Newsletter
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LRCM LEGAL RESOURCES CENTRE FROM MOLDOVA

JUSTICE REFORM

Civil society: justice reform and combating corruption should be the main priorities of the government

On 4 December 2014, more than 100 non-governmental organizations launched an appeal addressed to the parties negotiating the establishment of a pro-European alliance. The signatories of the appeal called, *inter alia,* for consultation of the draft governmental program with civil society; intensification of efforts for efficient implementation of all the reforms initiated by the previous government, especially, justice reform, combating corruption and ensuring the functionality of National Integrity Commission (NIC); as well as exclusion from negotiations of the positions which, due to their nature, do not imply political loyalty.

On 9 December 2014, several civil society organizations launched another appeal addressed to the parties negotiating the establishment of a governing coalition requesting implementation of a thorough justice reform and a genuine fight against corruption. The appeal requests that justice reform and fight against corruption to be the first two priorities of the future governing coalition. It also requests to exclude from negotiation the distribution of positions in the judiciary, Constitutional Court (ConstC), prosecution service, National Anti-Corruption Center (NACC) and NIC. The appeal also calls for the following urgent measures: adoption of a new Law on prosecution service, optimization of judicial map, filling in the vacant position of ConstC judge (vacant since October 2014), attributing to the exclusive competence of the anti-corruption prosecution service of investigation of „big corruption" cases and organizing this prosecution service based on the model of the Romanian National Anti-corruption Directorate.

The signatories received no reply to the above appeals, and the negotiation process did not become more transparent, as requested by the first appeal.

The Venice Commission issued its opinion on the Law regarding professional integrity testing

In June 2014, four communist MPs requested constitutionality control of the provisions of the Law no. 325 of 23 December 2013 on professional integrity testing (TPI) regarding application of TPI in relation to judges. In September 2014, ConstC requested the Venice Commission (Commission) to provide an *amicus curiae* regarding the following two issues: 1) if testing of judges by an authority controlled by the executive power is in compliance with the principle of judiciary independence, division of powers in a state and rule of law; and 2) if application of TPI by an authority subordinated to the executive branch is in contradiction with the right to private and family life.

On 15 December 2014, the Venice Commission issued an *amicus curiae* in reply to the questions of the ConstC. The Commission has underlined the importance of efforts made by states for combating corruption, but also the fact that such efforts should not undermine independence

CONTENTS

and impartiality of the judiciary. The Commission has noted that the general purpose of the TPI procedure is a disciplinary one, and that disciplinary procedures, which may end up in dismissal of a judge, should to be assimilated to criminal proceedings. There must be specific safeguards for the protected person. Taking into account the fact that an essential element of TPI is based on wide engagement of undercover agents, called „professional integrity testers", it appears that standard safeguards related to disciplinary proceedings are not applicable to the TPI procedure. The Commission has noted that it is necessary at least to have a post-event control system by an independent judicial body. The Parliamentary control established by the Law no. 325 is a very loose one, consisting of an annual report by the NAC and Intelligence Service, based on statistical data. This creates an impression of a complete immunity of the NAC, especially taking into account its status of an authority subordinated to the executive power, as well as its extremely large competencies regarding the TPI measures, which are not subject to a proper control. The Commission noted that establishing a unique anti-corruption agency is encouraged, which should be independent and not autonomous from the executive or legislative branch.

The Commission stressed that the area of application of the Law no. 325 is broader than the general goal of combating corruption, covering the general assessment of the performance of professional duties by public employees subjected to TPI. There is no clear criteria based on which the NAC will verify the performance of professional duties of judges. In addition, it seems that the Law no. 325 does not require objectively based suspicion for initiation of TPI, the conditions that would allow to suspect that a certain judge might be predisposed towards corrupt behavior. The grounds for initiation of TPI provided for in Art. 10 para (2) are extremely general. This may lead to adoption of arbitrary decisions or create a presumption that such legal instruments are applied in order to discipline certain courts or judges.

