

JUSTICE REFORM

LRCM has analyzed achievements and faults of the Moldovan justice reform

The justice reform was initiated in 2011. On September 22, 2014, LRCM launched the study "[Achievements and faults in reforming the justice sector of the Republic of Moldova: 2012 – July 2014](#)". This study analyzes 30 issues selected by the LRCM team based on the effect they had or are expected to have on the Moldovan justice or society. The issues refer to the organization of the judiciary and prosecution system, functioning of SCM, activity of judges and prosecutors, social guarantees of the judges, combating corruption, as well as the attitude of the Constitutional Court (ConstC) towards the initiatives of justice reform.

Although the reform of the prosecution has been announced, it has not been completed. Similarly, although the optimization of the judicial map has been promised by the authorities, it is not clear if it will take place. SCM's practice regarding appointments and promotions in the judicial system leads to many question marks. Increase of judges' salaries in 2014 is welcomed. Otherwise, combating corruption in the justice sector is self-defeating. However, pensions and other social guarantees of the judges, which increased along with their salaries, seem to be too generous. According to the amendments introduced in the civil and criminal procedure codes in 2012, district courts try all cases as first instance courts. At the same time, a number of special laws, which provide for the rights of appeal courts to try cases as first instance courts, have not been amended. Moreover, instead of narrowing the powers of the SCJ in civil cases, the legislative amendments of 2012 have broadened them. The increased powers of the SCJ may create serious obstacles for unification of judicial practice. Although the SCJ has issued many recommendations for the unification of judicial practice, it is hard to say that judicial practice is very uniform. The measures taken for combating corruption, such as simplification of judges' immunity and raising penal sanctions, seem to bring a certain change, yet many of them should be improved. ConstC was very outspoken when examining constitutionality of certain justice reform initiatives, as a rule, taking the judiciary's side. This position was not in all cases in accordance with the best European practices or ECtHR standards. The study contains recommendations for improving the detected flaws.

Workload of investigative judges is uneven – LRCM offers solutions

Since 2003, in each district court from Moldova there have been investigative judges. They examine complaints against criminal investigation authorities, issue arrest warrants, authorize searches and wiretapping etc. Since the establishment of the institution of investigative judges, the number thereof has not changed substantially, despite a considerable increase of their workload. The workload of investigative

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judges varies significantly from court to court. In some courts the workload is extremely high, while in others – very low. The high workload of some investigative judges, especially in the Chişinău municipality, was one of the main reasons which seriously affected the quality of the activity of investigative judges and the society's trust towards these judges. On March 4, 2014, SCM modified its Regulation on Random Distribution of Cases, stating that the judges that exercise the powers of investigative judge shall also receive other types of cases in the volume of 50%.

On September 4, 2014, LRCM launched the policy document „[Reallocation of the number of investigative judges: recommendations for each court](#)”. This document aims at streamlining the work of investigative judges. According to the calculations based on statistical data from 2010–2013 and

socio-demographic data, LRCM has identified the real workload of investigative judges in every Moldovan court. The policy document recommends amending SCM's Regulation on Random Distribution of Cases. The number of investigative judges in the district courts of the Chişinău municipality and Bălţi municipality shall increase and these judges shall examine only cases attributed to the exclusive competence of the investigative judge. In the Cahul, Hînceşti, Ialoveni, Orhei, Soroca and Străşeni district courts the number of investigative judges shall remain the same, but these judges should examine only cases attributed to the exclusive competence of the investigative judge. In the other 30 courts, an investigative judge's workload is lower than a full workload, varying from court to court. The investigative judges in these courts may receive for examination other cases, but the volume thereof should correspond to the time left after carrying out by the investigative judge of his/her main tasks.

