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Newsletter

GOOD GOVERNANCE

Changing the Electoral System Threatens Democracy in the Republic of Moldova

On 6 March 2017, the Chairman of the Democratic Party of Moldova (DPM), Vladimir PLAHOTNIUC, announced the intention of the DPM to change the current electoral system (Members of Parliament being elected based on the party list) for the uninominal electoral system (Members of Parliament being elected in constituencies). The DPM initiated a massive campaign on promotion and collection of signatures to support the uninominal system. On 14 March 2017, several MPs from the DPM registered draft law no. 60 in the Parliament, which provides for the introduction of the uninominal system and the right of voters to revoke the MPs. On the same day, the draft was submitted to the Venice Commission.

In March 2016, during a visit to the Republic of Moldova at the invitation of the Constitutional Court of the Republic of Moldova, Gianni BUQUICCHIO, the President of the Venice Commission, mentioned that any change in the electoral system should be made following ”a wide debate with the authorities, political parties and civil society” and that ”election reform must be adopted upon the widest possible consensus among the political forces of the country”. The Venice Commission mentioned in the previous opinion that while changing the electoral system ”care must be taken to avoid not only manipulation [of the electoral system] to the advantage of the party in power, but even the mere semblance of manipulation”. However, on billboards, in advertisements and speeches to promote the uninominal vote, the DPM used the argument that the citizens will be able to withdraw the mandate of the MPs, who ”do not honour their duty”. The withdrawal of the MP's mandate is contrary to Art. 68 para. (2) of the Constitution and is not recommended by the Venice Commission. This right existed in the former USSR and exists in four states that have a communist regime - China, North Korea, Vietnam and Cuba. The revocation procedure stipulated by the draft law made it practically impossible to enforce - more signatures were required for revocation than for the election of the Member of the Parliament, within very strict deadlines. It seems that the promotion and collection of signatures for the uninominal system took place on the basis of a mechanism that was known from the very beginning as impossible to be implemented in practice.

On 31 March 2017, the Parliament held a debate on the need to improve the electoral law. Although the debate began with some remarks by the Secretary General of the Constitutional Court (CCM), Rodica SECRIERU, and the MP Raisa APOLSCHII about the improvement of the current electoral system, the discussions derailed to the need to modify the electoral system. Most of the representatives of non-governmental organizations specializing in electoral systems, justice, human rights and good governance opposed to the initiatives to change the electoral system for uninominal or mixed and called on the Parliament to focus on improving the current electoral system.

The main arguments against the uninominal or mixed voting invoked by non-governmental organizations in this debate were that the promotion of the uninominal system is based on a false premise because the withdrawal of the MP's mandate is unconstitutional and this possibility was and exists only in dictatorial regimes; the

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experience of the neighbouring countries, Romania and Ukraine, shows that elections by constituencies increase corruption in the country, and ”local barons“ and wealthy people who ”buy“ by various methods the citizens’ vote become Members of the Parliament; the uninominal or mixed system is beneficial mostly for parties that have a lot of financial and/or administrative resources, smaller parties being disadvantaged, thus affecting political plurality and decreasing the representativeness of the elected MPs (MPs are usually elected in a single round) and so on.

On 5 April 2017, several civil society organizations held a press conference and launched a public appeal reiterating the request to withdraw the draft law no. 60 and focus the attention of the Parliament on the real problems of the electoral system: financing of the political parties, mechanism of examining the electoral complaints, mechanism of voting abroad, coverage of the electoral campaign in mass-media, involvement of the religious cults in the electoral system and so on. These improvements also result from the appeal by the CCM to the Parliament and recommendations by the election observation missions.

The experience of Romania and Ukraine - mixed system increases political corruption

At the beginning of April, five main opposition parties (the Action and Solidarity Party, the ”Dignity and Truth“ Platform Party, the Liberal Democratic Party of Moldova, the Party of Communists of the Republic of Moldova and ”Our Party“) issued a joint statement against the change of the electoral system and in favour of maintaining the current system. On 3 May 2017, the President of the European People’s Party (EPP) and the President of the Alliance of Liberals and Democrats for Europe (ALDE), the most influential parties in the European Parliament, vehemently opposed the actions to modify the electoral system, stating that ”any attempt to bring about such a change [to the electoral system] without the full backing of the opposition and of civil society will lead the EPP and ALDE to demand that all European funding be stopped”.

On 18 April 2017, the President of the country, Igor DODON, under the pretext of combating draft law no. 60, announced that he would promote the change of the electoral system into a mixed one, an initiative that immediately was supported by the Party of Socialists of the Republic of Moldova (PSRM). On 19 April 2017, draft law no. 123 was registered in the Parliament, which provided for the introduction of the mixed electoral system (50 Members of Parliament elected based on the party lists and 51 under the uninominal system). This draft law was registered and submitted to the Venice Commission on the same day.

