



ACTIV

JUDICIARY REFORM IN MOLDOVA

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“The judiciary reform in Moldova will be successful only when a change occurs in the mindset of judges”

Toomas Hendrik Ilves,
President of Estonia

THE REFORM IN A NUTSHELL

Candidates to the positions of judge and prosecutor will be tested using the polygraph

On October 4 of the current year, the Minister of Justice has submitted to the Government a set of draft laws on anticorruption actions in the judiciary. The laws provide for the mandatory testing of the candidates to the positions of judge and prosecutor, using the lie detector. In addition, clear prohibition of judges' interaction with the trial participants or with other people is imposed, if such interaction is related to the case examined by the respective judge and takes place with violation of the procedural rules. The amendments also relate to the Criminal Code sanctions applied for corruption crimes, namely the increase of the fine and the term of punishment by deprivation of the right to hold some public offices or to exercise a certain activity for up to 15 years. The legal amendments are stipulated in the Judiciary Reform Strategy for 2011-2016, in the chapter "Integrity of the judiciary actors".

There will be No Need for SCM's Prior Agreement to Initiate Criminal Investigation of Judges

This decision has been made by the Constitutional Court (CC) in early September, following a notification submitted one year ago by the Supreme Court of Justice, by which SCJ was asking CC to check on the constitutionality of eliminating a judge's immunity in case of commission of passive corruption and influence peddling (Articles 324 and 326 of the Criminal Code), as well as in case of commission of administrative offences. SCJ alleged that the initiation of a criminal case and criminal investigation against a judge, without the prior agreement of the Superior Council of Magistracy, conflicts with some provisions of the Constitution and the international rules on the independence of judges. According to CC's decisions, the General Prosecutor has the right to decide individually whether or not to initiate criminal corruption cases against judges, based on Articles 324 and 326 of the Criminal Code, without SCM's prior agreement. However, the Constitutional Court has ruled that the procedural actions of apprehension, search, arrest or summoning by force of a judge may be carried out only upon agreement of the Superior Council of Magistracy.

In the first half of 2013, the average monthly caseload of a judge was:

- at the Supreme Court of Justice – 14 cases
- at the Courts of Appeal – 17 cases
- at the Military Court – 3 cases
- at the Commercial District Court – 2 cases
- at other courts – 27 cases.

Source: SCM

The Judiciary Reform Needs to Be Accelerated

The reforms in the judiciary are implemented at a very slow pace. The institutions having the biggest gaps in implemented the required actions are the Superior Council of Magistracy, the General Prosecution Service and the National Council for State Guaranteed Legal Assistance. These are the findings of a report on monitoring the Judiciary Reform Strategy, which was recently presented publicly by two non-governmental organizations.

The "Promo-Lex" Association and the Association for Efficient and Responsible Governance (AGER) have recently launched a report on the performance evaluation of the actions set out in the Judiciary Reform Strategy (JRS). The report covers the period of April-June 2013. According to the findings, only 44 of the 101 JRS activities that were not conducted in 2012 were implemented in the reporting year, and only 6 out of the 31 activities planned for the second quarter of 2013 were implemented. Among the institutions which have gaps in the implementation of judiciary reforms are: The Superior Council of Magistracy (SCM), The General Prosecution Service (GPS), and the National Council for State Guaranteed Legal Assistance (NCSGLA).

SCM has implemented only 42% of the actions

According to the report, in 2012 and the first two quarters of 2013, SCM managed to implement only 42% of the actions planned for this period, while GPS and NCSGLA have carried out only half of the planned actions.

One of the actions established in



Pavel Postica (Promo-Lex) and Olesia Stamate (AGER) presenting the Report on Monitoring the Judiciary Reform Strategy

the Reform Strategy for 2012, which was not implemented in due time, was the performance evaluation of investigative judges with a view to including them in the ordinary body of judges, as specialized judges. SCM President, Nichifor Corochii, says the delay was caused by the failure to select in due time the members of the College for evaluation of judges' performance. "Some of the College members were elected within the General Meeting of judges, in November 2012, while the members representing the civil society were elected as late as at the beginning of the current year. Therefore, the delay in the evaluation of investigative judges' performance is justified", SCM President explains.

Pavel Postica, lawyer at "Promo Lex" Association says that, in case of delay in the implementation of actions set forth in the reform strategy, the reason for such delay should be clearly explained and the action plan should be adjusted to fit the

current situation. "The main drawback both with SCM and with other institutions responsible for carrying out the actions within the judiciary reform is that no preliminary studies have been conducted regarding the need to change the procedure of staff appointment and to streamline the staff, which has led to a delay of the reforms", Pavel Postica says.

The aid from the EU will depend on the implementation of actions

At the same time, if reforms are not speeded up, Moldova risks to lose the support, including financial, of European and

international institutions. Olesia Stamate, director of the Association for Efficient and Responsible Governance (AGER) admits that, another reason for the slow pace of the reform is the political instability in the country, which was also the reason for the failure to sign in time the memorandum with the EU on judicial reform financing. "The government should monitor thoroughly the implementation of the planned actions, because the amount of the financial assistance provided by the EU will depend on the level of implementation of actions", Olesia Stamate concludes.

The Implementation of the Judiciary Reform in Figures:

| Number of institutions responsible for the implementation of actions | Total number of actions planned | Including: | |
|--|---------------------------------|-------------|-----------------|
| | | Implemented | Non-implemented |
| 14 | 196 | 116 | 80 |

Source: Promo-Lex and AGER Report

SCJ Decisions of the Past Five Years – Available Online

The Supreme Court of Justice has launched an online mechanism for rapid search of national court decisions and the decisions of the European Court for Human Rights (ECtHR). According to the SCJ president, Moldova is the only country in Europe to make available detailed information about all court decisions issued by SCJ, and citizens will have the possibility to follow up on the examination of any case.

The president of the Supreme Court of Justice, Mihai Poalelungi, says that about 50 thousand decisions of the Supreme Court, issued in the past five years, may be found on www.csj.md. "Several programmers and psychologists have participated in the development of this online mechanism, by establishing the most frequently searched words and information, in order to meet the



demand. The online system has a search engine adapted for the legal terms. So far, Moldova is the only country in Europe to provide detailed information about all court decisions issued by SCJ. Citizens will be able to see the text of the decisions, searching by article, field, and thematic indexes of the decisions," SCJ president noted. In addition, the

online mechanism enables viewing the decisions of the European Court for Human Rights against Moldova; the database will be updated as soon as new decisions are passed. ECtHR decisions may also be found by article, field, and thematic indexes. Decisions are available in four languages: Romanian, Russian, English, and French.

Iana Spinei, expert of Transparency International-Moldova says this mechanism on the SCJ website will guarantee maximal availability of the Supreme Court's decisions. "Citizens, both from the country and from any corner of the world, will be able to see the text of a court decision without having to come to SCJ and submit a request asking for a copy of the respective decision", the expert states, mentioning that all courts in Moldova should have an online mechanism allowing to search for all court decisions.

Within the launch of the online mechanism for rapid search of court decisions, SCJ president, Mihai Poalelungi, stated that a database of all national courts will be created on the website of the Supreme Court, and magistrates will be obliged to publish periodically information about the cases examined.



This page has been edited by the Association of Independent Press (API). Reporter – Lilia Zaharia