Higher salaries for judge assisting staff and lower salaries for judges

The judge assisting staff have the status of civil servants and receive salaries provided for in the [Law No. 48 of 2012 on the System of Remuneration of Civil Servants](#). Besides the fact that these salaries are very low, they are lower than salaries received by civil servants with similar functions from other public institutions. The SCJ challenged the Law No. 48 before the ConstC, based on the fact that it provides for lower remuneration of staff assisting judges than that of similar positions in other public institutions. On September 10, 2013, [the Constitutional Court declared unconstitutional remuneration grades set in Attachment No. 2 to the Law No. 48/2012](#) in the part that refers to the salaries of the secretariat of ConstC, SCM, courts and prosecution service. ConstC found that setting lower remuneration grades for employees of the judicial system in comparison to those set for employees of legislative and executive authorities, for carrying out identical or similar functions represents a discriminatory treatment contrary to the Constitution. The Court called the Government to adopt new remuneration grades for civil servants in the judicial system, which should be recalculated as of the date of adoption of the ConstC's decision.

On July 17, 2014, the Parliament approved the modification of the remuneration grades for civil servants in the judicial system (Law No. 146), which entered into force on October 1, 2014. The Law does not cover the recalculation indicated by the ConstC and maintains a discrepancy, although a smaller one, between the staff who assist judges and civil servants with similar functions from other public authorities. By the same Law, judges' salaries have been reduced. Prior to amendment, their salaries had been calculated based on an average salary forecasted in the economy and established by the Government (for 2014, it is MDL 4,225). Starting from October 1, 2014, judge's salaries should be calculated according to the “average salary attained in the economy in the previous year”, which in 2013 was MDL 3,765. On September 29, 2014, [the SCJ requested the Constitutional Court to declare the Law No. 146 unconstitutional](#). On November 6, 2014, [the ConstC declared the Law nr. 146 constitutional](#), on condition that it does not apply for the judges in office at the date of entry into force of the law.

The Government has not filled in the vacant position of judge at the Constitutional Court

The mandate of the judge of the ConstC Mr. Petru RĂILEAN expired in October 2014. This vacancy is to be filled in by the Government. Until 15 September 2014, the Government did nothing for filling in this vacancy. By a public request, civil society organizations have [asked the Government to organize a competition](#) and to [select a judge on the basis of a transparent and fair procedure](#). Representatives of the civil society also requested to amend the legislation in order to introduce the obligation to organize public and fair competitions for selection of judges of the ConstC.

On October 17, 2014, the LRCM received [the reply of the Ministry of Justice to the request of the civil society](#). According to this reply, no competition can be organized prior to amendment of Art. 20 of the Law on the Constitutional Court. Neither the Law on the Constitutional Court, nor any other laws prohibit organization of a public competition for the position of judge of the ConstC. In 2013, SCM selected two judges of the ConstC based on a publicly announced competition.

Potential overlap of powers between SCM and the National Agency of Court Administration

The Ministry of Justice developed a [draft Government Decision](#) for streamlining the operation of the Department of Judicial Administration, as well as for improving the process of planning and using the financial resources of the judicial system in the domain of centralized procurements and capital investments. In the [informative note](#) to the document, it is stated that the adoption of the draft document will ensure correct and efficient formation of capital investment budgets, based on objective and transparent criteria, deriving from an assessment of organizational, administrative, technical, material and informational needs, as well as developing judicial information system.

LRCM has conveyed to the Ministry of Justice [opinion on the draft Government Decision on Organization and Functioning of the](#)

[National Agency of Court Administration](#) (NACA). LRCM supports establishment of this organization and the need for centralizing of the processes related to procurements, renovations, investments and human resource policy in district courts and appeal courts. At the same time, introducing the amendments by a Government decision, without intervention in the legislation, creates an overlap of powers between NACA and SCM, the provisions of the draft Government decision being contrary to the law on SCM. Establishing of NACA in the proposed form cannot take place without the revision of the relevant legislative framework.

By the [SCM Decision No. 740/24 of 17 September 2014](#), SCM disapproved the draft Government decision in question. Until November 1, 2014, the Government had not adopted the Regulation on NACA.

