

JUSTICE REFORM

What does the new Government program provide in the fields of justice, human rights and fighting corruption?

On 18 February 2015, the new Government was invested. The [Activity program](#) of the Government has 43 pages with 17 priorities, fighting corruption being the first on the list. Priorities also include justice (no. 5) and human rights (no. 17).

In the field of fighting corruption, the program provides, inter alia, inviting an EU expert mission to offer support in examining cases of corruption, clear delimitation of powers of the National Anticorruption Centre (NAC) and anticorruption prosecutor's office, limiting the discretion of the law enforcement employees, adopting a new anticorruption Strategy, adopting the Law on financing political parties, improving the mechanism of declaring income, properties and interests and priority check of judges' and prosecutors' assets.

In respect of justice and human rights, the Government aims at, inter alia, optimisation of the judicial map and specialization of judges, improving the mechanism of appointment and promoting of judges, reducing the length of proceedings by reducing to minimum the number of hearings, taking minor cases from courts' jurisdiction and modernizing the summoning procedure, unification of the judicial practice and reforming the rules on reasoning the court judgments, as well as adoption of the new Law on prosecution service.

Regarding human rights, the program provides for the development and implementation of a new Action Plan in the field of human rights for 2016-2019, combating domestic violence, protection of child's rights, building of a new prison and launching the process of construction of arrest houses, improving the national mechanism of enforcement of judgments of the European Court of Human Rights (ECtHR), as well as extending the range of subjects entitled to represent in courts.

Development partners recommend to the Government to intensify reforms

At the beginning of March, the representatives of the donor community, diplomatic missions and cooperation organisations in the Republic of Moldova, have presented the new Government a [set of recommendations](#) for the implementation of policies and reforms previously undertaken by the Government of the Republic of Moldova. The recommendations include immediate measures (<100 days), and short term (<12 months) and medium (>12 months) in 30 areas, including justice, fighting corruption and human rights.

In respect of justice reform and eradication of corruption, the development partners recommend the comprehensive implementation of the legislative package on fighting corruption, adoption of the new Law on prosecution service in line with the [recommendations](#)

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[of the Venice Commission](#), use of new powers of the General Prosecutor to investigate judges for corruption, as well as monitoring the judicial system by the Superior Council of Magistracy (SCM) and the civil society. It is also recommended to ensure an uniform judicial practice and use of audio recordings as standard practice in court hearings. The partners also recommend the reform of the Constitutional Court, ensuring a fair and transparent selection of judges and initiation of optimisation

The Venice Commission has issued its opinion on the new Law on prosecution service

In November 2014, the Ministry of Justice asked for the opinion of the Venice Commission and ODIHR on the new draft Law on prosecution service. In February 2015, a common group of experts of the Venice Commission and ODIHR conducted a study visit to the Republic of Moldova and, on 23 March 2015, [their common opinion](#) was made public. The Venice Commission and ODIHR concluded that the draft law presents a substantial improvement of the current Moldovan legislation on prosecution. However, reservations were expressed regarding the insufficiently clear regulation of the extra-penal powers of the prosecution, procedural independence of prosecutors, mechanism of dismissal of the General Prosecutor, as well as on the manner of appointment the prosecutors in TAU Găgăuzia.

The Working Group in charge of the draft law has adjusted the draft law. Prosecutors' powers to control the compliance with the law and to institute civil proceedings have virtually disappeared.

LRCM assessed the reform of the investigative judge institution

Investigative judges in Moldova are called to ensure compliance with human rights during criminal investigation. The majority of these judges are former prosecutors and criminal investigation officers. Over the years, their activity has generated much criticism. In 2012, the Parliament adopted the Law no. 153/2012 with the aim of reforming the institution of investigative judge. Law no. 153/2012 requires the evaluation of the activity of all investigative judges and, in case of positive evaluation, reconfirmation as common law judge. The reconfirmation is carried out by the President of the country at the proposal of the SCM, after assessing the performance of judges and their training at the National Institute of Justice (NIJ). SCM has developed a regulation which provides that to the position of investigative judges could be appointed only judges with an length of service of at least 3 years and only with their consent. Although it should have been finalised by 31 August 2015, the process was basically finalised by December 2014. According to Law 153/2012, further, the tasks of the investigative judge shall be carried out by a common law judge appointed by the SCM for a period.

