translation from Romanian

OPINION

on the proposals to amend the justice sector related legislation launched by the Center for Reform in the Judicial System on 20 May 2015

Date: 18 June 2015
To: Center for Reform in the Judicial System (CRSJ)
Sent by email: info@SCJ.md

Signatories of the opinion:

1. Amnesty International – Moldova
2. Asociația „Promo-LEX" / "Promo-Lex" Association
3. Asociația pentru democrație participativă (ADEPT) / Association for Participatory Democracy (ADEPT)
4. Asociația pentru Guvernare Eficientă și Responsabilă (AGER) / Association for Efficient and Responsible Governance (AGER)
5. Asociația pentru Politică Externă (APE) / Foreign Policy Association (APE)
6. Centrul Analitic Independent „Expert-Grup" / Independent Think-Tank „Expert-Grup"
7. Centrul de Drept al Femeilor / Women's Law Center
8. Centrul de Resurse Juridice din Republica Moldova (CRJM) / Legal Resources Centre from Moldova (LRCM)
9. Centrul de Resurse pentru Drepturile Omului (CReDO) / Center for Human Rights Resources (CReDO)
10. Centrul International pentru Protecţia şi Promovarea Drepturilor Femeii „La Strada" / International Center for Women Rights Protection and Promotion "La Strada"
11. Centrul PAS / PAS Center
12. Centrul Pro Marshall / Pro Marshall Center
13. Fundația Est-Europeană / East Europe Foundation
14. Habitat
15. Institutul de Politici Publice (IPP) / Public Policy Institute (IPP)
16. Institutul pentru Dezvoltare și Inițiative Sociale „Viitorul" / Institute for Development and Social Initiatives „Viitorul"
17. Institutul pentru Politici și Reforme Europene (IPRE) /Institute for European Policies and Reforms (IPRE)
18. Transparency -International Moldova,
19. Общественная Палата АТО Гагаузия

Context and summary of the opinion

The signatories are surprised by the proposals made by the Center for Reform of the Judicial System (CRSJ), given that most of the proposals are not provided or are, to some extent, contrary to the Justice Sector Reform Strategy (JSRS) for the years 2011-2016, approved by Law no. 231 of 25 November 2011. We believe that by the end of 2016 Moldova must make all efforts to successfully implement the JSRS, which is actually protracted for more than a year. The JSRS, approved by law, is the policy document that should guide all stakeholders in the justice sector reforms. Implementation of the JSRS activities constitutes an undertaking in the context of the Association Agreement between Moldova and the European Union. The budgetary support for Moldova to implement the JSRS was already reduced due to insufficient implementation of the strategy by the Republic of Moldova. Any deviation from the implementation of the JSRS in detrimental for the country. In this context, we welcome the creation of the CRSJ and call on all its members to contribute to the implementation of the JSRS, as well as to waive the proposals that are not provided by the JSRS, contradict the JSRS or that are dangerous for Moldova. If, however, there is strong need for far-reaching measures, as those proposed, they may be inserted in the JSRS, and their implementation should begin only after the amendment of the JSRS.

The signatories were also surprised to see that no reasoning was provided for proposals to amend the legislation, as well as the lack of cost analysis. Some initiatives, such as payment of the court fee at the end of the trial, increase of the number of judges of the Constitutional Court and of the judicial inspectors, introduction of jury trials and of honorary judges, involve considerable costs for the state budget, which either risk of not being collected (in case of court fee amendments) or to be incurred at the creation of the new proposed institutions. Many of the proposed changes concerns the amendment of the Constitution. Such changes require time, discussions, serious analysis, which did not occur in the present case.

We are also surprised by the speed of promoting of the proposed legislative amendments. The proposals were made public on 20 May 2015, at a public event and a 30-day period for public consultations was announced, with the possibility of extension if necessary. The period for submitting written opinions expire on 19 June. However, on 16 June we have been notified that on 19 June the final debate is already taking place. Such a rush is not understandable, especially given the fact that the changes involve radical changes in the justice system, including changing the Constitution.

Finally, we express our confusion regarding the initiators of legislative amendments and of the moment when these proposals were launched. Creating an initiative group from judges in order to contribute to justice sector reform is welcomed, but it would have been desirable to know more about setting up and goals of the CRSJ. From the information publicly available, it seems that the Center is only intended to promote the legislative proposals announced a few months ago the President of the Supreme Court of Justice.

On 20 May 2015 CRSJ initiatives to amend the legislation were publicly presented without further details. The opinion of Association of Judges and of the SCM are missing. Any initiative is welcomed and appreciated. However, it is not clear why the judges of the initiative group made such radical proposals to amend the legislation when the right of legislative initiative belongs only to executive and legislative powers. At the same time, the judiciary is facing a number of serious problems that can be resolved only by judges, such as: poor reasoning of judgments, random distribution of cases, audio recording of hearings, disciplinary responsibility of judges, promotion to the superior courts of judges who took lower score before the Board for selection and carrier of judges, lack of transparency in the appointment of judges and

proposals for the appointment of candidates with questionable integrity, lack of uniform judicial practice, including at the SCJ. We were surprised to find out that CRSJ did not make any proposals in these areas.

As for the content of proposals, of the 17 proposals submitted by CRSJ, we support without reservation only one proposal, namely the proposal to provide by law for the possibility of assigning to the NIJ staff trainers from European Union countries. However, we strongly recommend making a cost analysis for implementation of this proposal for the first two years at minimum.

Other five proposals we support in principle, but not in the form proposed by the CRSJ, namely:

1) We support the need to revise the jurisdiction of the Chișinău Court of Appeal. However, we do not support the proposal for reorganizing the Chișinău Court of Appeal in two separate courts of appeal - for Chișinău and, respectively, for the rayons of the central region of the country, and call not to pursue it further. We recommend rethinking the proposal in the context of optimizing the judicial map and review the territorial jurisdiction of all courts of appeals in order to ensure a comparable workload for judges. Some districts that are included in the Chișinău Court of Appeal jurisdiction could be included in the jurisdiction of other courts of appeal. Ministry of Justice and SCM should take the lead in this field;
2) We do not support the creation of a permanent parliamentary committee for supervising the execution of national judicial decisions, but support the exercise by the Legal Committee of the Parliament of parliamentary oversight over the execution of the ECtHR judgments. A draft regulation in this respect already exists in the Parliament;
3) We do not support the proposal for the reorganization of the Judicial Inspection by increasing from 5 to 15 the number of judicial inspectors and providing 15 assistants to judicial inspectors, as well as the selection of most judicial inspectors from civil society (8 out of 15). We recommend initiating discussions to strengthen and enhance the role and status of the Judicial Inspection and deciding on the number of judicial inspectors after a thorough analysis of the scope of Judicial Inspection's new role;
4) We support the initiative to strengthen the mediation in Moldova, but not in the form and procedure proposed by the CRSJ. The proposals provide the combination of the function of judge with mediator, although it is necessary to maintain the separation of these two institutions. At the same time, we support the idea of empowering the first instance judge to issue, at the preliminary stage of examination of the case, a mandatory order regarding the mediation of civil cases (applied to categories of cases provided in the legislation). In this context, we recommend continuing discussions on strengthening the institution of mediation by the Ministry of Justice, in the context of activities to implement the JSRS. In any case, the focus should be on mediation by professional mediators;
5) We support the reduction of judges' immunity in misdemeanour (contravention) proceedings, but not in the version provided in the proposed amendments. We recommend excluding the exclusive jurisdiction of the courts to impose sanctions on judges for misdemeanour offences (sanctiuni contraventionale).

We are particularly concerned about the other initiatives and call to drop them and not to pursue them further.

Below are our comments on each of the proposals made by CRSJ. Bearing in mind that the proposal involve conceptual changes and were presented for discussion only to test the appropriateness of continuing to promote them, we refer below to the appropriateness of each initiative, without making detailed

comments on each draft law. Following the nature of proposals and the logic of grouping the proposals by the CRSJ at the workshops organized between 10 to 17 June, the proposals below are divided into three groups and the comments are included on each institution from the respective three groups.

We have the general impression that most of the initiatives are aimed at reducing the workload of judges and increasing their guarantees, without emphasis on improving the quality of their work. It should be mentioned, however, that the main problem of the Moldovan justice is the quality of justice and not the independence of judges. Moreover, in recent years the number of cases examined in the judiciary remained at the same level, while the number of judges increased. The salaries of judges increased substantially and the number of judge assisting staff increased as well, while the obligation to motivate/reason all civil judgments was excluded. In this context, we call all stakeholders to focus on raising the quality of justice.

