and criminal investigation officers. The intervention area 2.4.2 of the JSRS provides to uniform the method for collecting and analyzing statistical data related to criminal justice and to ensure the interoperability of databases. This activity was supposed to begin in 2011 and be completed in 2014. Unfortunately, until September 2014, this activity was still not implemented. Apparently, the activity will be however implemented with the support of the United Nations Development Programme.

Until 2013, the statistical reports on courts' activity were submitted to and stored on paper at the DJA. Although the ICMS contains a high-performance statistical module, until 2013 it did not generate reliable data, because only a few courts were entering the data about all cases in the ICMS. Until 2013, the statistical data on courts' activity for the entire country did not exist in electronic format. To conduct the study on optimization of the judicial map of the Republic of Moldova, the data on courts' workload (the number and types of cases examined by courts) were collected from statistical paper reports, prepared by each court and sent to DJA<sup>50</sup>. Collection and maintenance of statistical data available only on paper and only at DJA's office is a serious impediment to any in-depth analysis on the activity of the judicial system. Data errors are inevitable when they are collected manually.

**We recommend the SCM to set as priority for 2014-2015 - ensuring that all courts enter data about all cases in the ICMS. It is also necessary to urgently implement the intervention area 2.4.2 of the JSRS by improving the databases of all bodies with duties in criminal matters and ensuring the interoperability of these databases.**

## 10. Election of members of the Superior Council of Magistracy

*Ion GUZUN*

The SCM is composed of 12 members: six judges from all court levels elected by the General Assembly of Judges, three full law professors appointed by Parliament and three ex-officio members (the President of the SCJ, the Minister of Justice and the Prosecutor General). Elected members have a term of office of four years. The new composition of the SCM was to be elected in 2013. The election of the SCM members in 2013 did not take place smoothly. There were rumors that the appointment of the SCM members by Parliament was made on political grounds. On the other hand, due to the complicated procedure, judges

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<sup>50</sup> For instance, the Annual Activity Report of the SCM does not include all categories and therefore cannot be used.

cannot elect all their representatives in the SCM. Until the publication date of this study, five general assemblies of judges were held, where only five out of six members of the SCM were elected.

In 2013, two general assemblies for electing the SCM members from among judges were held, where two members from among judges at the level of the SCJ, one judge at the level of courts of appeal and two alternate members were elected. In 2014 other three members were to be elected, positions that remained vacant as a result of failure to elect all members of the SCM from among judges. Two of these positions were filled in 2014<sup>51</sup>. One position is still vacant and the next general assembly, where it will attempted to fill this vacancy, will be held in October 2014.

Until 2013, the law did not regulate in detail how the Parliament appointed the members who were full law professors. Since the creation of the SCM and until 2013, no contest concerning the members appointed by Parliament was held, this created the perception that the appointment was made on political grounds.

In autumn 2013, non-governmental organizations called on the Parliament to hold a public contest to elect, based on fair criteria, the three members of the SCM<sup>52</sup>. On November 21, 2013 the Parliament amended Law on the SCM<sup>53</sup>. According to these amendments, selection of candidates for the position of member of the SCM is to be made based on a contest, held in an open and transparent manner by Parliament's Legal Committee for Appointments and Immunities.

In December 2013, the Parliament publicly announced the contest for all law professors who wanted to become members of the SCM. On December 19, 2013 the Legal Committee for Appointments and Immunities heard the candidates within a public meeting. Immediately after the meeting, deliberations took place and three candidates selected to be proposed to Parliament for approval were announced. The members of the Committee did not provide any explanations as to the criteria based on which the candidates were selected. On December 24, 2013 the Parliament appointed the three candidates as members of the SCM.

**In conclusion, we can state that the Parliament has adopted provisions which would ensure a greater transparency of selection of the SCM members by Parliament. However, the Parliament is to show greater transparency when selecting members of the SCM. On the other hand, the numerous and failed attempts of judges to elect their representatives in the SCM, suggest that the current procedure is too complicated and needs adjustment.**

## 11. Improvement of technical and material conditions of the Superior Council of Magistracy

*Nadejda HRIPTIEVSCHI*

During 2012-2014 a number of legislative changes were made to improve the conditions of the activity of the SCM and its Boards – the Judges' Performance Evaluation Board, the Board for Selection and Career of Judges and the Disciplinary Board. Among the most important technical and material measures are introduction of the rule concerning the reduction of the workload for judges members of the SCM Boards and the provision of allowance for full law professors/civil society representatives- members of the SCM Boards, the increase in number of staff of the SCM Secretariat and provision of separate premises for the SCM.

