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Newsletter

LRCM | LEGAL RESOURCES CENTRE FROM MOLDOVA

DEMOCRACY AND GOOD GOVERNANCE

FILIP Government secretly voted and vested

On 20 January 2016, a parliamentary majority made up of the Democratic Party, Liberal Party and some MPs who left the Liberal Democratic Party and the Party of Communists voted for a new Government led by the candidate of the Democratic Party, Mr. Pavel FILIP. This took place after several failed attempts to vest a new government, including a lack of quorum at the Plenum session of the Parliament where Mr. Ion STURZA, proposed by the President of the Republic of Moldova, was to be voted and two refusals of the President to propose the Democratic Party candidate, Mr. Vladimir PLAHOTNIUC on the ground of lack of integrity.

The voting and vesting of Filip government raised several question marks, addressed in a public appeal signed by 25 NGOs on 22 January 2016. Representatives of the civil society have condemned the insistence of MPs on a candidate who does not enjoy trust from the society (Vladimir PLAHOTNIUC); mimicking the process of signing the declaration of integrity by the members of the Filip Government; voting for the Government suspiciously quickly, in 30 minutes, without debating the program and the list of Government, contrary to art. 98 para. (3) of the Constitution of the Republic of Moldova; vesting the new Government on the same day it was voted, in secret at midnight, although it was initially declared that the oath will take place another day. In conclusion, the civil society organizations have concluded that Filip government was voted in an undemocratic manner and expressed their distrust towards it.

What progress does the Government promise in exchange for re-launching cooperation with development partners?

On 11 March 2016, the Government made public a list of commitments that it has proposed for implementation by 31 July 2016. The document called "Roadmap for the priority reforms agenda" includes 82 actions aimed to strengthen the independence of law institutions, ensuring sustainable economic development and investigation of 2014 fraud in the banking system. Most of the measures in the list are both pending actions in the process of implementing the Moldova-EU Association Agreement.

Roadmap of the Government:
- **82 actions**
- **13 fields**
- **4 months for implementation**

The 82 actions are part of the 13 areas of intervention; combating corruption is the first on the list of priorities. The document provides, inter alia, the adoption of the set of laws on integrity: the Law on the National Integrity Centre, the Law on declaration of assets and interests, the Law on evaluation of institutional integrity. Additionally, the powers of the institutions responsible for fighting corruption are to be delimitated: the mandate of the National Anti-Corruption Centre (NAC), Ministry of Internal Affairs (MIA), Anti-corruption prosecutor's office, but also extending the deadline for implementation of the National Anticorruption Strategy 2016.

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Regarding the justice sector reform, the document especially provides for the adoption in first reading of the Law on the reorganization of the judicial map; amendments to the Law on the status of judges and the Constitution in respect of the initial term of appointment of judges. At the same time, the provisions of the Constitution regulating the role and powers of the Superior Council of Magistracy (SCM) in the process of self-administration of the judiciary are to be revised.

In terms of economic development and ensuring a functioning market economy, the Government promised to resume negotiations and sign the cooperation agreement with the IMF, strengthening the supervisory powers of the National Bank and the National Commission of Financial Market, as well as thorough investigate the cases of fraud detected in the banking system to recover the embezzled funds. Cooperation with the civil society is to be strengthened particularly by re-launching the new mechanism of cooperation with the civil society on a permanent basis, creating a new working platform for the civil society and the permanent committees of the Parliament at the stage of drafting laws, as well as adoption of the 2% Law.

According to the Government, by 17 June 2016, 68% of the actions included in the roadmap have been achieved.

After 16 years, the Constitutional Court decided that the President will be elected by the people again

On 4 March 2016, the Court admitted the complaint of a group of MPs related to the adoption by Parliament in 2000 of amendments to the Constitution that changed, *inter alia*, the procedure for electing the President of the Republic of Moldova. Direct election by the people has been replaced by parliamentary vote.

The Constitutional Court noted that the Parliament essentially amended the draft no. 1115 of 5 July 2000 for revising the Constitution, after the Opinion of the Constitutional Court, without sending the new amendments to repeated endorsement. Therefore, the procedure of issuing Opinions by the Constitutional Court regarding the initiative to revise the Constitution, as provided for by Articles 135 paragraph. (1) c) and 141 para. (2) of the Constitution was violated. The amendments introduced by Members of the Parliament after the Opinion of the Constitutional Court included the following issues: increasing the age of the candidate for president from 35 to 40 years; increasing the number of votes of MPs needed to elect the President from 51 to 61; adding three new paragraphs on repeated elections and the dissolution of Parliament and the possibility of dissolution of the Parliament in the last 6 months in office in case it fails to elect the President in repeated elections organized by the Parliament.