Within the disciplinary proceedings initiated as a result of TPI, dismissal is mandatory if the judge has „admitted" a violation of his/her anti-corruption obligations. At the same time, the judge lacks the possibility to assess the evidence within the disciplinary proceedings, because the evidence is considered to be confidential according to Art. 13 para (2) and Art. 15 para (3) of the Law no. 325, which could infringe upon the judge's right to an efficient remedy. The Commission noted that the principles of predictability of crimes and the restrictive interpretation thereof are also applicable *mutatis mutandis* to disciplinary proceedings. Thus, the provisions of Art. 6 para (2) lit. a) of the Law no. 325, according to which public agents, including judges, have the obligation „not to admit in their activity acts of corruption, corruption-related acts and actions of corrupt behavior" are of a general, hybrid and vague character and overlap. By contrast, the terminology used in the Criminal Code (Art. 324 (passive corruption) and following articles) is much more concrete and allows for an unequivocal understanding of the prohibited behavior. The expression „not to admit" acts of corruption is not entirely clear and is a vague term which bears serious risks as to the predictability of what would be a violation within the framework of TPI. The same applies to the ambiguous concept of "corruption-related acts". In addition, although the Law no. 325 provides for deferral to the relevant disciplinary authority for the application of disciplinary measures on the basis of the TPI results, the mandatory character of dismissal of the judge for certain types of violations may constitute an unjustified interference with the competences of the Disciplinary Board for judges. The Commission also mentioned that, although Art. 9 of the Law no. 325 provides for different sanctions of public agents, the dismissal of judges is mandatory (Art. 6 para (2) lit. a)), which may lead to arbitrary decisions. This situation is not in compliance with the principle of proportionality between the violation committed and sanction applied.

When it comes to the issue of interference in the private life of judges, the Commission has mentioned that Art. 8 of the ECHR provides for protection against the disproportionate application of surveillance measures. Although the Law no. 325 states in Art. 9 para (3) that methods and means used in TPI do not represent special investigative measures, it is not clear in which manner they differ from special investigative measures. Therefore, the use by testers of undercover measures, as well as mandatory audio/video recording of TPI, may constitute an interference with private life of a judge. The use of these measures by the NAC, without an adequate control, may lead to the use of this legal instrument for purposes of influencing judges. In order for the Law no. 325 to be compatible with ECHR, these aspects should be clarified and a judicial review should be introduced.

The Law no. 325 runs contrary to all the principles developed by the ECtHR regarding involvement of undercover agents. The grounds provided for in Art. 4 and Art. 10 para (2) of the Law no. 325 are not sufficient to be considered as reasonable grounds for initiating TPI; the plan of TPI approved by the NAC is not in compliance with the minimum requirements for authorization of the activity of an undercover agent, and the tester will actually use a false identity and will approach the judge with a corrupt offer, for instance, by offering a sum of money, therefore he/she should be qualified as *agent provocateur*.

Involving undercover agents is compatible with ECHR if the following conditions are met: (1) existence in advance of grounded reasons to suspect that the respective person is involved in a similar criminal activity or has previously committed such acts; (2) legal authorization of the activity of undercover agent, indicating full information regarding the goal and reason for application of this method; (3) the undercover agent may be involved only to supplement ongoing criminal investigation and he/she must not instigate.

Anti-corruption measures challenged at the Constitutional Court

On 3 December 2014, the Ombudsman Tudor LAZĂR challenged at the Constitutional Court Art. 106^1 (extended confiscation) and Art. 330^2 (illicit enrichment) of the Criminal Code. These articles provide for incrimination and confiscation of property of civil servants which could not have been gained it other than by illegal means. The legal provisions subjected to constitutional

control were included in the Criminal Code through the anti-corruption package of laws adopted on 23 December 2013.

The author of the complaint considers, ***inter alia,*** that application of these norms violates the principle of non-retroactivity of the law, presumption of innocence and presumption of legality of property, provided for in the Constitution. Most probably, the Constitutional Court will examine this complaint in the spring 2015. Previously, Mr. Lazăr had challenged at the Constitutional Court the legislation harshening the conditions for retirement and the interdiction to become and advocate for persons convicted of a crime.

