Newsletter
No. 7 | JULY – SEPTEMBER 2015
LRCM LEGAL RESOURCES CENTRE FROM MOLDOVA

IMPLEMENTATION OF THE JSRS

Unprecedented Attacks on NGOs

The President of the Supreme Court of Justice (SCJ), Mr. Mihai POALELUNGI, in a portal interview and in a TV broadcast (only in Romanian) (min. 26), severely criticized two NGOs and two representatives of these NGOs for having criticized the proposed amendments to the law submitted by the Center for Reform of the Judicial System (Center for Reform) (only in Romanian). The President of the SCJ assessed the NGOs' position as "subjective and bad-intended attitude.... and ill-favoured approach."

Indeed, the LRCM, along with 18 other NGOs, had a critical position towards the majority of the initiatives launched by the Centre for Reform, which is headed by the President of the SCJ and the President of the SCM. The position of the civil society was determined by the desire to improve some initiatives and to explain the danger of promoting the others. The changes proposed by the Centre for Reform irreversibly affect the judicial system and the civil society cannot neglect the risks that accompany such initiatives. This is the role of a genuine NGO.

The criticism of NGOs by the head of a supreme court, that is called upon to ensure the respect for human rights, can seriously harm the image and confidence in justice, as well as discourage open discussion of issues of high public interest, such as the reform of the judiciary.

Optimization of the judicial map - How will it be accomplished and how much does it cost?

Optimization of the judicial map is a prerequisite for improving the quality of the judicial act and increasing the efficiency of courts. In June 2015, the Ministry of Justice (MoJ) opened for public coordination the draft law on the reorganization of the judicial map (only in Romanian). The project provides for the optimization of the judicial map in the country by creating courts with at least 9 judges (option 3 of the Study on optimization of the judicial map in the Republic of Moldova, elaborated by the LRCM in partnership with MoJ and SCM). According to the draft law, there will be 15 courts in the country (compared to 44 at present), including a consolidated Chisinau District court. The draft law also provides for the liquidation of specialized courts (military and economic).

The draft law proposes optimization in two stages. Starting 1 January 2016 the courts shall be merged administratively. Their physical relocation will take place upon creation of material conditions (reparation of old premises or new buildings constructed). According to the Informative Note (only in Romanian) to the draft law, the optimization will be accomplished by 2029.

According to the estimates provided by experts, the optimization of the judicial map proposed by the

HOW MUCH DOES THE OPTIMIZATION OF THE JUDICIAL MAP COST?
Expenditure
1.18 billion MDL
Annual savings
45.3 million MDL
Return of investments
17 years

CONTENTS

IMPLEMENTATION OF THE JSRS
Unprecedented Attacks on NGOs 1
Optimization of the judicial map - How will it be accomplished and how much does it cost? 1
The Government proposes splitting of Chisinau Court of Appeal into two separate courts 2
The MoJ proposes to amend constitutional provisions concerning the judicial system 2
Establishment of the Anticorruption Court and empowerment of the SCM to verify the wealth of judges 3
Professional integrity testing is promoted neglecting the opinion of the Venice Commission 4
Change of the composition of the SCJ - is it appropriate? 4
Centre for Reform proposes changing the system of payment of court fees 4
Is it reasonable to introduce fixed terms for examination of cases? 5
The Centre for Reform proposes to introduce mandatory mediation in civil cases 5
Judges suggest reducing the number of appeals for certain categories of cases 6
Does the new package of laws in fact limits the immunity of judges? 6

ACTIVITY OF THE SUPERIOR COUNCIL OF MAGISTRACY
How does the SCM allocate funds for courts infrastructure? 7
The contest for filling the position of the Vice-president of the SCJ has been announced for the third time 7

HUMAN RIGHTS
Dangerous Precedent: The SCJ Tolerates Discrimination 7
The Parliament put the foundations for a better mechanism of enforcement of the ECtHR judgements 8
ECtHR deals with the efficiency of the remedy introduced by Law no. 87/2011 8

HIGH PROFILE CASES
Impunity of decision-makers in the „April 7" Case 9

IN BRIEF 9
FOLLOW-UP 10

MoJ will cost about 1.18 billion lei, but will also generate considerable savings. Annual savings will constitute about 45.3 million lei. The investment will be returned within the next 17 years. The cost assessment report was prepared by the Justice Management Institute, the Urban Project Institute and the LRCM.

According to the MoJ, on 8 October 2015 the draft law was submitted for anticorruption expertise, following which it is to be submitted to the Government. Given that the draft law is still at the MoJ, it is unlikely that it will be adopted and put into force starting 1 January 2016, as it provides.