The Constitutional Court noted that the constitutional reform in 2000 established an imperfect mechanism for presidential election, with the possibility of dissolving the Parliament for an infinite number of times, when political forces lack consensus. This led to several political and constitutional crises in the country and to cumulating the functions of President of the country by the Speaker of the Parliament for a prolonged period of time, which led to the infringement of the principle of separation of powers. Noting that "one of the fundamental tasks of a constitutional court consists in securing the normative order confined in the Constitution" and that "it is put in a position to eliminate the mechanisms that generate unbalancing the constitutional institutions", the Court decided on the unconstitutionality of some challenged norms. These norms refer to the election of the president by the Parliament with the vote of 61 MPs; repeated elections in the Parliament; dissolution of the Parliament in case of failure to elect the President during repeated elections, including in the last 6 months of the Parliament's mandate. The Court considered that the amendments regarding increasing the candidate's age from 35 to 40 years, provided that he/she has lived or lives on the territory of the country for 10 years, introduced by MPs after the Court's Opinion, are not essential and has maintained them. The new direct presidential elections will take place on 30 October 2016.

JUSTICE REFORM

What do judges, prosecutors and lawyers think about judicial reform and fighting corruption?

In a survey conducted at the request of the Legal Resources Centre from Moldova (LRCM) between October and December 2015, 273 judges, 509 prosecutors and 163 lawyers were questioned on justice reform and fighting corruption[1].

When asked about the quality of justice in 2015 compared to 2011, 82% of judges, 46% of prosecutors and 37% of lawyers believe that it has improved. 62% of the questioned judges believe that

[1] 273 judges represent 58% of the total number of judges in the country, 509 prosecutors represent 72.7% of the total number of prosecutors in the country and 163 lawyers represent 9% of the total number of lawyers. The figures are valid for August 1, 2015.

the SCJ's practice is uniform, compared to 47% of prosecutors and 35% of lawyers. These figures confirm that the expectation of the legal professions regarding the quality of justice and the uniformity of judicial practice is different, the most demanding in this respect being lawyers.

62% of the respondent judges considered that the mechanism for initial appointment of judges is fair and merit-based, and 34% did not agree with this statement. 54% of the questioned judges agreed that the manner of promotion is correct and merit-based, while 43% think the opposite. Regarding the mechanism for initial appointment of prosecutors, 59% of the respondent prosecutors considered that it is fair and merit-based, and 39% did not agree with this statement. 44% of the respondent prosecutors considered that the promotion of prosecutors is fair and merit-based, while 54% did not agree with this statement. Such a high percentage of both judges and prosecutors who do not consider that the appointment and promotion is merit-based reflects the weaknesses in the process of appointment and promotion.

72% of judges and 20% of lawyers thought that the SCM's activity is transparent. Meanwhile, 68% of judges and 25% of lawyers thought that the SCM's decisions are clear and well-reasoned. 30% of judges and 73% of lawyers disagree with this statement. The high number of judges and lawyers who are not satisfied with the work of the SCM may suggest the need to intensify SCM's efforts to enhance the quality and transparency of its activity.

As to the evolution of the phenomenon of corruption in the justice sector from 2011 to the present, the perception among lawyers, prosecutors and judges is very different. While most judges think that corruption in the justice sector has declined compared to 2011 or is inexistent, 68% of prosecutors and 81% of lawyers believe that corruption has remained the same or has increased. The survey results show that prosecutors and lawyers perceive that there is a higher level of corruption in the judiciary than the judges admit.

The Law on Prosecution was adopted. What is next?

After nearly three years from the initiation of the drafting process, on 25 February 2016, the Parliament adopted in final reading the new Law on Prosecution. It narrows the powers of prosecution and of the Prosecutor General, increases the powers of the Superior Council of Prosecutors, reduces political involvement in the appointment of the Prosecutor General, strengthens the specialized prosecution offices, reduces hierarchical subordination of prosecutors, etc. The law was promulgated by the President and will come into force on 1 August 2016.

Although the new law has not been substantially amended in the Parliament, and was positively appreciated by the international experts, its effective implementation requires the adoption of three draft laws that will amend the Constitution and the related legislation (procedural codes, regulations on the status of criminal investigators, etc.), as well as the adoption of the Law on specialized prosecution offices. The draft amendment of the Constitution, which provides for a new procedure for the appointment of the Prosecutor General, was positively endorsed by the Constitutional Court on 19 April 2016. According to art. 143 of the Constitution, it will be submitted to be voted in the Parliament only after 6 months from the registration of the draft, which took place on 3 May 2016. The Government approved the draft amendment to the related legislation on 20 April 2016 and the draft Law on specialized prosecution offices – on 15 June 2016. They are to be examined by the Parliament. The last two drafts must be voted by the end of this parliamentary session, to enter into force on 1 August 2016, at the same time with the Law on Prosecution.

