

OPINION

on the draft Action Plan for the implementation of the Strategy ensuring the independence and integration of the justice sector for the years 2020-2023

SENT VIA EMAIL AND PUBLISHED ON THE WEBSITES WWW.IPRE.MD AND WWW.CRJM.ORG

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Data: 15 July 2020

This opinion is provided in the context of the public consultations launched by the Ministry of Justice on 3 January 2020 on the draft Strategy ensuring the independence and integrity of the justice sector¹ for years 2020-2023 (hereinafter Strategy) and the Action Plan for its implementation² (hereinafter "the Action Plan").

The Opinion comes to complement the [preliminary opinion of IPRE and CRJM from 19 May 2020](#)³ and reviews the updated draft Action Plan, submitted by the Ministry of Justice on 25 June 2020.

Our conclusion is that the updated draft Action Plan has taken into account several of the recommendations we proposed in our previous opinion, as well as those of the Council of Europe experts. However, we have some suggestions on the proposed activities.

¹http://justice.gov.md/public/files/directia_analiza_monitorizare_si_evaluare_a_politicilor/Proiect_Strategia_pentru_asigurarea_independentei_si_integritatii_sectorul_justitiei_2020-2023.pdf

²http://justice.gov.md/public/files/directia_analiza_monitorizare_si_evaluare_a_politicilor/Proiect_Plan_de_Actiuni_SISJ_2020-2023.pdf

³ IPRE and CRJM, Preliminary opinion on the draft Strategy for Ensuring the Independence and Integrity of the Justice Sector 2020-2023, available at <https://crjm.org/wp-content/uploads/2020/05/2020-05-19-Opinie-IPRE-CRJM-Strategie-independenta-integritate-sector-justitie.pdf>.

A. Strategic priorities

We acknowledge that the suggestions related to the structuring of the Action Plan in three strategic goals were largely taken into account. Thus, currently the Action Plan contains the following three strategic goals:

- 1) Independence, responsibility and integrity of actors in the justice sector
- 2) Access to justice and the quality of justice
- 3) Efficient and modern administration of the justice sector

We understand the arguments of the Ministry of Justice referring to the strategic goal related to fundamental rights, which may be found in the other two suggested goals and are taken into account, as well as the fact that aspects related to fundamental rights are found in other strategic documents such as the National Human Rights Action Plan for the years 2018-2022 ([NHRAP III](#)). The solution offered by the current version of the Action Plan to include the aspects of human rights protection within the strategic goals no. II, objective 2.1. is considered it appropriate.

At the same time, we also consider the third strategic goal of efficient and modern administration of the justice sector relevant in the context of the need for actions to improve the management of the judiciary and prosecutors, including the management of courts and prosecutors' offices, as well as widespread use of information technologies, their interconnection and interoperability.

Once the Strategy and Action Plan are most likely to be approved in the fourth quarter of 2020, the deadlines of implementation of actions will require an appropriate adjustment.

B. The Strategic Objectives of the Action Plan

The current version of the Action Plan sets the following objectives grouped in the three strategic goals:

- 1.1. Strengthen the independence of the judiciary and of the prosecutor's office
- 1.2. Strengthen the integrity and accountability of the justice sector
- 1.3. Increase the degree of transparency and trust in justice
- 1.4. Strengthen the capacities of the legal professions related to justice
- 2.1. Improve access to justice and the protection of human rights in the justice sector
- 2.2. Improve the quality of judicial acts and standardising judicial practice
- 2.3. Strengthen legal training, education and specialisation
- 2.4. Strengthen alternative dispute resolution
- 3.1. Continue the process of improving the management of the judiciary and the prosecutor's office
- 3.2. Strengthen the administrative and managerial capacities of the courts and prosecutor's offices
- 3.3. Modernisation of the justice sector by equipping with electronic systems and modern equipment and their interconnection