The Government proposes splitting of Chisinau Court of Appeal into two separate courts

On 28 September 2015, on the initiative of the Centre for Reform, the MoJ opened for coordination a draft law (only in Romanian) that proposes, inter alia, to split the Chisinau Court of Appeal into two courts of appeal – one for Chisinau municipality and one for the remaining localities which are now under the jurisdiction of Chisinau Court of Appeal. The draft law stipulates that the total number of judges who will serve in these courts will be equal to the current number of judges of Chisinau Court of Appeal. The Informative Note (only in Romanian) to the draft law justifies the need for division by heavy workload at Chisinau Court of Appeal and specific nature of the cases examined by the courts in Chisinau municipality.

On 19 October 2015, the LRCM called upon the MoJ to give up this initiative because it contradicts to the Justice Sector Reform Strategy for 2011–2016 (JSRS) and is not justified by economic and financial considerations. Most probably, the current problems of Chisinau Court of Appeal are related to the poor management of that court. It follows that the management is to be improved rather than the court reorganized. Furthermore, the proposal is based on erroneous information as regards the "specific nature of the disputes in Chisinau municipality", lacking any studies to this end.

The LRCM recommends to review the jurisdiction of all Courts of Appeal to ensure an adequate workload for it

The LRCM is aware of the heavy workload of Chisinau Court of Appeal and recommends to reduce its territorial jurisdiction and increase the number of judges of that court. Thus, the number of cases to be examined by Chisinau Court of Appeal will be reduced and the workload of other existing courts of appeal, which are currently examining a small number of cases, will be increased.

The MoJ proposes to amend constitutional provisions concerning the judicial system

On 15 September 2015 the MoJ opened for coordination a draft law on amendment to the Constitution. To a great extent, the draft law complies with the international standards and best practices on judicial independence. The draft law excludes the initial appointment of judges for five years, the provision that adversely affects the independence of judges. The draft law also provides for the appointment of judges of the SCJ by the President of the country, on the proposal of the SCM, thus reducing the involvement of political factor in the appointment of judges. The draft law introduces the right of judges to have immunity, but at the same time mentions that this immunity should be functional and not a general one.

The draft law strengthens the independence of the SCM. It is proposed to exclude the Prosecutor General and the President of the SCJ from the SCM's composition. However, the Minister of Justice will remain ex officio member of the SCM, which will be composed of judges and law professors. The majority of the SCM members shall be judges elected by the General Assembly of Judges, representing the courts of all levels.

The MoJ proposes amendment to the Constitution to strengthen the independence of judges

The LRCM recommended the MoJ to improve the draft law (only in Romanian). It is recommended to preserve in the Constitution the requirement of 10 years of experience for the appointment as SCJ judge. The draft law proposes exclusion of this requirement without any justification. The Centre for Reform advocates for the appointment of 16 out of 33 judges to the SCJ from among lawyers, academics and civil society. The draft law, probably, follows this initiative. The LRCM also recommended to exclude from the Constitution the right of the President to reject the SCM's proposals on the appointment or promotion of judges, as well as to offer the possibility for the representatives of civil society, and not just those from academia, to be a part of the SCM, alongside with the strengthening of the independence of the SCM's Boards.

OTHER INITIATIVES IN THE FIELD OF JUSTICE AND COMBATING CORRUPTION

Establishment of the Anticorruption Court and empowerment of the SCM to verify the wealth of judges

On 28 September 2015 the MoJ opened for coordination a draft law (only in Romanian) that proposes, inter alia, establishment of the Anticorruption Court in Chisinau, of a specialized panel to deal with corruption cases within Chisinau Court of Appeal, as well as the establishment of a permanent panel within the SCJ in order to decide on appeals on points of law in corruption cases. The draft law also empowers the SCM to verify the declarations on income, property and personal interests of judges. The SCM will have the right to determine whether there is an obvious difference between the judge's income and acquired property that cannot be justified and whether the judge violated the regulations on the conflict of interest. If such circumstances are established, the SCM will have the right to propose the dismissal of the judge.

On 19 October 2015 the LRCM called upon the MoJ to give up the draft law, because it contradicts to the JSRS and is not grounded as regards economic and financial aspects. As regards the establishment of anticorruption courts, this initiative does not solve the existing problems and increases the risk of influence upon judges. On the other hand, this initiative is contrary to the initiative of the MoJ on optimization of the judicial map. Moreover, the small number of cases in this field does not justify the creation of specialized courts. Finally, the LRCM noted that examination of all cases of corruption in Chisinau municipality will create difficulties in examination of cases coming from the regions, as this involved the travel of all trial participants to Chisinau.

LRCM noted that examination of all corruption cases by several judges creates preconditions for third parties to influence them easier. On the other hand, the initiative virtually excludes the possibility of random distribution of corruption cases, which is an important measure to prevent corruption in the judicial system. Within the framework of a survey conducted by the LRCM in 2014, in the context of the Study on specialization of judges, 41% of respondent judges disagreed with the creation of specialized courts and only 29% supported this idea. Moreover, the Republic of Moldova has a less pleasant experience concerning specialized courts. In 2011-2012, due to suspected corruption, the jurisdiction of the Commercial Court was reduced, while the Appeal Economic Court and the Economic Board of the SCJ were dissolved.

