CRJM | CENTRUL DE RESURSE JURIDICE DIN MOLDOVA

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Unofficial translation

Date: 19 October 2015

Subject: **Opinion on the draft law amending and supplementing certain legislative acts (establishment of the Anticorruption Court and the District Court of Appeal Chisinau)**

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SENT BY E-MAIL

Summary

Legal Resource Centre from Moldova (LRCM) urges the Ministry of Justice to give up the draft law amending and supplementing certain legislative acts (establishment of the Anticorruption Court and the District Court of Appeal Chisinau) because it is not sufficiently substantiated in respect of legal needs, economic and financial aspects, it contradicts the Justice Sector Reform Strategy (JSRS) for the years 2011-2016, and, in essence it is contrary to the objectives declared on many occasions by the Moldovan authorities in respect of fighting corruption.

Below are presented the arguments regarding the main provisions of the draft law, we recommend to be dropped off.

I. Establishment of the Anticorruption Court

The draft law provides for the creation of the Anticorruption Court, by reorganizing the Military Court, and the establishment of a specialized board within the courts of appeal "in order to decide upon the appeals and the appeals on points of law declared against the decisions issued by the Anticorruption Court", as well as the establishment of specialized permanent panel within the Criminal Board of the Supreme Court of Justice (SCJ) "for judging ordinary appeals on points of law lodged in the cases examined by the Anticorruption Court".

The main arguments invoked by the authors in the informative note can be resumed to the following:

- The establishment of the Anticorruption Court is provided in the activity program of the Government of the Republic of Moldova for the years 2015-2018;
- The analysis of the case-law shows an uneven practice of the courts in respect of the

legal qualification of corruption acts, individualization of the punishment and other procedural aspects, despite the fact that the SCJ undertook measures in order to unify the case-law (Recommendation no. 61 on certain issues related to the individualization of criminal punishment in corruption cases and the Explanatory Decision no. 11 on the application of the legislation related to criminal liability for corruption offences, approved by the Plenum of the SCJ on 22 December 2014);

- Specialization of judges has a number of advantages, listed in the Opinion No. 15 (2012) of the Consultative Council of the European Judges (CCJE);
- International studies in the field and the practice of other European states, having a similar European path as Moldova "show the efficiency of anticorruption courts, due to their independence and immunity from political and economic pressure, due to the transparent process of appointing judges, and due to the integrity and professionalism of judges", without giving a concrete example of such studies and international practices.

We consider that the establishment of the Anticorruption Court and the specialized board/panel is inappropriate for the Republic of Moldova for the following main principles:

1) **The increased risks of influence on the judges of the specialized court/panel/board.** Concentration of all corruption cases and the ones related to them (hereinafter *corruption cases*) in order to be examined by several judges obviously creates easier premises for third parties to influence them. It is easier to influence a small and known number of judges, than the general body of judges from all courts, courts of appeal and the SCJ. The draft law is basically abolishing or limiting dramatically the random distribution of corruption case files, which represents an important safeguard for preventing corruption within the judiciary.

The international practice and recommendations do not unequivocally recommend the specialization of judges. On the contrary, even the Opinion No. 15 (2012) of the Consultative Council of the European Judges[1] (CCJE) warns about the risks of a narrow specialization and by no means recommends the establishment of specialized courts until a very thorough analysis of the context is performed, and all measures are undertaken in order prevent the creation of a special group of judges. The CCJE identified, as well, the following possible limits and dangers of the specialization of judges:

- since courts require an adequate workload, setting up a court specializing in a very restricted field can have the effect of concentrating that specialization within a single court for the whole country or for one national region. This may hamper access to courts or create too great a distance between the judge and the litigant[2] (*underlined by the authors of the opinion)*;
- setting up a highly specialist court may have the purpose or the effect of separating judges from the rest of the judiciary and exposing them to pressure from the parties, interest groups or other State powers (*underlined by the authors of the opinion)*;
- in a specific field of law, the danger of an impression of excessive proximity between judges, lawyers and prosecutors during joint training courses, conferences or meetings is real. This could not only tarnish the image of judicial independence and impartiality, but could also expose judges to a real risk of secret influence and therefore orientation of their decisions (*underlined by the authors of the opinion)*;
- specialised legal professionals tend to develop concepts which are specific to their field and are (often) unknown to other lawyers. This can lead to compartmentalization of the law and procedure, moving specialist judges away from legal realities in other fields, and

[1] http://www.csm1909.ro/csm/index.php?cmd=0701.