On 5 May 2017, draft laws no. 60 and 123 were examined at the plenary session of the Parliament, although, initially, they were not included in the agenda. On the same day, both draft laws were adopted at first reading (draft law no. 60, with 52 votes and draft law no. 123 - with 74 votes) without the approval by the Government, anticorruption expertise and report by the specialized Parliamentary committee - mandatory conditions imposed by law. The voting took place without the opinion of the Venice Commission, despite the fact that it was previously requested, and the voting took place just before the information visit of the representatives of the Venice Commission to the Republic of Moldova. Upon voting, the draft law on the introduction of the mixed system was taken as a basis, even if the draft law in question was not discussed with the society, and in 2014, the Venice Commission mentioned numerous risks related to the introduction of the mixed system in the Republic of Moldova. The PSRM and the PPEM Group, that voted with the DPM for the introduction of the mixed system, mentioned they supported this system in order not to introduce the uninominal system. Thus, it is not clear to what extent there is wide political consensus on the mixed electoral system.

A group of 20 non-governmental organizations specializing in electoral systems, justice, human rights and good governance condemned the actions of the Parliament, which adopted these draft laws in violation of legislation and common sense. Several representatives of the civil society have organized flash mobs and protests to withdraw draft laws no. 60 and 123 and focus on the real problems of the country.

In mid-May 2017, the ”merged” version of draft laws no. 60 and 123 was published. Basically, it consists of the draft law no. 123 (mixed electoral system), with the exclusion of the right to revoke the Members of Parliament, even if this was the basis of the DPM campaign for collecting signatures to change the electoral system. On 16 June 2016, the Venice Commission did not recommend changing the electoral system.

JUSTICE

European Parliament Discussed the Fight against Corruption and Situation of the Judiciary in the Republic of Moldova

On 23 March 2017, at EURONEST, the meeting of the Members of the Eastern Partnership countries and the European Parliament, the situation in Moldova, Georgia and Ukraine in terms of the state of judiciary, fight against corruption and discrimination was discussed. Civil society organizations from three countries, including the LRCM, prepared alternative reports and had the

opportunity to present them at EURONEST meeting. CSOs from Moldova, with the support of Soros Foundation-Moldova, have drawn up reports on several topics, including the integrity system, financing of parties, situation in mass-media and banking system. The LRCM has drawn up reports on justice, investigation of grand corruption and combating discrimination.

The report on the state of justice criticizes several issues related to the work and transparency of the judiciary in the country. These include the adoption by the SCM of all decisions in camera, non-transparent nature of judges appointment and promotion procedures, lack of independence of judicial inspection and complexity of disciplinary proceedings, as well as criminal cases initiated against judges, which undermine the independence of the judiciary. The report on the investigation of grand corruption recommends intensification of efforts to eradicate corruption among judges and prosecutors, ensuring genuine independence of prosecutors, transparent procedures for appointment and promotion based on merit, excluding from the powers of the Anti-corruption Prosecutor's office cases of „minor" corruption and providing it with sufficient staff as well as ensuring that no one is prosecuted for one's beliefs or political affiliation. As regards combating discrimination, the LRCM has mainly recommended strengthening of the Council for the Prevention and Elimination of Discrimination (the Council) by providing it with headquarters and sufficient resources for the activity, granting the Council the right to impose sanctions and clarifying of the examination procedure for appeals against decisions by the Council in courts.

Despite the Increased Number of Cases Filed in the Courts in 2016, the Workload per Judge Decreased

According to the report of the Agency for Courts Administration (AAIJ) for 2016, on average 418 judges acted in the judiciary system in 2016, and their activity was supported by 954 registrars, judicial assistants, and 890 persons with non-judicial functions. The courts registered 253,823 files and materials, by 2.7% more than in 2015. As compared to 2015, in 2016, both the number of judges who actually work in the system and the average duration of the case examination increased, but the rate of case settlement and the number of cases per judge decreased. The workload and other information on the activity of the courts are shown in the table below:

	2014	2015	Variation as against the previous year	2016	Variation as against the previous year
Total cases filed in the first instance court	237,222	247,070	+ 4.1%	253,823	+ 2.7%
Solved cases	231,482	247.069	+ 6.7%	248,817	+ 0.7%
Rate of case settlement	98%	100%	+ 2%	98%	- 2%
Average number of acting judges	387,5	410	+ 5.8%	418	+ 1.9%
Average duration of case hearing in the first instance court (days)	77	72	- 5 days	79	+ 7 days
Average workload per judge (cases per year)	597	603	+ 1%	595	- 1.3%
Cost per case (MDL)	945	1,102	+ 16.6%	1.273	+ 15.5%

in the first instance court for less than 12 months, making up 85,22% of the total number of registered cases. Cases pending from 12 to 24 months constituted 4,809 (8.96%), from 24 to 36 months - 2,173 cases (4.05%) and 946 cases (1.76%) were pending for more than 36 months.

In 2016, the highest workload per judge was in the courts of Orhei (1,208), Chișinău Centre district court (1,091), Anenii Noi (938), Șoldanești (924) and Bălți (907), and the lowest - in Leova (406), Soroca (378), Bender (343) and Dubăsari (309).

In 2016, the courts required an average period of 79 days to solve a case. The courts required an average period of 122 days to solve a civil case, 125 days to solve a commercial case, 135 days to solve an administrative case, 24 days - for a misdemeanor case and 158 days - for a criminal case. According to the situation on 31 December 2016, 45,715 cases were pending to be examined

During 2016, 38,181 files and materials were filed in the courts of appeal, by 2.1% more than in 2015, of which 78.8% were filed in Chișinău Court of Appeal. The Courts of Appeal reviewed 37,670 files, i.e. 98.7% of files and materials received. The average workload of judges at the courts of appeal practically did not change in 2016 as compared to 2015. In 2016, the SCJ

received 11,956 files, by 5.5% more than in 2015. During 2016, the SCJ solved 12,097 cases, by 141 cases more than received. As compared to 2015, the average workload at the SCJ increased by about 10% up to 41,7 cases per month.