C. Specific objectives and activities

Specific objectives and actions that need to be completed or revised

- 1) Reformulation of the Specific Objective 1.1.4. in "Improving the system of selection and promotion of judges and prosecutors".
- 2) Completion of the Action 1.1.4. lit. a) with the verification of the candidates for the position of judge and prosecutor, who submitted the documents for the exams to the Admission Commission of NIJ. Thus, the examination of the opportunity to change the legal framework to establish the mechanism of prior verification of candidates should not be limited only to candidates for the position of judge and prosecutor among candidates in the initial training courses of NIJ.
- 3) Completion of the Action 1.1.4. lit. b), which will have the following content "Amendment of the legal framework to strengthen the boards of selection and evaluation of judges' performances".
- 4) The exclusion of the phrase "including the examination of the opportunity to merge the Selection Board with the Performance Evaluation Board" from Action 1.1.4 let. c) and the similar rule from Action 1.1.4. lit. f). We consider both processes distinct which do not need to be unified. The workload is too high for a single Board. Also, merging them would concentrate too much influence (actually the entire career of judges) in a single body, which is very risky.
- 5) We propose to add a new action with the following content "1.2.1. lit. e) Strengthening the capacities of the National Integrity Authority and the Integrity Inspectorate for collecting and analysing data and information to verify the declarations of assets and interests of judges, prosecutors, MPs and members of the Government. " We consider that this action will contribute to the implementation of Recommendation no. 4 of the evaluation from the 4th round of GRECO. Moreover, the capacity building of ANI and Integrity Inspectors is evident in the context in which it is proposed to amend the legislation in Action 1.2.1. lit. a).
- 6) The specific objective 1.2.2. (as well as actions a) and b), must be excluded. These is a partial reproduction of the provisions of art. 27 para. (3) of Law no. 132 of June 17, 2016 on the National Integrity Authority. The exclusion of these actions will be offset by the above proposal.
- 7) Completion of the specific Objective 1.2.3. with a new activity: Creating a clear and comprehensive mechanism to effectively prevent ex-parte communication of judges and prosecutors. This measure can help reduce corruption in the judiciary and influence of judges.
- 8) Completion of the Specific Objective 1.2.5. with the action "c) Amendment, as the case may be, of the legislation and normative acts, related to the disciplinary liability of judges and prosecutors.". The review of the practices of the disciplinary boards of judges and prosecutors will result in proposals to amend the legislation in force, or the normative acts adopted by the SCM or SCP. Moreover, on July 10, 2020, the analytical document "[Disciplinary liability of judges in the Republic of Moldova. Evaluation of legislation and practices](#)"⁴ was launched. The document contains a number of proposals to improve the mechanism of disciplinary liability of judges.
- 9) The exclusion of the action from letter d) The specific objective 1.3.1. At the moment, the SCP's website (www.csp.md) is functional. However, it should be borne in mind that decisions are published with a considerable delay or do not contain sufficient information to understand of the circumstances under which the decisions were taken.
- 10) Introduction of a previous Specific Objective 2.2.1, with the following content "Specific Objective 2.2.1 Ensuring the random distribution of cases; Activity a) Reviewing the criteria of

⁴ Cristi Danileț, „ Disciplinary liability of judges in the Republic of Moldova. Evaluation of legislation and practices ”, available at <https://crjm.org/mecanismul-de-raspundere-disciplinara-a-judecatorilor-trebuie-sa-devina-mai-simplu-si-mai-eficient/>.

complexity of cases in courts; b) Ensuring the integrity of the system of random distribution of files in courts; c) Ensuring the random distribution of cases based on the criteria of complexity of cases d); Analysis and review of the workload for judges and prosecutors seconded to the bodies of the SCM or SCP, as well as those who have managerial functions; e) the introduction of the system of random distribution of cases in the prosecutor's offices”.

11) We still **consider inappropriate** activity 2.2.1. lit. a) related to the amendment of the legal framework on the assurance of the quality and clarity of the court decisions, given the reasons invoked in the previous opinion. The clarity requirements can be developed by the SCJ (which has such competences within the meaning of art. 2 letter c) and art. 16 letter c) of the Law no. 789 of March 26 1996 on the Supreme Court of Justice), but also the registry of the courts (art. 46 paragraph (2) of Law no. 514 of July 6 1995 on the organization of the judiciary. The competence to standardise the judicial practice is the most successful solution to ensure the quality and clarity of judgments. The current provisions of the CPC and CrPC (art. 239 and 384 para. 3, respectively) already set out the requirements for judgments - to be legal, well-founded and reasoned.

12) We still consider activity 2.4.2. lit. b) to be obsolete in case of taking the decision within the activity 2.4.2.a) to abolish the obligatory judicial mediation performed by the judges. We recommend excluding it.

13) We further consider that some specific objectives of the Action Plan need to be revised. Thus, the specific objective 2.3.2. "Training and development of non-judicial skills for judges, prosecutors and support staff" is relevant as long as the proposed actions are part of the implementation of adjustments arising from other activities set out in the Action Plan. In this context, activity 2.3.2 b) "Conducting training courses in the field of using the e-File information application and the videoconferencing system for professional external users" is largely an activity that the National Institute of Justice is already carrying out, which is part of its current mandate.

14) We suggest the use of the standardised phrase "reorganisation of courts and prosecutor's office" based on Law no. 76 of April 21 2016 on the reorganisation of courts, from Objective 3.1 and throughout the text (eg. Specific Objective 3.1.1. and 3.1.2.).