The study on unification of judicial practice was launched

On 19 December 2014, the Study on unification of judicial practice and ensuring the principle of legal certainty in the Republic of Moldova, developed by Cristi DANILEȚ with the support of ABA ROLI, was launched. This Study had the goal of identifying legislative drawbacks and other problems which generate non-uniform jurisprudence. The Study contains the following recommendations: specialization of judges; indexing the jurisprudence of the SCJ by subject matter and publication thereof; developing of guidelines regarding individualization of punishments; suspending examination of similar cases when the SCJ is requested to deliver a leading decision; informing the legislator by the SCJ when legal provisions should be improved; organizing regular meetings with judges to discuss recent legislative amendments and the jurisprudence of ECtHR and SCJ; continuous training at the NIJ aimed at unification of judicial practice; better reasoning of court decisions; using of a standardized structure of decisions by all judges and structuring decisions in a easily understandable manner; thorough monitoring by presidents of courts of judicial practice in their courts; taking into account the observance of uniform practice in the process of performance evaluation of judges.

The Study recommends the following mechanism for unification of judicial practice: a judge must follow his/her own jurisprudence and any deviations should be reasoned; all judges of the same court must follow the same practice, and the judge who does not agree, after the first dissenting opinion, must anyway follow the practice established by the majority of judges; in case of divergent practices among different courts, the SCJ should be notified in order to take a decision regarding the practice that should be followed; in their decisions judges should refer to national jurisprudence (which up until now has not been encouraged by the SCJ).

SELECTION AND CAREER OF JUDGES

LRCM analyzed the system of selection and career of Moldovan judges

In late 2014, the LRCM developed a public policy document "Selection and career of judges – overlaps of responsibilities or additional safeguards?" LRCM has analyzed the practice of the SCM for the period January 2013 – September 2014 on appointing, promotion and transfer of judges to a same level court or to a lower level court, as well as appointment in the position of court president or deputy president.

The document highlights several problematic aspects related to selection and career of judges, including: overlapping of activity of the Board for Selection and Career of Judges and of the SCM; promoting to the SCJ and appeal courts in the period 2013-2014 of certain judges who had obtained lower scores at the Board for Selection and Career of Judges; organization of separate competitions for each position, which creates conditions for manipulation; lacunae in the manner of keeping and using the registry of participants of competitions for vacant positions; certain criteria of selection, promotion or transfer of judges are inadequate and do not contribute to the promotion of the best candidates.

SCM dealt with applications of the candidates for the position of judge who had been previously rejected by the President of the Republic of Moldova

On 16 December 2014, SCM examined again applications for participation in the competition of the following candidates for the position of judge: Petru HARMANIUC, Corneliu CREȚU and Natalia BERBEC. On 30 November 2014, the President of the country rejected the appointment of these candidates in the positions of judges in mun. Chișinău for the reason that "there was no evidence that they had irreproachable reputation".

The refusal of the President to appoint in the position of judge may be overturned by a vote of 8 out of 12 members of the SCM. After

the President's refusal, the SCM did not issue a decision on repeated proposal of candidates and the three candidates were admitted to participate in a competition for positions other than those for which they had been rejected by the President. At the same time, Petru HARMANIUC and Corneliu CREȚU declared in the sitting of SCM that they do not want to participate in the latter competition, because they "previously, had been proposed to the President of the Republic of Moldova for appointment in the position of judge". Natalia BERBEC did not attend. Consequently, another graduate of the NIJ, Mr. Vitalie-Silviu MIDRIGAN, was appointed in the position announced for competition. The latter had been previously proposed for the position of judge. Prior to appointment by the President, he refused, because he had got involved in election campaign.

Before that, several NGOs made a public appeal requesting the President of the country to verify discrediting information appeared in press regarding the respective candidates and to appoint in the position of judge only candidates with irreproachable reputation.

ACCOUNTABILITY OF JUDGES

The Law on disciplinary liability of judges entered into force

On 1 January 2015, the Law no. 178 on disciplinary liability of judges, adopted by engagement the responsibility of the Government on 25 July 2014, entered into force. This law contains a series of improvements regarding disciplinary liability of judges. It defines disciplinary violations more clearly. Art. 4 para 1 of the law contains an exhaustive list of 15 disciplinary violations. In order to regulate the entire range of possible situations, the last point of para 1 provides that a disciplinary violation is also any other acts that damage the honor, professional integrity or prestige of justice. The Law provides for the possibility of the Disciplinary Board to qualify as violations only the acts that are especially grave and not any shortcoming. Although certain violations could have been defined in more detail, in general, the manner in which the new law regulates disciplinary violations is better than the language of the previous law.