The new Law on Prosecution requires amending the internal regulations on the selection, evaluation and promotion of prosecutors, as well as amending the disciplinary investigation of prosecutors. Also, the General Prosecutor's Office and the Anticorruption Prosecutor's Office are to be reorganized and a new prosecutor's office is to be created to fight organized crime.

The mechanism of disciplinary responsibility of judges has many flaws

The LRCM analyzed the Law no. 178 on the disciplinary liability of judges and its application throughout the first year of implementation and drafted the public policy document entitled "Assessment of Needs to Improve the Legal Framework on the Disciplinary Liability of Judges". Law no. 178 created a quite complicated judges' disciplinary liability mechanism. Thus, a complaint related to the judges' disciplinary offences can be examined by five bodies – the Judicial Inspection, the Admissibility Panel of the Disciplinary Board, the Plenary of the Disciplinary Board, the Superior Council of Magistracy and the Supreme Court of Justice – each, at one stage or another, having the power to annul the decision of the body which has previously examined the disciplinary case.

According to official data, **72% of all complaints filed in 2014 were dismissed by the Judicial Inspection as manifestly unfounded**. Out of these, only 28% were appealed before the Admissibility Panels of the Disciplinary Board. The rejection decisions, issued by the Judicial Inspection, are not published and the appeals against them are rejected in proportion of 97%. A closer examination of the complaints dismissed as manifestly unfounded, reveals that the Judicial Inspection, although

does not comply with the time limitation for rejecting the complaints as manifestly unfounded, seems to reject a large number of them with the purpose to reduce the workload of the Admissibility Panels and the Plenary of the Disciplinary Board. At the same time, the Judicial Inspection has no powers provided by law to frame into legal norms the actions indicated in the complaint and to present the disciplinary charges. As a result, the member rapporteur of the Disciplinary Board often has to act as an accuser against a judge, although he/she should be neutral, and the Judicial Inspection's representative has a formal presence at the meeting.

The rate of instituting disciplinary procedures in 2015 decreased by almost 27% and the rate of the judges' sanctioning decreased by four times

During the first year of Law no. 178 implementation, statistics showed that the rate of instituting disciplinary procedures in 2015 decreased by almost 27% compared to 2014, although the circle of subjects who currently can file complaints has been extended. Thus, if in 2014 an action was brought for every 48 disciplinary complaints, then in 2015, an action was brought for every 61 complaint. Additionally, **the rate of the judges' sanctioning decreased by four times**. Given that according to recent polls, about 75% of the population do not have trust in the justice system, such a significant decrease of the sanctioning rate is hard to explain, but with a complicated and formalistic mechanism of judges' disciplinary sanctioning.

LRCM calls the decision-makers to amend the legislation on the disciplinary liability of judges by strengthening the status and by placing greater responsibility on the Judicial Inspection, as well as by reducing the number of stages and bodies involved in examining complaints related to judges' disciplinary offences.

Novation - judges can directly address the Constitutional Court to invalidate acts contrary to the Constitution

According to well-established judicial practice, when a judge had doubts regarding the constitutionality of a law, government decision or decree of the President, he/she could have asked the Supreme Court of Justice (SCJ) to notify the Constitutional Court. The SCJ had the total discretion to submit or not the request to the Constitutional Court (exception of unconstitutionality).

On 9 February 2016, the Constitutional Court explained the constitutional provisions regarding the exception of unconstitutionality (art. 135 para. (1) g) of the Constitution). According to the Constitutional Court, the exception of unconstitutionality is to be directly sent to the Constitutional Court, avoiding the SCJ. The exception may be claimed in legal proceedings by any party to the proceedings and may be waived by the court *ex-officio*. According to the Constitutional Court, raising the objection is an obligation, not a right of the judge, who is obliged to notify the Constitutional Court if there is uncertainty about the constitutionality of the norm to be applied to the case that he/she examines. The Court also noted that the judge cannot refuse to refer to the Constitutional Court on the grounds that this uncertainty will be resolved by him/herself.

The judge is obliged to notify the Constitutional Court if unsure about the constitutionality of the norm to be applied

The Constitutional Court said that the exception of unconstitutionality may be brought only on normative acts that can be subject to constitutional control, i.e. laws, decrees of the President and decisions and orders of the Government. In other cases, the court itself may declare them unconstitutional. The Constitutional Court asked the Parliament to amend the legislation accordingly, because, currently, it does not expressly provide, the direct notification of the Constitutional Court. It seems that by this decision the Constitutional Court answered the discussions taking place for some time in the legal environment, about the appropriateness of giving the right to individuals to notify the Constitutional Court.