LRCM monitored the process of reappointment of investigative judges and drafted the Report [„Reform of the institution of investigative judge in the Republic of Moldova”](#), launched

of the judicial map. Many of the recommendations in the field of justice result from the LRCM's studies on the [optimization of the judicial map](#), [optimization of prosecution structure](#) and report on the [progress of the justice reform](#). In the field of human rights, it is recommended to ratify Protocol no. 12 of the ECtHR (prohibition of discrimination in any fields), as well as proper implementation of the Law on equality of chances and of the legislative framework for equality between men and women.

The provisions regarding hierarchical subordination have been detailed to ensure a single level of control instead of several existing now. As to the dismissal of the General Prosecutor for misconduct, it will only be possible upon the proposal of the Superior Council of Prosecutors. In respect of the candidates to the position of chief prosecutor of the TAU Găgăuzia Prosecutor's Office, only those nominated by the Gagauz Popular Assembly shall be admitted to the contest.

The new draft Law on prosecution service had to be sent from the Ministry of Justice to the Government at the beginning of May. On 21 April 2015, during public discussion on the draft law, the Speaker of the Parliament announced that he expects the draft law to reach the Parliament by mid-May. According to estimates, it should be adopted by July 2015. The law should enter into force on 1 January 2016.

on 28 January 2015. According to the report, out of those 40 investigative judges in office on the date of entry into force of the Law 153/2012:

- 30 investigative judges were reappointed;
- two were transferred as a judge without passing through the procedure of reconfirmation;
- two resigned;
- two investigative judges were dismissed for failure to pass the performance evaluation;
- one judge did not request reappointment as he is reaching the retirement age soon;
- one judge was suspended, because a criminal case has been initiated against him;
- one investigative judge has been dismissed on grounds of breaching duties;
- reappointment in the position of one judge has been refused by the President in November 2014 and the SCM has not yet decided whether to propose him to the President again.

Out of those 30 judges reappointed to the position of common law judges, 25 (83%) continue to exercise duties of investigative judge. This does not contribute to their professional integration and improval of their professionalism. In 14 out of those 44

courts the mandatory condition of having at least three years of experience as judge has not been complied with, although in those courts there were judges who corresponded to this requirement. The LRCM report recommends introducing the interdiction for former investigative judges to hold the same function for at least three years. The authors of the report recommend that appointment of investigative judges is done with three months prior to taking office. In this period judges would benefit from training courses at the NIJ and their workload as common law judges should be reduced gradually. The report also recommends that the mandate of the investigative judges have a fixed period of three years, without the possibility of extension.

The authors of the report have also assessed the workload of the investigative judges. They have found an uneven distribution of workload between them. About 50% of the total workload

refers to the eight investigative judges from Chişinău. The report recommends increasing the number of investigative judges in Chişinău and in Bălţi municipality courts. In Cahul, Hînceşti, Ialoveni, Orhei, Soroca and Străşeni investigative judges should examine only the cases given by the Criminal Procedure Code in the exclusive competence of investigative judges. In the other courts, they can also examine other categories of cases, but their number must depend on the time spent by the investigative judge to fulfil their primary functions.

In 2014, the Ministry of Justice developed a draft law and included the majority of the recommendations of the LRCM were included. It was opened for public consultations and registered in Parliament in August 2014, but sent back to the ministry after investiture of the new Government. In spring of 2015, the draft law will be sent again to the Parliament for adoption.

ADMINISTRATION OF THE JUDICIARY

Ambitious reforming initiatives were announced at the General Assembly of Judges

On 13 March 2015, the General Assembly of Judges took place. At the event, the [Report on the activity of the Superior Council of Magistracy and manner of organisation and functioning of the judiciary in 2014](#) was heard. The minister of justice and the president of the Supreme Court of Justice (SCJ) also held speeches. The video recording of the General Assembly is available [on-line](#).