SELECTION, CAREER AND DISCIPLINE OF JUDGES

New judges have been appointed to the Supreme Court of Justice

In 2013, SCM announced four competitions for five judge positions at the SCJ. Two more competitions for three judge positions were announced in 2014. 13 magistrates participated in the competition and SCM proposed the following judges for the eight vacant positions: Mrs. GHERVAS (from the Botanica District Court, who accumulated 95 points for the competition); Mr. MARDARI (from the Ciocana District Court, who accumulated 91 points); Mr. DRUȚĂ (from the Botanica District Court, who accumulated 82 points); Mrs. CATAN (from the Chișinău Court of Appeal, who accumulated 77 points), Mr. MORARU (from the Cahul District Court, who accumulated 67 points); Mrs. Toma (from the Ialoveni District Court, who accumulated 64 points); Mr. STERNIOALĂ (from the Buiucani District Court, who accumulated 59 points); Mr. GUZUN (from the Bender Court

of Appeal, who accumulated 57 points). The latter four have been promoted despite the fact that they had less points than other candidates. In the text of the SCM decisions regarding these judges it is not stated on which reasons or criteria these promotions were based.

According to the current procedure, in order to participate in the competition, judges are evaluated by the Performance Evaluation Board and the Selection Board on the basis of criteria set by SCM. As a result of the evaluation, judges accumulate points with which they participate in the competition. At the same time, SCM does not consider it necessary to appoint candidates with the highest score and sometimes prefers candidates with a lower score without any explanation.

The President of the country has refused to appoint four judges

On September 17, 2014, SCM proposed to the President to appoint 5 judges in the Chișinău municipality (Lucia BAGRIN, Natalia BERBEC, Maria COZMA, Corneliu CREȚU and Petru HARMANIUC). Back in the summer of 2013, media published several materials (based on information from the Security and Information Service) which generate suspicions regarding integrity and reputation of these candidates. The information refers to fortune which is not in accordance with income or undeclared property, conflicts of interests, relations with controversial persons, as well as alleged involvement in illegal activities.

On September 29, 2014, [non-governmental organizations requested the President](#) to verify the information published in press and to accept in the system only candidates with irreproachable reputation. On October 30, 2014, the President [appointed Maria COZMA in the position of judge, and rejected the other candidates](#), their files being conveyed to SCM for re-examination. President TIMOFTI [mentioned](#) that he could not „promote [in vacant magistrate positions] persons whose irreproachable reputation is not proven”. SCM may repeatedly propose candidates rejected by the President by a vote of 8 of the 12 SCM members.

The Bender Court of Appeal has been liquidated – what happened to its judges?

In the previous issue of its newsletter, [LRCM highlighted the deficiencies](#) of the Law No. 177 of July 25, 2014, by which the Bender Court of Appeal (CA) had been liquidated. LRCM stressed the lack of clear provisions regarding the transfer of judges of this court. It seems that the risks of this omission to regulate the transfer of the judges from the liquidated court have proven to be real. All the five judges of the Bender CA have requested to be transferred to the Chişinău CA. At the same time, on September 17, 2014, SCM rejected these requests due to the failure to accumulate the necessary number of votes (four votes in favor and four votes against). These judges were given 15 days to submit requests for transfer to other courts. Three members of SCM did not agree with the decision of the majority and issued [two dissenting opinions](#).

Surprisingly, on October 7, 2014, SCM re-examined the requests of the judges at question, annulled its own decision of September 17, and, as a result of voting (with at least 8 votes for), proposed

for appointment as judges at the Chişinău CA two of the five judges from the Bender CA (Mr. Grigore DRUGUŞ and Mrs. Svetlana LEU). As mentioned in the [dissenting opinion of certain SCM members](#), annulment of its own decision and rejection of the requests of the other three judges had been decided upon without any legal grounds.

On October 14, 2014, the remaining three judges from the Bender Court of Appeal, whose requests for transfer to the Chişinău Court of Appeal had been rejected, were proposed by SCM for transfer to the Comrat Court of Appeal (Mr. Mihail ANTONOV and Mr. Nicolae NOGAI) and the Cahul Court of Appeal (Mrs. Aurelia PARPALAC). Although it rejected the transfer of the three judges of the Bender Court of Appeal to the Chişinău Court of Appeal, on October 28, 2014, SCM decided to promote to the Chişinău Court of Appeal two judges (Mrs. Maria NEGRU and Mr. Stelian TELEUCĂ).

How does the immunity of judges in the Republic of Moldova work?

