

PUBLIC APPEAL TO THE SUPERIOR COUNCIL OF MAGISTRACY

The initiative to change the way judgements are published seriously affects the transparency of the judiciary and limits access to information of public interest

October 9, 2017

Journalists and representatives of the civil society organizations signatory hereto express their bewilderment regarding the initiative to include in [the agenda of the Superior Council of Magistracy \(SCM\) meeting as of October 10, 2017](#), the new Regulation regarding the manner of publishing court judgements. The draft provides for anonymization of the identity of all natural persons in the judgements published on the web portal of the courts. This will considerably impact investigative journalism and will make it impossible for the public to find judgements in high profile cases and information on the way these cases are examined. This will further reduce public confidence in the judiciary.

The promotion and possible voting of this Regulation takes place contrary to [the commitments assumed by the SCM leadership in August 2017](#), which undertook to revise the problematic provisions of the Regulation with the involvement of representatives of civil society and journalists. Since August 2017, journalists and civil society representatives have not been invited to any meeting of the Working Group drafting the Regulation and no amended version of the Regulation in question has been and is yet published on the SCM website. The representative of the National Centre for Personal Data Protection invited some journalists to discuss the draft of the Regulation on 11 October 2017, while the document is already on the SCM agenda and has to be voted on 10 October 2017.

[The current version of the draft Regulation](#) raises serious concerns as it greatly reduces the transparency of the judiciary. The version proposed for voting stipulates, *inter alia*:

- a) **Excluding of data regarding the names and surnames of parties from the court judgements published on the courts portal, which** will make it impossible for journalists and the public to find court judgements. The Regulation in force does not provide for such a measure;
- b) **Placing information about court sessions on courts portal at least 3 days before they are held and deleting this information after the court sessions are over.** This will make it very difficult, if even not possible, to monitor high profile cases. The current Regulation does not provide for the deletion of this information. Also, the deadline of 3 days will hinder placement of the information on court sessions on the courts portal in case of applications to be solved within 24 hours since their filing (e.g. the protection order);
- c) **Extending the categories of court judgements that will no longer be published on the courts portal.** The draft Regulation introduces new grounds for non-publication of court judgements, such as: „for the sake of morality“ or „special circumstances in order not to harm the interests of justice“. These grounds are very vague and leave room for abuse. Journalistic investigations have already found that many judgements are made anonymous, although they should not have been anonymized;
- d) **Full access to court judgements through a user identification mechanism after a prior registration.** The draft provides for the possibility of accessing court judgements in their full

form for journalists and researchers. This is illogical, if privacy protection is desired. Journalists should not have access to judgements where the protection of privacy is justified. On the other hand, accessing court judgements through a logging mechanism allows identification and monitoring of journalists, which is unacceptable in a democratic society. Moreover, this proposal is not supported by actions. The Regulation does not specify when a system for journalists to have access to depersonalized court judgements could be created and what would be the terms and conditions. This process may take months or even years.

There are no clear reasons why the above aspects are being promoted with such insistence. Protection of privacy can not justify such radical measures, which limit so much the transparency of justice administration. On the other hand, the draft does not solve in any way the issue of restricting the search engine for judgements by the names of the parties, a feature excluded without any legal ground from the national portal of courts in January 2017.

Several civil society organizations have previously sent to the SCM some [recommendations](#) to improve the Regulation on the publication of court judgements on the unified portal of courts. None of those recommendations were accepted in the draft proposed for voting. Moreover, there are no reasons why they were not accepted, although they are based on the best compared practices.

In the form in which it was proposed, the draft Regulation can not be supported. Adopting it will mean closing the judiciary towards the public, further lowering the trust in the judiciary and cancelling of the major progresses made by the Republic of Moldova in ensuring the transparency of the judiciary since 2009. These provisions are also contrary to the objectives and the spirit of the Justice Sector Reform Strategy for 2011-2016. Moreover, the annulment of the possibility of identifying court judgements by the names of the parties in any case will make it impossible to verify the past of the persons claiming high public offices, as well as to monitoring cases of corruption. The activity of investigative journalists will be effectively impossible.

The signatories of the present appeal point with satisfaction to the position of the Supreme Court of Justice (SCJ) in this case, which has drafted its own draft Regulation, following the logic of the best compared practices and the case law of the European Court of Human Rights. The signatories recommend to use the draft Regulation developed by the SCJ as the basis for the following discussions within the working group set up to improve the Regulation regarding the way court judgements are published, whilst improving provisions that deal with defining more precise categories of judgements that may or may not to be published on the courts portal, as well as stipulating the principle that non-publication and anonymization of judgements is an exception and not a rule.