The president of the SCJ referred to the insufficient quality of judgments and to the high rate of admitted appeals, as well as to the exercise by some judges of powers of administrative bodies, by recognising the legality of unauthorised constructions or even the acquirement of the citizenship of the Republic of Moldova. The president of the SCJ proposed several initiatives meant to improve the situation in the justice sector, such as

[instituting of a court of juries in exceptionally complex cases, constituting at the SCJ of a panel to review final judgments prior to lodging an application with the ECtHR, setting maximum terms for examining cases in first instance courts \(6 months\) and appeal \(3 months\), changing the membership of the SCJ and dividing the Chişinău Court of Appeal in two separate courts, dismissing the judges who cannot justify their properties](#). Mr Poalelungi announced that the SCJ has already created several working groups for implementing these initiatives. Despite the fact that the initiatives of the SCJ require serious amendments of the legislative framework and their implementation has been initiated, prior to the General Assembly, they have not been made public and there has been no discussion on their opportunity.

Failure to ensure the random assignment of cases - SCM reacts slowly

As mentioned in the [previous Newsletter](#), in 2014, there have been found some alleged manipulations of the electronic case management system, including at the SCJ. In response to the request of the President of the SCM on the random distribution of files at the SCJ, in January 2015, the Special Telecommunications Centre (STC) has sent a note to the SCM. On the 27 January 2015, the [SCM decided to leave it without examination](#).

On 2 February 2015, [16 civil society organizations called the SCM](#) to carry out urgent detailed controls on the manner of distribution of cases in all the courts of the country, identification of vulnerabilities, harsh sanctioning of all the persons involved in

manipulation of the random distribution of cases system or of those who did not report about this manipulation and posting, as soon as possible, the results of the controls on the web page of the SCM. On 10 February 2015, [SCM requested from the STC to present information on the manipulations](#) of 2014 in the process of random distribution of cases in the courts of Chişinău municipality, including Chişinău Court of Appeal and SCJ. It seems that the decision of 10 February 2015 was sent to STC a few weeks later. It is not clear whether the STC has presented the requested information. Upon the date of publishing the present newsletter, the SCM did not return to the subject of random distribution of case files.

Polygraph testing of candidates to the position of judge and prosecutor postponed

On 23 December 2013, the Parliament voted Law no. 326, by which it adopted a set of amendments meant to fight corruption in the justice sector. These include the polygraph testing of candidates for the position of judge and prosecutor, introduced as a mandatory condition. Polygraph testing should have started after the creation of necessary conditions for its implementation, but no later than 1 January 2015. The SCM, Superior Council of Prosecutors (SCP) and Information and Security Service (ISS) were obliged to adopt detailed provisions in this respect by 25 July 2014. On 1 July 2014, the SCM created a working group for implementation of provisions related to the polygraph testing of candidates to the position of judge. On 31 March 2015, these regulations were still not published on the website of SCM.

On 3 February 2015, at the request of the minister of justice, the SCM discussed this subject and found that the polygraph has not yet been purchased and no specialist has been employed to carry out the test. Therefore, the polygraph testing is not being carried out.

According to the informative note to the draft Law no. 326, creating necessary conditions for polygraph testing requires purchasing the polygraph and training the polygraphers. The costs amount to about USD 9,000, plus the salary of the polygrapher, as well as his training costs. It is unclear when SCM will create conditions for applying the polygraph test.

HIGH PROFILE CASES

The solution was issued in “Pădurea Domnească” case

On 4 February 2015, Făleşti court issued the [sentence in “Pădurea Domnească” case](#). The former deputy-president of the Chişinău Court of Appeal, Gheorghe CREȚU, was found guilty of shooting dead with negligence of Sorin PANCIU and illegal hunting. The other defendants, employees of “Moldsilva” Agency, accused of illegal hunting, false statements, forgery and abuse of power, have been fully acquitted. The court found that the shooting of Mr. Panciu took place due to violation of hunting safety rules. Despite the fact that Mr. Crețu has consistently denied his guilt, he has been convicted to two years of imprisonment with suspended execution of this punishment for two years. The court

has also obliged Mr. Crețu to pay MDL 600,000 to the parents of Mr. Panciu and MDL 406,000 to the wife and daughter of Mr. Panciu as moral and material damage and court expenses. The court has also obliged Mr. Crețu to pay to Mrs. Panciu, until reaching adulthood by the daughter, a monthly compensation of MDL 1,500. For illegal hunting, Mr. Crețu was fined with MDL 6,000. The sentence was appealed and the case is pending in the Bălți Court of Appeal.