[2] A similar concern was raised when the competence of the District Economic Court was revised and the court was reorganized into the District Commercial Court (informative note to the draft law, the Law on amending and supplementing certain legal acts, no. 29 of 06.03.2012).

potentially isolating them from general principles and fundamental rights. This compartmentalization could undermine the principle of legal certainty;

- judges who, for reasons of specialization, have previously had to decide on the same issues might tend to reproduce these previous decisions, which can hamper the evolution of case-law in line with society's needs. This danger also arises where decisions in a specific field are always taken by the same select group of judges;
- it can give judges the impression that their expertise in their field places them in an elite group of judges who are different from the others. It may also give the general public an impression that some judges are "super-judges" or, on the contrary, that a court is an exclusively technical body separate from the actual judiciary. This may result in a lack of public confidence in courts that are not thought to be specialised enough;
- depending on the type of the court and the procedure involved, there is a danger that a specialized judge who is part of a bench and who is responsible for providing particular technical or expert advice may express a personal opinion or account of the facts directly to his or her colleagues without such matters being presented to the parties for their submissions (for example, a patent court with non-jurist judges having specific technical knowledge);
- setting up specialized courts in response to public concerns (e.g. anti-terrorist courts) can result in the public authorities granting them material and human resources unavailable to other courts.

CCJE has analyzed possible advantages and disadvantages of judges' specialization, general principles and respect for fundamental rights, and reached the conclusion that, taking into consideration that in certain fields, the development of the law is so complex or specific, it is recommended to appoint judges who have an adequate qualification and which should be responsible for specific areas. However, the CCJE stressed the fact that "all judges, whether generalist or specialized, must be expert in the art of judging. Judges have the know-how to analyze and appraise the facts and the law and to take decisions in a wide range of fields. To do this they must have a broad knowledge of legal institutions and principles"[3]. CCJE highlighted the role of generalist judges which examine most of the cases pending before the courts, according to the replies provided by the member States and the experts' report written in order to prepare the CCJE Opinion no 15 (2012). Thus, though it recommends specialization of judges in certain fields, CCJE emphasizes the role and importance of the generalist judges. It is underlined that "it is vital for judges to have general training in order to acquire the requisite flexibility and versatility to cope with the needs of a general court, which has to deal with an enormous variety of matters, including those requiring a certain degree of specialization"[4].

While recommending specialization of judges in certain fields, CCJE underlines that "specialization can only be justified if it promotes the administration of justice, *i.e.* if it proves preferable in order to ensure the quality of both the proceedings and the judicial decisions"[5]. If the State introduces specialization of judges, the following basic requirements must be met: specialized courts and specialized judges have to meet all requirements related to a fair trial enshrined in Article 6 of the European Convention for Human Rights (ECHR); creation of specialized boards or courts must be strictly regulated, both generalist and specialized judges have to ensure the same safeguards and the same quality; specific procedural rules are only permissible if they respond to one of the needs which led to the setting up of the specialized court (e.g. special rules applicable to the examination of cases involving children); all courts must benefit from similar material resources[6]. Lastly, <u>CCJE considers that greater mobility and flexibility</u>

[3] Point 24, CCJE Opinion no. 15 (2012).
[4] Point 27, CCJE Opinion no. 15 (2012).
[5] Points 30-38, CCJE Opinion no. 15 (2012).
[6] Points 29-36, CCJE Opinion no. 15 (2012).

on the part of judges might help remedy the above-mentioned disadvantages of specialization, and judges should be entitled to change court or specialization in the course of their career, or even move from specialized to generalist duties or vice-versa[7] (*underlined by the authors of the opinion*).