The new law features a clearer range of sanctions, explaining each sanction and providing for consequences specific for each sanction. This should contribute to a better individualization of sanctions based on the gravity and nature of the committed violation. According to the Law, disciplinary sanctions can also be applied to resigned judges and, in case of application of disciplinary sanction in form of dismissal to a resigned judge, the allowance payable upon resignation and the special pension of judges are withdrawn. The new law increases the limitation period for disciplinary liability from one year to two years. These provisions should also increase of accountability of judges.

According to the new law, the decisions of the Disciplinary Board no longer require validation by the SCM, which represents an important element for raising the status of the Board. The decisions of the Board can be challenged at the SCM, which may uphold the decision of the Board or adopt a new decision, following the procedure applicable to examination of cases by the Board. Not the least, the new law provides for a new procedure of submitting complaints regarding disciplinary violations of judges and sets clear stages of the procedure. Members of the SCM no longer have the exclusive right to initiate disciplinary proceedings. Proposals regarding initiation of disciplinary proceedings will be submitted by the judicial inspection to a special panel of the Disciplinary Board. Rejection of complaints must be reasoned, as opposed to the previous situation, which represents an important safeguard against abuse.

The composition of the Disciplinary Board has been modified, having been reduced to 9 members, of whom 5 will be judges and 4 representatives of civil society, the latter being appointed by a public competition organized by the Ministry of Justice in consultation with the SCM. The change in the composition of the Board is a step forward, ensuring that the majority of the members are judges and providing for a transparent procedure of appointment of representatives of civil society. According to the previous law, only law professors could have been appointed as members of the Disciplinary Board. This appointment was done by the Minister of Justice without competition. The Disciplinary Board will continue to operate in its current composition until the expiry of the mandate of its current members.

The new law also contains some serious drawbacks. The law excludes the phase of initiation of disciplinary proceedings but introduces the admissibility procedure for disciplinary proceedings, transfers the exclusive right to initiate disciplinary proceedings from a SCM member to the admissibility panel composed of 3 members of the Disciplinary Board. The panel of 3 members of the Disciplinary Board, based on the materials presented by the Judicial Inspection, will decide if the respective case is worth to be examined on the merits by the Disciplinary Board or dismiss it if there is no reasonable suspicion that a disciplinary violation has been committed. The Judicial Inspection has limited powers, even though investigation of violations depends on this institution. The presence of the Judiciary Inspection at the examination of the case by the Disciplinary Board is mandatory, although the role of the Inspection is unclear, as long as the member-*rapporteur* of the Board presents the case before the Board, and the Inspection does not have the role of the "accusation".

LRCM has analyzed in more detail the drawbacks of the new law, at the drafting stage, in its opinion dated 1 April 2014 and, on 17 April 2014, presented proposals for amending of the draft law. The new procedure has also been criticized in the Joint Opinion of the Venice Commission and ODIHR dated 24 March 2014. Unfortunately, the draft law has been adopted without taking into account any of the recommendations formulated by the Venice Commission and ODIHR.

On 17 December 2014, the Superior Council of Magistracy posted for consultations the draft Regulation on the Activity of the Disciplinary Board, developed according to the Law no. 178. This Regulation is to be adopted by the SCM in the early 2015. For purposes of enactment of the Law no. 178, the Ministry of Justice has developed and made available for consultations a draft law for amendment of certain legislative acts (amendment of the normative framework collateral to the Law no. 178 of 25 July 2014 regarding Disciplinary Liability of Judges). This draft law is to be adopted by the Parliament in 2015.

Exchange of experience with German experts in the field of disciplinary liability of judges

In December 2014, a group of experts from the Republic of Moldova participated in a working visit to Aurich, Germany (Lower Saxony). During the visit, an exchange of experience with the German experts took place in the field of disciplinary liability of judges. German experts presented a system of disciplinary liability of judges which is special in comparison to the Moldovan one. The German system does not have a self-administering body like the Moldovan SCM and there is no specific legislation for disciplinary liability of judges. Disciplinary proceedings against judges are examined according to the general legislation on civil servants. Judges can be held disciplinary liable for violation of service duties prescribed by law.

