

## PUBLIC APPEAL

### on the Initiatives to reform the judiciary and imitation the fight against corruption

29 September 2015

The signatories of this Appeal are highly concerned about the lack of transparency and the possibility to expeditiously adopt some legislative initiatives launched in the public space on radical changes regarding judiciary system and the civil procedure code, as well as creation of specialized courts for corruption offenses. We call on the public authorities, especially the Government and the Parliament, to adhere to the previously assumed commitments and to refrain from adopting in a rush the initiatives that could turn dangerous in the Moldovan context.

During a conference held on 20 May 2015, the Center for Reform of the Judicial System (CRSJ) made public [a package of legislative amendments](#) that refers to the judicial organization, the civil procedure and the criminal procedure. The initiatives, inter alia, refer to organization of judicial system, including reorganization of the Supreme Court of Justice (SCJ) so that 17 judges to be appointed from among career judges and 16 – from academic circles, lawyers and civil society; division of the Chisinau Court of Appeal into two courts of appeal - for Chisinau municipality and for the 19 raions from the center and the east of the country, respectively; increase in the number of judicial inspectors from 5 to 15 and retaining additional staff to assist them, as well as selection of the majority of judicial inspectors (8 of 15) from the civil society; entitlement of the SCM with the right to check the judges' assets and to dismiss them if they cannot prove the legality of acquiring such assets. The amendments to the Civil and Criminal Procedure Codes include, inter alia, payment of the court fee after the case is solved and not at the submission of the complaint, as it is the case now; introduction of a single review for simple cases; imposing mandatory mediation in the civil cases at first instance; appeals against sentences delivered for minor and less grave offences by means of appeal to the courts of appeal, ruling out the possibility of examining such cases by the SCJ; establishment of a deadline for examining both civil and criminal procedure cases - 6 months for the first instance and for the court of appeal and court of review - three months each.

On 18 June 2015, 19 non-governmental organizations presented [their joint opinion on the launched initiatives](#) to the CRSJ. The signatories expressed their surprise at the haste with which the initiatives were promoted and their concern regarding the substance of the proposed initiatives, because most proposals are not justified, are not accompanied by any cost analysis, are not stipulated by or contradict the Justice Sector Reform Strategy for the period 2011-2016 (JSRS) and can be dangerous in the Moldovan context. Without reacting to the joint opinion of the NGOs, on 19 June 2015 the CRSJ passed the respective initiatives to the Minister of Justice during a public event. The Head of the EU Delegation and other development partners present at the event, have called on the Moldovan decision-makers to subject the package of amendments to a comprehensive and transparent process of public consultation.

In July 2015, the CRSJ [proposed to establish specialized courts for examining corruption related offenses](#). The initiative proposes the establishment of a separate first instance court, a separate court of appeal and a specialized panel at the SCJ to examine corruption related cases. Recently, both the Parliament and the Prime-Minister have made statements regarding the initiative to establish specialized courts for corruption cases.

Although until today the proposals of the CRSJ have not been subject to public consultations and coordination procedure and have not been published on the Ministry of Justice or Parliament websites, the majority of them are examined by the Government and the Parliament. On the pretext of the need to intensify the fight

against corruption, the CRSJ initiatives may be shortly registered as legislative initiatives and adopted in a rush and with no public consultations by the Parliament.

In the above-mentioned context, we express the following concerns regarding the nature of the initiatives proposed by the CRSJ and the way they are promoted:

1. There is no evidence that the judiciary system supports the CRSJ's proposals. It seems that the package of legislative amendments has been initiated and is supported by a few judges who exercise leadership roles in the judiciary system. We reiterate that the CRSJ was established at the initiative of and is headed by the President of the SCJ and the President of SCM, and the composition and objectives of this initiative group have been not made public. The CRSJ imitated the process of coordination and transparency of the reform initiatives. Although the CRSJ organized two events during which the proposals were debated, it offered less than one month for submitting opinions, did not present any tables of discrepancies based on the opinions received and did not present any final texts of the legislative initiatives. Although at the meeting held on 19 June 2015 it was stated that the package of legislative amendments would be submitted to the Ministry of Justice, it has not been yet submitted for public consultation by any public authority. Moreover, it seems that the package was directly submitted to the Parliament, which has also not published the current version of the initiatives and has not submitted them for public consultations. Given the radical nature of the majority of proposals, we consider that the lack of a large public consultation and coordination of the proposals with the society is very dangerous;
2. The CRSJ proposed initiatives do not relate with or contradict with the JSRS, which was approved by law, as shown by a few examples that follow. The initiative on the SCJ restructuring by reducing to 17 out of 33 positions filled by career judges and the selection of 16 people from among academics, lawyers and civil society does not respond to the problem regarding the quality of judicial process at the SCJ level. In fact, this initiative will block the promotion of career judges to the SCJ for many years. The introduction of mandatory mediation by judges is contrary to the JSRS and the law on mediation recently adopted by the Parliament. Vesting the SCM with the right to check the judges' assets means doubling of competences assumed by the SCM and the National Integrity Commission (NIC), which can only result in passing of responsibilities and impunity. Although limitation of judicial immunity in civil actions is announced, it actually implies difficulties in making judges liable for such actions. These are just some of the promoted initiatives.

At the same time, none of these actions is based on a study or cost analysis. For instance, initiatives related to changing the way to set the court fee, increase in the number of judicial inspectors and establishment of specialized courts for corruption offenses involve costs, which under current conditions of austerity would be a great burden for the state budget.