On June 12, 2014, [for procedural reasons, the SCJ annulled](#) the Decision of SCM of April 15, 2014 by which it consented to initiating criminal investigation and prosecution of judges Eugeniu CLIM, Aureliu COLENCO, Valeriu HARMANIUC and Ala NOGAI. In July 2014, the General Prosecutor filed a repeated motion to SCM requesting its consent for initiating criminal investigation in respect of these judges. The examination of this motion has been postponed by SCM for at least 5 times, before rejecting the motion on October 7, 2014 with seven votes against three by [Judgment no. 721/26](#). SCM concluded that “no reasonable suspicion has been proven that the judges have knowingly pronounced a judgment contrary to the law”. Such a reasoning is surprising taking into account that half a year ago, on April 15, 2014, the SCM had authorized the criminal investigation of these judges.

The General Prosecutor has filed motions for authorization of criminal investigation against other two judges, Dorin COVALI and Mihail CIUGUREANU. The motions regarding these judges were

examined on September 9, 2014 after having been postponed several times. SCM has admitted the motion regarding Mr. [Dorin COVALI](#), who is suspected to have issued a judgment while being out of the court premises. Surprisingly, in this judgment, SCM found that the judge committed an illegality, which prejudices the criminal case and seems to violate the presumption of innocence. In regards to Mr. [Mihail CIUGUREANU](#), who is also suspected of having knowingly pronounced an illegal judgment, SCM refused to authorize the criminal investigation. The judgment has been taken with parity of votes, which has been interpreted by SCM as rejection of the motion.

The SCM's repeated postponement of examination of the motions of the General Prosecutor to authorize the criminal investigation, which slows down this process for several weeks and, sometimes, months, raises important question marks. According to the Law on the Superior Council of Magistracy, such motions shall be examined within, at most, five days.

SUPERIOR COUNCIL OF MAGISTRACY

The last vacancy at SCM has been filled in

SCM consists of 12 members, three of whom are by virtue of law and nine are appointed for a four years mandate. Three of the nine members are appointed by the Parliament from law professors. In 2013, the mandate of the elected members of the SCM expired. On December 24, 2013 the Parliament appointed three members of the SCM based on a public competition,

but without explaining the reason for selecting namely these persons. The non-governmental organizations expressed their [dissatisfaction](#) with the manner of organizing the competition.

Other six members of the SCM are judges elected by the General Assembly of Judges by the vote of the majority of the participants.

From October 2013 to August 2014, five General Assemblies of Judges took place, where five members of SCM have been elected. There was still one vacancy because the candidates could not accumulate votes of the majority of the participants. On October

3, 2014, the General Assembly of Judges finally elected the sixth member of the SCM. He is Mr. Dorel MUSTEAȚĂ, judge in the Anenii-Noi District Court.

HUMAN RIGHTS IN THE REPUBLIC OF MOLDOVA

The Republic of Moldova at the European Court of Human Rights

In September 2014, LRCM received from the ECtHR the statistical data concerning the Republic of Moldova. According to these data, in the first eight months of 2014, the ECtHR allocated to a decisional formation 855 applications against Moldova. During 2013, 1,356 applications were filed against Moldova to the ECtHR. In the first eight months of 2014, 34 applications were communicated to the Government and 1,055 applications were examined. Out of those 1,055 examined applications, 19 have resulted in judgments and the rest have been declared inadmissible or stricken out.

In the first six months of 2014, ECtHR declared inadmissible 811 Moldovan applications. Out of those, 543 were manifestly unfounded, in 70 cases the domestic remedies had not been exhausted, 71 cases were qualified as „the fourth instance”, 87 applications had been filed out of the six months deadline and 40

cases were declared inadmissible for other reasons.

On July 15, 2014, there were 1,154 Moldovan applications pending at the ECtHR, which is 20% less than at December 31, 2013, when there were 1,442 Moldovan applications pending at the ECtHR. Out of those 1,154 pending applications, 102 applications were distributed to an individual judge, 67 applications were allocated to the Committees of 3 judges, 984 – to Chambers of 7 judges (with a high chance of success) and one case – to the Grand Chamber (17 judges).