The establishment of anticorruption courts does not solve the existing problems and increases the risk of influence upon judges.

The draft law makes reference to the lack of uniform court practice in corruption cases as the reason for the establishment of anticorruption courts. The court practice is indeed not uniform, but the best way to eliminate this problem is the unification of practice by the SCJ. It seems that even the SCJ practice in this regard was not uniform. On 22 December 2014 the SCJ Plenum adopted a decision on the unification of the court practice in this field, but it is too early to assess its impact.

According to official statistics for 2014 (only in Romanian), in the last year, all the courts across country received only 162 cases involving acts of corruption or related to corruption. Most of these cases are simple cases and do not involve high-level corruption. If the anti-corruption court is constituted of 3 judges, then the annual workload would be of about 54 cases, which is by far the lowest workload in the country.

It is proposed to establish Anti-Corruption Court, which will have the lowest workload in the country

With the view to ensure that the courts consider corruption cases properly and apply equitable sanctions, the LRCM proposed to change the jurisdiction of the courts on corruption cases, to ensure that these cases are heard by the court from the city were the investigation is made, and not in the district were the crime was committed. This will allow examination of corruption cases in just three courts and specialization of several judges from each court in this field. The LRCM also recommended identifying of gaps in the existing court practice and their removal, training of judges by colleagues from Romania and preparation of a recommendation of the SCJ on the individualisation of penalties on corruption cases, similar to those used in the USA and the United Kingdom.

Regarding the proposal to empower the SCM to verify the wealth of judges, thus is now the competence of the National Integrity Commission (NIC). Empowering the SCM with similar responsibilities would create conflicts of competence and risks of contradictions between these bodies. Moreover, the SCM does not have resources to verify the declarations of judges and it is unlikely that it will check the wealth of judges better than a body specialized in this field, such as NIC.

Professional integrity testing is promoted neglecting the opinion of the Venice Commission

On 15 December 2014, the Venice Commission found that the Law on the professional integrity testing (Law no. 325) does not correspond to the European standards. On 16 April 2015, the Constitutional Court declared unconstitutional the main provisions of this law (only in Romanian). In the autumn of 2015, the MoJ came up with proposals to amend the law, which were accepted by the Government (only in Romanian) on 28 October 2015. The new draft law amends the concept of Law no. 325, replacing personal integrity testing with assessment of integrity of public institutions. This will be done by the National Anti-Corruption Centre (NAC) and the Intelligence and Security Service (ISS) (with regard to NAC).

The proposed new mechanism does not contain sufficient safeguards against abuse and endangers the principle of separation of powers.

The LRCM and AGER identified several problems posed by the draft law. It is not clear how the assessment of the institution will be carried out and based on what information the NAC will decide whether or not the institution has passed the test. The new system also creates prerequisites for improper influence by the NAC upon any public entity. The draft law empowers the NAC to carry out unlimited controls of the public entities and challenge the refusal to dismiss the head of the entity under assessment, i.e. directly influence the dismissal of any head of the public institution. The proposed system also raises serious issues on assessment of the institutional integrity of the courts and prosecution offices.

The draft law does not solve any key issues raised by the Venice Commission and by the Constitutional Court. It does not provide for adequate judicial control of integrity testing, the existence of reasonable suspicion is not required to start testing and there are no guarantee that the testers will not instigate.

Change of the composition of the SCJ - is it appropriate?

Within the framework of the conference held on 20 May 2015, the Centre for Reform made public a package of legislative amendments (only in Romanian). One of the proposals refers to the change of the SCJ's composition. It is proposed to appoint 16 out of 33 judges to the SCJ from among lawyers, academics and civil society. 19 non-governmental organisations presented their joint opinion on the launched initiatives. They do not support the proposal on the reorganization of the SCJ. Real intentions on changing the SCJ's composition are not clear and there are no preconditions that the best lawyers will be promoted to the SCJ. In 2014, the Parliament appointed at least four judges to the SCJ. They were promoted despite the fact that in the process of selection the majority of these candidates accumulated a lower score than the other candidates. On the other hand, if the initiative is accepted, it will take several years to fill 16 vacancies from among academia, civil society and lawyers, and no career judge will be promoted to the SCJ. This will reduce the motivation of the existing judges that seek promotion to SCJ. This proposal is partially contrary to the JSRS, which in p. 1.1.6. provides for carrying out a study on the criteria for selecting the judges to the SCJ and amending the legislation accordingly. Such a study has not been carried out and the draft law does not provide for criteria and procedure for selection.