In 2013, LRCM carried out a Study on the specialization of judges and the opportunity to set up a system of administrative courts in the Republic of Moldova, which included, inter alia, a survey regarding the specialization of judges, performed among the judges from the Moldovan courts of all levels[8]. Analyzing the survey results, LRCM concluded that, in general, most judges in Moldova support the idea of specialization, while maintaining broad knowledge about the legal principles and practice. When asked to choose specialization between civil and criminal cases, judges' preferences were almost equally divided, fact, which can be both interpreted as an indicator of will, and one of feasibility to specialize the judges only in civil and criminal fields. Judges also share the opinion about the potential negative impact on their impartiality, where a judge or group of judges permanently focuses on a narrow legal area. This can be interpreted as an indicator against a specialization on narrow legal fields and/or in support of a more flexible approach towards the specialization, which would encourage the judges to change periodically the areas of specialization, instead of having a permanent specialization. As regards the potential impact of the specialization, the overwhelming majority of respondent judges, 80%, think that specialization of judges will enhance the quality of court judgments, and only 9% disagreed, and 10% were neutral in respect of this assertion. At the same time, 15% of respondents agreed with the statement that specialization of judges would enhance the inappropriate attempts to influence the court decisions and corruption, while 41% totally disagreed, 25% more likely disagreed, and 16% were neutral.

As regards the specialization of judges, the great majority of 68% of the respondent judges believe that judges should be specialized according to the two main general areas: criminal and civil, 20% disagreed, 8% were neutral. When asked about a more narrow specialization, only 37% of the respondent judges agreed, while 49% disagreed (24% totally disagreed and 24% more likely disagreed), 10% were neutral and only 4% could not respond ("it is difficult for me to give an appreciation/I do not have an opinion"). When asked about specialization by means of specialized panels, 57% of the respondents agreed, 22% disagreed, 15% were neutral, and 6% said that it was difficult for them to give an appreciation or they did not have an option. In respect of specialized courts, 41% of respondent judges disagreed with creation of specializations by establishing specialized courts, only 29% supported this idea, 20% were neutral, and 10% said that it was difficult for them to give an appreciation or they did not have an option.

Having in mind the European practice analyzed in the CCJE Opinion no 15 (2012), we can conclude with certainty that there is neither a recommendation, nor a firm international practice which would recommend specialization of judges on narrow areas, or setting up of specialized courts. Such a decision can and must only be based on a thorough analysis of the conditions in each state. Taking into consideration the opinions of the judges from the Republic of Moldova, we can conclude that specialization on two main general fields, *i.e.* civil and criminal law, is supported and has a real potential to be implemented in Moldova, with 68% of respondent judges supporting this type of specialization, and only 20% who are against it. If the SCM would take such a decision, 54% of the total number of judges would choose civil cases, and 44% - criminal cases.

[7] Point 36, CCJE Opinion no. 15 (2012).

[8] The survey performed by CBS-Axa, using the questionnaire drafted by the LRCM team. Questionnaires were filled in by judges during the period 24 June – 10 July 2013. More information is available in the Study on the specialization of judges and the opportunity of setting up the system of administrative courts in the Republic of Moldova, available here: http://crjm.org/wp-content/uploads/2014/06/2014-Studiu-Specializ-Jud-MD_ro.pdf.

Unfortunately, the authors of the draft law examined only the advantages of specialization, without analyzing the risks of a narrow specialization of judges and the establishment of only one court for the whole country. The Republic of Moldova has a very recent experience with a specialized court and a court of appeal. Because of a Parliament voting, in 2011-2012 the economic court was reorganized into a commercial court with more reduced competences, and the Economic Court of Appeal, and the economic board of the Supreme Court of Justice have been abolished. In the light of these amendments, the economic court and the Court of Appeal were classified, including by the representatives of decision making bodies, as being mostly affected by inappropriate influences. It seems that the aim is to bring back the same negative situation. The informative note does not examine at all these aspects.