According to the information presented by the ECtHR, the Moldovan applications pending as of June 30, 2014, were mainly referring to matters related to fair trial, access to justice, insufficient reasoning of judgments, lack of uniform judicial practice, quashing of final court judgments, manner of applying the Law no. 87, as well as detention conditions.

Law no. 87 – an efficient remedy with deficient implementation

In order to enforce the judgment [Olaru and others v. Moldova](#), on April 21, 2011, the Parliament adopted the Law no. 87, which introduced a national remedy for compensating the violation of the right for hearing a case in reasonable time and the right to enforcement of the court judgment in reasonable time. The remedy has been accepted *prima facie* by the ECtHR as an efficient one, but with the reservation of being able to revise its position in the future, depending on the possibility of the national courts to create a jurisprudence consistent with the requirements of the ECHR (see dec. [Balan v. Moldova](#), para. 27).

In 2014, [LRCM analyzed 262 cases based on the Law no. 87](#), which represents above 90% of the total number of cases where

an irrevocable decision had been adopted from September 2012 until October 2013. The results of this analysis raise doubts regarding the efficiency of the mechanism introduced by the Law no. 87. There are serious problems regarding both the expediency of examining the actions filed based on the Law no. 87 (22% examined in the first instance within a term exceeding 12 months), as well as the quality of reasoning of court judgments (75% of the rejected actions are insufficiently reasoned). At the same time, compensations awarded as moral damages are much smaller than those awarded by the ECtHR in comparable cases (average of the awarded compensation is MDL 7,084 for 2 years and 11 months of non-enforcement). At the same time, legal assistance fees are, usually, fully or partially left at the expense of the applicants.

The new initiative for fighting extremism – a mechanism protecting the society or creating room for abuse?

On July 17, 2014, the Parliament adopted in the first reading [a draft law](#) meant to fight extremism. Through this draft law, the Information and Security Service (ISS) obtains the status of the main authority for preventing extremist activities. In case of

crimes which put at risk the security of the state, ISS will be able to carry out special investigation measures, based on security warrant, outside criminal proceedings. The security warrant will be issued on the basis of a decision of a specially appointed judge

at the Chişinău Court of Appeal, upon a reasoned motion of the prosecutor, issued upon the proposal of the ISS investigation officer.

According to these amendments, ISS will be able to carry out, outside criminal proceedings, audio/video recordings, home surveillance, communications and images tapping, collecting information from service providers, apprehension, investigation, delivery, search or seizure of postal deliveries, etc. ISS will also be able to temporarily block, for 60 days, without a prior authorization, the materials, which indicate an extremist character from informational systems (web-page, social network, blog etc.). In case of, at least, two materials with extremist character, the hosting informational system can be blocked definitively or for a one year period on the basis of a court decision, upon the request of ISS or General Prosecutor. The draft law also provides for a set of new crimes meant to incriminate extremist activities, calls that threaten the constitutional order, propagation of Nazi, racist or xenophobe ideology, as well as actions which endanger the Republic of Moldova's security and threaten the integrity and territorial inviolability of the country.

Although strengthening the mechanisms of protection of the state security and fighting extremism are necessary, there is also the risk of reaching the other extremity, where human rights will be neglected through obscure procedures. To avoid this, it is necessary to introduce additional legal guarantees to protect both the right to private life and the right to an

effective remedy in case of its violation. In [its opinion](#), the Venice Commission enumerated a series of drawbacks, which were not taken into consideration by the Parliament. The main problems identified in that opinion are the following: access to information which represents bank secret can be obtained without any authorization procedure, lack of a concrete procedure and criteria for appointing the judge competent to examine the motion for issuing the security warrant, lack of a deadline for the judge to examine such motions, lack of a specialized defence attorney that would ensure intervention from outside the system, extremely vague exceptions that allow not to inform the person about the application of special measures after their conclusion, lack of the requirement that in the motion or in the ruling on the issuing of the security warrant the justification of the infringement in the right to private life of the person be analyzed, the extremely wide range of crimes for which the security warrant may be issued, materials of the case file on the security warrant constitute a state secret, etc. One of the main deficiencies of the draft law which, apparently, was not a part of the subject of the Venice Commission's opinion, and is extremely alarming is the provision which allows for blocking the informational sources for dissemination of the materials of extremist character. Thus, the extensive list of extremist activities indicated in the law, along with the procedure of blocking the informational systems which offer the state authorities an extremely wide discretion can lead to violation of the freedom of speech in the absence of a carefully examined proportionality test.