Centre for Reform proposes changing the system of payment of court fees

Another initiative of the Center for Reform (only in Romanian) refers to the change in the system of court fees payment for examination of civil cases. Unlike the current situation, when the court fees are charged at the beginning of the proceedings, the initiative proposes paying it at the end of the examination procedure, by the party that lost the case. The initiative abolishes the right to the exemption from payment of the court fees. The difficulties faced by the judges while examining the cases and abusive requests for exemption from court fees payment are advanced as justification for this initiative.

Those 19 non-governmental organizations signed a joint opinion criticising this initiative. The purpose of the court fees payment consists in preventing the submission of abusive applications. Exclusion of the obligation to pay the court fees at the beginning of the proceedings will increase the number of civil cases filed, and consequently, the workload of judges, which, according to them, is very high. The adoption of this initiative will also affect

The initiative will reduce revenues of the state budget and increase the workload of judges

the state budget, because it involves collection of the court fees from the party that is often insolvent. In 2010 over MDL 56.800.000 were charged for examination of cases in the first instance courts. Besides this amount, the court fees for the examination of appeals and cassations were also charged. In addition, payment of the amounts after the completion of hearings will involve a complex procedure of enforcement. This mechanism does not solve the problem of court fees collected from foreign companies, especially from those residing in offshore territories. Additionally, according to the initiative, the court fees shall be paid after the judgement becomes final, that is several years after the filing of the claim. This means that during several years the state budget, in the times of austerity, will not receive considerable amounts of money.

In addition, this initiative can seriously affect socially vulnerable groups. The initiative proposes to exclude the exemption from payment of the court fees. In case they lost the case, the poor persons, who are currently exempted from paying court fees, will have to pay this amount anyway.

The current mechanism for charging court fees is much simpler and has more benefits than the proposed mechanism. If, however, the court fees set forth by current law is too high, the current legislation can be improved. Thus, the court fee in the first instance court could be smaller than the current one, and it can gradually increase in appeal and cassation. This will ensure an easier access to the first instance courts while discouraging abusive appeals and cassations. Such a system efficiently functions in many European countries.

Is it reasonable to introduce fixed terms for examination of cases?

The Centre for Reform proposes establishing of fixed time limits for examination of civil and criminal cases (only in Romanian) – 6 months for the first instance courts and three months for appeal and cassation instances. The authors justify this initiative by the uncertainties created for the litigants by the fact that the current law lacks clear deadlines for examination of cases.

The 19 non-governmental organizations signatory to the joint opinion do not support this initiative. It will diminish the quality of justice, which already represents one of the main problems of Moldovan judiciary. This issue was highlighted in over 40% of European Court of Human Rights (ECtHR) judgements concerning Moldova. At the same time, establishing fixed deadlines for examination of cases is not a common practice in democratic countries and is not imposed by the ECtHR.

Establishment of short terms for examination of cases will diminish the quality of justice, which already represents one of the main problems of Moldovan judiciary.

On the other hand, the length of proceedings has never been a systemic problem in the Republic of Moldova. According to official statistics (only in Romanian), in 2014, out of 81 796 civil cases pending in the first instance, only 1 827 (2.23%) were pending from 1 to 2 years, 578 (0.70%) were pending from 2 to 3 years and only 321 (0.39%) – for more than 3 years. Out of 18,683 criminal cases pending in 2014 in the first instance, only 694 (3.7%) were pending from 1 to 2 years, 207 (1.1%) – from 2 to 3 years, and 69 (0.36%) – for more than 3 years.

The Republic of Moldova was convicted by ECtHR in nine cases for excessive length of court proceedings, the last time date back in 2011. However, these delays were caused by repeated sending of cases back for re-examination. This problem was basically solved for civil cases through amendments introduced in 2012, which allowed the higher courts to examine the merits of cases without sending them back for re-examination. Another reason for the prolonged examination of cases is frequent postponing of court meetings. The issue of postponing of court hearings can be solved by optimizing the current system of administration of cases, including the summoning the parties and preparation of the case for examination in written proceedings, without a hearing.

The Centre for Reform proposes to introduce mandatory mediation in civil cases

The initiatives of the Centre for Reform refer to mandatory mediation in civil cases (only in Romanian). The mediation shall be carried out within 30 days by the judge to whom the case was assigned randomly. If the parties reach an agreement, the judge will discontinue the case. Otherwise, the judge shall return the case to the chancellery to be randomly assigned to another judge.

The 19 non-governmental organizations signatory to the joint opinion support the reduction of the judges workload by means of mediation, but through another mechanism than that proposed by the Centre for Reform. The mechanism proposed by the Centre for Reform is likely to have effects opposite to those expected from the mediation. In cases where the parties do not reach an agreement, the case will be assigned to another judge, which will increase the workload of judges. The proposed term for mediation is 30 days. Given the heavy workload of the courts, there is a risk that judges will be faced with a difficult choice either to comply with this term to the detriment of their adjudication function, or to breach the established 30 days mediation deadline. Both situations will lead to the increase of the period of examination of cases.