The minister of Justice intervened to release a person from custody

On 21 January 2016, Straseni district Court sentenced a person who stabbed and killed her husband in an attempt to defend herself from his abuses. Previously in this case, in August 2014, the court issued a protection order against the abusive spouse, which has been violated several times, and the authorities failed to give her a real protection. At the same time, the Association Promo-LEX, which provided legal assistance to the convicted person, issued a press release on this subject. On 22 January 2016, Straseni district Court issued a ruling to replace the preventive measure of pre-trial detention to house arrest. The person under house arrest has to take care of five minor children, 2 of whom are her own, and very small, while 3 are taken under tutelage.

Apparently, Straseni district Court changed its decision following the intervention of the minister of Justice, given that the later is not party to the proceedings. At the time, the minister of Justice has publicly stated that he worked hard to help the family, but he cannot expose himself on the manner the decision was issued.

THE ACTIVITY OF THE SUPERIOR COUNCIL OF MAGISTRACY

The SCM reports about the achievements in the judiciary in 2015

On 11 March 2016, the General Assembly of Judges took place. During the event, the Activity report of the SCM and the judiciary for 2015 and the SCJ report on the unification of jurisprudence for 2015 were presented. Moreover, amendments and completions to the Regulation on the functioning of the General Assembly of Judges and the Code of ethics and professional conduct of the judge were approved.

In the Activity report for 2015, the SCM noted that it met in 40 sessions, examined more than 1,100 issues and adopted 994 decisions. The most relevant documents adopted by the SCM in 2015 were the Communication and service standards of the litigants in courts, Regulation on the organization and conduct of the contest for the position of judge of the court president and vice president, Regulation on the activity of the Disciplinary board, Regulation on organization and functioning of the Superior Council of Magistracy. The 2015 budget of the courts constituted MDL 399,435,700.

During 2015, the SCM initiated the verification of 123 judges and 59 candidates for the position of judge, under the provisions of the Law on the verification of the tenured and candidates for public office. As a result, 109 judges and 51 candidates for the position of judge have been declared compatible with the judicial position. Based on verifications, 3 candidates to the position of judge and a judge in office were declared incompatible.

On 31 December 2015, of the total number of 33 judges at the Supreme Court, 30 positions were filled, while other three positions were vacant; in the courts of appeal of the total required number of 94 judges, 90 judges were in office and four positions were vacant. In district courts, of the total number of 346 judges, 312 judges were in office and 34 positions of judges were vacant. In 2015, 25 judges have resigned and five were dismissed from the judiciary.

The 44 district courts, courts of appeal and the Supreme Court registered during 2015 a total workload of 295,714 cases (5.6% more than in 2014). Of the total number of cases in all courts were solved 247,069 cases, i.e. 6.8% more than in 2014.

The SCM admitted shortcomings in the appointment and promotion of judges

At the sitting of 26 January 2016, the SCM examined several issues, including the appointment and promotion of judges. Several civil society organizations have argued that the principles of meritocracy and integrity were not complied with in the adoption of the SCM's decisions at that time.

The first competition was meant to fill the vacant position of vice-president and president of the Civil, commercial and administrative board of the SCJ. The only candidate in the contest was Mrs. Tatiana RĂDUCANU. The SCM rejected the sole candidate stating that the necessary number of votes to reach a decision (seven votes) was not met. This contest was held for the third time.

The second competition was aimed at filling the vacant position of judge at the SCJ. Six candidates participated in the competition. The SCM has decided to propose to the Parliament of the Republic of Moldova the appointment of Mrs. Mariana PITIC (judge at Centru district Court of mun. Chisinau) as judge to the SCJ. Mrs. Mariana PITIC did not receive the highest score in the Selection and career of judges board and had the slightest experience as judge of all candidates. A member of the SCM had a dissenting opinion. On 1 April 2016, the Parliamentary Legal commission for appointments and immunities discussed the draft decision for appointing Mrs. Pitic to the position of judge at the SCJ. This issue was not included in the agenda of the Commission's sitting and was not publicly announced in advance.

The third competition was referring to the appointment to the position of judge at Centru district Court of mun. Chișinău of Mrs. Lucia BAGRIN, and in *another competition* – the appointment of the President of the Comrat Court of Appeal, for a period of four years, of Mr. Serghei GUBENCO. Earlier, the President of the Republic of Moldova refused to appoint to the position of judge Mrs. Bagrin and to promote Mr. Gubenco to the position of judge at the Comrat Court of Appeal, invoking the existence of elements of risk factors and failure to comply with the compulsory criteria for the accession to the position of judge. It follows from SCM Decision no. 14/2 of 26 January 2016 that Mrs. Bagrin was proposed with a majority vote, although the law expressly requires that repeated proposal is to be made with a vote of 2/3 of members of the SCM. Later, in Mrs. Bagrin's case, the LRCM requested the president to check the information about the number of votes given for repeated proposal for appointment.