Another negative practice was the establishment in 2003 of the institution of the investigating judge within the first instance courts, by appointing one or more specialized judges, who dealt with same categories of cases for ten years, and namely examination of complaints against the prosecuting authorities bodies; preventive detention; authorization of searches and wiretappings, etc. The purpose of creating this institution was to ensure better respect for human rights during criminal investigation. From the really beginning, the investigating judges were created as a separate category of judges, having specific criteria for selection, appointed for an indefinite mandate. The practice showed that these judges consistently showed behavior convenient for the prosecution[9].

In 2012, the lawmaker decided that this institution should be reformed. One reason for this decision was the narrow specialization and reduced chances of professional growth and promotion of investigating judges, as well as the unlimited mandate in this position, which led to a bad quality of these judges' work. On 5 July 2012, was adopted the Law no. 153 which revised the mechanism of appointment of the investigating judges. According to the introduced amendments, investigating judges working at the time were to be integrated into the general body of judges, and the new investigating judges were to be appointed from amongst the ordinary generalist judges. Proposals to create a specialized court to deal with corruption cases are reproducing in fact the model that was dropped out in 2012 – an extremely narrow specialization of judges, having an unlimited mandate in this position, with great chances of inappropriate influences.

2) **The establishment of the specialized court and board/panel will not solve the existing problems.**

The authors of the draft law make reference to the uneven practice of the courts on corruption cases. It is uneven in fact. However, uneven practice can be most properly solved by means of an even practice and guidance from the Supreme Court of Justice. The decision of the Plenum of the SCJ on the application of the legislation related to the criminal liability in corruption cases was approved by the SCJ Plenum only on 22 December 2014. It is too early to conclude that the tools the SCJ has today in order to unify the judicial practice are insufficient.

On the other hand, the judge is determining the case within the limits of the accusation and evidence provided by the prosecutor. If the case is poorly investigated and prepared, the judge cannot "save" that case, because he or she would breach the impartiality principle. Decision

[9] Soros Foundation-Moldova, *Criminal justice performance from a human rights perspective. Assessing the transformation of the criminal justice system in Moldova*, 2009, pages 121, 127, 142, available at: http://soros.md/files/publications/documents/CRIMINAL%20JUSTICE%20PERFORMANCE%20FROM%20A%20HUMAN%20RIGHTS%20PERSPECTIVE.pdf.

makers have to focus now primarily on passing the law on prosecution and strengthening the capacities of the anticorruption prosecutor's office on cases of corruption of great proportions, instead of coming up with proposals which only superficially touch upon the last stage of the examination of a case. If we set up the specialized court, and do not change anything at the level of investigation of corruption cases, then we are not entitled to expect quality changes.

1) **The number of corruption criminal cases examined by courts throughout the country does not justify the creation of specialized anti-corruption court and contradicts the idea of optimizing the judicial map**

The authors of the proposal made no estimate of workload for specialized judges and how many judges are needed in the court, leaving it to the Superior Council of Magistracy's (CSM) discretion to appoint judges. The statistics on the cases of corruption are available and the workload estimate can be made. According to statistics for 2014, the first instance courts throughout the country received only **162 cases files** on corruption and related acts of corruption.[10] Most of these cases are simple and not major corruption cases. Such a workload is too small to justify the creation of specialized courts. For example, for 2010-2012, Buiucani court had an annual constant workload per judge of over 1100 cases (ie 1229, 1219 and 1145 cases). Meanwhile, there were judges who had an annual volume of work significantly less per judge. For example, in 2010, Donduşeni district court registered 256 cases per judge and the Military Court - 24; in 2011 Glodeni District Court had 336 cases, while in 2012 cases recorded in Dubăsari District Court were 273 and Commercial Court District had 130 cases per judge. One of the arguments for liquidation of Military Court is the small volume of work. In such a context, it is hard to imagine how it can be justified to create an Anticorruption Court, where if there were 3 judges, then the **annual caseload would be of about 54 cases**. This would be the lowest workload per country. In a context of budgetary austerity, creating a court that would obviously need from the state budget more than any other court requires at least a solid justification and lack of any alternatives for qualitative examination of cases. Both of these preconditions are lacking in the Anti-Corruption Court.