Mr. Cretu was the only one accused of illegal hunting of the whole group of people that participated in the hunt.

Criminal investigation against four judges was discontinued

By [Decision of the Superior Council of Magistracy no. 374/13 of 15 April 2014](#) the request of the General Prosecutor was accepted and consent was given to initiate criminal investigation against judges of Economic Court of Appeal Aureliu COLENCO, Valeriu HARMANIUC, Eugeniu CLIM and Ala NOGAI, for intentional delivery of a judgement contrary to the law. On 12 June 2014, [SCJ annulled for procedural reasons](#) the SCM Decision of 15 April 2014. In July 2014, the General Prosecutor repeatedly requested the SCM's consent for criminal investigation of these judges. The examination of this request has been postponed at

least 5 times. On 7 October 2014, by [Decision no. 721/26](#), the SCM, with seven votes against three, rejected the request. The SCM concluded that „no reasonable suspicions exists that the judges knowingly issued a judgment contrary to the law”. Such reasoning is surprising taking into account that on 15 April 2014 the SCM authorized criminal investigation for these judges, arguing that such a suspicion existed. Given that without the SCM's consent the criminal investigation against judges cannot take place, on 1 December 2014, the Anticorruption prosecutor's office closed the criminal case against the four judges.

HUMAN RIGHTS

The Republic of Moldova at the ECtHR in 2014

On 29 January 2015, the ECtHR launched the [annual activity report](#) and the [analysis of statistical data for 2014](#). According to these

documents, on 31 December 2014, the number of cases pending at the ECtHR was 69,000, that is 30% less than at the end of 2013.

At the same time, in 2014, 56,250 applications were registered, or 13% less than in the previous year. It is for the first time since 2003 when the number of applications at the ECtHR decreased.

[LRCM made an analysis of the statistical data](#) concerning Moldova. On 31 December 2014, there were 1,159 pending Moldovan application at the ECtHR, or 19.6% less than on 31 December 2013. The number of registered Moldovan applications decreased with 18.5%, from 1,354 applications in 2013 to 1,105 applications in 2014. However, reported to the number of population of the country, the number of applications lodged with the ECtHR against Moldova is very high. In this respect, in 2014, as in 2013, Moldova was on the fourth place. The decrease of the number of registered applications can be explained by the adoption of stricter rules for completing applications with the ECtHR and by discouragement of the defence attorneys, caused by the high number of applications found inadmissible in previous years.

LRCM assessed the manner of enforcement of ECtHR judgments

By the end of 2014, the ECtHR delivered 297 judgements on Moldovan cases and found in total more than 400 violations of the ECHR. The majority of the violations are repetitive. The large number of violations found and their nature raises questions regarding the enforcement by the Republic of Moldova of ECtHR judgments. The [Report „Enforcement by the Republic of Moldova of the European Court of Human Rights judgments”](#), launched by the LRCM on 31 March 2015, answers the question what did the Republic of Moldova do to enforce the ECtHR judgments and which was the impact the of measures taken?