The signatories hereto request the Superior Council of Magistracy to:

1. Postpone the adoption of the Regulation regarding the way court judgements in its current version at the SCM meeting of 10 October 2017;
2. Return to the process of drafting the Regulation within the Working Group, with the participation of the representatives of the press and civil society, based on the best compared practices, taking as the basis the draft Regulation developed by the Supreme Court of Justice. Timely publication of information on the working group meetings as well as the working version of the Regulation.

Signatory organizations and persons:

1. Amnesty International Moldova
2. Asociation for Participatory Democracy (ADEPT)
3. Association for Efficient and Responsible Governance (AGER)
4. The Association of Independent Press (API)
5. Promo-LEX Association
6. Community "WatchDog.MD"
7. Centre „Acces-info”
8. Independent Think Tank Expert-Grup
9. Women’s Law Centre
10. The Information Centre „GENDERDOC-M”
11. Centre for Investigative Journalism (CIJ)
12. Legal Resources Centre from Moldova (LRCM)
13. Centre for Independent Journalism (CJI)
14. Center for health policies and studies (Centrul PAS)
15. CPR Moldova
16. „Freedom Moldova” Foundation
17. Institute for Development and Social Initiatives Viitorul
18. Institute for Public Policies (IPP)
19. Institute for Policy and European Reforms (IPRE)
20. Laywers for Human Rights Association
21. Transparency International Moldova
22. OMEGA Agency
23. AGORA
24. BizLaw.md
25. Deschide.MD
26. #diez.md
27. Press Group „Realitatea”
28. Jurnal de Chişinău
29. Jurnal.md
30. Jurnal TV
31. moldNova.eu
32. Mold-street
33. E-Sanatate.MD Platform
34. Platzforma.md
35. Anticoruptie.md portal
36. Moldova Curată portal
37. UNIMEDIA portal
38. PRO TV Chişinău
39. Report.md
40. RISE Moldova
41. Weekly regional newspaper CUVÂNTUL
42. Timpul Newspaper
43. TV8
44. Ziarul de Gardă
45. Ziarul Naţional
46. Aramă Dan, reporter (Gazeta de SUD)
47. Barbăroşie Lilia, journalist (Radio Europa Liberă)
48. Basiul Valentina, journalist

49. Bucataru Victoria (APE)
50. Cașer Valeriu, editor (Radio Chișinău)
51. Călugăreanu Vitalie, journalist (Deutsche Welle)
52. Chirilescu Carolina, journalist (Jurnal de Chisinau)
53. Ciobanu Marina, journalist (Ziarul de Gardă)
54. Cioina Elena, journalist
55. Colun Mariana, investigative journalist (CIJ)
56. Corai Tatiana, journalist
57. Corobceanu Svetlana, journalist (Jurnal de Chișinău)
58. Cozonac Cornelia, investigative journalist (CIJ)
59. Dodon Victoria, investigative journalist (CIJ)
60. Eșanu Anatolie, journalist (Ziarul de Gardă)
61. Galben Dorin, reporter
62. Grabovski Fulga, avocat la CA „Grabovski Fulga”
63. Grigoriță Constantin, fotoreporter, API member
64. Iașcenco Tudor, jurnalist de investigație
65. Lungu Diana, journalist
66. Morari Natalia, journalist (TV8)
67. Moșneag Victor, journalist (Ziarul de Gardă)
68. Munteanu Galina, journalist
69. Munteanu Victor, Program Director of the Justice and Human Rights programme at the Soros Foundation Moldova
70. Nani Anastasia, investigative journalist (CIJ)
71. Papuc Irina, journalist
72. Popa Victoria, journalist (Jurnal de Chișinău)
73. Porubin Natalia, investigative journalist (CIJ)
74. Rață Mariana, investigative journalist (CIJ, TV8)
75. Scobioală Natalia, activist Curaj.TV
76. Sofronii Victor, director Impuls TV
77. Ștefârță Sorina, journalist
78. Terguță Ion, journalist
79. Zaharescu Natalia, reporter (Radio Chișinău)
80. Zaharia Lilia, journalist (Portalul Moldova Curata.md)
81. Zaharia Viorica, editor Moldova Curata

The list of signatories remains open

Contact person:

Mihaela CIBOTARU, Communication Coordinator, Legal Resources Centre from Moldova,
contact@crim.org