Does the SCJ consider that the SCM should not give reasons for the adopted decisions?

On 27 February 2016, the SCJ rejected as ungrounded the request of a candidate to the position of judge to the SCJ. Judge Domnica MANOLE, from the Chișinău Court of Appeal, requested the annulment of the SCM decision no. 7/2 of 26 January 2016 on carrying out the contest for filling the vacant position of judge at the SCJ. Mrs. Manole raised several procedural violations in the adoption of the decision, including that the SCM's decision was not substantiated and that the mere indication in the text of the judgment of the number of votes does not represent in itself the reasoning. On the SCJ website it is only published the decision, but not the entire reasoning. The solution given by the SCJ is inexplicable, especially given that art. 20 para. 3^1 of the Law on the SCM binds the SCM to adopt a reasoned decision.

Intelligence and Security Service accuses, Judicial Inspection excuses itself: another judge escapes disciplinary action

On 18 March 2016, the Disciplinary board of the SCM terminated on the grounds of lack of evidence, the disciplinary proceedings brought against the President of Centru district Court, Ion ȚURCAN. The judge was brought before the Disciplinary board after a complaint lodged by the Intelligence and Security Service (ISS), which raised a number of misbehaviors that had allegedly been committed by him. Among others, ISS referred to several deeds that had allegedly been committed by Mr. Țurcan, namely: the illegal adoption of an ordinance which had as its object exorbitant amounts; receipt of goods and services (a hunting weapon of 31,000 MDL, a stay at Poiana Brașov in Romania and a "Range Rover" car) from Ion VÂNAGA which, according to ISS, has "*links with the underworld*" in exchange of issuing of rulings; improper influencing of judges in Centru district Court of mun. Chișinău that he leads (Victor ORÂNDAȘ and Svetlana VÂȘCU); hiring a person who is in kinship with his wedding godparents in a position responsible for distributing cases in the court he administers, etc.

Inspector-judge of the Judicial Inspection in conflict of interest with the judge accused of committing disciplinary offense

The Judicial Inspection rejected the complaint as being manifestly unfounded, but the Admissibility panel of the Disciplinary board forwarded the case to the Disciplinary board. Subsequently, the Disciplinary board found that the Judicial Inspection did not collect enough evidence to elucidate the circumstances and submitted the case file for further verification. After verification, the Judicial Inspection referred the case again to the Disciplinary board.

In the plenary session of 18 March 2016, both some members of the Disciplinary board and the representative of ISS indicated that the investigation of the case by the Judicial Inspection was deficient. Moreover, the ISS representative indicated that the inspector judge who was in charge of the case, Mr. Valeriu CATAN, was in conflict of interest with the judge Țurcan since the last examined a case which involved a company where one of the co-owner was the wife of Mr. Catan. Although this has not been denied, the examination of the case continued and the case was not assigned to another inspector judge. Among other things, Mr. Catan mentioned in the hearing that a border crossing to Romania with the "Range Rover" has been found, but it has not been proved that Mr. Turcan had been in Poiana Brasov. As to the weapon, he said that it was bought by means of the store "Cartuș", which was an acceptable practice at the time of alienation. As to the fact that Mr. Vânaga used the "Range Rover" before and after it was used by Mr. Țurcan, Mr. Catan said that Mr. Vânaga does not have goods registered after him. Thus, although the ISS representative cited an alleged link between obtaining and/or use of such goods by judge Țurcan and issuing of a judgment in favor of Mr. Vânaga, this circumstance has not been found neither by the Judicial Inspection, not by the Disciplinary board. Finally, the Disciplinary board did not find any misbehavior in respect of Mr. Țurcan.

HUMAN RIGHTS

How does Moldova look like in the light of the ECtHR statistics?

In January 2016, the ECtHR released its activity report for 2015. LRCM prepared a summary with a focus on the Republic of Moldova. In April 2016, the LRCM developed an infographic reflecting those data. In 2015, the ECtHR registered 1,011 applications against Moldova, Moldova ranking 3 out of the 47 member states of the Council of Europe in terms of the number of registered applications in relation to the number of population. From 1998 to 2015, the ECtHR has recorded a total

of 11,814 applications against Moldova. On 31 December 2015, 1,223 of them (10.4%) were still waiting to be examined. The high number of applications to the ECtHR speaks primarily about the low confidence in the legal system of the country.

Until 31 December 2015, the ECtHR issued 316 judgments on Moldovan cases, of which 19 – in 2015. By the number of judgments, Moldova is ahead Germany, Spain, the Netherlands and Portugal, countries which ratified the European Convention on Human Rights (ECHR) well ahead of Moldova and with a much higher number of population than Moldova.