There are several methods of encouraging alternative settlement of disputes (only in Romanian). For a successful mediation it is necessary to provide conditions (space, mediator, costs, deadlines, etc.) that will allow the parties to negotiate. Mandatory mediation can take place in the presence of an authorized mediator before submitting a court action or shortly afterwards. This mechanism is much faster and more efficient than the mediation proposed by the Centre for Reform. The Republic of Moldova had similar experience until 2003, when the pre-trial dispute resolution of commercial disputes was obligatory. It proved to be inefficient in practice. Moreover, the mechanism proposed by the Centre for Reform is contrary to the Law no. 137 on mediation, approved by the Parliament in July 2015.

Judges suggest reducing the number of appeals for certain categories of cases

The Centre for Reform proposes to exclude the possibility of challenging certain categories of cases before the SCJ (only in Romanian) and examination thereof by appeal courts as last instance. Among these are civil disputes with a value of less than MDL 50 000 and criminal cases in which the sanction is up to 5 years of imprisonment. The only argument provided for this initiative is the reduction of the workload of the SCJ judges.

The 19 non-governmental organizations signatory to the joint opinion do not support this initiative, as it reintroduces the system excluded in 2012. It is unacceptable to change a system that did not encounter major problems just in a few years after its introduction. Moreover, this initiative is still illogical given that it proposes to introduce an additional filter on the way of appeals to the ECtHR at the SCJ or at the Constitutional Court. On the other hand, since 2012 the workload of the SCJ judges declined due to the triple increase of the number of judicial assistants, exclusion of public hearings and more frequent declaration of appeals as inadmissible.

Reducing the number of levels of appeal is contrary to the 2012 reforms and is illogical, given the proposal to introduce an additional filter on the way of appeal to the ECtHR

The lack of an uniform judicial practice is a particularly acute problem in Moldova. The proposed amendment will severely limit the possibilities of the SCJ to harmonize practice in the cases that will not reach the SCJ. At the same time, the value of a dispute or the reduced severity of the charge is not an indicator for the importance of the case. Many cases of small monetary value or of less serious charges present serious legal issues that deserve attention of the SCJ. At the same time, it is proposed that the final decision in these cases shall be taken by the courts of appeal, although the quality of their work is alarming and this fact is confirmed by official statistics. Within the period of 2013 and 2014 the SCJ sent for re-examination 35% of civil cases and 70% of criminal cases in which the cassation was accepted. The main reason for sending to retrial is the insufficient quality of work of the courts of appeal.

Does the new package of laws in fact limits the immunity of judges?

The Centre for Reform proposes changing the procedure of examining misdemeanour cases against judges (only in Romanian). On 11 September 2011 the Government approved the draft law proposed by the Centre for Reform (only in Romanian) and submitted it to the Parliament for consideration. It has not yet been examined.

The informative note to the draft law states that it is intended to reduce the immunity of judges in misdemeanour cases. The draft law envisages changing the way of examining misdemeanour cases against judges. At the moment misdemeanour sanctions can be applied to a judge by an administrative body, or, in case of objection of the judge, by the court. The draft law provides for exclusive examination of misdemeanor cases against a judge by the court, even for minor offence. De facto, the draft law broadens the immunity of judges.

De facto, the proposed draft law broadens the immunity of judges

The 19 non-governmental organizations signatory to the joint opinion do not support this initiative. Typically, the majority of administrative sanctions are applied by administrative bodies and not by judges. It is unreasonable to provide that every misdemeanour procedure against a judge, for example, such as traffic offences, is not examined by police, but by the court. This approach unnecessarily complicates the procedure and creates facilities that are hard to explain by logical arguments. At the same time, current legislation provides sufficient guarantees to protect judges against abuse, such as the release after identification, impossibility to arrest or prosecute in criminal cases unless authorized by the General Prosecutor's Office and following a complicated procedure, etc. Moreover, if the judge disagrees with the misdemeanour sanction imposed by the administrative body, s/he can always challenge it before the court. On the other hand, the Misdemeanours Code does not provide for a specific procedure for examining cases against judges, when the sanction in these cases is usually applied by administrative bodies. This can cause a procedural blockage and a virtual impunity. The LRCM has already established in a comparative research (only in Romanian) that immunity of judges for minor offences is extremely difficult to justify.

ACTIVITY OF THE SUPERIOR COUNCIL OF MAGISTRACY

How does the SCM allocate funds for courts infrastructure?