Abbreviations used:
SCM – Superior Council of Magistracy
SCJ – Supreme Court of Justice
NIJ – National Institute of Justice
JSRS – Justice Sector Reform Strategy for 2011-2016, approved by Law nr. 231 of 25 November 2011
CNI – National Integrity Commission
MJ – Ministry of Justice
DJA – Department for Judicial Administration
ECtHR – European Court of Human Rights
PIGD – Case Management Integrated Program
CRSJ – Center for Reform in the Judicial System

THE GROUP OF AMENDMENTS RELATED TO JUDICIAL ORGANIZATION

1. **Reorganization of the Supreme Court of Justice, so that half of the judges (17) to be appointed from among career judges, and half (16) from among academia, lawyers and civil society**

CRSJ proposes to amend the Law no. 789 of 26 March 1996 on the SCJ, art. 4 and 11 and the amendment of the art. 116 para. (4) of the Constitution.[1] The essence of the initiative is to change the status of 16 out of 33 SCJ judges by involving people from academia, lawyers and civil society as judges. Hence the current proposal is to annul the current requirement on the length of service of at least 10 years of service as a judge before the appointment at SCJ.

The information note to the proposal provides as arguments for reorganization of the SCJ the shortcomings in ensuring uniform jurisprudence, including its own case law. It also mentions the importance of training of judges. In addition, it states the following: "It is well known that most SCJ judges were trained as professionals in the Soviet times. New realities, new disputes submitted to courts often call for modern approaches different from those used in the '90s, according to specific legislation and current social and economic relations. It is therefore appropriate that the members of the SCJ be appointed both from among career judges and among notorious lawyers from academia, practicing lawyers and civil society. Such an approach, in addition to the benefits for the quality of the judicial act, would result in the direct exercise of justice by society, thereby raising public confidence in the judiciary." It refers to the practice of the Federal Republic of Germany to appoint eminent jurists at the SCJ.

Our opinion: we do not support the proposal for the reorganization of the SCJ by appointing 16 out of 33 judges from among academia, practicing lawyers and civil society, for the following reasons:

a) The proposal is partially contrary to the JSRS. Para. 1.1.6. of the JSRS provides for a study on criteria for selecting the judges to the SCJ and amendments to the legislation according to the findings of the study. The study was not conducted. The CRSJ proposes to change the conditions of appointment as a SCJ judge without specifying the criteria, procedure and the real needs for change;
b) The proposal is not sufficiently substantiated. The reasons provided in the information note actually refer to the quality of professional training of judges, the foundation of which is laid by the law schools/faculties. Judges, law professors, lawyers and civil society representatives with experience of at least 10 years have largely carried out law studies at the same faculties. No test or other procedures are provided to allow selecting the best lawyers to SCJ;
c) The argument about studies during the Soviet times is discriminatory on the ground of age. To follow the logic of this argument, it would mean that all judges of the SCJ should be replaced by younger people, which is not correct;
d) The proposal raises suspicions about the real intentions pursued by the authors, given the context of the SCJ promotions in recent years. For example, in 2014, at least 4 judges were promoted to the SCJ based on the SCM decision, although the candidates who participated in the selection competition have accumulated a lower score than others based on the evaluation by the Board

[1] It is proposed to exclude the last sentence of art. 116 para. (4): Both the Chairpersons and Deputy Chairpersons of the Supreme Court of Justice shall be appointed for a four year term by the Parliament following a proposal submitted by the Higher Magistrates Council. They must provide evidence of work experience in courts of law that is not less than 10 years long.

for Selection and Career of Judges.[2] The draft legislative proposals do not provide for a procedure and criteria for selecting the judges of Supreme Court, which could lead to promotions that are not based on merit;

e) The proposal does not refer to whether the number of the SCJ judges, namely 33, is an appropriate number or not. In the context of reducing the competences of the SCJ, it would be appropriate to evaluate if the number of judges at the SCJ is appropriate. Changes in civil and criminal procedure codes in 2012 led to a substantial reduction of the workload of the SCJ. At the same time, since 2012, the staff of the SCJ was considerably increased, providing each judge with 3 judicial assistants;

f) The proposal limits judges' aspirations to professional development to be promoted to the SCJ. If this proposal is adopted, before the 16 vacancies are filled, no career judge will be promoted to the SCJ. This practically means that in the next 10 years no career judge will have a chance to be promoted to the Supreme Court of Justice. By excluding this possibility and limiting the promotions to the SCJ for such a long period of time , the motivation of judges to improve their performance will be significantly reduced.

Our conclusion: we do not support the proposal for the reorganization of the SCJ by selecting half the SCJ judges among academia, lawyers and civil society and request not to pursue it further.

2. **Reorganization of the Chișinău Court of Appeal and creation in the limits of its current personnel and competences of two separate courts of appeal for Chișinău and, respectively, for the rayons of the central part of the country**

The CRSJ proposed amendments to the third annex to the Law nr. 514 from 6 June 1995 on the judicial organization, concerning the jurisdiction of the Chișinău Court of Appeal. The proposal is to divide the Chișinău Court of Appeal in two courts: the Chișinău Court of Appeal, which will include the courts from Chișinău, and the Chișinău Circumscription Court, which will include the courts in the rayons (localities) outside of Chișinău, currently under the jurisdiction of the Chișinău Court of Appeal.

The information note to the draft law includes the following justification for this proposal: "At this time it is clear that the Chișinău Court of Appeal suffers from several functional problems that leads to its unsuccessful organization. Because the disputes in Chișinău and those in the bordering rayons have specific differences, and for the sake of the specialization of judges, it is necessary to create two separate courts of appeal based on the existing one."

[2] For example, by SCM decision no. 81/3 of 28 January 2014, Oleg STERNIOALĂ was proposed to be appointed as SCJ judge. He was evaluated with 59 points, in comparison to the other three candidates that were evaluated with 94, 75.5 and 74.5 points accumulated by the other candidates. By SCM decision no. 124/4 of 4 February 2014, Ion GUZUN was proposed to be appointed as SCJ judge, although he had the lowest score out of five candidates, being evaluated with 57 points in comparison with 94, 85, 75.5 and 74.5 points accumulated by the other candidates. By SCM decision no. 550/19 of 1 July 2014, judges Petru MORARU and Nadejda TOMA were proposed for appointment at SCJ. They accumulated the lowest points in comparison with other five candidates, being evaluated with with 67 and 64 points, in comparison with 83, 80, 75.5, 74.5 and 70 points accumulated by the other candidates. For more details, see LRCM, *Policy document: Selection and career of judges – doubling of responsibilities or additional guarantees?,* Chișinău, January 2015, available (only in Romanian) at http://crjm.org/wp-content/uploads/2015/01/CRJM-DPP-Selectie-si-cariera.pdf.

Our opinion: we do not support the proposal to reorganize the Chișinău Court of Appeal into two separate courts of appeal for Chișinău and, respectively, for the rayons of the center of the country, for the following reasons:

a) The proposal does not provide reasons beside the functional problems of the Chișinău Court of Appeal. If they exist, most likely they are due to the management of the court. They should be dealt with accordingly, but not by reorganizing the court. Moreover, the proposal is based on the wrong assumption that "the disputes in Chișinău and those in the bordering rayons have specific differences". No research has been carried out that would prove the specific differences of disputes in Chișinău and other rayons. It is only known that the Chișinău courts are overloaded compared to other courts, both first instance and courts of appeal;
b) The proposal contradicts the JSRS, which provides in the strategic direction nr. 1.1.1 "The optimization of the judicial map in order to consolidate the institutional capacities of the courts, and the number of the judges and to ensure the efficient use of the available resources", and the stages of its implementation. To ensure the implementation of the JSRS, LRCM, in partnership with the Ministry of Justice and the SCM, has elaborated in 2013-2014 a study on optimization of the judicial map in the Republic of Moldova.[3] One of the findings of the study refers to the necessity to change the jurisdiction of the courts of appeal, in order to ensure a comparable workload and to include a sufficient workload to create civil and criminal panels. According to data collected in the process of drafting the study, the Chișinău Court of Appeal had a very high workload, while the Bender, Cahul and Comrat courts of appeal had a low workload for the number of allocated judges. Since then the Bender Court of Appeal was closed the localities from its jurisdiction were transferred to the Chișinău Court of Appeal. In present, the Chișinău Court of Appeal remains disproportionately large in comparison with the other three courts of appeal, while the workload in the Cahul and Comrat courts of appeal is insufficient for the creation of two panels. Therefore, to respond to the real challenges of the system, it is necessary to review the territorial jurisdictions of all the courts of appeal, and to distribute the rayons/localities between them, in order to ensure a comparable workload. The division into two courts of the Chișinău Court of Appeal does not respond fully to the challenges of the system. Moreover, the separation between Chișinău courts and other courts creates an artificial separation between the capital and other regions, creating the premise for different standards of examining the cases in appeal;
c) The high workload of the Chișinău Court of Appeal is caused, among other reasons, by the low number of judges for the current caseload. According to the study mentioned above, the optimal number of judges for the Chișinău Court of Appeal is 63. SCM has the discretion to allocate number of judges per courts. Consequently, the SCM has increased the number of judges at the Chișinău Court of Appeal from 49 to 54. But, after the Bender Court of Appeal was closed, the SCM accepted the merging of the Chișinău Court of Appeal with the Bender Court of Appeal, without an automatic transfer of the judge positions from the Bender Court of Appeal to the Chișinău Court of Appeal. Consequently, the number of judges at the Chișinău Court of Appeal remains insufficient due to the fact that it has the biggest and most numerous localities included in its jurisdiction;
d) It is well known that the large courts are more efficient when appropriately managed. The merge of courts and not their division represents a tendency in the modern judiciary. The creation of two courts instead of one will reduce significantly their efficiency;

[3] For details see, LRCM, Study on optimization of the judicial map in the Republic of Moldova, Chisinau, 2014, available on: http://crjm.org/wp-content/uploads/2014/06/2014-Study-Optimis-Jud-Map-MD_en-web.pdf.

e) The proposal has to be correlated with the proposals of the Ministry of Justice, which currently is working at a draft law in order to reorganize the judicial map, a draft law that was presented for public debate. Ain addition, the proposal has to be correlated with the results of the study on the costs for the reorganization of the judicial map, which will be presented on 22 June 2015 at the Ministry of Justice.

Our conclusion: we do not support the proposal to reorganize the Chișinău Court of Appeal into two separate courts of appeal for Chișinău and, respectively, for the rayons of the center of the country, and, therefore, request not to pursue this proposal further. We propose to rethink the initiative in the context of the optimization of the judicial map and the review of the jurisdiction of all the courts of appeal in order to ensure a comparable workload. The Ministry of Justice and the SCM should take over the initiative in this field.

3. **Increasing the number of judicial inspectors from 5 to 15 and ensuring their assistance by civil servants (assistants of the judicial inspectors) and selection of the majority of judicial inspectors (8 out of 15) from the civil society**

The CRSJ proposes to amend the Law no. 947 from 19 July 1996 on SCM regarding the composition of the Judicial inspection. Namely, it is proposed to increase the number of judicial inspectors from 5 to 15 and to include an assistant for each judicial inspectors. Thus, is proposed to increase the staff of the Judicial inspection from 5 to 30. Also, CRSJ proposes to select more than half of judicial inspectors, namely 8 out of 15, from the civil society representatives. The information note does not provide arguments for these proposals.

Our opinion: we do not support the proposal regarding the reorganization of the Judicial inspection by increasing to 15 the number of judicial inspectors and adding 15 assistants for the judicial inspectors, as well as the selection of the majority of the judicial inspectors from the civil society, from the following reasons:

a) The proposal provides no arguments regarding the need to increase the staff of the Judicial inspection from 5 to 30 persons. This increase will be a substantial burden for the state budget and it should be justified;
b) The proposal refers only to increasing the staff of the Judicial inspection, without taking into account the shortcomings of the current regulations on the Judicial inspection, including its limited role and status, as well as the procedures for selecting judicial inspectors. LRCM proposed back in 2013 to revise the role and the status of the Judicial inspection in view of providing it a functional independence from SCM and dividing the competences between the SCM secretariat and the Judicial inspection.[4] Until now, no legislative changes regarding the role of the Judicial inspection were undertaken. Moreover, by Law no. 178 from 25 July 2014 on the disciplinary responsibility of judges, the role of the Judicial inspection in the disciplinary procedures was reduced. Thus, without a conceptual re-evaluation of the role and status of the Judicial inspection it is not

[4] For details to see LRCM, *Transparency and efficiency of the Superior Council of the Magistracy from the Republic of Moldova 2010-2012. Monitoring report*, Chișinău, 2013, available at http://crjm.org/wp-content/uploads/2014/04/Transparency-and-efficiency-of-SCM.pdf.

reasonable to operate any amendments to its structure, these two aspects should be part of a complex reform;

c) Regardless of the number of the judicial inspectors, they should be exclusively persons with experience in the judicial field, to ensure that they have the necessary capacity to qualitatively fulfil their role. For example, in Romania, judicial inspectors can become only a person with a minimum experience of 6 years as judge. The reform of the Judicial inspection in Romania is a successful one in the region and it should be at least analysed before proposing amendments regarding the activity of the Judicial inspection in the Republic of Moldova.

Our conclusion: we do not support the proposal to reorganize the Judicial inspection by increasing the number of judicial inspectors from 5 to 15 and by introducing 15 assistants for the judicial inspectors, as well as the selection of the majority of the judicial inspectors from the civil society and we request not to pursue this proposal further. We recommend initiating discussions to strengthen the role and status of the Judicial inspection by a complex reform of this institution.

4. **Assigning the SCM the competence to verify judges' assets, without prejudicing National Integrity Commission (CNI) competencies. When judges will not be able to justify the legality of acquired properties, they shall be dismissed from office due to lack of integrity**

CRSJ proposes to amend the Law no. 947 from 19 July 1996 on SCM, assigning the SCM the legal competence to verify judges' assets and the delivery or participation at delivering decision(s) in breach with the Law on conflict of interest. CRSJ also proposes amending the Law no. 544 of 20 July 1995 on the status of judges by introducing a new ground for judges' dismissal when SCM establishes an unjustified gap between the judge and his family's income during her/his term of office and the property acquired during the same period, the difference being obviously unjustified or if SCM establishes that a judge delivered in person or through intermediaries a legal act or participated in delivering decisions in violation of conflicts of interest provisions.

Our opinion: we do not support the above proposals for the following reasons:

a) The specialized body empowered to check wealth, conflicts of interests and incompatibility issues, is the National Integrity Commission (CNI). CNI has the mandate to notify criminal investigation bodies or fiscal authorities in cases with elements of criminal offenses or/and tax related obligations. Assigning SCM the competence to verify assets and conflicts of interests of judges will create duplication and uncertainty between CNI and SCM competence, which may adversely affect the implementation of the Law on the declaration of income, assets and conflicts of interest;

b) The proposal is not justified in terms of competences and resources available to SCM. SCM is a body of judicial self-administration, which implies, among other things, representing the interests of judges, including in relation to other powers/authorities. From a practical perspective, it is not clear how SCM will combine its role as judges' representatives and the role of an investigative body. Moreover, SCM is not a public agent with the competence for establishing misdemeanors/ contraventions (agent constatator), as CNI is. SCM has neither the resources, nor the capacity to check the judges's assets and conflicts of interest. On the other side, CNI has the right to request from public authorities, institutions, individuals or legal entities involved, documents and necessary information for the control, as well as to check the data veracity, presented in the property declarations. SCM has no such right or human resources to carry out such inspections;

c) The proposal is not sufficiently developed to be applied in practice. For instance, if CNI detects that a legal act/decision at issue is in breach with the rules governing the conflict of interest, it may address the court for annulment of the administrative acts issued in violation with this provision. This competence is missing in the case of the SCM. Also, there is no clarity as to the effects of judgments taken in this situation;
d) Duplication of powers between CNI and SCM can lead to inconsistent practices, either to avoidance of assets and conflicts of interest verification regarding judges, thus by setting up a selective legal framework and judicial practice for judges compared to other public authorities;
e) The proposal is contrary to the draft legislation developed by the MoJ at the end of 2014 on declaring personal assets and interests, and the initiative for the reorganization of the CNI in the National Integrity Centre.