Moldova ranks the third in the top of the countries with the highest number of applications to the ECtHR

Of the 316 judgments issued in Moldovan cases, 289 refer to the merits of the case, and the others usually concern compensation. In 284 (98.3%) of the 289 judgments, the ECtHR found that the Republic of Moldova has violated the ECHR. Among the most frequent types of violations are: the failure to enforce national judgments (mainly due to situations that occurred before 2007); inadequate investigation of ill-treatment and deaths; detention in poor conditions; irregular quashing of final judgments; ill-treatment or using excessive force by state representatives; pre-trial detention without sufficient reasons.

Based on ECtHR judgments, amicable settlements between the Government and the applicants and unilateral declarations of the Government, in 2015, the Republic of Moldova had to pay over 214,199 EUR. In total, based on those 316 ECtHR judgments issued before 31 December 2015, the Republic of Moldova had to pay more than 14,250,000 EUR. The other more than 3,350,000 EUR were granted under amicable settlements or unilateral declarations formulated by the Government.

Previously, LRCM performed similar analyzes also for the years 2010, 2011, 2012, 2013 and 2014.

Termination of the Project implemented by the LRCM "Promoting Equality - Strengthening the Agents of Change"

Between 1 February 2014 and 31 January 2016, in partnership with Euroregional Center for Public Initiatives from Romania, the LRCM has implemented the project "Promoting equality – Strengthening the agents of change", funded by the EU Delegation in the Republic of Moldova. The purpose of the project was to strengthen the principle of equality and the fight against discrimination in Moldova by promoting legislative and practice improvements, and by empowering teachers, social workers and legal community to act as agents/factors of change.

Within the project, an Analysis of the compatibility of the legislation of the Republic of Moldova with the European standards on equality and non-discrimination was drawn up, available also in Russian and English. The conclusions and recommendations of the compatibility analysis were broadly discussed with a number of authorities responsible for this area. Also, two guides on equality and non-discrimination were drafted – one for the general public (Russian language version) and the second one – for practitioners (Russian language version).

The implementation team has drafted a series of documents for initial and continuous training of teachers and social workers. The following documents were developed for teachers: a curriculum for the continuous training in the field of non-discrimination for teachers (Russian language version), a curriculum for the training program for trainers in the field of non-discrimination for teachers (Russian language version) and a resource guide for teachers in the field of non-discrimination (Russian language version). The set of documents for initial and continuous training of social workers included a curriculum the for continuous training in the field of non-discrimination for social workers (Russian language version), a curriculum for the training program for trainers in the field of non-discrimination for social workers (Russian language version) and a resource guide for social workers in the field of non-discrimination (Russian language version).

Also, in the framework of the project, two training of trainers in the field of equality and non-discrimination were organized for 14 teachers and 13 social workers, who, later, being assisted by the LRCM, organized 15 cascade trainings for 188 teachers and 119 social workers from various regions of Moldova.

ECtHR - persons can complain to the ECtHR about human rights violations in the Transdniestrian region without exhausting "domestic remedies"

On 23 February 2016, the Grand Chamber of the ECtHR issued the judgment in the case of *Mozer v. Moldova and Russia*. The crucial legal aspect of the case was whether the documents issued in criminal proceedings by "the judiciary from the Transdniestrian region" are compatible with the European Convention on Human Rights (ECHR).

The ECtHR found that in the absence of convincing information on the organization and functioning "of the judiciary in the Transdniestrian region", the detention of a person based on documents issued by this system is contrary to the ECHR. The ECtHR considers that any limitation of rights guaranteed by the ECHR by a document issued by the "Transdniestrian judicial

system" is contrary to the ECHR. This means that the domestic remedies provided under the "Transdniestrian legislation" should not be exhausted. The ECtHR also reiterated that the actions of the "Transdniestrian authorities" are attributable to the Russian Federation.

The ECtHR noted that Moldova still has no control over the separatist region and that it has fulfilled its positive obligations arising from art. 1 of the Convention namely has taken sufficient diplomatic and legal measures to ensure the observance of the applicant's rights under the ECHR. The Court also found that the ECHR does not require Moldova to compensate for damage caused by «MNR» or those caused by inability to fully execute the decisions of Moldovan authorities in this region.

Constitutional Court – pre-trial detention cannot last for more than 12 months

On 23 February 2016, the Constitutional Court solved the exception of unconstitutionality raised by judge Viorica PUICA from Botanica district Court, mun. Chisinau ., filed eight days after the Constitutional Court explained that it can be directly referred to by judges. The judge asked the Constitutional Court to explain whether pre-trial detention for a period exceeding 12 months, which was allowed by art. 186 of the Criminal Procedure Code, corresponds to art. 25 para. 4 of the Constitution, which provides that pre-trial detention cannot last more than 12 months. According to judicial practice, the period of 12 months provided in art. 25 para. 4 of the Constitution was interpreted as applying only to pre-trial detention at the criminal investigation stage, but not to the period of examination of the merits in court. The judge asked also to be checked whether the possibility of detaining the person at the stage of examination of the case for a period of up to 3 months allowed by art. 186 par. 9 of the Criminal Procedure Code, conforms to art. 25 para. 4 of the Constitution, which provides that the arrest warrant may not exceed 30 days.