The report notes that, following ECtHR judgments, during 2013–2014, the prosecutors reopened many cases of ill-treatment. However, in the most of cases this did not lead to conviction of torturers. On the other hand, as a result of amendments to the Criminal code, the sanctions applied in 2014 for torture have harshened. There were no improvements as to the detention conditions. Although alimentation

Lawmakers propose limiting freedom of expression

On 31 March 2015, a group of MPs of the ruling alliance registered in the Parliament the [draft law no. 107](#). It proposes that any person who, during audio-visual programs accuses someone of committing any illegal deeds, has to prove these claims and the moderator of the show has to ensure the accused person the right to reply. In case no evidence is provided during the broadcast, the program moderator shall immediately declare that the accusations are not proved. In news programs, the broadcasters shall be obliged to request the position of every public authority concerned in the newscast. If the authority refuses to present its comments, the broadcaster shall expressly mention this fact. In case the broadcaster is not sure about the credibility of the confidential source, it shall expressly mention that the information may not correspond to the reality. The draft law also proposes that the local products constitute at least 8 hours of the daily emission time, and the European productions – at least 12 hours.

Upon the first violation of the above-mentioned, the broadcaster shall

In 2014, the ECtHR examined 1,366 Moldovan applications, of which 1,341 (98,2%) were declared inadmissible or stricken out, and on 25 applications (1,8%) judgments were adopted. In 2014, the ECtHR adopted judgments in respect of 2,7% of the total number of examined applications. The low rate of issued judgments on Moldovan cases may be explained by friendly settlements, unilateral declarations or withdrawal by the applicants of their claims. In 2014, the ECtHR issued such decisions in at least 46 cases.

By 31 December 2014, the ECtHR issued 297 judgments on Moldovan cases, of which 24 were issued in 2014. Based on total number of judgments issued against it, Moldova is ahead of Germany, Spain, Netherlands or Portugal. In the 24 judgments issued in 2014 there were found 10 violations of art. 6 ECHR (the right to a fair trial) and 9 violations of art. 3 ECHR (prohibition of torture, inhuman and degrading treatment).

of detainees was always insufficient, allocations for their alimentation decreased in 2014. Insufficient reasoning of arrests remained a problem, so as no major changes occurred in sending cases for retrial, which causes delays in the proceedings. On the contrary, the rate of criminal cases sent for retrial by the SCJ increased. Without sufficient reasons, the SCJ quashed several final judgments in 2014. Although in 2012 the legislation regarding wiretapping was harshened, in 2014 were approved twice as many wiretappings as in 2013. The analysis of the compensation mechanism for damage caused by breach of reasonable time requirement confirmed that in 2012–2013, the respective actions were examined slowly, and the given compensations were much smaller than those granted by the ECtHR in similar cases.

The report includes specific recommendations for preventing ECHR violations.

be publicly warned. For repeated violations, the broadcaster may be sanctioned with a fine from MDL 5,000 to MDL 30,000, depending on the number of repetitions. After the sixth violation, the broadcasting licence can be suspended. The broadcaster shall also be required to inform the public about the applied sanction within 48 hours from the time of issuing the sanctioning decision.

The draft law also proposes to prohibit communicating information, which contravenes the Law on countering extremist activity. Transmission and retransmission of TV and radio broadcasts stations containing political or military shows or news which are not produced in the member state of the European Union and in the states which have not ratified the European Convention on the cross-border television shall also be prohibited. Among the states that [have not ratified this Convention](#) are Georgia, Greece, Russia, Serbia, Ukraine etc.

The draft law also proposes to exclude the possibility of public

broadcasters (eg. Moldova 1) to broadcast advertising other than social and electoral one. Taking into account that the state does not ensure sufficient funding for public broadcasters, this interdiction makes them vulnerable to undue influence from the state. Following this interdiction, the private broadcasters will attract more commercial advertisement. Several private broadcasters are affiliated to ruling political circles.

Finally, the draft law prohibits the dissemination of information through mass media by anonymous authors or which cannot be

identified. Such an interdiction is excessive. Although the authors of the draft invoke the ECtHR jurisprudence to justify the initiative, the ECtHR standards suggest the opposite.

This draft has generated vehement reaction from journalists. It seems that afterwards, [some signatories withdrew their support for this draft law](#). Such initiatives, in the current context, are contra-productive, distract the attention of the society from priority issues such as justice reform and fight against corruption.