This summer the Ministry of Finance called the public authorities to freeze capital investment expenditures. Nevertheless, on 2 September 2015, the SCM examined the request submitted by the President of Chisinau Court of Appeal on the allocation of additional funds amounting to MDL 17,884,300 for the completion of works on the expansion of the building of this court. The expenditure involved, among other things, the purchase of an additional lift and replacement of finishing materials. At the SCM meeting, the President of Chisinau Court of Appeal said that he had discussed this issue with the President of the country and political leaders and asked for assistance in this regard. The SCM approved the request and proposed to the Parliament and the Ministry of Finance (only in Romanian) to identify possibilities for allocation of additional financial resources to Chisinau Court of Appeal. It seems that the decision was adopted by the SCM without any debates regarding findings of the Court of Accounts on auditing of Chisinau Court of Appeal in 2014 (only in Romanian). The Court of Accounts found deficient the organization of the public procurement process and low quality design of construction works, which generated unforeseen expenditure. Within the period 2012 – 2015 the Court of Appeal received financial allocations of MDL 68,854,900 for reconstruction and extension of the office. Despite the decision given by the Court of Accounts, the President of Chisinau Court of Appeal was evaluated by the Board for Selection and Career of Judges and received 120 points (only in Romanian), which is the maximum score possible.

Who decides on allocation of financial means for courts: SCM or political leaders?

At the same meeting of the SCM, the President of Ungheni District Court informed the SCM that the resources allocated in 2015 for the construction of a new office for Ungheni District Court were blocked by the Government and requested the SCM assistance in releasing the amounts necessary for the construction of the roof, which would allow better preservation of the building. This request was rejected. However, on 6 October 2015 the SCM accepted the request of the President of Riscani District Court, Chisinau municipality (only in Romanian), to allocate MDL 1,000,000 for the design of an extension to the existing premises of the court.

The position of the SCM in the above cases confirms the absence of a consolidated position of the SCM regarding capital investments funding in the judicial system. This determines some presidents of the courts to negotiate allocation of funds with politicians, avoiding SCM and endangering the independence of judges.

The contest for filling the position of the Vice-president of the SCJ has been announced for the third time

On 9 April 2015 the Parliament accepted the proposal by the SCM (only in Romanian) on dismissal of the Vice-president of the SCJ Ms. Svetlana FILINCOVA. The SCJ accepted the resignation request made by Ms. Filincova, who cited personal reasons. The resignation request came after she was accused by the President of the SCM in manipulations of the system of random distribution of cases.

On 28 April 2015, the SCM announced the competition for filling the vacant position. On 23 June 2015 (only in Romanian), the SCM announced a new competition on the grounds that no candidate applied. On 11 August 2015 (only in Romanian), for the same reason, the SCM announced the competition for filling the vacant position of the Vice-president of the SCJ for the third time. This time a single candidate, Ms. Tatiana RĂDUCANU, currently a detached judge of the SCM, applied for this position. It is for the first time in the recent history of Moldovan justice that the SCJ judges are not running for the position of the Vice-president of the SCJ.

HUMAN RIGHTS

Dangerous Precedent: The SCJ Tolerates Discrimination

On 16 September 2015, the SCJ passed the final judgement on the dispute between the Information Centre Genderdoc-M (Genderdoc-M) and Marchel, the Bishop of Balti and Falesti (only in Romanian). Genderdoc-M alleged that the following statement delivered in a TV broadcast is discriminatory and amounts to hate speech: „to stop them [homosexuals] a bit, do not allow them to be employed straightforward in educational institutions, institutions of health care and public catering institutions, imagine

that a homosexual, 92 percent of whom are HIV/AIDS carriers, who are patients with AIDS, is employed at a blood transfusion unit, this is a catastrophe."

The SCJ criticizes the efforts of civil society in protecting the rights of LGBT

Balti District Court and Balti Court of Appeal have recognized the statements by the Bishop as false and obliged him to apologize in public, to refute the information about the percentage of people suffering from AIDS and to pay damages of about MDL 30,000. The SCJ quashed the judgements of the lower courts and dismissed the lawsuit. The SCJ mentioned, inter alia, that the Bishop was guided by his religious beliefs, that according to the Bible, „homosexuality is a sin", that the speech did not contain any signs of incitement to violence and it was not categorically stated that there should be no homosexuality in the Republic of Moldova. Moreover, the SCJ qualified the statements by the Bishop Marchel as value judgements and criticized the „attempt" of lower courts to discourage people who, for religious reasons or by their civic attitude, disagree with the position of Genderdoc-M.

The SCJ avoided to consider the effect of the Bishop declaration upon the LGBT community. Although the SCJ found that the speech by the Bishop Marchel is a value judgment, the SCJ did not examine, if it has a sufficient factual basis. The SCJ also did not explain why the statement on the percentage of homosexual persons suffering from AIDS is an opinion. Obviously, this declaration is a statement of facts and is to be proven. The SCJ not only diminished the importance of combating discrimination in the Republic of Moldova and discouraged courts to combat it, but also criticized the efforts of Genderdoc-M to fulfil its statutory goals. Although the SCJ judgement seems to protect human rights, its essence and reasoning leads to an opposite conclusion.