Our conclusion: ee do not support the proposal to assign the SCM the competence to verify the assets and conflicts of interest regarding judges and we call not to pursue it further. If the SCM has any suspicion regarding certain judges' property or conflicts of interest, it can notify the CNI at any moment within the current legal framework.

5. Transfer of the Department of Judicial Administration from the Ministry of Justice to the Superior Council of Magistracy

CRSJ proposes amending the Law no. 947 of 19 July 1996 on the SCM in order to transfer the DJA from subordination to the MoJ to the SCM. According to the draft proposal, DJA will be subordinated to the SCM, with the status of legal entity, financed from the state budget. DJA is responsible for organizational, administrative and financial management of the courts.

The information note to the draft proposal includes one single general sentence as arguments for the transfer. According to the information note, the transfer of the DJA "would strengthen the organizational and financial independence of the judiciary".

Our opinion: we do not support the proposal to transfer the DJA from the subordination of the MoJ to the SCM based on the following reasons:

a) The proposal does not refer to possible discrepancies in the competences of the SCM and the DJA, the alleged interferences of the executive in the work of the judiciary, costs and expenses for the transfer of personnel and of the competences;
b) Several aspects related to the eventual taking over of the competences by the SCM are not clarified, such as: judicial information system development and training assistance for the court personnel in this field; organization of centralized public procurement procedure for the courts (capital investments and investments for the purchase of IT equipment and services); organizing financial management activity in the centralized procurement field, internal audit and control, etc.;
c) On 22 December 2014, the Ministry of Justice sent to the Government a draft decision on the organization and functioning of the Agency of administration of courts.[5] A final decision on

[5] See the document no. 90 at http://justice.gov.md/pageview.php?l=ro&idc=230.

this institution was not taken. The CSJC proposals make no reference to the MoJ draft laws and do not at least argue why this initiative is not supported;

d) The practice from the Republic of Moldova until now does not support the transfer of the DJA to the SCM. DJA has competences that are not appropriate for the judicial self-administration body, namely: administration of judicial information system, organization of centralized public procurement procedure. On the other hand, the legislation in force ensures SCM independence as judicial self-administration body in the process of budgeting for SCM and the courts and offers SCM broad competences to negotiate and manage the budget of the judiciary, as well as competences for court administration and management aimed at improving the quality of justice. At the same time, so far the SCM has not shown the ability to react to the systemic problems in the field, even if it has sufficient tools. For example, SCM did not react and did not publish information on the request of the civil society to investigate the random assignment of cases at several courts, including the SCJ.[6] Until now, no SCM decision has been issued that would point out on the vulnerabilities of the random assignment of cases system, no information on disciplinary measures taken against the individuals involved in manipulating the random assignment of cases system, no information regarding the monitoring of this system were placed on the website of SCM. The statistics on random case assignment of cases were published only by the DJA on the courts' portal.[7] Thus, it is necessary to maintain a balance between the competences of the judicial self-administration and an independent institution of the executive power;

e) The proposal is not justified by the best practices in the field. The practice on budgeting is not uniform in the European countries. The process of compiling court budgets in UK, Croatia, Estonia, Finland, Greece, Spain, Turkey, Belgium, France, Romania, etc. lies within the competence of the Ministry of Justice in coordination with judicial self-administration bodies. Court budgets in Ireland, the Netherlands, Norway, Sweden, Cyprus, Denmark, Georgia, etc. are compiled by the judicial councils. It is rational to involve the Ministry of Justice in the process of compiling court budgets and periodically adjusting budgetary allocations. Para. 37 of the Opinion no. 10 (2007) of the Consultative Council of the European Judges (CCEJ) indicates that it is important to ensure the financing of the Judicial Council in order to enable its proper functioning. The Opinion does not indicate the funding mechanism. Para. 74 of the same Opinion indicates that the Judicial Council or an independent agency may serve as institution responsible for administration of court budgets;

f) The manner in which DJA currently operates cannot harm the independence of judges. DJA has no control over elaboration of budgets, nor has the right to veto over the spending of justice resources. The only important duty of the DJA today is related to the random assignment of cases system. This, however, cannot affect in any way the independence of judges. On the contrary, it can provide a good and a very much necessary counterbalance mechanism between the judiciary and the executive.

Our conclusion: we do not support the current proposal to transfer the DJA into subordination of the SCM and request to not to pursue this proposal further.

[6] The public appeal of civil society organization of 2 February 2015, available at http://crjm.org/ong-uri-cer-csm-investigarea-distribuirii-dosarelor-in-sistemul-judecatoresc/ and the Repeated public appeal of 28 May 2015, available at http://crjm.org/ong-urile-cer-repetat-csm-investigarea-distribuirii-aleatorii-a-dosarelor-in-instantele-judecatoresti/

[7] http://instante.justice.md/cms/rapoarte-daj/report-statistic.

6. **The possibility for National Institute of Justice (NIJ) to invite trainer magistrates from the EU**

The CRSJ proposed to amend the Law no. 152 of 8 June 2006, assigning the NIJ Council the competence to take necessary measures in order to invite for the processes of admission, graduation committees, initial and continuous training, detached judges/ magistrates, from member states of the European Union. The information note of the proposed amendment did not clarify the grounds of this proposal.

Our opinion: although the proposal is not justified, in principle, we support it because we are aware of issues concerning the quality of education at the NIJ and the need to adopt radical measures in order to improve the quality for both teaching methods and teaching material content. However, we consider that it is important to justify the proposal in the explanatory note and analyze the costs that implementation of such a measure would imply, at least for the first years of implementation.

Our conclusion: we support the proposal to provide by law the possibility of inclusion in the staff of NIJ of trainers/magistrates from European Union countries, with the condition that cost analysis will be provided for at least the first two years of implementation of this proposal.

7. **Creation of a permanent parliamentary commission to supervise the execution of national and international judgments**

The CRSJ proposed amending the Parliament statute in order to create a permanent commission responsible for the supervision of the execution of domestic and international court decisions. The Commission will have two main tasks: (a) supervising the activity of state institutions and other competent authorities regarding enforcement of judgments and (b) examining alleged violations of citizen's fundamental rights and freedoms in the judicial enforcement process. The information note accompanying the proposal gives no details as to the premises that led to the necessity of creating such a mechanism and no evaluation as of the implied costs.

Our opinion: we do not support the creation of a permanent commission in the Parliament for supervision of execution of national and international judgments, though we support awarding the Legal, Immunities and Appointments Committed of the Parliament (Legal Committee of the Parliament) of parliamentary oversight over the execution of the ECtHR judgments, for the following reasons:

Execution of national judgments:

a) Failure to execute national judgments is no longer a systematic problem requiring the creation of the proposed mechanism. Although a significant number of ECHR violations found in respect of Moldova relate to the failure to enforce judgments, these violations took place until 2009, and were focused primarily on non-enforcement of state housing, pronounced against the State or its entities. In 2009, following the judgment of the ECtHR in *Olaru and others. v. Moldova* pilot judgment, the State was invited to bring a remedy to ensure truly effective redress for violations of the ECHR, caused by prolonged non-enforcement by the state of final judicial decisions on granting state housing.[8] In 2011, the Parliament established a compensatory remedy (Law no. 87) for delayed enforcement or non-enforcement of judgments. In 2012, the SCJ President and Government Agent (GA) issued a recommendation concerning just satisfaction to be awarded in

[8] ECtHR, hot. Olaru and others v. Moldova, 28 July 2009, para. 58.

regard to ECHR violations. In 2012, In *Balan v. Moldova case*, the ECtHR accepted, *prima facie*, that the appeal brought by Law no. 87 is an effective remedy, suggesting to exhaust it, for people who complain of violations of the reasonable time in judgments execution;[9]

b) With the reform of the national system of enforcement of judgments and the establishment of private bailiffs in 2010, out of the total number of enforcement orders received by bailiffs (95,000 in 2012; 96,000 in 2013 and 58,000 in the first 6 months of 2014), annually, an average of 61% from the received orders by the bailiffs are executed.[10] These numbers appear to indicate towards the current enforcement mechanisms efficiency. In this context, it is not clear for why there is an urge for a Parliamentary commission for supervision of the execution of national judgments, unless it will deal with state housing judgments, which is not appropriate or possible at this stage.