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<sup>51</sup> On October 18, 2013 Dumitru VISTERNICEAN and Tatiana RADUCANU (judges at the Supreme Court of Justice) and Anatolie TURCAN (judge at Chisinau Court of Appeal) were elected. On January 17, 2014 Victor MICU (judge at the Riscani district court, municipality of Chisinau) was elected and on March 14, 2014 Vera TOMA (judge at Balti Court of Appeal) was elected.

<sup>52</sup> <http://crjm.artsintez.md/wp-content/uploads/2013/09/2013-09-03-Apel-Parlament-alegere-membrilor-CSM-final.pdf>,  
<http://crjm.artsintez.md/wp-content/uploads/2013/10/2013-10-11-Apel-Repetat-Parl-aleg-membrilor-CSM.pdf>.

<sup>53</sup> See Law no. 280 of November 21, 2013, in force from December 6, 2013.

Initially, by the SCM Decision of August 20, 2013, a workload of 75% was established for judges members of the Judges' Performance Evaluation Board, Board for Selection and Career of Judges and Disciplinary Board.<sup>54</sup> By its Decision of November 5, 2013, the SCM reduced the workload of judges who are members of the Judges' Performance Evaluation Board to 50% of the workload of judges of the respective court<sup>55</sup>. On May 15, 2014, a workload of 70% of all cases was established for the SCJ judges members of the Disciplinary Board and Board for Selection and Career of Judges<sup>56</sup>. The allowance for civil society representatives who are members of the SCM Boards is provided for each attended meeting, in the amount equivalent to one twentieth (1/20) of the salary of a judge of the Supreme Court of Justice<sup>57</sup>.

Reduction of the workload for judges who are members of the three SCM Boards is essential, due to the time necessary for them to engage fully in the activity of Boards, while at the same time performing their main activity as a judge. Currently, the workload for judges members of the Judges' Performance Evaluation Board is clearly set at 50%, whereas the workload for judges members of other Boards varies by court. Moreover, reduction of the workload for judges members of the Disciplinary Board was provided only in Law of July 21, 2014, approved by the assumption of responsibility of Government, whereas the SCM had reduced in advance the workload of members of the Disciplinary Board who were judges of the SCJ. We recommend the SCM to carry out an analysis of the necessary workload for judges members of all three Boards and to establish a similar workload per board for all judges, regardless of the court in which they perform their main activity.

With regard to allowances for civil society representatives- members of the SCM Boards<sup>58</sup>, their introduction is welcomed, as they will motivate the full involvement of respective members. However, the allowances are provided, for the time being, only for each meeting, whereas the members of the Boards are involved in a number of activities outside meetings. We recommend the SCM and MOJ to carry out an analysis of the workload of members of the SCM Boards, who are civil society representatives, in order to determine the appropriate allowance for the respective workload.

The SCM Secretariat has an essential role in ensuring the efficient activity of the SCM, especially due to the fact that the SCM is a collegial body. The small number of staff of the SCM Secretariat, including the lack of a structure with clear duties for the Secretariat's staff, was one of the key problems in the activity of the SCM until 2013. For example, in July 2012, six civil servants were working in the SCM Secretariat<sup>59</sup>. Law no.153 introduced significant changes for increasing the number of staff of the SCM Secretariat and improving its structure. Namely, the Law provided that the staff of the SCM Secretariat is made up of civil servants, subject to the regulations of Law no.158-XVI of July 4, 2008 on the public office and status of civil servant, and contract staff, subject to the provisions of labor law, performing ancillary activities, being

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<sup>54</sup> See the SCM Decision no.613/26 of August 20, 2013 on the request of Mr. Frederick G. YEAGER, USAID ROLISP director, regarding authorization to introduce certain changes in the ICMS.

<sup>55</sup> See the SCM Decision no.811/34 of November 5, 2013 on reducing the workload of judges members of Judges' Performance Evaluation Board.

<sup>56</sup> See the SCM Decision no.448/15 of May 15, 2014 on the request of Mr. Mihai POALELUNGI, President of the Supreme Court of Justice, regarding the percentage of cases assigned by the Integrated Case Management System (ICMS) within the Supreme Court of Justice.

<sup>57</sup> See Art. 3 para.(3) and Art. 15 para.(3) of Law no.154 and Art. 13 para.(3) of Law on disciplinary liability of judges, approved by Government Decision no.610 of July 21, 2014 on assuming the responsibility for the draft Law on disciplinary liability of judges (promulgated by the President on August 11, 2014, which was not published in the Official Gazette at the date of writing the report).