15) We suggest the use of the phrase provided by art. 10 para. (1) of Law no. 3 of 25 February 2016 on the Prosecutor's Office, from Objective 3.1 and throughout the text. (Specific objective 3.1.1. And 3.1.2.). For example. renaming of Specific Objective 3.1.2 in "Review of the location of territorial prosecutor's offices based on the circumscription of the courts".

16) Renaming action c) from Specific Objective 3.1.2., As follows "Relocation of prosecutor's offices and analysis of the opportunity to reduce the number of prosecutors". We consider that once the decision has been made on the review of the number of prosecutors, the legislation related to the competence of the Prosecutor's Office, as well as the structure, shall be analysed. The reduction of the number of prosecutors implicitly involved the employment of staff that assists their activity. If such a decision is further supported, then we consider developing a separate specific objective in this regard.

17) We still consider relevant the arguments brought in the preliminary opinion presented to the Ministry of Justice related to the inappropriateness of activity 3.2.1. lit. a) related to the application of the judicial reserve. We consider that the last two competitions organised by the SCM ([from 6 August 2019](#) and [30 June - 1 July 2020](#)), as a result of which 47 judges being appointed in less than a year, is a demonstration of the lack of need for the judicial reserve in the form indicated in the law on the judiciary. Following the last competition, the number of vacancies in the judiciary has substantially decreased. In any case, any vacancy that occurs is filled in no more than 7-8

months. In the same context, on May 22, 2020, the LRCM launched the Public Policy Document "[Resetting the system of selection and promotion of judges - lessons learned and \(new\) challenges](#)". The document concluded that the practice of organising competitions twice a year is a positive development and deserves to be continued.

18) If action b) of the Specific Objective 3.2.1. refers to judges, then we consider that it should be excluded. More details are indicated in the comment to the previous action. If the action concerns vacancies among legal assistants, clerks and court staff, specific Objective 3.2.2 is available, which can be supplemented with the following actions: d) Analysis of court staff and the opportunity of reviewing their number, depending on the size of the court and the workload of the judge in the same office.

19) We reiterate the previously formulated proposal to complete Specific Objective 3.3.9 with a new action - "letter c) analysis of the opportunity to outsource translation services". This will solve many of the existing problems in this area.

D. Additional recommended actions

1) We consider that the strategy and the action plan must contain measures meant to ensure the functional autonomy of the Judicial Inspection within the SCM. This measure should be introduced to ensure a functional judicial inspection. Thus, we propose the introduction of a new Strategic Objective „1.2.6. Strengthening the functional autonomy of the Judicial Inspection and the Prosecutors' Inspection", with the following actions: a) Strengthening the role of the Judicial Inspection and the Prosecutors' Inspection, by consolidating the functional autonomy and reviewing their competencies. b) Ensuring the Judicial Inspection and the Inspection of Prosecutors with a sufficient budget and its own functional apparatus.

2) We further support the introduction to objective 1.3. of the activity related to the verification of the observance of the rules regarding the publication of the anonymised judgments on the courts' web portal. There are significant shortcomings in this regard. Some decisions are excessively anonymised and other decisions that need to be anonymised are published without excluding sensitive data.

3) We further support the introduction in the Action Plan of a specific objective within general objective 2.3. strengthening legal training, education and specialisation related to strengthening the quality of teaching at law schools and professional colleges in accordance with the needs of the justice system, including the activities of: a) evaluating university curricula and professional colleges from the perspective of justice system needs, b) the inclusion in the university curricula of the activities of development of critical thinking, c) the formation of the abilities to apply in practice the legislative technique of writing legal documents and motivating court decisions, acts issued by the prosecutor, decisions issued by administrative authorities specialised centres, local public administration authorities, state institutions as well as d) teaching at user level the information technologies used in the justice system (PIGD, E-file, FEMIDA, E-criminal record, etc.).

4) We consider that the specific objective 2.3. (Strengthening legal training, education and specialisation) should also include an analysis of the NIJ's work and internal procedures to enhance the quality of NIJ training. A review of NIJ activities is also needed from the perspective of implementing several activities within the Action Plan, once activities such as ensuring the quality and clarity of court decisions are introduced.

5) We recommend the introduction within the objective 3.2. of an activity related to the creation of a register of employees in the justice system, in order to ensure the subsequent contact with former employees in case of vacancies.

Finally, we reiterate the opportunity to reflect in the new strategic document the outstanding policy measures in the field of justice and integrity in the justice sector previously formulated in the **White Book on Good Governance**⁵ presented by IPRE, LRCM and Expert-Grup on July 19, 2019.

⁵ IPRE, CRJM, Expert-Grup, White Book of Good Governance, 19.07.2019 available in English at: <http://ipre.md/2019/07/19/cartea-alba-a-bunei-guvernari-propuneri-privind-prioritatile-de-politici-pentru-urmatoarele-12-luni-pentru-guvernul-republicii-moldova/?lang=en>