It is unacceptable that a draft law, which provides for the creation of new courts, has no estimate of the expected workload, while another law, namely the Justice Sector Reform Strategy provides the optimization of the judicial map. Since 2009, governments include in their action plans the optimisation of judicial map, which involves merging the courts so that there are fewer, but with more judges per court. Optimizing the judicial map is included in the Justice Sector Reform Strategy for the years 2011-2016 (SRSJ). The Ministry of Justice has asked Chechi Consulting Company, as part of the USAID Strengthening Rule of Law Institutions (ROLISP) assistance to conduct a feasibility study on the optimization of the map of Moldovan courts. Chechi Consulting contracted Justice Management Institute (JMI), which conducted the study and presented it to the Ministry of Justice, Superior Council of Magistracy and the judicial administration department in July 2015. Following the request from the Ministry of Justice the drafted study envisaged a minimum of 9 judges per court. At the same time, in July 2015 the Ministry of Justice submitted for coordination the draft law on the reorganization of the court system. Given the SRSJ and actions already taken by the Ministry of Justice to prepare the legal framework for optimizing the judicial map, the draft law on creating the Anti-Corruption Court is at least unclear. The authors do not explain whether it will be an exception from the minimum number of nine judges per court or if it is planned to create a court with nine judges. In any case, it is obvious that the workload is not enough for a court of nine judges.

[10] See the Report on the activity of the first instance court on examining cases related to fight against corruption for 12 months 2014, according to the National anticorruption strategy for 2011-2015, available here:
http://www.justice.gov.md/public/files/file/Sistemul%20Judiciar/Studii%20si%20Analize/2015/Penal_total_12_luni_2014.xlsx.

2) **Lack of grounds to consider that the Anti-Corruption Court judges and the board/specialized professionals will be more integrated than the current judges. Creating a separate "caste" of judges is dangerous and absolutely unfounded**

Anticorruption Court judges and the board/specialized panel on corruption cases shall be appointed among the judges who are currently in the position of judges. In essence, only several judges will be transferred. This change shows no guarantee that once transferred these judges/board/specialized panel will work better. The Superior Council of Magistracy (CSM) is responsible for appointing and promoting judges. In case of establishing an anti-corruption court, the CSM will choose judges who will be appointed to the anti-corruption court. During 2013-2014, we witnessed the promotion of at least four judges to the Supreme Court who had a lower score than the other candidates, who were not promoted. Scoring was provided after comprehensive assessment of candidates by the Selection Board of Judges, including based on the results of the performance evaluation of candidates to the position of judges. We also witnessed the CSM proposal for appointment to the position of judge by the President, candidates with a questionable reputation, about who the media has written, based on information from sources including the Security and Information Service. Upon the insistence of the SCM, the President appointed at least one candidate. Due to this practice, we have no reason to believe that the draft law to implement the specialised court/board/panel will provide for a more qualitative and objective process for selecting and appointing respective judges.

The draft also provides for the appointment to the position of judge after being tested by polygraph. We must point out that on 23 December 2013 was introduced the rule that all candidates for judicial office must pass polygraph testing and CSM was required to create the necessary conditions for this, but not later than 25 July 2014. [11] Up to this time (October 2015), polygraph testing of candidates for judge does not take place.

Although not mentioned in the explanatory note in the draft law, we have been informed about some proposals to create special conditions for judges of the Anti-Corruption court and specialised board by providing higher salaries, security and other possible guarantees. The judiciary must be one homogeneous in terms of compensation and guarantees granted, varying only according to the experience and the degree of jurisdiction of the court that the judge operates in. Providing guarantees related to the protection of judges would be justified if we had a situation where judges were intimidated. So far, there has been no case of violence or intimidation on judges examining corruption cases. Accordingly, such proposals would not be justified.