The highest quashing rate of the first instance judgements referred to the following courts: Chișinău (Centru district) – 11% of civil cases and 41% of criminal cases out of those appealed against; Chișinău (Râșcani district) – 8% of civil cases and 39% of criminal cases; Chișinău (Botanica district) - 6% of civil cases and 33% of criminal cases; Criuleni - 4% of civil cases and 38% of criminal cases; Chișinău (Buiucani district) – 9% of civil cases and 29% of criminal cases; Ialoveni – 4% of civil cases and 33% of criminal cases and Chișinău (Ciocana district) – 6% of civil cases and 29% of criminal cases.

In 2016, the actual budget of the courts constituted 382.3 million MDL, by 36.7 million MDL (10.6%) more than in 2015 when the actual budget of the judiciary was of 345.6 million MDL.

The SCM Published the 2016 Activity Report

According to the 2016 Activity report, in 2016, the SCM Plenary met in 39 meetings, reviewing over 1,000 issues related to the career of judges and courts activity. Thus, 952 judgements were published in full on the SCM website, and in case of 11 judgements only the operative provisions of the judgement were published because they concerned criminal proceedings against judges and examination of the Security and Intelligence Service (SIS) opinions regarding verification of judges.

In 2016, the SCM proposed to the President of the Republic of Moldova the appointment of 14 candidates as judges, of which four (39%) were selected from among graduates of the National Institute of Justice (NIJ) and 10 (69%) among the specialists with more than five years of experience. The SCM proposed promotion of six judges (three judges - to the SCJ and three to the courts of appeal) to the hierarchically superior courts. At the same time, 36 judges resigned, and two judges were dismissed.

Administration of Chișinău Court was Elected

Following the reorganization of the judiciary, since 1 January 2017, those five district courts of Chișinău municipality have merged into one court, Chișinău Court. This is the largest court in the country and has over 140 judges. In Autumn of 2016, the SCM announced a contest to fill in the position of the chairperson of this court. Only one judge ran for the office, Mr. Radu ȚURCANU, at that time the deputy chairman of Botanica District Court. In October 2016, judge ȚURCANU did not get the required number of votes to be elected and a new contest was announced. On 7 March 2017, the SCM proposed, however, Mr. Radu ȚURCANU, who was again the only candidate in the contest, to the President of the Republic of Moldova for his appointment as the Chairperson of Chișinău Court. The SCM did not explain in its decision what made it review its previous decision, or whether the last decision was due to the absence of other counter-candidates. According to a journalistic investigation, judge Țurcanu was involved in a raider scheme, allowing the alienation of equity stakes of an insurance company.

[A single candidate submitted his files for the contest regarding the office of the president of the largest court in the country]

In addition to the contest for the position of the chairperson, there was organized a contest for those five positions of deputy chairpersons of Chișinău Court. Four out of five positions were filled. The SCM appointed to these positions Luiza GAFTON, ex-chairperson of Botanica District Court, Chișinău mun. (subsequently promoted to the SCJ), Victor BURDUH, ex-chairperson of Ciocana District Court, Chișinău mun., Ghenadie PAVLIUC and Dorin DULGHIERU, judges at Buiucani District Court, Chișinău mun. Oleg MELNICIUC, chairman of Râșcani District Court, Chișinău municipality, also ran for the office of the deputy chairman of Chișinău Court. Although he was initially proposed by the SCM for this position, his candidacy was not accepted by the President Igor DODON.

Compulsory Judicial Mediation of Civil Cases Introduced in the Republic of Moldova

On 13 March 2017, the Parliament passed a law that introduced compulsory mediation by judges of civil cases. The law, supplementing the Code of Civil Procedure with art. 182^1 – 182^5, entered into force on 5 May 2017, on the very day of its publication. It stipulates that mediation shall be applied in the vast majority of civil cases. The new mechanism provides that the judge to whom the case has been assigned shall oblige the parties to appear before him for to explain them repercussions of the judicial proceedings and possible solution. If the parties agree to conclude a reconciliation statement, the judge shall terminate the proceedings. Otherwise, the case will be randomly assigned to another judge.

Civil society organizations and mediation experts asked the Parliament not to support this initiative. According to them,

the introduction of mandatory judicial mediation will reduce to zero the impact of the Law on Mediation adopted in 2015, and the institution of voluntary mediation created by this law risks no longer be enforced. The proposed mediation procedure, in fact, does not represent mediation, but only information about the risks of judicial proceedings and cannot have a positive impact. This will have an opposite effect to the one expected, by increasing the workload of judges and extending the duration of the case examination in courts. The authors of the opinion also stated that the draft law does not contain convincing arguments for to introduce mediation by judges, and references to practices in other countries have been misrepresented.

The initiative to introduce mandatory judicial mediation was suggested in May 2015 by the Center for Reform of the Judicial System, a group of judges whose co-presidents are the President of the SCJ and the President of the SCM. On 13 March 2015, this idea was launched at the General Assembly of Judges by the President of the SCJ.