3. Although the package of legislative initiatives was allegedly drafted by several judges, it does not refer to any of the serious problems of the judiciary that can be solved without major legislative interventions and unnecessary costs, such as: poor reasoning of judgments, problematic random assignment of case files, audio recording of court proceedings, lack of transparency in the appointment of judges, promotion of judges to higher courts with a lower score accumulated in the contest, lack of uniform judicial practice, including at the Supreme Court, etc.
4. It seems that, as a result of street protests, the public authorities, as a concession to the protestors' claims, promote the idea of creating specialized courts for corruption cases, idea launched by CRSJ back in July 2015. The inconsistent judicial practice and questionable individualization of sentences in corruption cases are invoked as justifications for specialized courts. At the same time, [the study](#)

[on specialization of judges](#), elaborated as part of JSRS implementation, recommends giving up the practice of establishing specialized courts and strengthening the mechanism of specialization of the judges in the existing courts. The recommendation is based on the insufficient number of cases for establishing specialized courts and the previous experience of the Republic of Moldova regarding the economic courts that became nests of corruption. In reality, this proposal seems to help postponing the reforms that would have a real and positive impact on fighting corruption, such as **strengthening anticorruption prosecutor office and limitation of its mandate to fighting high level corruption**. Establishment of a specialized first instance court and specialized panels (at the level of the Chisinau Court of Appeals and the SCJ) on corruption cases will not settle the SCJ problem, which still lacks uniform judicial practice, including on corruption cases. If still desired, specialization of judges in corruption cases can be made easier through specialization of judges in existing courts, through specialization of first instance judges in civil and criminal cases, without creating separate courts. The real problem in combating corruption in Moldova is inefficient investigation. It is, therefore, absolutely necessary to adopt the draft law on prosecution service and related laws to lay the groundwork for fighting corruption through a professional investigation of corruption offenses, rather than drawing attention to the final stage of a criminal case.

**In the context of the above-mentioned proposals and statements made by the President of Parliament and the Prime-Minister on the measures planned to fight corruption, including as a reaction to the street protests, we are deeply concerned that policy-makers, in particular the Government and the Parliament, do not debate the ways to promote the law on prosecution service and the related laws, as well as the practical way for capacity building and staffing of the anticorruption prosecutor office. There is no discussion regarding the three draft laws on national integrity system, which after a large public consultation with the decision-makers, civil society and national and international experts were rejected by the Government at the sitting of 16 June 2015. These normative acts create the institutional framework and serve as real instruments for preventing and combating corruption. Delaying their adoption and changing the essence of the draft laws can only mean one thing - Moldovan authorities are not interested in creating real instruments to fight corruption, but continue to pretend that they want to fight corruption. At the same time, the authorities promote laws, which necessity and public utility is very doubtful, such as the draft law on the obligation to report corruption related acts.**

The real fight against corruption is a long process. It starts with creation of a favorable legal framework, strengthening institutions and appointment in key positions of persons according to their professionalism and integrity. Moreover, to ensure an efficient fight against corruption, a comprehensive reform of the justice system is necessary, which is to include all institutions called to apply the law. This reform must be coherent and inclusive.

**To sum up, the signatories call on all stakeholders to adopt the below-mentioned normative acts and take real and effective measures to prevent and fight corruption, and ensure an independent and accountable judicial system, namely:**

**We call on the Government and the Parliament to:**

- 1) urgently adopt the draft law on prosecution service and related laws, as proposed by the working group, with the view to create premises for better-investigated and qualitatively presented before the courts corruption cases;
- 2) reassign prosecutors, support staff and criminal specialists and investigators in the prosecution system and the National Anticorruption Center to strengthen the Anticorruption Prosecutor's office according to the model of the National Anticorruption Directorate from Romania;
- 3) adopt the draft law on the National Integrity Center, the draft law on personal assets and interests and the draft law amending and supplementing certain normative acts, in the version proposed by

the Ministry of Justice to the Government in June 2015, that was subject to large public consultation process, including opinions of international experts in the field;

- 4) allocate sufficient resources necessary to create the National Integrity Centre as shortly as possible;
- 5) ensure the independence and accountability of the institutions called to apply the law and appoint in key positions persons according to their professionalism and integrity, and not according to political criteria;
- 6) respect the law on transparency in the decision-making process, when adopting normative acts;
- 7) continue the implementation of the Justice Sector Reform Strategy for the period 2011-2016 and promptly implement the activities provided by the strategy.

**We call on the judiciary system, especially SCM and its affiliated bodies, as well as the Ministry of Justice as a decision-maker in judicial sector to:**

- 8) thorough monitor, detect and sanction any violations in the random distribution of cases in courts, in order to remove any doubts about biased examination of cases;
- 9) ensure audio recording of all hearings and coordination of the audio recording mechanism and of the way the court proceedings protocols are drafted;
- 10) strengthen judges' disciplinary accountability mechanism to make them accountable and dismiss the incompetent judges;
- 11) improve the way to appoint, transfer and promote judges, excluding the appointment of judges who raise doubts about their reputation and professionalism, including promotion to the SCJ only of those judges who are of impeccable integrity and demonstrate the highest standards of professionalism in order to improve the uniform practice at the SCJ, and the whole system accordingly.

**Signed by:**

1. Amnesty International – Moldova
2. Association for Participatory Democracy ADEPT
3. Association for Efficient and Responsible Governance (AGER)
4. Foreign Policy Association (APE)
5. Association „Promo-LEX”
6. Independent Think-Tank ”Expert-Grup”
7. Women’s Law Center
8. Legal Resources Centre from Moldova (LRCM)
9. International Center for Women Rights Protection and Promotion “La Strada”
10. Center for Health Policies and Studies (PAS Center)
11. East-European Foundation
12. Institute for Development and Social Initiatives (IDIS) "Viitorul"
13. Public Policy Institute (IPP)
14. Institute for European Policies and Reforms (IPRE)
15. Nicolae Roșca, Associate Professor, Moldova State University
16. NGO "Terra-1530"
17. Transparency-International Moldova