Disciplinary proceedings against judges are extremely rare, due to complex and rigorous procedures of appointing judges, as well as due to a extremely well-organized system of evaluation of judges. In Lower Saxony the procedure of selecting judges has several stages. Graduates of law faculties should pass a state exam, which contains eight separate exams, followed by a traineeship of two years (in the legal profession, different levels of courts, prosecutor's office, etc.) Afterwards, the student shall pass another state exam, which also comprises eights exams. Only the students with the highest marks and not all candidates who have passed the exam become judges. If accepted for the position of judge, the candidate shall undergo a trial period from 3 to 5 years. At the end, the candidate is interviewed by a selection committee. The interview tests the personal abilities and aptitudes of the candidates and represents the final admission filter for the profession of judge, after which the mandate of the judge is prolonged until retirement. After the interview, only the persons „with a rigid verticality and highest independence" remain in office. During the trial period, the candidates are evaluated every year. Three years after passing the interview, the judge is evaluated again. Afterwards, the judge is evaluated after each 5 years until the age of 45. The highest qualification is given extremely rarely and are never given to the beginner judges, in order to encourage their professional growth. As a result of failing the evaluation, the judge may be dismissed, but, according to the knowledge of the German experts, it never happened.

Irregularities related to random distribution of cases in courts

On 11 December 2014, after being notified by the President of the Rîșcani disctrict Court of Chișinău, the NAC and Anticorruption Prosecutor's Office apprehended and heard eight employees of the Rîșcani district Court of Chișinău in a criminal case initiated on the suspicion of forgery of public documents and abuse of office. The court staff is suspected of interfering with the Integrated Case Management System (ICMS) by substituting some civil case-files with others in the period between 2012 and 2014, so that certain cases be examined by a certain judge. On the same day, searches were carried out in the houses and vehicles of these persons. Later, the Buiucani Court issued arrest warrants or house arrest warrants regarding all these persons.

On 30 December 2014, SCM gave its consent for initiating criminal investigation and holding criminally liable of Mr. Iurie ȚURCAN, former judge in the Rîșcani district Court of Chișinău (dismissed on 16 January 2014 based on resignation request), who is suspected to have participated in these actions together with personnel of the court and some jurists. According to the General Prosecutor's Office, prosecutors identified 20 civil cases which had been examined by this judge through rigging the system of random distribution of cases. These cases concerned large monetary claims. As example is given the award of more than MDL 93 mln. against the S.E. Moldovan Railway in favour of a private firm from Cahul. Criminal investigation in this case is carried out by the Anticorruption Prosecution Office.

On 23 December 2014, the Chairperson of the SCM notified the NAC about a alleged manipulation of ICMS at the SCJ by the deputy chairperson of the SCJ and the chairperson of the Civil Section, Ms. Svetlana FILINCOVA. Information related to the rigging of the system of random distribution of cases were obtained from the Centre for Special Telecommunications upon the request of the Chairperson of the SCM of 24 November 2014. The information refers to 22 cases of alleged manipulation of ICMS during January-November 2014. It seems that this matter

has not been discussed within the SCM and the members of the SCM found out about this notification from press. At the last sitting of the SCM in 2014, several members of the SCM proposed to put this matter on the SCM's agenda, but the proposal did not accumulate the necessary number of votes. The Chairperson of the SCJ voted against. It seems that the Anticorruption Prosecutor's Office is examining the notification of the SCM's Chairperson, although the General Prosecutor (who is a member of the SCM) or his first-deputy has the exclusive power to initiate criminal investigation against a judge. In an article published on the 6 January 2015, referring to statements made by Ms Filincova, it is mentioned that these measures represent a revenge for not complying with a request „in solving some civil cases in favour of certain ***protégées***". The article also mentions that Ms. Filincova filed a complaint with the General Prosecutor with evidence which confirm that it was a set-up and she will give more details in the following days. The system of random distribution of cases was introduced at the CSJ only in 2014, as opposed to other courts, were this system is operational since 2009.