Despite Recommendations by GRECO, the SCM Continues Not to Provide Reasoning for Its Decisions

By the decision no. 78/4 as of 31 January 2017, the SCM examined in public session the conduct of the contest on promotion to the SCJ. The candidate did not get the required number of votes and the SCM considered the contest failed. The SCM does not provide reasoning for its decision, taking into account that only one candidate participated in this contest and took part in all the contests announced for this function. The text of the decision merely states that voting for one candidate or another is an exclusive right of the member of the SCM and that the necessary number of votes has not been acquired. The distribution of votes is a typical reasoning for most of the SCM decisions regarding the contests on appointment or promotion of judges.

This practice continues even after the Report of the Group of States Against Corruption (GRECO) was published within the Fourth Evaluation Round as of 1 July 2016. The report expresses concern about insufficient justification of the SCM decisions, in particular those on appointment, career and disciplinary issues concerning judges. According to GRECO evaluation group, this practice erodes judges' and the public's confidence in the SCM's decisions and in the fairness and objectivity of the selection process (para. 93). The objective of GRECO is to improve the capacity of its members to fight corruption.

Judgements Can No Longer Be Searched after the Names of the Parties on the Web Portal of Courts

In January 2017, the national portal of courts underwent major changes, the possibility of searching for court judgements after the names of the parties of a trial being excluded. According to a press release issued by the Ministry of Justice on 3 February 2017, the removal of the search engine by name was imposed as a response to the requests of many citizens who objected to the publication of their personal data in the public space. The litigants would have reported violation of the right to privacy by disclosure of their personal data in the court judgements.

This measure caused a negative reaction of the civil society and investigative journalists. In response, on 15 February 2017, the LRCM published an infographic regarding the practice of publishing and depersonalizing judgements in other countries and international tribunals. The LRCM called upon the authorities to ensure a clear balance between access to information/ transparency of justice and privacy.

On 27 March 2017, the LRCM, together with other 13 CSOs submitted to the authorities a joint legal opinion that included specific comments to improve the SCM Regulation on the publication of court decisions on the single portal of court instances. The signatory organizations requested the restoration of the search engine for court judgements by the names of the parties and proposed to the authorities a series of recommendations to improve the SCM Regulation, including: more precise definition for the categories of judgements that cannot be published on the court portal and compliance with the principle that non-publication and depersonalization of judgements is rather an exception than a rule. The recommendations are to be reviewed by the Working Group on amendment of the Regulation on the publication of court rulings on the single portal of court instances, established by the SCM in February 2017.

CCM: Criminal Liability of Judges for Unlawful Judgements Issued Deliberately Is Constitutional

On 15 December 2016, the SCJ, acting *ex officio*, invoked the exception of the unconstitutionality of art. 307 of the Criminal Code in the case of judge Domnica MANOLE. Proceedings were initiated for deliberate pronouncement of a judgement contrary

to the law in the ”Referendum” case (see the details of the case in Newsletter no. 10, ”Judge left without immunity for the interpretation of legal norms”). The SCJ requested to declare art. 307 of the Criminal Code unconstitutional. On 12 January 2017, the CCM requested an *amicus curiae* from the Venice Commission regarding the compliance of art. 307 of the Criminal Code with international standards.

On 13 March 2017, the Venice Commission issued an opinion outlining three main points. Firstly, the criminal liability of judges for the interpretation of a law, the ascertainment of facts or the assessment of evidence is only possible in cases of malice or gross negligence. Secondly, the fact that a lower court's decision has been overturned by a higher court is not sufficient to hold liable the judge who issued it. Criminal liability can be stated only if individual guilt of the judge is proven and the ”error“ is due to malice or gross negligence. Thirdly, the criminal liability of judges can only arise pursuant to the law, which must comply with the principle of the independence of judges and must be restrictively interpreted.

The SCM is obliged to consider that criminal liability of judges is a measure to be applied as a last resort

On 28 March 2017, the CCM rejected the referral of the SCJ regarding the unconstitutionality of art. 307 of the Criminal Code. However, the CCM provided some clarifications on the application of this article. For this criminal component, by the phrase ”wilful rendering“ it is meant that the deliberate intention of the judge to deliver the judgement in breach of the law must be proven. The accusation must be proven beyond any reasonable doubt and any doubt must be interpreted in favour of the accused judge. Prosecutors must prove the intention to provoke consequences contrary to the law, and that the judge upon whom the deed is imputed was certain of the occurrence of such consequences. In addition, quashing of the judgement by a higher court cannot be used as a determining ground for criminal prosecution of the judge. The CCM further added that, when authorizing criminal prosecution under art. 307, the SCM is obliged to consider the fact that criminal liability shall always be a measure which is to be applied as a last resort. The SCM has to consider the alternative of disciplinary liability of the judge.