<sup>58</sup> Including full law professors, members of the Disciplinary Board, until the expiry of the term of office of incumbent members of the Disciplinary Board

<sup>59</sup> For example, until the adoption of Law no.153, the SCM Secretariat consisted of 13 staff units, without making distinction between civil servants and technical staff. Only on December 27, 2011, by the SCM Decision no.709/47, the staff structure of the SCM Apparatus was clarified, which was to include 13 civil servants and 7 units for technical staff. For more details see the Legal Resources Center from Moldova, Monitoring report "Transparency and efficiency of the Superior Council of Magistracy of the Republic of Moldova 2010-2012", Chisinau, 2013, p.78-79, available at [http://crjm.org/wp-content/uploads/2014/04/Raport\\_Transparenta\\_si\\_eficienta\\_CCSM\\_2010\\_2012.pdf](http://crjm.org/wp-content/uploads/2014/04/Raport_Transparenta_si_eficienta_CCSM_2010_2012.pdf).

remunerated under the conditions provided by law. The law also provided that the staffing list of the SCM Secretariat is approved by the SCM<sup>60</sup>. Consequently, for 2013, the SCM approved the staffing list which included 36 units<sup>61</sup>. For 2014, the SCM approved the staffing list with 50 staff units<sup>62</sup>. In July 2014, these 50 units were not filled.

**The increase in the number of staff of the SCM Secretariat from 13 units in 2012 to 50 units in 2014 is a significant progress, which should help to improve the activity of the SCM. Provision of premises to the SCM at the end of 2013 is also an important step for strengthening the role of the SCM. In July 2014 the premises were not fully equipped, but measures were being taken to equip it.**

## 12. Selection and promotion of judges

### *Ion GUZUN*

On July 5, 2012 the Parliament of the Republic of Moldova passed Law no.154 on the selection, performance evaluation and career of judges, which entered into force on December 14, 2012. In March 2013 the SCM adopted the Regulation on the procedure and criteria for performance evaluation of judges<sup>63</sup> and the Regulation on the procedure of selection, promotion and transfer of judges.<sup>64</sup> The SCM also examines matters concerning promotion to a higher court, transfer to a court of the same level or a lower court, secondment, suspension, resignation and dismissal of a judge.<sup>65</sup> During 2013, the Board for Selection and Career of Judges examined the materials regarding 40 candidates to the position of judge, of which 27 were admitted and 13 were rejected. Thus, 16 judges have participated in the evaluation for promotion. Eight judges were evaluated to fill the vacancies at the SCJ and the others for courts of appeal.<sup>66</sup> Seven judges were evaluated to be transferred to a court of the same level. In 2013, 17 judges were appointed to the office until reaching the age limit and two judges - for a period of up to five years.

The Board for Selection and Career of Judges and the SCM examined the issue concerning the manner of selecting judges seconded for work purposes who request promotion to a higher court, transfer to a court of the same level or lower court, appointment as court president or vice-president. Thus, pursuant to the SCM Decision no.505/21 of July 3, 2013, the Judges' Performance Evaluation Board is to assess them based on their activity for the last 12 months actually worked prior to secondment or suspension or, where appropriate, for the next 12 months actually worked in the court after termination of secondment or suspension. Although there is no regulated procedure<sup>67</sup>, during 2012-2013, the SCM established a practice of appointing judges in the municipality of Chisinau and courts of appeal only by transfer to the same court level. In its new composition, established at the end of 2013, the SCM does not observe this practice.

In every case of appointment to the office or transfer to another court of judges, the SCM adopts decisions by which it should appoint the best candidate. In most cases, the members of the SCM avoid to address questions to the candidates present at the meeting. In several decisions, the SCM did not mention

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<sup>60</sup> Art. 27<sup>3</sup> of Law on the SCM.

<sup>61</sup> See the SCM Decision no.845/40 of December 26, 2012 on approving the staffing list of the SCM.

<sup>62</sup> See the SCM Decision no.106/3 of January 28, 2014 on approving the staffing list of the SCM for 2014.

<sup>63</sup> Regulation on the criteria, indicators and procedure of performance evaluation of judges, approved by the SCM Decision no. 212/8 of March 5, 2013.

<sup>64</sup> Regulation on the criteria of selection, promotion and transfer of judges, approved by the SCM Decision no. 211/8 of March 5, 2013.

<sup>65</sup> See Art. 20 of Law on the SCM.

<sup>66</sup> Including the SCM member, Nichifor COROCHII (Decision of the Selection Board no.57/9 of December 18, 2013) who ran as a candidate for promotion to a court of appeal, and Dina ROTARCIUC (Decision of the Selection Board no. 56/9 of December 18, 2013), who ran as a candidate for promotion to the SCJ.