The Parliament put the foundations for a better mechanism of enforcement of the ECtHR judgements

Law no. 151 on the Governmental Agent was adopted on 30 July 2015 and entered into force on 21 August 2015. The law strengthens the status of the Governmental Agent (GA) and its competences in the field of execution of judgements of the ECtHR. According to the Law, the GA is appointed for a term of 7 years. The law provides for the possibility to detach prosecutors and other public officials within the subdivision of the GA and involve experts if necessary. Under the new law, the Government had to appoint a GA until 21 November 2015. This did not happen so far.

The responsibility for the execution of the ECtHR judgement lies with all the authorities responsible for human rights violations in question and the GA has the power to propose general measures to the authorities and monitor their implementation. The execution of the ECtHR judgements at the national level is supervised by the Government and the Parliament. The authorities are obliged to submit a report on the execution of general and individual measures undertaken for the execution of the ECtHR judgements to the GA until 31 January. Based on the information collected, the GA shall draw up a report on the execution of the ECtHR judgements and submit it to the Government. Subsequently, the report approved by the Government shall be submitted to the Parliament for information.

The law stipulates that the Parliament shall be informed, periodically or upon request, by the GA on the ECtHR judgements and decisions and undertaken or planned measures for their execution. The procedure for parliamentary control shall be provided in detail by the Parliament Regulations. Currently, a draft regulation (only in Romanian) on the parliamentary control for the supervision of the execution is in the Parliament. It regulates the procedure of parliamentary control of the execution of the ECtHR judgements and decisions.

ECtHR deals with the efficiency of the remedy introduced by Law no. 87/2011

On 1 September 2015, the ECtHR informed the Government of the Republic of Moldova of 61 applications (in *IALTEXGAL Aurica SA and others v. the Republic of Moldova case*), where the efficiency of the mechanism established by Law no. 87/2011 is questioned. This law gives the right to compensation for the breach of the reasonable time requirement for adjudicating the cases or enforcement of court judgements. The claimants allege that the examination of actions filed under Law 87/2011 lasted too long, that compensations offered were insufficient and that the judgements of national courts were not executed.

More than 60 cases on inadequate enforcement of the Law 87/2011 were communicated to the Government

The mechanism introduced by Law no. 87/2011 was established following the pilot judgement *Olaru and others v. Moldova*, of 28 July 2009. Subsequently, in *Balan v. Moldova* decision of 24 January 2012, the ECtHR called claimants to exhaust the remedy established by Law no. 87/2011 before claiming at the ECtHR the breach of the reasonable time requirement. The ECtHR has reserved the right to review its position depending on the ability of the courts to establish a practice that is consistent with the ECHR standards. In a study published in September 2014, the LRCM found several shortcomings in the practice of implementation of the mechanism established by Law no. 87/2011. Applications submitted under Law no. 87/2011 are examined longer than usual application, the judgements are poorly motivated and the amounts of compensation awarded by the courts are well below those granted by the ECtHR in similar cases. If this mechanism is declared ineffective by the ECtHR, the necessity to exhaust this remedy may fall away.

HIGH PROFILE CASES

Impunity of decision-makers in the „April 7" Case

On 30 June 2015, the SCJ passed the final judgement (only in Romanian) in the case of former Minister of Internal Affairs and former Commissar of Chisinau municipality (Gheorghe Papuc and Vladimir BOTNARI). They were accused of professional negligence (art. 329 par. 2 of the Criminal Code) by failing to prevent violence on 7 April 2009 and subsequent police abuses. The former Minister of Internal Affairs has also been accused of abuse of power (art. 327 par. 2 of the Criminal Code), through payment by the Ministry of Internal Affairs (MIA) for four years of the rent of an office used by the Party of Communists of the Republic of Moldova and of expenditures related to the use of a MIA car by this party.

On 29 December 2011 Centru District Court, Chisinau municipality, acquitted the both accused persons. On 19 January 2015 Chisinau Court of Appeal convicted Gheorghe Papuc of both charges and sentenced him to four years of real imprisonment and interdiction to work in the MIA for 5 years. Mr. Botnari was convicted of negligence and sentenced to two years of suspended imprisonment. Both were deprived of special military grades. Immediately after the court of appeal judgement was passed, Vladimir PAPUC disappeared. He reappeared after the SCJ judgment was pronounced.