Disciplinary proceedings were launched against a judge of the SCJ

On 23 December 2014, the SCM initiated disciplinary proceedings against SCJ judge Ion DRUȚĂ. He is being accused that, contrary to the law, he has participated twice at examination the same case, once as a judge of the Botanica district Court of Chișinău and the second time after having been promoted to the SCJ. Despite the fact that the Ministry of Finance requested initiation of the disciplinary proceedings several months ago, no member of the SCM initiated the disciplinary proceedings. The proceedings were launched only in December 2014, after discussions on this matter in the SCM sitting. A member of the Superior Council of Magistracy was upset of this delay.

The case concerns a dispute between a Moldovan defence attorney and a foreign company regarding a debt. Judge Druță decided in favour of the defence attorney in the first instance. On 19 February 2014, the SCJ, with the vote of three of the five judges (the vote of judge Druță being decisive) decided on the collection of the debt of the foreign company (MDL 4.363.741) from the state budget. On 10 December 2014, the Supreme Court of Justice, upon the request of the Ministry of Finance, quashed its judgment of 19 February 2014, for the reason that judge Druță had participated twice at the examination of the same case.

On 29 January 2014, a panel of the SCJ, one of whose members was Judge Druță, ruled in favour of the same defence attorney in a similar case, deciding on the collection from the state budget of the amount of MDL 776.046.

Mr. Druță was promoted to the SCJ in September 2013. He is the Chairperson of the Association of Judges of the Republic of Moldova.

THE EUROPEAN COURT OF HUMAN RIGHTS

ECtHR held the biannual meeting with the civil society

On 21 November 2014, in Strasbourg, a biannual meeting of the ECtHR with the civil society took place, attended by the representatives of the LRCM. The event was also attended by the President and judges of ECtHR, representatives of the ECtHR Registry, NGOs and lawyers specialized in representing cases before the ECtHR.

The ECtHR communicated that is had a large number of pending cases (78.000 cases as of 31 October 2014), but this number is decreasing (there were 99.900 cases pending on 1 January 2014). To clear the backlog of previous years there is a need to temporarily supplement the number of lawyers. In the past years, the ECtHR has instituted several mechanisms for a stricter filtering of poor quality applications of (stricter rules for the form of the application was introduces in 2014 and the new ground for inadmissibility (significant disadvantage) was introduced in 2011), as well as for rapid processing of cases (single judge and priority policy).

The rule 47 of the ECtHR Rules, in its version in force from 1 January 2014, obliges the applicant to submit a standardised template application which should be fully and properly filled in. Failure to observe the form of the application or inadequate filling in does not suspend the 6 months term for lodging an application with the ECtHR (see, for example, judgment ***Malysh and Ivaninc v. Ukraine***). In case of an incomplete application, the ECtHR, within 1-2 weeks from the receipt of the application, will respond with a letter calling for another application, adequately filled in, with all the documents attached. The applicant who has lodged an incomplete application in the last days of the 6 months term does not have chances to observe this timeframe.

As to the "single judge", the civil society expressed its concern, because the inadmissibility letters are standardized and the ground for inadmissibility based on which an application has been rejected is not clear. ECtHR reassured that in the nearest future it would

solve this problem. At the same time, the "single judge" mechanism proved to be efficient. It almost led to the situation where the applications allocated to the single judge are examined immediately after being received. In practice, the decision of the single judge is taken within 2-3 months from the lodging of the application.

ECtHR encouraged the civil society to contribute as much as possible to enforcement of ECtHR judgments at the national level, especially in implementing general measures, in order to exclude repetitive cases. The importance of the following measures was underlined: a well-designed mechanism of enforcing ECtHR judgments, a stronger role of the Parliaments in supervising the enforcement of the ECtHR judgments, involvement of national authorities responsible for guaranteeing human rights in the enforcement process, as well as appointing a person with sufficient authority for coordination of general measures.

ECtHR: immunity of the President of the country cannot be absolute

On 2 December 2014, a Chamber of the ECtHR issued the judgment *Urechean and Pavlicenco v. Moldova*. Ex-president of the Republic of Moldova, Vladimir VORONIN, in a TV program accused Vitalia PAVLICENCO of being a member of the former KGB and that Serafim URECHEAN, as mayor of the capital city, had instituted a corrupt system in the mayor's office. The both persons lodged actions with court against Mr. Voronin, stating that the above declarations were false. Courts refused to examine the requests, because the latter had made those statements while he was the President of the country, which, according to Art. 81 of the Constitution, enjoyed immunity.