Assigning the Legal Committee of the Parliament of parliamentary oversight over the execution of the ECtHR judgments:

a) Parliamentary control over the execution of ECHR judgments is important, and is recommended by the Parliamentary Assembly of the Council of Europe (PACE).[11] We support the creation of a parliamentary oversight mechanism for the execution of ECHR judgments by Moldova, but not in the form proposed by the CRSJ in the draft law on amending the Parliament regulation;
b) The CJRS makes no reference to the draft law on Government Agent, which was passed by the Government to the Parliament on May 5, 2015.[12] The draft law provides for parliamentary control but does not specify the creation of a permanent commission for supervision of ECtHR judgments execution. The draft law has undergone the Council of Europe expertise and was subjected to public debates over an extended period. During these debates, no proposal for the creation of a permanent commission on execution of ECtHR judgments was registered, which would change the draft law already submitted for examination by the Parliament. The proposal is not accompanied by any justification in order to appreciate its relevance;
c) At the end of 2013, a draft Regulation on parliamentary oversight for ECtHR judgments and decisions execution was drafted, which states that the Legal Committee of the Parliament shall exercise the parliamentary oversight over the execution of the ECtHR judgments. The regulation was not subjected to public debate, being developed in a working group consisting of representatives of Parliament, Government Agent, Ministry of Foreign Affairs and European Integration and LRCM. The draft regulation provides a detailed oversight mechanism. We believe that the regulation is sufficiently detailed and justifies assigning the control to the Legal Committee of the Parliament.

Our Conclusion: We do not support the creation of a permanent parliamentary commission for supervision of the execution of national judgments. We support assigning the role to the exercise the parliamentary oversight over the execution of the ECtHR judgments by the Legal Committee of the Parliament.

[9] ECtHR, dec. Balan v. Moldova, 24 January 2012, para. 23 – 26
[10] National Union of Bailiffs (NUB). Answer no. 85 from 29 January 2015, addressed by Legal Resources Centre from Moldova no. 1965 from December 19, 2014.
[11] PACE Resolution no. 1823 (2001) from 23 June 2011. PACE encouraged Member States of the Council of Europe to introduce appropriate parliamentary structures in order to ensure rigorous and permanent monitoring and supervision mechanisms for the judgments execution, compatible with international human rights obligations.
[12] See the draft Law and explanatory note at:http://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/2685/language/ro-RO/Default.aspx.(Available in Romanian)

8. **The possibility to lodge individual complaints to the Constitutional Court – a national filter of applications on human rights before the ECtHR. Increasing the number of judges at the Constitutional Court**

The CRSJ proposed amendments to the Constitution, to the Law nr. 317 from 13 December 1994 on the Constitutional Court and to the Code on constitutional jurisdiction nr. 502 from 16 June 1995 in order to provide for the possibility for individuals and legal entities to lodge complaints/ applications concerning human rights with the Constitutional Court after the exhaustion of the domestic remedies. The applications will be lodged within 30 days from the final decisions, or within three months from the day that the applicant knew or had to know about the infringement of his/er right for which the law does not provide a legal remedy. The proposal provides a month for the admissibility procedure and three months for the examination of the application. Also, the initiative proposes doubling the number of judges at the Constitutional Court, from 6 to 12 judges.

According to the information note to the proposed amendments, there is a similar mechanism of filtration of human rights applications in Germany. The CRSJ believes that the examination of individual applications by the Constitutional Court will be an efficient means for protection of human rights and for redressing the damage caused by the infringement of these rights. Also, CRSJ mentioned that, based on the Constitutional Court judgments, in this cases the applicants will be able to require the review of the national court judgments. In CRSJ's opinion, this mechanism will decrease the number of ECtHR judgments against Moldova, a factor that will improve Moldova's image in the Council of Europe.

Our opinion: we do not support the proposal to introduce the right to lodge individual applications with the Constitutional Court and the increase of the number of judges from this institution from 6 to 12 judges, for the following reasons:

a) There is no international obligation to create such kind of mechanism at the national level. Nevertheless, the states have the responsibility to secure the rights and freedoms to everyone within their jurisdiction and to ensure efficient remedies at the national level. Such remedies already exist in Republic of Moldova, this being the possibility to go to a court. The ECtHR required Moldova to put in place a special remedy for the breach of the right to a hearing in a reasonable time, which has already been created (Law 87);
b) The proposal of the CRSJ does not fall into the JSRS and does not propose a reform focused on the efficiency and independence of the Constitutional Court. Through the JSRS, the Republic of Moldova has assumed the strategic objective to review the subjects with the right to lodge applications with the Constitutional Court, an objective that should have been achieved based on a study concerning the activity of the Constitutional Court. This study should have determined the necessity to review the subjects with the right to lodge applications, as well the circumstances of this review. Together with this activity, JSRS provides several activities meant to increase the efficiency of the Constitutional Court (p. 6.1.2 and 6.1.4) and the transparency of the selection process of judges from this institution (p. 6.1.1);
c) In previous judgments, the Constitutional Court recognized that it is a politico-judicial body, considering its specific powers and the way the judges are selected.[13] In this circumstances, when the Constitutional Court's judges are selected by political bodies, such as the Parliament and the

[13] Constitutional Court, Judgment nr. 6 from 16 May 2013, p. 50.

Government, and the selection procedure is not transparent or based on objective criteria,[14] awarding the Constitutional Court such extensive powers to examine any human rights issues implies many risks;

d) The CRSJ proposals are not based on a study concerning the necessity to review the subjects with the right to lodge applications with the Constitutional Court, and the determination of the real number of judges and personnel needed for this mechanism. Without a reliable research concerning the review of the subjects and the reorganization of the Constitutional Court, the Court could be overloaded with applications and this could block its activity. Previously the Constitutional Court declared unconstitutional legal norms that blocked its activity;[15]

e) The introduction of this mechanism could determine the risk that the Constitutional Court will not have sufficient time to exercise its other powers, especially those related to interpretation of the Constitution and solving politico-judicial debates;

f) The proposals do not analyze the differences between the realities in Germany in relation to the realities in Moldova. Germany is an old democracy where the authorities enjoy the public trust. The legal system from Germany in this case might not be the best example for Moldova, considering the lack of trust of the society in the law system of Moldova, a fact that is admitted even by the CRSJ in the information notes attached to the legislative proposals. The mechanisms that are functional in Germany might not be functional in Moldova. Moreover, the creation of a mechanism that filtrates the human rights applications might be justified in a state with a population exceeding 80 million, while it could be not as justified in a state with a population less than 4 million;

g) The proposals are based on the justification that with this mechanism put in place the number of violations found by the ECtHR against Moldova will decrease and this will improve Moldova's image in the Council of Europe, but they do not include the objective of improving the judicial act. The best solution for ensuring the respect of human rights and for improving the image of Moldova is for the judges, and especially for the SCJ, to concentrate their efforts on the quality of the judicial act. This is easier and more effective than putting in place a constitutional appeal. On the other hand, there is no guarantee that the created constitutional appeal will be efficient and the Constitutional Court will examine the human rights cases better than the SCJ;

h) At the same time, the creation of an individual appeal to the Constitutional Court might not necessarily decrease the number of violations found by the ECtHR against Moldova, but it will certainly prolong the examination of the application by the ECtHR, because the applicants will have to exhaust the fourth (constitutional) court at the national level. Currently, several authorities decline the timeliness of the problems established by the ECtHR and, respectively, the necessity of their solution, based on the argument that the ECtHR judgments do not reflect the real situation in the country because the judgments refer to events that took place many years ago. The creation of another domestic way of appeal will increase even more this form of nihilism;

i) The CRSJ proposals were not consulted with the Constitutional Court. This kind of initiative, that brings essential changes to the way the Constitutional Court operates, should come from the Ministry of Justice or the Constitutional Court and not from the judicial system, which interest in creating a supra-judicial control over the judicial system is not clear. The only explanation is that the judicial system does not want for the judicial error to be discussed at the international level,

[14] See the public appeal of the civil society addressed to the Government on selecting the judges from the Constitutional Court in a transparent and fair procedure, available on: http://crjm.org/ong-solicita-guvernului-numire-transparenta-judecatorii-curtii-constitutionale/.

[15] Constitutional Court, Judgment, nr. 6 from 16 Maz 2013, p. 45-74.

or at least it wants the delay of their discussion so that the responsible persons for this errors could not be held accountable.

Our conclusion: we do not support the proposal to introduce an individual appeal to the Constitutional Court in the context, conditions and form proposed by the CRSJ, and, therefore, request not to pursue this proposal further.