Following Optimization of the Judicial Map, the Construction Plan for Court Buildings Was Approved

On 21 April 2016, the Parliament approved the law that stipulates the optimization of courts and reduction of their number from 44 to 15. The law entered into force on 1 January 2017. The plan to construct or renovate the buildings necessary for proper functioning of 15 courts was approved by the Parliament Decision no. 21 of 3 March 2017. Buildings are to be built between 2017 and 2027. The plan sets out several stages of construction and/or renovation for 15 court instances, starting with the identification of land lot for the new buildings up to assembling of furniture, installations and equipment. If the Plan is applied without any deviations and in compliance with the Court Buildings Design Guide, the infrastructure of the courts in the Republic of Moldova will probably be one of the most modern in Europe. The authorities will ensure the implementation of the Plan within the limits of financial resources approved by the State Budget Law for the corresponding year. Construction/renovation will start differently for different courts and consist of three stages. Most courts, including Chisinau District Court, the largest court in the country, which currently has over 140 judges, will be built/renovated within the first years.

INTEGRITY AND ANTI-CORRUPTION

The Authority Responsible to Verify Declarations of Public Officials without Governing Body for 11 Months

On 1 August 2017, the Law on the National Integrity Agency (NIA) entered into force. Under art. 44 para. (2) of the Law, the Parliament, the Government, the Superior Council of Magistracy (SCM), the Superior Council of Prosecutors (SCP), the Congress of Local Authorities from Moldova (CALM) and the Ministry of Justice were to ensure the appointment of their representatives to the Integrity Council, the supreme governing body of the ANI. The institutions appointed their representatives as follows: on 11 August 2016 – SCP (Mircea ROȘIORU, chairperson of the SCP), on 6 September 2016 – SCM (Victor MICU, chairperson of the SCM), on 9 September 2016 – CALM (Viorel RUSU, expert at CALM), on 22 December 2016 – the Parliament (Sergiu OSTAF, the President of the Resource Centre of Non-governmental Organisations for Human Rights), on 28 December 2016 – the Government (Victoria IFTODI, notary) and on 29 December 2016 - the Ministry of Justice (Tatiana PAȘCOVSCHI, press officer, Association Promo-LEX, and Dumitru ȚÎRA, founder and manager of Realitatea Media).

The first meeting of the Integrity Council (the Council) was convened on 30 December 2016, after all the institutions had appointed their representatives. In a press release in January 2017, the Council announced that it would organize public debates on the Regulation on the organization and conduct of the contest for the positions of the president and vice-president of the NIA (Regulation). Within the period of January-February 2017, the Council held seven sessions, mainly focused on discussions regarding the Regulation. On 28 February 2017, several civil society organizations submitted a declaration to the members of the Council. They expressed the concern about the superficial approach to the criteria for assessing candidates for the governing body of the NIA, as well as the Council's failure to comply with the provisions of the law on transparency in decision-making. Some proposals of the signatory organizations, but not the most important (e.g. the integrity of the written and verbal evidence process, as well as the evaluation criteria for the candidates) were accepted at the meetings of the Council. On 20 February 2017, the members of the Council unanimously adopted the Regulation.

On 7 April 2017, the contest for selection of the governing body of the NIA was launched on the website of the Council, setting the date of 3 May 2017 as the deadline for submission of files. This contest has not been completed yet.

Under the Law on the NIA, the National Integrity Council (NIC) ceased its activity on 1 August 2016. The check-ups regarding property, conflicts of interest, incompatibilities and restrictions initiated by the NIC until the entry into force of the Law on the ANI continue under the procedures stipulated by this law. Mass-media wrote that more than 80 files initiated by the NIC risk to be terminated due to the expiration of the limitation period, and in addition to this number, more than 100 referrals filed in 2017 that have not been examined yet.

NOTORIOUS CASES

Judge Accused of Committing Criminal Charge for Dismissing the Prosecutor's Request

On 31 January 2017, the SCM, at the request of the Prosecutor General, gave its consent for the prosecution of the judge of Chișinău Court, Dorin MUNTEANU. The judge is accused under art. 307 Criminal Code in wilful delivering of manifestly illegal judgement. The judge was suspended from office. He is accused in dismissal, on 9 December 2016, of the prosecutor's request to prolong the arrest of a person accused in fraud. Immediately after the dismissal of the request for arrest, the judge wrote to the Prosecutor General's Office about the violations committed by the prosecutor of that case and requested the disciplinary investigation of the latter. Subsequently, Chișinău Court of Appeal quashed the judgement by the judge Munteanu. Meanwhile, the accused person left the country.

According to a press release of the General Prosecutor's Office, made public shortly after the SCM meeting, the judge's decision to dismiss the arrest was illegal, because it was based on the statements of a witness, who was heard ”unfoundedly“ and on the fact that the judge found that the incriminated act was not a fraud. The reasons invoked by the prosecutor's office for initiating the criminal proceedings, i.e. the „unfounded“ hearing of a witness and finding that the incriminated act is not a criminal offence are disputable. The Code of Criminal Procedure obliges the judge examining the arrest requests to check whether the imputed act is an offence and hear the witnesses of the defence. If the incriminated act is not a criminal offence, the judge is obliged under the law to dismiss the request for arrest. According to the press release, the case against the judge is based on self-referral of prosecutors, not the victim's complaint.

The press release does not state that the judge is suspected of corruption. The mere fact of quashing the court judgement by the hierarchically superior court does not constitute a ground for the prosecution under art. 307 of the Criminal Code. The law and the case-law of the Constitutional Court require that quashing of the judgement shall be grounded by illegal actions committed ”wilfully“. The SCM did not provide clarification regarding the fact how it came to the conclusion that the judge had violated the law and that this violation could only take place ”wilfully“. On the contrary, as stated in the previous paragraph, the facts presented by the prosecutor's office suggest that the judge's actions were lawful.