Authorities have reacted to the racist speech of an electoral candidate

On October 13, 2014, the Council for Prevention and Fighting Discrimination and Ensuring Equality (CPFDEE) issued a decision on the statements of Mr. Renato USATÎL, leader of the political party „PaRus”. During the press conference of September 15, 2014, Mr. USATÎL, referring to the leader of another political party, said the following phrases „this dirty and smelly gypsy [...] will find himself where his place is!”; “[...] it is known that Filat is half gypsy, but Filat is a terminal gypsy”. CPFDEE

found that the above statements represent an instigation to racial discrimination and concluded that Renato USATÎL should state through the same media source which disseminated his initial speech, the following: ”I hereby apologize to the Roma community for using racist expressions in my speech”. The decision was taken at the CPFDEE's own initiative and represents a good example of speedy and adequate reaction to racist statements of public persons.

Election of the Ombudsman lagging behind

On April 3, 2014, the Parliament adopted the Law on Ombudsman. The Parliament announced public competition for occupying the two positions of ombudsman. The Parliamentary Commission responsible for selecting the candidates proposed to the Plenum of the Parliament 4 candidates, two for each vacancy. The Parliament voted these candidatures on July 21, 2014. According to the [video recording of the Parliament's sitting](#), only for the election of the candidates to the position of ombudsman the quorum was met (52 MPs present in the room). 52 MPs participated in election of the ombudsman, and only 49 MPs participated in the election of the ombudsman for child's rights. The votes were distributed as follows: 33 MPs voted Mihai COTOROBAI for the position of

ombudsman and 19 MPs voted for Ion MANOLE; 33 MPs voted Jana COSTACHI for the position of ombudsman for child's rights and 16 MPs voted for Maia BĂNĂRESCU.

According to the Law on Ombudsman for the next round of voting only the candidate who accumulated the highest number of votes in the first round shall be proposed. By October 31, 2014, the Parliament had not organized the second round of voting for electing the ombudsman and had not tried to organize the first round for electing the ombudsman for child's rights. It is highly unlikely that the current composition of the Parliament will come back to this subject.

A new initiative for improving the provisions of the CPC regarding pre-trial detention

In 2013, the Ministry of Justice created a working group for adjusting the provisions of the CPC to the international human rights standards. In 2014, the working group mainly focused on adjusting the provisions of the CPC regarding detention. The prepared [draft law](#) details the grounds for apprehension and pre-trial detention in criminal cases, reduces the maximum term for which a person can be kept in pre-trial detention to 12 months, increases the rights of the defence during pre-trial detention proceedings, details the rules on filing the motion for pre-trial detention to ensure the right to defence and excludes from the CPC the provisions which are incompatible with the ECHR. This initiative also proposes to reintroduce the right of the prosecutor to release the person before the expiry of the pre-trial detention warrant, if the circumstances which served as basis for detention no longer apply. In the summer of 2014, [the draft law was referred to the Council of Europe for review](#). In the following weeks, the draft law is to be finalized in the light of the Council of Europe opinion by the Legislative Division of the Ministry of Justice and will be addressed after the new Government is formed.

EVENTS IN NOVEMBER

NOVEMBER 15

LRCM celebrated 4 years since foundation

NOVEMBER 19-21

LRCM team participates in the meeting of ECtHR with NGOs

NOVEMBER 20-21

The LRCM team participates at the [6th Eastern Partnership Civil Society Forum](#). The event takes place in Batumi, Georgia.

ABOUT LRCM

The Legal Resources Centre from Moldova is a not-for profit non-governmental organization based in Chişinău, Republic of Moldova. LRCM to ensure a qualitative, prompt and transparent delivery of justice and effective observance of civil and political rights in Moldova. In achieving these aims, LRCM combines policy research and advocacy in an independent and non-partisan manner.

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