LRCM analysed the legislation in the field of non-discrimination in employment

On 25 February 2015, LRCM launched the report „[Analysis of compatibility of the national legislation in the field of non-discrimination in employment with European standards](#)”. The report notes that in the Republic of Moldova there is a comprehensive framework in the field on non-discrimination in employment. It needs minimum amendments to ensure greater clarity and efficiency. Although the Council for Prevention and Elimination of Discrimination and Ensuring Equality (CPEDEE), has been recently established, it solves a high number of petitions in this field and has a proactive approach in fighting discrimination in employment. The report underlines that the lack of applications lodged with the CPEDEE on discrimination in employment on a series of criteria does not indicate upon the absence of cases on the given categories, rather on the lack to informing the population and involve the authorities. The main

task of the authorities of the Republic of Moldova is to encourage the employers and employees’ awareness about the negative effects of the discrimination in employment.

LRCM has launched two guidelines – one addressed to the [employers](#) and another to the [employees](#) – on the prevention of discrimination in employment. The guidelines contain useful information, such as the actions to be taken to prevent discrimination in employment, which are the obligations of the employers and employees to ensure equality of chances and non-discrimination in labour relations, which should be the actions to be undertaken in case of discrimination, etc. and provides a list of useful contacts in the respective field. At the same time, a [Compilation of the relevant international and national legislation in the field of non-discrimination in employment](#) has been drafted.

BRIEF NEWS

On 16 January 2015, LRCM launched the [project „Promoting legal reforms and advocacy for reforms in promoting a favorable environment for civil society organisations](#)”. Within the project, LRCM shall contribute to drafting amendments to the Law on civil society associations, Fiscal Code, regulations on implementing the Law of 2%. The key objectives of the project are to promote self-financing strategies of the NGOs and ensuring their effective participation in the legislative process.

On 21 January 2015, [28 NGOs boycotted the media institution Pro TV Chişinău](#), in relation to broadcasting unacceptable videos. Although Pro TV Chişinău has publicly declared that it committed a mistake, it has neither adequately remedied the affected person, nor informed the public about the measures taken for preventing similar situations in the future. For this reason, on [18 March 2015](#), [23 NGOs reiterated in a public message the](#) previously announced [boycott](#).

On 3 February 2015, the Ministry of Justice selected Sorina MACRINICI, legal adviser within the LRCM, as member of the Civil council for monitoring the National Anticorruption Centre, for a 6 years mandate.

On 3 April 2015, with the vote of 71 MPs, the Parliament elected to the position of ombudsman, Mr. Mihai COTOROBAI. The

candidate to the position of ombudsman for child’s rights has not acquired the sufficient number of votes. In order to fill in this position a new contest shall be organised.

On 7 April 2015, took place the [Conference Cooperation between the Parliament and Civil Society](#), organized by the Council of NGOs in cooperation with the Parliament. At the conference the [State Chancellery](#) and the [Council of NGOs](#) presented a report on the implementation of the [Strategy for development of the civil society 2012–2015](#). The Strategy expires in 2015. Although not all the actions in the Strategy have been implemented, it is not clear whether it will be extended.

On 7 April 2015, the SCM accepted the resignation request of the deputy president of the SCJ Mrs. Svetlana FILINCOVA. She invoked “personal reasons”. On 9 April 2015, the Parliament accepted the proposal of the SCM. Mrs. Filincova is now an ordinary SCJ judge. We recall that in December 2014, the president of the SCM requested the NAC to initiate a criminal case against Mrs. Svetlana FILINCOVA for alleged manipulation of the random distribution of files system. It seems that Mrs. Filincova is not criminally investigated, but the anticorruption prosecution office initiated a criminal case against three employees of the SCJ apparatus.

TO FOLLOW

ON 26 MAY 2015

LRCM will launch the „Analysis on compliance of the Moldovan legislation with the EU anti-discrimination acquis”.

BETWEEN 27-29 MAY 2015

the second training for trainers on nondiscrimination for social assistants organized by LRCM will take place.

ABOUT LRCM

The Legal Resources Centre from Moldova is a not-for profit non-governmental organization based in Chişinău, Republic of Moldova. LRCM strives 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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