On 1 February 2017, several non-governmental organizations issued a declaration where they qualified the case of Mr. Munteanu as another precedent that jeopardizes the independence of judges in the Republic of Moldova. According to NGOs, such actions raise fears among judges in front of prosecutors. This further reduces the chance that ungrounded criminal proceedings will be finalized with acquittal. In the Republic of Moldova, there has always been serious criticism of the way judges examine criminal cases. The rate of acquittal does not exceed 3%, well below the average for countries with advanced democracy, and the rate of admission of requests for arrests is constantly higher than 75%, despite the criticism of the European Court of Human Rights that arrest is applied in the Republic of Moldova too often and groundless. The rate of admission of requests for authorisation of interceptions is over 98%.

HUMAN RIGHTS

LRCM Analysed Statistics on the Republic of Moldova at the ECtHR

On 27 January 2017, the LRCM published an analysis regarding the situation of the Republic of Moldova at the European Court of Human Rights (ECtHR) for 2016, and subsequently published an infographic on the same issue. According to the analysis, in 2016, the ECtHR registered 839 applications, by 17% less than in 2015. This decrease could be due to the decrease in the popularity of the ECtHR, after the European Court of Human Rights rejected in the years 2011-2016 about 8,500 requests of Moldovan citizens, providing no explicit reasoning, which could have a deterrent effect on lawyers. The decrease in the number of submitted applications was also observed in the majority of other countries.

Despite the decreasing tendency in 2016, Moldova remains at the top of the Council of Europe Member States by the number of registered applications correlated to the population of the country. In 2016, Moldova ranks 7th out of 47 Member States. In 2016, Moldovans applied to the ECHR four times more often than the European average. In 2015, Moldova ranks third, and in 2014 and 2013 it is ranked fourth.

In 2016, the ECtHR issued 23 rulings in cases brought against Moldova, in which it found 31 violation of the ECHR. Out of these, 23 violations (74%) refer to two articles of the ECHR - art. 3 of the ECHR (prohibition of torture) and art. 6 of the ECHR (right to a fair trial). Rulings in cases of Buzadji and Mozer are among the most important ones delivered in 2016. In Buzadji case, the ECtHR changed its case-law, tightening the requirements imposed on the authorities to arrest a person. In Mozer case, the ECtHR found that, until information on the organization of the ”judiciary system“ in the Transnistrian region had been provided , it could not accept the legality of acts issued by ”judges“ of that ”system“.

Under the judgements and decisions delivered by 31 December 2016, the Government of the Republic of Moldova was obliged to pay over 16,200,000 EUR. Out of these, 14,037,439 EUR (187,407 EUR in 2016) under the judgements, and 2,187,365 EUR (49,400 EUR- in 2016) based on amicable settlements or unilateral declarations by the Government. The amount awarded by the ECtHR in Moldovan cases until 31 December 2016 is bigger than the entire budget of the courts for 2015 (which was about 15,715,000 EUR).

The Venice Commission and Civil Society - the Draft Law „Big Brother“ Has Serious Shortcomings

Draft law no. 161, known as ”Big Brother“ Law, was adopted by the Government on 30 March 2016 and registered in the Parliament on 13 April 2016. It strengthens the control of the law enforcement authorities over the electronic information space. On 8 April 2016, several civil society organizations expressed their concern about the negative consequences for human rights that could arise following the adoption of this draft law, requesting *inter alia* submission of the draft law for the expertise of the Venice Commission. Following the Parliament’s request, on 26 November 2016, the joint opinion of the Venice Commission and of the Council of Europe on the draft law was issued. On 14 February 2017, Promo-LEX Association organized a public debate on draft law no. 161. The event was attended by the representatives of civil society, public authorities and private sector, each having the opportunity to express one’s own opinion on the draft law.

The Chairman of the Parliamentary Committee for National Security, Defense and Public Order assured that all the objections regarding the draft law will be taken into account, and the Parliamentary Committee will hold public consultations before presenting the draft law for debates in the Plenary of the Parliament.

The event highlighted the risks underlined in the joint opinion of the Venice Commission and of the Council of Europe, the opinion of the International Centre for Not-for-Profit Law (ICNL), the opinion of the LRCM and the risks underlined by the representatives of the private sector. Speakers paid attention to granting of wide powers to the law enforcement agencies with the view to intercept and collect computer data regarding too many types of crime, and providing for general surveillance measures that are inefficient, cost money, and unduly violate the right to privacy. The private sector, represented by several service providers, found the vague wording in several provisions of the draft law, which will be difficult or even impossible to implement in practice.

Among the most important issues and risks identified by the Venice Commission and the Council of Europe are the following: ensuring adequate measures for data interception, especially those related to computer data search and seizure of objects following such searches; respect for the proportionality of means and providing appropriate safeguards against abuse; ensuring the procedures and deadlines for authorizing the measure; and also introduction of exhaustive rules regarding verification procedures for data obtained through surveillance and procedures for retention, storing and destroying of such data (categories of data to be retained and stored, authorities entitled to receive and process the data

in question, etc.). Also, the provisions on the offence of child pornography (art. 208[1] of the Criminal Code) and the offence of illegal access to computer systems (article 259 of the Criminal Code) are to be amended and/or supplemented so as to bring them fully in line with the provisions of the Budapest Convention as of 23 November 2001. It is necessary to revise the provisions of the draft law and of the entire legal framework regulating Internet access blocking, so that it is fully in conformity with fundamental principles and safeguards, as enshrined in the ECHR.