3) **Creating difficulties for participants in the trial in cases where the criminal investigation took place elsewhere than in Chisinau**

The authors propose examining all cases of corruption in Chisinau. This involves that all the participants in the proceedings travel from elsewhere to Chisinau. In such context, an obvious question arises regarding the effectiveness of examining a case if the participants at each hearing will have to move to Chisinau from all over the country. The absence of participants in the court hearing is a widespread phenomenon in our country, as shown since 2008 in monitoring reports of trials carried out by the OSCE Mission to Moldova. [12] The cases of corruption may contain a large number of witnesses whose presence may be further hampered by a trip to Chisinau. Thus, the draft law proposes a mechanism that will delay the examination of cases of corruption by specialised courts.

[11] Law 326 of 23 December 2013.

[12] See, for example, *Court Monitoring Program in the Republic of the Moldova*, issued by the OSCE Mission to Moldova, OSCE/BIDDO 2009, electronic version available at http://www.osce.org/ro/moldova/70946?download=true

4) **The proposal to create Anticorruption Court is not grounded from an economic and financial point of view**

The Informative note to the draft law mentions that the implementation of the draft law does not require additional financial resources, because the Military Court will insure the premises and goods as headquarters for Anticorruption Court. Such an argument is at least superficial, as this involves maintaining the number of judges and staff at the same levels. Meanwhile, the draft comes with an estimate of the expected workload and the number of Judges for Corruption Court, as mentioned above. If we keep the number of 3 judges in the Anticorruption Court for a workload of about 90 cases a year, such a court would be considerably more expensive than other courts in the system.

To respond to problems indicated in the explanatory note to the draft law, namely the poor quality and un-uniform case-law in corruption cases, we propose the following alternative solutions that can be implemented with much less funds and that will not create conditions for mimicking the fight against corruption:

1) Implementation of the specialization of judges in courts across the country in civil and criminal matters;
2) Carrying out a detailed analysis of corruption cases examined by courts, courts of appeal and the Supreme Court in the years 2014-2015 to identify gaps and make recommendations to the problems identified;
3) Organize trainings with involvement of experts and / or judges from Romania on examining corruption cases;
4) Develop a recommendation from the Supreme Court on the criteria of individualization of sentences on corruption cases, with detailed explanations and recommendations according to the model guide for individualization of penalties (sentencing guidelines) used in the US or the UK, so that the judge has some objective benchmarks for establishing the sentence, limiting to the maximum the discretion of the judge;
5) Change the competence of hearing cases of corruption not by the place of commission of the crime, but by the whereabouts of the criminal investigation body (Subdivisions of the NAC/possibly anti-corruption prosecution). This will allow judges to specialize only in a few courts. In this case, corruption cases will be examined by fewer courts, thereby having a natural smaller number of judges that could examine corruption cases and thus investing more easily and effectively in training of these judges, without creating an expensive court and risk exposing it too simple to influence from third parties.

I. <u>I. Reorganization of the Court of Appeal and creation of two separate courts of appeal in Chisinau mun. for Chisinau and rayons in the Center of the country, respectively</u>

The draft proposes dividing the Court of Appeal in two courts of appeal: one for the courts of mun. Chişinău and the other for the other localities in the current jurisdiction of the current Court of Appeal. As arguments are brought the high workload in the Court of Appeal Chișinău and the different nature of the cases examined by the courts in mun. Chişinău from other localities.

We do not support the provisions for reorganizing the Court of Appeal in two separate courts of appeal due to the following reasons:

1) The proposal is shortly reasoned regarding the „problems" faced by the Court of Appeal Chișinău
If the Court of Appeal is experiencing such problems, they must be probably related to the mismanagement of that court. [13] These problems must be solved, but the court should not be

[13] See, Decision of the Court of Auditors no.30 of 24 July 2015 on approving the audit report on conformity of managing public funds by the Chisinau Court of Appeal in 2014, available at http://www.ccrm.md/hotarireview.php?idh=759&l=ro.

reorganized. Furthermore, the proposal is based on erroneous information on the "different nature of the disputes in mun. Chişinău and in other places, given that most public institutions and businesses are concentrated in the city of Chisinau". There are no studies that demonstrate the different nature of the disputes in mun. Chişinău. It is only known that the courts of mun. Chişinău have a larger workload.