THE GROUP OF AMENDMENTS RELATED TO THE CIVIL PROCEDURE

9. Payment of court fee at the end of the trial

Currently, when lodging a claim in court the claimant needs to pay a court fee, which varies depending on the nature of the dispute. In patrimonial cases, it represents 3% of the value of the dispute. In the court of appeal the amount of court fee is 75% of the fee that is to be paid in first instance court, while in recourse/cassation instance, this amount is 50%. The court can exempt a person from payment of the court fee, if it is established that the person cannot pay it. In 2010, for examination of cases in first instance courts alone, more than 56.800.000 MDL were collected as court fees in the state budget. Besides this amount, court fees for appeal and recourse proceedings were also collected.

In order to guarantee access to justice, the CRSJ proposes that the court fee for examination of civil cases be payable by the party who lost the case after the court decision has become final (irrevocable). In France, there is a similar situation. The grounds for this initiative are difficulties faced by claimants when trying to justify the impossibility of paying the court fee, as well as abusive requests for exemption from the payment of the court fee.

Our opinion: we do not support this initiative based on the following grounds:

a) The need for this amendment is not convincingly justified. It seems that this initiative is rather an issue of opportunity and not one of necessity. It is true that ECtHR has convicted the Republic of Moldova for five times for this issue, yet four of these convictions referred to legislative deficiencies that have already been eradicated, while in one of these cases, the judges failed to properly reason their decision. What is more, the latest conviction on this issue dated back to 2008. The fact that judges sometimes do not adequately fulfil their duties shall not serve as grounds for amending the law;
b) The party who requests such exemption should provide reasons for such request, and this requirement complies with ECtHR standards. Otherwise, the judge is to reject the request. Reasoning such requests is not an impossible or very difficult task, and a great number of exemptions granted by judges indirectly confirms this;
c) The main purpose of the court fee is to prevent the lodging of abusive claims with courts. Elimination of court fee when lodging the claim will inevitably lead to an increase of the number of civil cases lodged. Due to this, such an initiative is difficult to reconcile with the general purpose of the initiatives, which is to reduce the workload of judges;
d) The amounts collected up until now in the budget as court fees are not negligible. The proposed mechanism of collecting the court fees shall negatively affect the state budget, because it implies the collection of court fee from the party which lost the case, which often is insolvable. An average rate of enforcement of court decisions in Moldova is around 60%. What is more, the collection of these amounts will imply a complex procedure of coercive enforcement of due amounts. The mechanism does not solve the problem of court fees collected from foreign companies. The offshore companies generate special difficulties in debt collection. It should also be mentioned that according to this initiative the court fee will have to be paid after the decision becomes irrevocable, which means in several years in cases which are examined up to the recourse instance. This means that during several years the state budget, although austere as it is, will be lacking collection of considerable amounts of money;

e) The initiative proposes the exclusion of the concept of exemption from the payment of court fee. This means that if the case is lost, poor people who are currently exempted from court fees will need to pay this amount anyway. This could represent an excessive burden for these people;
f) The initiative does not distinguish between natural persons and legal entities. If for natural persons certain exemptions could be provided for, the argument provided for legal entities is not clear. Moreover, determination of the amounts for the court fee refers to the fiscal policy of the state, with serious consequences on the court users, the state budget and the caseload of judges. Therefore, any initiative to amend the court fee needs thorough analysis and needs to be consulted with all relevant stakeholders.

The current mechanism of collecting court fees is much simpler and implies more benefits than the proposed mechanism. At the same time, if it is considered that the state court fee established by current law is too high, the current legislation can be improved. Thus, the court fee in the first instance court could be smaller than the current one, and it can gradually grow in appeal and recourse instances. This would ensure an easier access to the first instance courts while discouraging abusive use of appeal and recourse. Such a system efficiently functions in many European countries.

Our conclusion: we do not support the proposal of paying the court fee after the end of the trial and we request not to pursue this proposal further.

10. Establishing in civil procedure of fixed terms /deadlines for examination of cases – 6 months for the first instance courts and three months in appeal and recourse instances

The CRSJ proposes establishing of fixed terms / deadlines for examination of cases - 6 months for the first instance courts and three months in appeal and recourse instances. The authors argue for this initiative mentioning the uncertainties created for the beneficiaries of justice by the fact that the current law lacks clear deadlines for examination of cases.

Our opinion: we do not support this initiative due to the following reasons:

a) The reasonable time for examination of cases is not and has never been a systemic problem in the Republic of Moldova. We can state with certainty that examination of an ordinary case in court with three levels of jurisdiction within less than five years complies with ECtHR standards. In the Republic of Moldova there are practically no cases that would be examined up to the recourse instance for a term exceeding 5 years. Thus, according to official statistical data, out of the 61.000 civil cases examined in the first instance courts in 2014, only 578 (0.95%) were examined for a period between 2 and 3 years and only 321 (0.5%) for a period exceeding 3 years;[16]
b) The Republic of Moldova has been convicted in 9 cases for excessive length of court proceedings. At the same time, it should be mentioned that such delays happened because cases were repeatedly sent for re-examination. This problem has been practically solved in civil cases by means of amendments introduced in 2012. The latest conviction at the ECtHR on this issue dates back to 2011;
c) The most serious problem of the Moldovan justice is the poor quality of the reasoning of court decisions. This issue has been mentioned in more than 40% of ECtHR judgments delivered in

[16]Please see http://justice.gov.md/public/files/file/studii/studii_si_analize/sarcina_civila_12_luni_2014.xlsx

Moldovan cases. This initiative stimulates judges to focus on the speed of examination of cases and not on the quality thereof. Such an approach is wrong and does not create preconditions for improving the administration of justice. On the contrary, this initiative creates preconditions for aggravating the situation of judges by placing the emphasis on the speed and not on the quality of reasoning;

d) The current legislation already contains sufficient terms/ deadlines that are to be respected by judges. The practice confirms that many of these terms/deadlines are not observed. In fact, the Republic of Moldova needs to exclude the terms / deadlines that were introduced in an ungrounded manner and to create preconditions for the judges to take the necessary time in order to ensure good quality of examination of cases. If a more detailed monitoring of the manner of examining cases by judges is desired, it can be done by improving the current case management system. It seems that PIGD already contains a module to this effect, while failure to observe deadlines for examining of cases represents a disciplinary violation;
e) Reduced terms of examination / deadlines will also affect the examination of cases from another perspective. The amendments introduced in 2012 greatly emphasised the preparation of the case for examination. This process is a lengthy one and allows the judge to focus on the quality of his/her work. The proposed deadlines will substantially reduce the impact of the initiatives launched in 2012;
f) A true reduction of the duration of court proceedings cannot be obtained by introducing procedural deadlines, but rather by streamlining procedures of case examination. The current civil procedure in the Republic of Moldova is rather cumbersome. By simplifying the procedure by improving the manner of summoning parties, recording of minutes, recording if hearings, a better impact can be achieved than by introduction of certain deadlines.

Our conclusion: we do not support the proposal of establishing in civil procedure of fixed terms / deadlines for examination of cases (6 months for first instance courts and three months for appeal and recourse instances) and we request not to pursue this proposal further.

11. Amending the Civil Procedure Code so that in less complicated cases there is only one level of appeal

The CRSJ proposes to exclude the possibility of challenging certain categories of cases before the SCJ and examination thereof by appeal courts as last instance. Among these categories of cases there are disputes whose value is less than 50.000 MDL. It seems that the only argument invoked in this context is the intention to decrease workload of judges.