The Constitutional Court explained that each prolongation of pre-trial detention cannot exceed 30 days, both at the criminal investigation stage and the court examination stage of the case. The pre-trial detention may be applied for a total period of 12 months, which includes both the criminal investigation phase and the court examination phase. This term ceases when issuing the sentence of the first instance court for conviction with imprisonment. Therefore, art. 186 of the Criminal Procedure Code, which allows for detention for more than 12 months and issuing an arrest warrant at the stage of court examination for longer than 30 days, were declared unconstitutional. On 27 May 2016, the Parliament passed in the final reading amendments to the Criminal Procedure Code (draft no. 309) to remedy the shortcomings highlighted by the Constitutional Court.

The Constitutional Court ordered the courts to revoke within 30 days the pre-trial detention applied to persons held in custody for more than 12 months. It also mentioned that the persons who have been in custody for more than 12 months and were later acquitted or sanctioned with non-custodial sentences may seek compensation from the state.

The Constitutional Court also explained that the 12-month period covers the situation where a person has been accused on several counts. Any detention exceeding the total period of 12 months applied for committing the same deed, irrespective of any subsequent reclassification of the offense, is contrary to the Constitution. This formulation, however, does not cover the situation where the detained person is subsequently detained for other offenses. According to prosecutors, shortly after the Constitutional Court decision, several persons who had been in custody for more than 12 months were released by judges and apprehended shortly afterwards on suspicion regarding other facts.

Moldova convicted again by the ECtHR for entrapment

On 8 March 2016, in judgment *Morari v. Moldova*, the ECtHR found that the applicant was incited by state agents, contrary to art. 6 § 1 of the ECHR, and the judges did not properly examine the argument of the defense about the entrapment. The case referred to the alleged making of a false Romanian passport. In this judgment, the ECtHR described in detail the manner in which judges must examine the arguments related to entrapment. The ECtHR reiterated that incitement to commit an offense occurs when state agents do not behave passively, but incite a person to commit an offense that would have not been committed otherwise. According to the ECtHR, it does not represent a passive behavior: (1) taking the initiative to contact the accused, (2) repeated proposal despite initial refusal, (3) insistent encouragement, (4) a promise of financial gain like increasing the price above the market average or (5) draw upon the defendant's compassion.

The ECtHR reiterated that when the accused alleges that he/she was incited to commit an offense, the court must thoroughly examine the evidence obtained in this manner. Art. 6 § 1 ECHR requires that any evidence obtained as a result of entrapment to be excluded from the case file. In case of a reasonable allegation, the authorities have the burden of proving that the entrapment did not occur. According to the ECtHR, judicial examination of this issue must include: (1) the reasons which led to the undercover operation, (2) the degree of involvement of state agents in committing the offense, and (3) the nature of any incitement or pressure against the accused.

The applicant was represented before the ECtHR by lawyers from the Legal Resources Centre from Moldova.

Authorities want more control of the Internet: "Big Brother" draft

On 30 March 2016, the Government approved the draft law initiated by MIA, conventionally called "*Big Brother draft*", which gives law enforcement authorities broad powers of very general control over information space. The draft provides for a range of new powers for law enforcement bodies, such as interception of computer data, computer search, seizure of information communications in case of serious, especially serious and exceptionally serious crimes, as well as in case of cybercrimes and those related to copyright. The draft law also provides for a series of penalties for non-fulfillment of the obligations of service providers to store information or for restricting authorities' access to this information. If the draft law is adopted, the authorities could require suppliers to suspend IPs that contain controversial information, including information related to child pornography and discriminatory information or which causes hostility or violence.

The "Big Brother draft" provides for mass surveillance of the information space by the authorities without guarantees for observance of the right to private life

On 8 April 2016, 28 non-governmental organizations have criticized the broad spectrum of offenses to which the new special investigation measures could be applied in the information field; lack of safeguards to respect the right to privacy and freedom of expression; lack of judicial control on suspending IPs; undue burden of storing traffic data put on the shoulders of service providers, which could lead to the shutting down of small suppliers and higher prices of Internet services provided by major suppliers, and lack of balance between massive interference in the person's rights and efficiency of measures in the fight against crimes. The signatory NGOs have called for the Parliament to widely consult the draft law before adopting it and to send it to the Venice Commission for expertise. On 9 April 2016, the Parliament of the Republic of Moldova affirmed that the draft will be submitted to the Council of Europe and OSCE for expertise. On 10 June 2016, the Commission on national security, defense and public order of the Parliament informed the signatories of the request for expertise submitted to the Council of Europe.