<sup>67</sup> Ex. professional experience, notice of the court president, note of Judicial Inspection on the examination of files etc.

the reason or criteria underlying the appointment of a judge, even though it had proposed for appointment other candidates than those who received the highest score from the Selection Board<sup>68</sup>.

During 2013, six appeals against the SCM decisions concerning the promotion and transfer of judges<sup>69</sup> were lodged at the SCJ. All appeals have been rejected for the reason that the SCJ has no competence to decide in the SCM's place who should be promoted.

**In conclusion, although the SCM has adopted regulations for evaluation and selection of judges and this task is assigned to the SCM Boards, the SCM often promoted, without explaining the reasons, other judges than those who had received the highest score from the Selection Board. This practice should be excluded. Maintaining the current situation does not justify the existence of the evaluation and selection boards.**

### 13. Authorization of criminal prosecution of judges

*Pavel GRECU*

Since August 2012, the SCJ examines appeals against the SCM decisions in a panel of nine judges. From then until now, the SCJ issued 17 decisions on these appeals, of which only in one case it had annulled a decision of the SCM. On June 12, 2014 the SCJ annulled the SCM decision by which the latter had issued its consent to initiate criminal prosecution and impose criminal liability on judges Eugeniu CLIM, Aureliu COLENCO, Valeriu HARMANIUC and Ala NOGAI<sup>70</sup>. Pursuant to this decision, the Prosecutor General had requested the SCM's consent to prosecute and impose criminal liability on judges from the former Economic Court of Appeal for issuing an illegal judgment, for tolerating the illegal actions of the first instance court and for dubious application of certain sequesters. By analyzing all the SCJ decisions issued on the basis of appeals lodged against the SCM decisions under the procedure from 2012, we can easily see the reluctance of the SCJ to "interfere" in the SCM's activity, except for this single case.

Let's analyze the SCJ case law of the last two years. Pursuant to the amendments of August 2012, the SCJ may examine appeals only in the part referring to the issuance/adoption procedure of the SCM decisions. From then until now, the SCJ rejected almost all the appeals lodged against the SCM decisions and apparently it had ignored the arguments of appellants, regardless of whether they referred to procedure or merits of the case. In the cases of judges Svetlana GARSTEA-BRIA<sup>71</sup> and Viorica PUICA<sup>72</sup> the SCJ did not refer at all to the appellants' argument as to how the SCM had examined their requests for recusal. The SCJ qualified the examination of recusals as a matter of appropriateness, whereas it is clear that this is a

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<sup>68</sup> Within the SCM Meeting of February 26, 2013 there was discussed the matter concerning the results of the contest for filling the judge's position in Bender district court. Ina TABARNA (rating 8,1) was appointed to the position of judge, whereas Vitalie BESLEAGA (rating 8,3) and Corneliu GUZUN (rating 8,9) were not proposed for the judge's position. See the SCM Decision no. 154/7 of February 26, 2013.

On February 4, 2014, the SCM appointed Ion GUZUN as judge of the SCJ, the candidate with the lowest score awarded by the Selection Board. The candidates had the following score: Ion GUZUN - 57 points, Viorica PUICA - 74,5 points, Aliona DANILOV - 75,5 points, Maria GHERVAS - 84 points and Dina ROTARCIUC - 95 points.

On July 1, 2014, the SCM appointed Nadejda TOMA and Petru MORARU as judges of the SCJ, although they had received the lowest scores from the Selection Board. The candidates had the following score: Nadejda TOMA - 64 points, Petru MORARU - 67 points, Mihail DIACONU - 70 points, Viorica PUICA - 74,5 points, Aliona DANILOV - 75,5 points, Maria IFTODII - 80 points, Domnica MANOLE - 83 points, Maria GHERVAS - 85 points.

<sup>69</sup> Files no.3-14/13, no.3-13/13, no.3rh-90/13, no.3-9/13.

<sup>70</sup> SCJ, Decision *Eugeniu CLIM, Aureliu COLENCO, Valeriu HARMANIUC and Ala NOGA v. the SCM*, June 12, 2014, available at <http://jurisprudenta.csjj.md/search cont csm.php?id=48>.

<sup>71</sup> SCJ, Decision *Svetlana GARSTEA-BRIA v. the SCM*, November 8, 2013, available at <http://jurisprudenta.csjj.md/search cont csm.php?id=32>.