Our opinion: we do not support this initiative due to the following reasons:

a) This initiative would reintroduce the system excluded in 2012. The system introduced in 2012 has proven its efficiency and changing an efficient system after just several years from its introduction is unacceptable and confusing both for judges and beneficiaries of the justice system;
b) It is true that the system introduced in 2012 could have increased the workload of the SCJ, but, meanwhile, the possibilities of the SCJ to examine cases have increased as well. The judges at the SCJ are now assisted by three judicial assistants (in comparison with judges in first instance courts and appeal courts who have only one judicial assistant), public hearings were practically excluded and the institution of inadmissibility was strengthened. Currently, **the workload of the SCJ has reduced and is at an acceptable level**;

c) The non-uniform character of judicial practice represents a serious problem in the Republic of Moldova, which is also recognised by the authors of the proposal in question. The mechanism introduced back in 2012, which is logical and well-structured, allows the SCJ to unify judicial practice in any field. The proposed amendments will seriously reduce the possibilities of the SCJ to unify practice in cases, which will never reach it;
d) Due to this initiative, the SCJ will not be able to examine cases regarding patrimonial cases whose value is below 50.000 MDL. It seems that such cases represent a large share of civil cases, while no one has tried to count how many of these cases there are. The value of the dispute is not an indicator of the complexity of the case. On the contrary, many cases regarding small amounts of money contain serious legal problems, which deserve the attention of the SCJ. If the SCJ considers that most of these cases are not worth examining, they can be easily declared inadmissible, which can happen today according to the current legal framework;
e) There will be many cases that will not be examined by the SCJ and the final decision in such cases will be delivered by an appeal court. According to official statistical data, in 2013 and 2014, the SCJ sent for re-examination 35% of civil cases and 70% of criminal cases in which the recourse was accepted. The main reason for sending cases for re-examination is insufficient quality of the work of appeal courts. Taking into account the quality of the work of appeal courts, this initiative represents, in fact, a considerable limitation for people to benefit from fair justice;
f) This initiative seems somewhat illogical taking into account the fact that it is proposed to introduce at the SCJ or at the Constitutional Court and additional filter for applications to the ECtHR.

The reduction of workload of judges should not be done by reducing an appeal level, but rather by reducing the number of cases that are referred to the justice system. This can be obtained by strengthening mediation and by changing the competence of courts, namely so that certain cases which are currently examined by courts be examined by administrative bodies (either existing ones or the ones that are to be created for this purpose), and parties should have the possibility to go to court only if they do not agree with the decision of the administrative body. For instance, in the study on specialization of judges from 2014,[17] it is recommended to change competences related to the following cases/procedures: increasing the number of contraventions in which the establishing agent could apply contravention sanction, while the court would only examine the appeal; establishing facts that have legal value, in cases when the person has all the documents (for instance, notaries could have this competence); divorces in families with minor children, unless there are disputes between the parties (for example, civil status authorities could have this competence);[18] limiting the number of contraventions included in the competence of courts (for example, contraventions involving juveniles); awarding compensation for illegally holding someone criminally liable (for example, the Ministry of Justice could have this competence); awarding compensation for infringement of reasonable time (Law no. 87, for example the Ministry of Justice could award such compensations); collecting of alimony. It is also recommended to implement a number of measures that could be applied by relevant decision makers in order to improve the performance of courts. Such measures can include: delegating more routine duties to court clerks, summoning parties by means of electronic mail, simplifying the manner of keeping of minutes (as a result of audio recording of hearings);

[17] For more details, please see LRCM, *Study on specialization of judges and feasibility of creating administrative courts in the Republic of Moldova*, Chișinău, 2014, available at http://crjm.org/wp-content/uploads/2014/06/2014-Study-Specialis-Judges-MD_en.pdf.
[18] These cases can be easily and more quickly examined by other authorities. In 2014, out of the 63.000 civil cases lodged with courts, approximately 12.000 (19%) represented this category of cases.

introduction of stricter measures for rendering the parties more responsible and creating an uniform practice at the level of appeal courts.

Our conclusion: we do not support the proposal to amend the Civil Procedure Code, so that in less complicated cases there is only one level of appeal and, respectively, we request to drop it.

12. **Mandatory mediation in civil cases in first instance courts**

The CRSJ proposed to introduce mandatory mediation in first instance courts in civil cases (contentious procedure), that will be accomplished by the judge who received the case for examination, in a time-limit of 30 days and obliging the parties to be present in the court. If the parties will agree to reach an agreement, the judge will discontinue the case. Otherwise, the judge will discontinue the mediation and will return the case that will be randomly distributed to another judge.

It is not clear from the information note to the proposal what was the reasoning of this proposal. We'll analyze it through the general principles of the states that decide to introduce mediation or alternative methods of dispute resolutions in court proceedings, namely reducing the courts workload, obtaining economic benefits by reducing costs in courts and delays for examining the cases, obtaining social benefits by maintaining friendly relations between the parties etc. CRSJ proposals might lead to contrary effects.

Our opinion: we support straightening the mediation institution in Moldova, but through another mechanism than proposed by CRSJ, for the following reasons:

a) The draft law provides that the mediation is carried on by the judge assigned to examine the case. Therefore, the cases will remain in the administration of the courts, which are already overloaded. Thus, the scope of reducing the number of cases will not be reached, on the contrary, the number of cases will increase as it is not guaranteed that all the mediation cases will finish successfully. In cases when the parties don't reach an agreement, the case will be distributed to another judge. This will lead to an increase of the workload not only for the judges, but also for the administrative staff;
b) The mediation has to be completed by the judge in no more than 30 days. Taking into account the workload of the courts, there is a risk that judges will be put in a difficult position to choose between respecting this deadline to the detriment of their adjudication function or to breach the mediation deadline. Both situations will lead to increasing the delays for examining the cases. This together with the increase of the workload will decrease the efficiency of the courts;
c) The draft law gives the power to the judges to oblige the parties to be present in mediation proceedings, even though they are represented in court. The mediation is meant to be an amicable procedure and the obligation of the parties to be present in the court might increase the tension between them. This will not contribute to a positive result of the mediation. Moreover, it is important to respect a fair balance between a public and a private interest and not to allow an excessive burden on the pretext of reaching a public or private interest. The obligation to be present in the court for the mediation procedure might be perceived by the parties as a mandatory and useless procedure that precedes the court hearings. In addition, for a successful mediation it is important to create a specific environment that will predispose the parties to discuss and negotiate, it means the mediation cannot be carried on in a courtroom. In states in which the courts play an important role in the mediation process, there are special rooms in the courthouses

set up with this purpose. Moldovan courthouses don't have separate rooms fitted for mediation purposes and don't plan to arrange them, despite major capital investments during the last years;

d) The draft law provides the right of judges to allow a conciliation delay for parties for no more than 15 days. This means that the parties will be allowed additional time for reflection and private meetings during these 15 days, outside the court. Taking into account the fact that the parties are already in conflict, mediation is efficient when it is intermediate by a third person – the mediator - who intervenes between the parties and help them to overcome the conflict and to negotiate. The most probable evolution of the case is that the parties will not meet during these 15 days. Therefore, this procedure might be transformed in time in an adjournment of the hearing, despite the declared scope of the draft law;
e) Mandatory mediation is provided to be introduced in all contentious procedures. This is not justified. Comparative practice shows that mediation is applied only in some categories of cases;
f) The success of a mediation also depends on the personality of the mediator, his/her knowledge and mediation skills. The professional profile of a judge is rather shaped according to other standards than to be a good mediator. The initial and continuous training of judges does not respond to a necessity to build appropriate skills for a successful mediator. Moreover, in Moldova there are authorised mediators according the Law no. 134 from 14 June 2007 on the mediation, who receive initial and continuous training in this field. These mediators might assume the mediation functions in case of adoption of mandatory mediation;
g) The draft law does not into account the actual system and the efforts for the promotion of mediation on Moldova, including the draft law elaborated by the Ministry of Justice in 2013-2014 in order to implement the strategic action no. 5.1.2. Pillar V of the SRSJ, that was registered in May 2015 in the Parliament for adoption.

There are several models in different states to increase the popularity of alternative methods of dispute resolution.[19] However, a successful mediation is characterized by the creation of certain conditions (environment, mediator, costs, delays etc.) that can predispose the parties to negotiate rather than the obligation to pass through additional time-consuming proceedings both for parties and the courts. Until 2013, in Moldova the mediation was mandatory in commercial cases. The practice showed that it was not efficient.

In order to strengthen the mediation institution in Moldova, there is a need to amend the legislative framework to establish more tough eligibility criteria for mediators, to increase the number of well-prepared mediators, to increase the role of judges and lawyers to enhance the popularity of mediation, strengthen the Mediation Council. All these proposals are provided in the draft law elaborated by the Ministry of Justice in 2013-2014 in order to implement the SJSR and that was registered in May 2015 in the Parliament for adoption.

If, however, mandatory mediation will be implemented in Moldova, it should take place with the participation of an authorized mediator before submitting the court action or shortly afterwards. This mechanism is more speedy and efficient than the model provided in the draft law.

[19] UNDP Moldova, Report on monitoring the implementation of Law no. 134 from 14.06.2007 on mediation, page 30, available in Romanian at http://www.justice.gov.md/file/reforma%20judiciara/Raport%20de%20monitorizare%20a%20Legii%20cu%20privire%20la%20mediere.pdf.