ECtHR noted that the immunity of the President is compatible with Art. 6 of ECHR (the right to a fair trial), but that it should not be too wide. It concluded that the immunity granted to the President of the country in these cases was excessively broad. Although Art. 81 of the Constitution grants the immunity of the President "in the exercise of the office", the courts of the Republic of Moldova did not examine whether Mr. Voronin had made the statements in the exercise of functions of the President of the country or in his private capacity. Likewise, domestic judges interpreted Art. 81 of the Constitution as offering absolute and perpetual immunity, which means that the President cannot be held liable even after the termination of his mandate. ECtHR mentioned that the larger the immunity is, the more convincing the justifying reasons should be. In any case, offering blanket immunity to the President of the country should be avoided. At the same time, taking into account that when the accusations were brought, in the Republic of Moldova, there was no media pluralism, the applicants, who were politicians, could not react efficiently to the accusations that they considered to be defaming.

This is the first judgment where the ECtHR dealt with immunity of the President of a state. The judgment has been adopted with the vote of four out of seven judges of the Chamber. Three judges (Šikuta, Pardalos and Grițco) voted against a violation. The judgment is not final and can be challenged to the Grand Chamber of ECtHR within three months.

OTHER NEWS

LRCM analysed the Moldovan legislation in the field of labor non-discrimination

On 22 December 2014, LRCM presented a draft report „Analysis of the compatibility of domestic legislation in the field of non-discrimination in labour with the standards of the Council of Europe and European Union" to the relevant decision makers. The document presents an analysis of the legislation, jurisprudence and existing data on the institutional practices in the field of combating discrimination and promoting labour equality. It indicates the existence of a comprehensive legal framework, which requires minimum amendments for ensuring a better clarity and efficiency. At the same time, the authors recommend the authorities of the Republic of Moldova to continue to encourage the process of increasing awareness regarding the negative effects of labour discrimination and sensitiveness to the problem of labour discrimination – regardless of the protected criterion, as well as the process of changing mentalities, involving, to the extent possible, all the involved parties both on the public and private levels. The final report will be published and sent to the relevant authorities by the end of March 2015.

A court banned the use of road traffic surveillance cameras

On 18 December 2014, a judge from the Centru district Court of Chișinău admitted the action of the Public Association "Lawyers for Human Rights" against the Ministry of Internal Affairs (MIA). The court found that recording and photographing its members

and their cars by the traffic surveillance cameras violated the right of the members of the association to private life. The judge prohibited MIA to use these cameras. The judgment is not final and has been appealed to the Court of Appeal Chișinău. The reasons why the judge took this decision have not yet been made public, but, as it follows from the statements of the representatives of the association, in court it was claimed that the use of road traffic video surveillance cameras was not sufficiently regulated by law, which did not guarantee adequate protection of personal data.

This court decision is surprising, taking into account that the judge prohibited the use of the cameras and did not order the improvement of the level of protection of personal data. To be recalled that, on 18 November 2014, ConstC rejected an application regarding the constitutionality of the use of the road traffic surveillance cameras. The chairman of the Public Association "Lawyers for Human Rights" represented the author of this application before the ConstC".

Limitation of the Ombudsman's powers was declared unconstitutional

On 19 June 2014, the Ombudsman Anatolie MUNTEANU challenge to the ConstC the Art. 21 para (5) lit. e) of the Law on Ombudsman. The subject matter of the application refers to prohibiting the Ombudsman to deal with complaints of the persons declared incapable. Before the ConstC, the Presidency and the Parliament asserted that the challenged norm was constitutional, while the Government affirmed that the norm was unconstitutional.

By the Judgment of ConstC no. 27, of 13 November 2014, the challenged provision was declared unconstitutional, because it contradicts art. 52 of the Constitution (right to petitioning). ConstC mentioned that such a constraint of the right of petitioning of incapable persons could not ensure the protection of rights of these persons. Such a limitation has not been found in the draft law sent by the Government to the Parliament, but was introduced in the Parliament. According to the legislation on the protection of disabled persons, the task of such protection (including the protection of the mentally-ill) lies with the Ombudsman. Through the challenged norm, the powers of the Ombudsman in this field have been narrowed. On the other hand, under the Ombudsman's office there is a national mechanism of protection against torture, which has the primary task of monitor the observance of human rights in detention. There is no other authority than the Ombudsman's office with similar powers in this field. Moreover, the possibility of notifying the Ombudsman by the legal representative may prove to be inefficient when the incapable person wants to complain of the former's actions. ConstC also mentioned that international regulations suggest that persons declared incapable should enjoy such a right.