Participants in the debate as of 14 February 2017 requested withdrawal of the draft law with the view to be rewritten in conformity with the recommendations of the Venice Commission Opinion and civil society analyses, or at least publication of the new version of the draft law, modified on the basis of opinions received by February 2017, providing reasonable time for civil society and private sector to share opinions on the new version and organize public debates before presenting the modified draft law no. 161 for debates in the legislative forum. The Chairman of the Parliamentary Committee for National Security, Defense and Public Order, Mr. Roman BOȚAN, assured the participants in the debate that all the recommendations will be taken into account in the process of revising of draft law no. 161, and the Parliamentary Committee will hold wide-ranging public consultations before presenting the draft law for debates in the Plenary of the Parliament.

Journalists Are Increasingly Denied Access to Information by Extensive Interpretation of the Provisions on Personal Data Protection

On 13 January 2017, several media organizations voiced their concern about the increase of cases of verbal aggression and inadequate responses to journalists on the side of political parties' supporters, who switched to insulting and aggressive language in the blogs of the authority-affiliated media.

On 22 December 2016, the journalist Mariana RAȚĂ published an article regarding the appointment for the office of the Head of the Security Department of Moldtelecom Company of the ex-commissioner of Chișinău municipality police Vladimir BOTNARI, who stood trial for neglect of official duties during the events of 7 April 2009. Mr. Botnari filed a criminal complaint regarding this article, claiming the offence under art. 177 of the Criminal Code, which refers to violation of privacy. The journalist was invited to the Prosecutor's Office for explanations. On 24 January 2017, representatives of several civil society organizations, at a press conference, qualified this case as a pressure on investigative journalist. Although on 25 January 2017, the Prosecutor's Office decided not to initiate criminal prosecution, summoning of the journalist itself represents an intimidation. Just simple reading of the provisions of art. 177 of the Criminal Code made clear that there were no constituent elements of this offence, because the published article does not contain information that would constitute personal or family secret. The invitation of the journalist was superfluous. The suspicion that the Prosecutor's Office decided not to initiate criminal prosecution under the public pressure cannot be ruled out. At the press conference, it was pointed to the intensification of pressure on investigative journalists and the increasing limitation of access to information of public interest through unjustified refusals by the authorities, who make references to the Law on Personal Data Protection.

Public officials increasingly refuse to provide personal information to journalists, invoking the protection of personal data and sometimes even requesting criminal investigation of journalists

On 26 January 2017, as a sign of solidarity with investigative journalists and as a form of protest against the abusive interpretation of the Law on Personal Data Protection, the campaign to support investigative journalism and access to information was launched. Within the framework of the campaign several activities that addressed the issue of abusive interpretations of the Law on Personal Data Protection took place, and also a series of articles, in which important data were anonymized, imitating the abusive interpretations of the authorities, were published. Public authorities were called upon to interpret and enforce the Law on Personal Data Protection in a reasonable manner and in accordance with the European standards.

On 13 February 2017, several civil society organizations made a statement in the context of public debates organized by the Investigative Journalism Centre of Moldova and Transparency International-Moldova. At the debate there were presented several examples how public authorities refused to provide information to journalists, lawyers and non-governmental organizations, motivating their refusal by the fact that the requested information constitutes personal data that can not be disclosed without the consent of the person concerned. The most frequent complaints of reporters regarding the limitation of access to information concern the Ministry of Justice and, in particular, the web portal of courts, the General Prosecutor's Office, the National Integrity Agency, the Ministry of Internal Affairs, the Presidency, but also many state-owned enterprises (Moldtelecom, Metalferos, CRIS Registru, Poșta Moldovei or Moldovagaz). The signatories requested the authorities to apply the Law on Personal Data Protection in the spirit of the European standards, and the Government of the Republic of Moldova to ensure real access to information of public interest and prevent abusive interpretation of the Law on Personal Data Protection by the responsible persons in public institutions.

CIVIL SOCIETY

Civil Society and the Media Alarmed by the Deterioration of Their Working Environment

On 3 March 2017, a group of CSOs issued a joint statement addressed to development partners and public at large, expressing concern about the worsening of the working environment for civil society organizations. The signatories drew attention to actions recently launched by the government-affiliated media aimed to divide and discredit civil society organizations, including by their positioning against quasi-nongovernmental organizations, and a general climate of increased intimidation of independent mass-media by public authorities.

CSOs condemn the actions of undermining freedom of association and expression in the Republic of Moldova

The signatories of the statement called on the development partners to closely follow, prevent and disapprove all actions that undermine freedom of association, freedom of opinion and expression in the Republic of Moldova. Besides, the signatories urged the public authorities of the Republic of Moldova to open, non-discriminatory and honest dialogue on issues of major public interest, involving representatives of all non-governmental organizations and the media, regardless of the opinions expressed or positions promoted.