Conclusion: we support the strengthening of the mediation institution in Moldova, but not in the way provided by the CRSJ. We recommend the adoption of the draft law elaborated by the Ministry of Justice in 2013-2014 in order to implement the JSRS that was registered in the Parliament for adoption. In any case, if mediation will become mandatory, it has to be done by authorized mediators.

13. **Adjudicating foreign investment cases or cases regarding a general public interest in the first instance courts by a panel composed of one judge and 2 honorary judges**

The CRSJ proposed to introduce the institution of the honorary judge who will examine civil cases regarding foreign investments or regarding a general public interest or important cases for the society. These kinds of cases are proposed to be examined in panels composed of 3 judges: one career judge and 2 honorary judges. According to the draft law, honorary judges will be appointed by the SCM, after being selected as a result of a public contest, on the basis of proposals of the rayon and municipal councils (local public authorities). Honorary judges have to have impeccable reputation and a good status in the society. These proposals determine the amendment of the Constitution, of the Law on the judicial organization and of the Civil procedure code.

The argument to create the institution of honorary judge inserted in the information note of the necessary amendment to the Constitution consists in diminishing the corruption risk and ensuring judicial solutions that will not be contested by the society. The information note to the proposal makes reference to the US practice on the jury court and on the practice of some European states to involve society representatives in adjudicating some court cases. However, no argument was brought why specifically these kind of cases were selected to be examined by honorary judges.

Our opinion: we do not support the provisions to introduce the institution of honorary judges in Moldova on the following reasons:

a) The proposal does not explain the need to introduce such an institution, nor the reason for choosing these particular cases to be examined by honorary judges. The proposal does not contain any costs analysis and the approximate number of cases to fall under this provision;
b) The proposal does not explain the selection of cases regarding foreign investments or important cases for the society to be adjudicated with the involvement of honorary judges. These are actually the most complex cases from the legal point of view and need an appropriate legal analysis to be made by career judges;
c) The honorary judge institution cannot be applied in Moldova for several reasons. First, in Moldova there are traditions related to the religious weddings that involve “God parents”, setting up close relations with many people through the procedure of baptism (in Romanian, they are called “cumetri”). Therefore, in a Moldovan community it is hard to find people without any relation with parties to a case. Second, the institution of honorary judge involves minimal legal knowledge, specific to states with advanced democracies. A poor level of legal knowledge and the legal nihilism are specific for the Republic of Moldova and a serious obstacle to implement the honorary judge institution. Third, Moldova had already undergone in Soviet times the experience of persons without legal knowledge to assist judges (“asesori populari”). There is no analysis done by CRSJ to indicate that after cancelling the institution of “asesori populari” the judicial system suffered a significant loss. On the contrary, judges who experienced this institution are usually reluctant to it because of the lack of professionalism and dedication of “asesori populari” (many hearings were adjourned because they were not present). In these conditions the reintroduction of this institution is absolutely arbitrary and unjustified;

d) The proposals bring actually an interference of the local public authorities in the judiciary, because the local councils are proposed to have the power to nominate the candidates for being honorary judges;
e) The name of the institution itself puts in a less favourable light the career judges, suggesting that they are not “honourable”. This attitude does not invite to a qualitative judicial act.

Our conclusion: ee do not support the proposal to introduce the institution of honorary judges for any category of cases and request not to pursue it further.

THE GROUP OF AMENDMENTS REGARDING THE CRIMINAL PROCEDURE

14. **Provision of exact terms / deadlines for examining criminal cases – 6 months for first instance and 3 months for appeal and 3 months cassation**

Conclusion: we do not support the proposal for providing exact terms for examining criminal cases (6 months for first instance and 3 months for appeal and 3 months for cassation) and request not to pursue it further. The arguments for our position are similar to the ones mentioned above regarding the civil procedure (pct. 10).

15. **Challenging the judgments pronounced regarding light crimes and less grave crimes via cassation procedure at the Court of Appeal (provisions of one appeal level)**

Conclusion: we do not support the proposal to amend the Criminal procedure code in order to provide only one appeal level for less complicated cases and, therefore, request not to pursue it further. The arguments for our position are similar to the ones mentioned above regarding the civil procedure (pct. 11).

16. **Limiting the immunity of judges**

The draft law changes the modality of examining misdemeanour cases (cause contraventionale) against judges. The draft law provides that misdemeanour sanctions are applied exclusively by the courts.

Our opinion: we cannot support this initiative as it is proposed, due to the following reasons:

a) Although the information note to the draft law mentions that the draft law is meant to reduce the judges' immunity in misdemeanour cases, de facto the draft law increases this immunity. At the moment only some misdemeanour sanctions are applied by the courts, while the draft law proposes that all misdemeanour sanctions are applied by courts;
b) The majority of misdemeanour sanctions are not applied by judges, but by administrative bodies. It is unreasonable to provide that every misdemeanour procedure against a judge, for example, such as traffic offences, is not examined by police, but by the court. This approach complicates the procedure unnecessarily and creates facilities that are difficult to explain by logical arguments;
c) The current legislation provides for sufficient tools for protecting the judge against abuses, such as setting the judge free after s/he is identified, the impossibility of arresting or criminally investigating a judge without an authorization from the Prosecutor General and via a complex procedure etc. These guarantees should be used, rather than introduction of complex procedures that complicate unnecessarily the possibility to apply a misdemeanour sanction regarding a judge. Moreover, if the judge does not agree with the established misdemeanour sanction, s/he can challenge it in court;
d) The misdemeanour Code does not provide for a special procedure for examining cases against judges when the sanction in such cases regarding other persons is applied by other authorities. This can lead to a procedural blockage;
e) A research undertaken by LRCM has shown that, in general, the judges' immunity for misdemeanour offence is very difficult to justify.[20]

[20] See for details the LRCM comparative study on European practices regarding the criminal investigation of judges, available here (in Romanian): http://crjm.org/wp-content/uploads/2014/04/Studiu-dr-comp-EU-investig-penala-judec_29.04.2013.pdf

Our conclusion: we support in principle abrogation of judges' immunity in misdemeanour procedures, but not in the version and manner proposed in the draft laws under discussion. Consequently, we request their amendment along the lines of the comments provided above.

17. Creation of jury trials/ courts

The initiative group of the CRSJ proposes the introduction of the institution of jury trials/ courts for examining cases regarding very serious or exceptionally serious crimes in first instance. The jury courts should be composed of 10 juries. His proposal implies amendments to the Constitution, the Criminal procedure code, the Law on judicial organization and adoption of a new law on Jury trials.

The reasoning for introduction the institution of jury trials in Moldova is similar with the reasoning regarding the introduction of the institution of judges of honour. Specific regarding the jury trials the information note to the draft law amending the Constitution provides the following. „The rationale to introduce the Jury trials in the judicial system is based not only on hopes that due to its very democratic nature it will provide secure guarantees against potential judicial errors, but also on the fact that for concluding regarding one's innocence for being held criminally responsible it is sufficient to have a good consciousness and a good will. The activity of the jury trials will reduce to a great extent the risk of abuse and judicial errors, it will considerably develop adversary judicial proceedings, contributing in such a way to an active role of the accusation and of the defence, excluding from the court the bureaucratic spirit, will increase the social activism of citizens, will increase their responsibility for the people's destiny, as well as the confidence of ordinary people that courts are fair, disinterested and objective".

The information note to the draft law on amending the Constitution lacks any analysis regarding the potential number of cases to be examined by jury trials and the costs that setting up and maintaining jury trials might entail.

Our opinion: similar to the arguments indicated above regarding the institution of judges of honour, we do not support the proposal to introduce jury trials in Moldova. Besides the arguments mentioned above regarding the judges of honour, we would like to mention the following regarding the jury trials:

a) Creation and maintenance of jury trials are expensive. Such an institution is not justified in the context of austerity of the budget of the Republic of Moldova;
b) Selecting 10 independent and neutral persons, especially in the context of demographic decline and migration of the population of the Republic of Moldova, will constitute a permanent challenge for selecting juries;
c) The small number of very serious and exceptionally serious criminal cases does not justify even the effort of cosy analysis for setting up jury trials in Moldova.

Our conclusion: we do not support the proposal to introduce jury trials in Moldova and, therefore, request not to pursue it further.