That the new law on Ombudsman, in Art. 21 para 5 lit. f), also contains the interdiction for the Ombudsman to examine requests which „discredit state authorities". This limitation of the Ombudsman's powers raises important question marks and creates room for abuse. However, it has not been the subject of the above-mentioned proceedings.

BRIEF NEWS

On 28 October 2014, SCM appointed Mrs. Olga DORUL as a member of the Disciplinary Board of judges. Mrs. Dorul is a university lecturer and has been selected following Mr. Dorian CHIROȘCA's resignation from the position of member of the Board on 5 August 2014.

During ECRI's plenary session no. 65, of 9-12 December 2014, our colleague, Nadejda HRIPTIEVSCHI, was chosen as a member of the Working Group for relations with the civil society and specialized bodies within the European Commission against Racism and Intolerance (ECRI), for a three-year mandate. For the first time, a representative from the Republic of Moldova is appointed in a statutory body of ECRI.

During the sixth Forum of the Civil Society of the Eastern Partnership, our colleague, Ion GUZUN, has been chosen as a national facilitator of the National Platform of the Republic of Moldova.

TO FOLLOW

From 1 **JANUARY 2015,**
LRCM implements a new three-year project. It aims at creating and improving the legal framework for ensuring financial and fiscal sustainability of NGOs, as well as at promoting effective mechanisms for NGO participation in the decision-making process. The project is implemented with the support of the US Agency for International Development (USAID), within the Moldova Partnerships for Sustainable Civil Society Program, implemented by FHI360.

ON 28 JANUARY 2015,

LRCM will launch a report on the reform of the institution of investigative judge in the Republic of Moldova.

ON 29 AND 30 JANUARY 2015,

LRCM will organize two workshops on the subject ***„Ensuring equality and non-discrimination in the Republic of Moldova – legal and practical aspects"***. The workshops will address several problematic aspects regarding the legislation of the Republic of Moldova in the non-discrimination field, as well as practical aspects related to the application of the legislation, with accent on existing remedies for complaints on discrimination. Defence attorneys and lawyers will be invited to the first workshop and judges and prosecutors – to the second one.

ON 30 JANUARY 2015,

the Council of the National Institute of Justice will hear candidates participating in the contest for the position of the Executive Director of the National Institute of Justice. Three candidates are registered in the contest, namely Diana SCOBIOALĂ, university professor; Eugen RUSU, former Deputy of the General Prosecutor and Valeriu KUCIUK, researcher at the Academy of Sciences of Moldova.

FEBRUARY

- LRCM will organize one workshop for defence attorneys and one for journalists to discuss the new Law on disciplinary liability of judges. The purpose of the workshops is to raise the level of knowledge about the new system and the interest of defence attorneys and civil society for the system of disciplinary liability of judges.

- LRCM will launch the second Report on enforcement of ECtHR judgments by the Republic of Moldova. The report assesses the measures taken by the authorities of the Republic of Moldova during 2013-2014 for purposes of enforcing the main ECtHR judgments.

- LRCM will publish the final version of the report *„ Analysis of the compatibility of domestic legislation in the field of non-discrimination in labour with the standards of the Council of Europe and European Union"* and two guidelines on non-discrimination in the labour field: one addressed to employers and another one addressed to the public, employees and potential employees.

MARCH

- LRCM will publish an analysis of the level of transparency and efficiency of the manner of organizing the sittings of the SCM and adoption of the SCM's decisions. The analysis refers to the activity of the SCM in 2014.

- In March 2015, the Venice Commission will make public its opinion on the new draft Law on the Prosecution. The opinion is given upon the request of the Ministry of Justice.

13 MARCH 2015

The General Assembly of Judges will take place, to discuss the activities of the SCM and courts for 2014.

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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