CIVIL SOCIETY

2% Law closer and closer

On 22 February 2016, the draft amendment that allows individuals to annually direct a part of the income tax to non-profit organizations and religious entities, conventionally named "2% Law" was registered in the parliament as legislative initiative of some Members of the Parliament. The draft brings improvements in the access, use, transfer, control and reporting mechanism of the amounts obtained following percentage designations. According to the draft, the 2% mechanism will be applied starting from 2017 on revenues obtained in 2016. On 10 March 2016, the LRCM organized a roundtable with the participation of authorities involved in drafting the Government Decision on the implementation of the "2% Law", namely representatives of the Ministry of Finance, Ministry of Justice and the State Tax Service. The participants are working on a draft Regulation on the application of the "Law on 2%".

Do we need a new Law on Public Organisations?

On 11 March 2016, the LRCM launched an analytical paper "Law on public associations - solutions for an appropriate framework for the commercial sector's needs". The document analyzes the provisions of the special law governing the creation, registration and operation of public associations. The purpose of the research was to identify norms is the law that contravene to the international and European standards on freedom of association.

The authors recommend, in particular, the exclusion of limitations for individuals and businesses to establish, to be members, administrators and members of the control bodies of an association, but also the simplification of the procedure of registration of the status of the association, which currently is not predictable because the registration authority also requests other documents than those expressly mentioned in the law. Moreover, the recommendations aim at reducing the term of registration of the status, defining the control boundaries by authorities, who may attend any meeting of the association and request any documents, as well as review cases of suspension and liquidation of public associations.

MoJ decided on the creation of a working group for the improvement of the legal framework on public associations

Following the launching event of the analytical document, on 22 March 2016, the Minister of Justice decided on the creation of a working group to improve the legal framework on public associations. The objective of the working group is to draft a new law that would adjust the normative legal framework on public associations to bring it in line with international and European standards on freedom of association. 6 of the 9 members of the working group are representatives of civil society organizations.

LRCM accused of money laundering by a member of the SCM

On 15 March 2016, the SCM examined in a public hearing the draft law on the reorganization of the court system. During the debates on the draft, some SCM members said that the draft law in question was developed by the LRCM and in drafting the studies on optimizing the judicial map money laundering actions have been undertaken.

On 17 March 2016, the LRCM sent a letter addressed to the SCM to express regret towards the statements above, since they are particularly serious, are not true and mislead the judiciary and the society. In the SCM sitting of 22 March 2016, the SCM member, Mr. Gheorghe AVORNIC, apologized to the LRCM team in connection with allegations made about the actions of money laundering. Previously, the LRCM was targeted in several statements by the SCJ President. Mr. Mihai POALELUNGI harshly criticized us because we criticized, along with other NGOs the proposed legislative changes presented by the Center for Reform of the Judiciary. Mr. Poalelungi is co-chairman of the center. The SCJ President has described the position of NGOs as "subjective, malicious attitude ... and ugly approach."

Unité company hides information of public interest

On 17 September 2015, the LRCM sent to Unité company, which is part of the state enterprise Moldtelecom, a request for information regarding the organization of a concert on September 6, 2015, held at the Exhibition Centre "Moldexpo" in Chisinau, where several foreign performers have been invited. On the same day, in the center of Chisinau major protests took place. The LRCM requested information about the costs of the event, the exact source of funding that constituted the grounds for this decision and who precisely has taken it and why performers from abroad have been invited. On 8 October 2015, Moldtelecom sent to the LRCM a general answer not providing any information of those requested. Moldtelecom representatives cited commercial confidentiality and personal data that can not be made public. On 26 February 2016, LRCM requested the Court of Accounts to verify the expenditure incurred for organizing the concert on 6 September 2015. According to the reply provided by the Court of Accounts, the schedule for audit activities for 2016 has already been approved, and the LRCM's petition cannot serve as grounds for amending it. Subsequently, on 17 March 2016, the Financial Inspection has responded that it was impossible to act on the LRCM's petition, since a "*moratorium on state control over person's entrepreneurial activity, including special entrepreneurs, in the social capital of which the state holds shares*" was set.

IN BRIEF

On 18 March 2016, the Government approved Mr. Marin GURIN's candidacy for the office of Governmental Agent of the Republic of Moldova to the European Court of Human Rights. Previously, Mr. Gurin was a lawyer in the Registry of the Court.

During 24-26 March 2016, the LRCM organized an advanced three-day seminar on the right to a fair trial and the right to privacy provided by the ECHR. The seminar was attended by 14 lawyers and trainee-lawyers.

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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