What Legal Constraints Do CSOs Encounter in Their Work?

At the beginning of January 2017, the LRCM published the results of the survey on the perception of civil society organizations of the legal environment in which they work. The purpose of this survey was to assess the level of satisfaction of non-commercial sector as concerns the legal framework regulating its activity. The survey was conducted within the period from December 2016 to January 2017. The questionnaire was filled in by 43 respondents representing CSOs, of which 22% were registered at the local level.

Survey results indicated that the main constraints are determined by the difficulties in applying labour and tax legislation, which are not adapted to the needs of the non-commercial sector. Those surveyed consider that current tax legislation does not take into account the nature of the CSOs activity, in terms of separating entrepreneurial activities and non-commercial activity (tax burden, volume of reporting, import of consulting services). They mention the specificity of the CSO activity, which is conditioned by projects/grants, the fact that influences the ability to ensure a continuous process of activity. The CSOs also underlined that the non-commercial purpose of the activity requires a specific approach on the side of authorities. 77% of respondents consider it necessary to draw up a separate chapter in the Tax Code to regulate their activity.

Labor and tax legislation are not adapted to the needs of the CSOs

Another legal constraint in the activity of the CSOs is labour legislation. Several respondents mentioned that it does not take into account the specificity of the CSOs activity and negatively affects the ability of the NGOs to ensure a continuous process of employment and permanent contractual relations with the staff. Given the specificity of project-based activity (some of which are short-term), the CSOs are unable to comply with labour legislation and social insurance for employees in the period when there is no funding for their activity.

Thus, 58% of respondents consider that current legislation does not provide sufficient mechanisms for financial support of the CSOs by the state. The CSOs also face significant impediments while engaging in decision-making, both at central and local levels. At the same time, 85% of respondents consider that current legislation is limiting the effective contribution of the CSOs to the processes of public consultations regarding draft laws and legislative initiatives.

The LRCM Promoted the 2% Mechanism in the Republic of Moldova

Between February and April 2017, the LRCM conducted an information campaign on the 2% mechanism. The campaign was based on the use of various promotion tools and channels. The LRCM developed a guide and an infographic on percentage designation for individuals. They are meant to answer the main questions that people ask when they offer support to a NGO making up 2% of their income tax. Informing of citizens continued with the launch of a website dedicated to the 2% Law - www.2procente.info. The site hosts useful information for both beneficiaries and taxpayers. During the same period, a video spot was also released (in Romanian and Russian). It was broadcasted during the period of submission of income tax declarations. The spot explains to people what the mechanism is and what advantages it gives to people, community and state. According to the data provided to the State Tax Service, 10% of persons who submitted the income tax declaration for 2016 used the 2% mechanism.

IN BRIEF

The judge Adela ANDRONIC was dismissed by the President of the country, Igor Dodon, on 29 December 2016, following the proposal of the SCM. Adela ANDRONIC implemented the interim measure in proceedings that were not initiated as stipulated by the law, the measure resulting in damages of MDL 20 million for the National Bureau of Auto Insurers from Moldova. Previously, the ex-President, Nicolae TIMOFTI, refused to dismiss Mrs Andronic, considering that the sanction was too harsh.

In February 2017, the case ”Russian Laundromat” was sent to the court. In March 2017, the General Prosecutor's Office stated that files against 14 judges, two bailiffs and four employees of the National Bank of Moldova were sent to the court.

On 3 March 2017, the Republic of Moldova signed Protocol no. 16 of the ECHR. This Protocol allows the courts and higher courts of the Contracting States to request the ECtHR consultative opinions on issues of principle related to the interpretation and application of the rights and freedoms provided for by the ECHR and its Protocols. The Protocol will enter into force for the signatory countries after 10 ratifications. So far, the Protocol has been ratified by seven countries.

On 9 March 2017, the Prosecutor General, Mr. Eduard HARUNJEN, appointed his deputies. They are Mircea ROȘIORU, Igor POPA and Iurie GARABA. The term of office of the Prosecutor General's deputies ends simultaneously with that of the Prosecutor General. Mass-media wrote about several alleged violations of law committed by Mr Popa and Mr Garaba. Both were counter-candidates of Mr. Harunjen in the contest for the position of the Prosecutor General. Mr. Mircea ROȘIORU is the President of the Superior Council of Prosecutors (SCP). This SCP proposed Mr. Harunjen to the President of the country for the position of the Prosecutor General.

On 16 March 2017, the European Committee for the Prevention of Torture (CPT) published the response of the Government of the Republic of Moldova following the visit of the CPT in September 2015. The document issued by the Government responds to the CPT observations and describes the short-term actions to be taken with regard to the conditions of detention in Penitentiary no. 6 (Soroca), the Ombudsman Office, the activity of the Council for the Prevention of Torture, the effective investigation of torture, inhuman or degrading treatment, etc., as well as the individual cases invoked in the CPT report.

The Ministry of Finance has created a working group to rewrite the Tax Code. In March 2016 the LRCM submitted to the address of the Ministry the analysis of the fiscal regime of non-commercial organizations, launched in November 2016. The analysis covers four areas: the tax regime regarding income tax, value added tax, donations, and tax obligations of non-commercial organizations following the conclusion of service provision contracts.

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ABOUT LRCM

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

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