2) The proposal contradicts the Justice Sector Reform Strategy

Direction 1.1.1. of the JSRS provides "Optimization of judicial in order to strengthen the institutional capacities of the courts, the number of judges and ensure the best use of available resources" and its implementation phases. In order to implement the JSRF, LRCM in partnership with the Ministry of Justice and SCM, carried out in 2013-2014 a study on optimizing the judicial map in Moldova. [14] One of the findings of the study refers to the need to amend the jurisdiction of the courts of appeal, to ensure a comparable workload and includes a sufficient workload to create civil and criminal boards. According to the study, the Court of Appeal had a huge workload and the Court of Appeal Bender, Cahul and Comrat had a smaller workload than the number of assigned judges. Since then the Court of Appeal Bender was liquidated and the districts within its jurisdiction passed to the Chișinău Court of Appeal.

It is generally recognized that bigger courts are more efficient than small ones, if well managed. Merging of the courts rather than their disjunction is a clear trend of modern justice. Creating two courts instead of one will substantially reduce the effectiveness of both courts.

Today, the Court of Appeal remains disproportionately big compared to the other three courts of appeal, while the workload for Cahul and Comrat courts of appeal are insufficient to form two boards. Therefore, to answer the real challenges of the system, it is necessary to revise the territorial jurisdiction of all courts of appeal and distribution of districts between them to ensure a balanced volume of work. The mere division of the Chisinau Court of Appeal into two appeal courts will not fully meet the challenges of the system. Moreover, the separation between the mun. Chisinau courts and districts courts will only artificially create a separation between the capital and other districts, creating premises for different standards in judging cases on appeal.

3) The high workload of the Court of Appeal is also due to the reduced number of judges for the current workload

According to the study above, the optimum number of judges at the Court of Appeal would have been 63. SCM has complete discretion to reallocate judges within the system. Accordingly, SCM has increased from 49 to 54 judges. But, after liquidation of the Court of Appeal Bender, the SCM accepted the merging of the Chisinau Court of Appeal with the Court of Appeal Bender without automatically transfer the positions of judge from the Court of Appeal Bender to that in Chisinau.

4) The proposal to divide the Court of Appeal Chișinău in two courts of appeal is not reasoned from an economic-financial point of view

The Informative note to the draft law mentions that the implementation of the draft does not require additional financial resources, because the Court of Appeal Chisinau will insure the goods and headquarters for the District Court of Appeal. Such an argument is at least superficial because the informative note does not indicate the existence of an analyses that would estimate the expected workload required for each of the two proposed Courts of Appeal and long term expenses, respectively. The fact that the Court of Appeal has now two premises does not mean that this is a reasonable solution financially and logistically.

Feasibility study on optimizing the judicial map of Moldova, submitted in July 2015 shows an estimate of needs for adequate premises for the Court of Appeal with a number of 63 judges. The

[14] See, for details LRCM, *Study on optimization of judicial map in the Republic of Moldova,* Chișinău, 2014, available at http://crjm.org/wp-content/uploads/2014/06/2014-Studiu-Optimiz-HartaJud-MD_ro-web.pdf.

study recommends expanding the current premises of the Court of Appeal with a five-story annex and finishing the new floor already built within the court. According to the study estimates, annual operating costs would increase by about 1.5 million lei, but they include an adequate premises and a court of 63 judges that would respond to the workload. If this proposal is not feasible, the authors of the draft law proposing the division of the Court of Appeal in two courts should at least consider whether the proposed solution is feasible and sustainable in the long term.

5) **There are no similar practices in other countries**

We have not found situations in other countries where, in the same locality there are general jurisdiction court of appeal, but with different territorial jurisdiction.

To respond to the problems indicated in the informative note to the draft law, namely the heavy workload of the Court of Appeal, we recommend rethinking the draft law in order to optimise and revise the judicial map jurisdiction of all courts of appeal to ensure a comparable workload. Dividing the Court of Appeal in two courts of appeal will not solve the problem of inadequate workload of the Court of Appeal Cahul and Comrat. If you change the jurisdiction to ensure a comparable workload and provide the ability of all four or possibly three courts of appeal, to function, the problem of heavy workloads at the Court of Appeal would automatically fall.