<sup>72</sup> SCJ, Decision *Viorica PUICA v. the SCM*, September 12, 2013, available at <http://jurisprudenta.csjj.md/search cont csm.php?id=24>.

matter of impartiality and an inherent element of a fair trial. In the cases of Ion MURUIANU<sup>73</sup> and Nina CERNAT<sup>74</sup>, the SCJ did not expressed itself at all on the arguments that the decisions of the SCM were not reasoned and that they, as persons concerned in the matters considered, had been not summoned to the SCM meeting.

In contrast to these decisions, in the case of Eugeniu CLIM, Aureliu COLENCO and others, the SCJ annulled the decision of the SCM, relying on reasons that seem to be formal. For example: omission to enter in the minutes of the meeting that the Prosecutor General did not participate in the deliberations, omission to enter in the decision a SCM member who *de facto* attended the meeting, lack of a reference in the SCM decision as to who voted for and against and no audio recording of the meeting. It should be noted that failure to enter votes 'for' and 'against' in the SCM decisions as well as to audio record the meetings is a constant practice of the SCM, which also persisted in the previous cases in which the SCJ rejected the appeals. The omissions referring to the minutes, as the SCM representative mentioned before the SCJ, are errors of the secretariat; thus, the Prosecutor General *de facto* did not participate in the deliberation on the matter. Furthermore, although the SCJ mentions that the vote of a SCM member was not introduced in the minutes of the meeting intentionally, the intention results only from the statements of judges-appellants. It results from the decision only that this was an error of the secretariat.

In July 2014, the Prosecutor General submitted a repeated request for the issuing of the SCM's consent to initiate criminal prosecution of these judges, and of other two judges, Dorin COVALI and Mihail CIUGUREANU. The requests concerning the last two judges were examined only on September 9, 2014, after at least three postponed meetings. As a result, the SCM authorized the commencement of criminal prosecution of judge Dorin COVALI and refused to authorize criminal prosecution in the case of judge Mihail CIUGUREANU. The request referring to judges from "Colenco group" was still not examined on September 15, 2014, which means that this matter has been postponed at least four times. These delays raise questions, given that on August 8, 2014 a rule took effect, pursuant to which the request of the Prosecutor General to initiate criminal prosecution is examined immediately, but not later than five working days (Art. 23 para.(1) of Law on the SCM). As reasons for postponing the examination of this matter, the SCM invoked on different occasions, the absence of Prosecutor General, the request of persons concerned<sup>75</sup> and the lack of materials to determine the well-foundedness of criminal prosecution<sup>76</sup>. It is not clear what the SCM means by "determining the well-foundedness of criminal prosecution", but pursuant to the law, the SCM may examine the respective request only in terms of observance of the conditions or circumstances provided by the CPP for disposing criminal prosecution, without assessing the quality and veracity of submitted materials (Art. 23 para.(2) of Law on the SCM).

**We recommend the SCM to examine within a maximum of 5 days the Prosecutor General's requests on the issuing of consent for criminal prosecution, arrest, detention, forced presentation or search of the judge; to examine requests for recusal in light of the right to a fair trial and not of appropriateness; to create a constant practice of examining the Prosecutor General's requests on the issuing of consent for criminal prosecution, arrest, detention, forced presentation or search of the judge.**

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<sup>73</sup> SCJ, Decision *Ion MURUIANU v. the SCM*, December 19, 2012, available at <http://jurisprudenta.csj.md/search cont csm.php?id=13>.

<sup>74</sup> SCJ, Decision *Nina CERNAT v. the SCM*, December 17, 2012, available at <http://jurisprudenta.csj.md/search cont csm.php?id=1>.

<sup>75</sup> See the summary of the SCM meeting of September 2, 2014, available at: <http://csm.md/noutati/1163- sinteza-sedintei-consiliului-superior-al-magistraturii-din-02-septembrie-2014.html>.

<sup>76</sup> See the summary of the SCM meeting of September 9, 2014, available at: <http://csm.md/noutati/1177- sinteza-sedintei-consiliului-superior-al-magistraturii-din-09-septembrie-2014.html>.

**We recommend the SCJ to consider the appeals lodged against the SCM decisions in terms of a fair trial guaranteed by Art.6 of the ECHR (which also includes the right to an impartial court), as also mentioned by the Constitutional Court in one of its judgments<sup>77</sup>.**

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<sup>77</sup> The Constitutional Court, Judgment no.17 of July 2, 2013, (para.42) on control of the constitutionality of a provision of Art.25 of Law no.947- XIII of July 19, 1996 on the Superior Council of Magistracy, in the wording of Law no.153 of June 5, 2012, and of Art. VIII para.(6) of Law no.153 of July 5, 2012.