The SCJ motivation on acquittal of Papuc and Botnari for negligence is illogical, and the sanction imposed for abuse of power to Mr. Papuc is very lenient

The SCJ quashed the judgement of the Chisinau Court of Appeal and acquitted the both accused persons of negligent performance of professional duties. The SCJ found that the accused had not infringed the law during the events of April 2009, had acted properly and had not intervene to stop the devastation of the Parliament and the Presidency in order to save the lives of many children participating in the protests. As for abuses in police stations, the judges concluded that the responsibility lies with each policeman apart and cannot be attributed to the accused, who at that time held key positions in the MIA. However, the SCJ convicted Mr. Papuc of abuse of power and sanctioned him to a fine of MDL 20,000 and interdiction to work in the MIA for 5 years, maintaining his military rank. The SCJ reasoning regarding negligence is strange, given that in police premises nothing happens without consent of superiors. Moreover, the SCJ fined Mr. Papuc although it could apply imprisonment for up to 5 years. In this case, the abuse lasted for 4 years, it was committed by the Minister of Internal Affairs and the damage caused to the state was of about MDL 800,000.

IN BRIEF

On **23 June 2015** (only in Romanian), Mr. Nicolae CLIMA was appointed as an inspector-judge within the Judicial Inspection of the SCM. On **11 August 2015** (only in Romanian) he was appointed as a chief inspector-judge. Earlier this position was held by Ms. Elena GLIGOR.

On **14 July 2015** Natalia BERBEC took an oath of the judge, being appointed as a judge to Hincesti District Court. Earlier, the President has rejected twice the proposal of the SCM on her appointment as a judge (to other courts) because „such appointments may jeopardize the efficiency and image of the justice sector."

On **11 September 2015** the General Assembly of Judges adopted a new Code of Ethics for Judges (only in Romanian). The document was drafted in order to adjust the Code of Ethics to amendments in the legislation passed in 2013 – 2015.

On **11 September 2015**, Mr Stelian TELEUCA, Judge at Chisinau Court of Appeal, was elected a member of the Disciplinary Board of Judges. Mr. Teleuca replaced Ms. Eugenia CONOVAL, who resigned from this position.

On **15 September 2015**, the SCM approved its Activity Rules (only in Romanian). The Rules were drafted by a working group created in 2014 (only in Romanian). Although the LRCM did not officially take part in this working group, it representatives attended more than 10 meetings of the working group. The final version of the Draft Regulations (only in Romanian) sent to LRCM did not include several issues that were discussed and approved by the working group. The main issues refer to the validity of competitions with participation of a single judge, invitation of judges to the SCM meetings and noting the number of votes (for or against) in the text of the SCM judgement. By the end of November 2015, the text of the Regulations has not yet been published on the SCM website and in the Official Gazette.

In **September 2015**, several media outlets have published an investigation on refusals by the President of the Republic of Moldova (only in Romanian) regarding the appointment and promotion of judges. The SCM repeatedly proposed to the President of the Republic of Moldova to appoint or promote several judges, even if previously the President refused their appointment or promotion for the reason that it would seriously affect the image of justice sector and quality of justice.

In **July - November 2015** the LRCM organized a series of cascade trainings for 188 lyceum and gymnasium teachers and 118 social workers from the regions of the republic. Teachers and social workers were familiarized with the basic notions in the field of non-discrimination, normative acts and institutions working in this field, discussing situations existing in Moldovan society, and also analysing decisions by the Council for Prevention and Elimination of Discrimination and Assurance of Equality.

On **15 November 2015**, the LRCM celebrated its 5th anniversary!

FOLLOW-UP

In December 2015:

- The LRCM will release the results of a survey carried out among judges, prosecutors and lawyers regarding justice sector reform.
- There will be presented the analysis of the uniformity of judicial practice in examining cases of corruption drafted by the LRCM.
- The LRCM will publish the policy document „Minutes and audio recording of the court hearings - accuracy or overlapping of tasks?".
- The candidate for the position of judge of the Constitutional Court will be proposed to the Government for approval. Sorina MARINICI, Legal Adviser of the LRCM, was a part of the committee for selecting the candidates.

USAID FROM THE AMERICAN PEOPLE Rule of Law Institutional Strengthening Program (ROLISP)

This publication was made possible by the generous support of the American people through the United States Agency for International Development (USAID) within the Rule of Law Institutional Strengthening Program (ROLISP). The publication is the work of the author and does not necessarily reflect the views of ROLISP, USAID or the United States Government.

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.

LRCM TEAM

Vladislav GRIBINCEA
Nadejda HRIPTIEVSCHI
Ion GUZUN
Sorina MACRINICI
Pavel GRECU
Ilie CHIRTOACĂ
Olga BURUCENCO
Doina DUMBRĂVEANU-MUNTEANU
Aurelia CELAC
Mihaela CIBOTARU

CONTACTS

Legal Resources Centre from Moldova
A. Șciusev street, 33, MD-2001
Chișinău, Republic of Moldova
Tel: +373 22 843601
Fax: +373 22 843602
Email: contact@crjm.org
www.crjm.org