II. **Investing the Superior Council of Magistracy (SCM) with the right to verify the assets and personal interests of judges**

The draft law provides for the right of the SCM, without prejudice to the competence of other bodies, to order the Judicial Inspection to verify the declarations of income and property and declarations of personal interests of judges and to require fiscal bodies to check the veracity of declarations of income of members of the judges' families. It also suggests that SCM is vested with the right to determine whether between revenues obtained by the judge and the members of his family while exercising his functions there is an obvious difference that cannot be justified and finds that he has participated in decision making or has directly or through intermediaries concluded a legal act if they are illegal or in violation of legal provisions on conflict of interest. The draft also provides that in case of finding the circumstances outlined above enumerated in the SCM's decision, the judge should be proposed for dismissal.

We believe these proposals dangerous and unjustified for the following reasons:

1) verifying assets of judges and the existence of conflicts of interest is the competence of the National Integrity Commission (NIC) and investing the SCM with similar responsibilities would create conflicts of competence which will only result in either failure to act on breaches committed by judges or abuse from one of the bodies to justify their relevance.

Providing the SCM with the responsibility to verify assets and conflicts of interests of judges will create duplication of jurisdiction and lack of clarity between NIC and SCM. This will only adversely affect the implementation of the law on the declaration of income and assets and conflicts of interest. There is no country where the SCM has similar powers. Currently the national integrity system, including the competent body and the manner of declaration of assets and conflicts of interest are in a reforming process. This draft proposal is not clear, especially when there are three other draft laws on national integrity system[15] which provide for a clear and independent mechanism, with the National Integrity Commission which is the authority responsible for verifying assets, incompatibilities and conflicts of interest.

1) **This proposal is neither justified from the point of view of competences and resources of the SCM.**

The SCM is a body of judicial self-administration, which entails representing the interests of judges including in relation to other powers. It is not clear how the SCM will combine its dual role as representative of justice and the verification of assets of judges. Moreover, the SCM is not a control

[15] The draft law on the National Integrity Centre, regarding declaring wealth and personal interests and the draft law amending and supplementing certain acts, proposed to the Government by the Ministry of Justice in June 2015, which were subject to public consultation, were also consulted with international experts.

body, responsible for finding contraventions as NIC is. SCM has no resources, no ability to check fortunes of judges and conflicts of interest. NIC has the right under law to require from all public authorities and institutions involved, individuals or legal entities documents and information necessary for the control and check of the veracity of the data reported in the income declaration. The SCM has neither such task, nor human resources to carry out such inspections.

Furthermore, the informative note does not provide for the increase of the SCM's apparatus or inspector-judges, stating that the draft does not require additional financial resources. It is well known that the SCM found that it has insufficient number of inspector-judges and asks for an increase in their number. So far the number of inspector-judges has not been increased, but the draft law already provides for increasing their tasks. Such an approach reveals only one thing - no intention to create any mechanism in verifying income and property/wealth and personal interests of judges, but to create mechanisms to hinder the work of NIC in this area.

2) The proposal is no sufficiently well-thought to be applied in practice.

For example, in case of finding that a legal act has been concluded or decision has been taken in breach of the rules concerning conflict of interest, the NIC may request the court to annul the administrative act issued / adopted or decision taken in breach legal provisions on conflict of interest. For proposals related to the verification of assets and conflicts of interest by the SCM, such expertise is lacking. In addition, there are clear effects on judgments. Duplication of powers between NIC and SCM will either lead to inconsistent practices or avoiding verification of assets and conflicts of interest in relation to judges, emerging in a legal framework and judicial practice which is selective to judges compared to other public authorities;

In conclusion, we do not support the proposal to invest the SCM with the task of verifying personal assets and interests of judges. The SCM can always refer to the NIC if it has suspicions or information on any judge without infringing its jurisdiction. This does not require changing the legal framework.

Faithfully yours,

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