LCRM – Legal Resources Centre from Moldova

Legisla?ia cu privire la r?spunderea disciplinar? a judec?torilor necesit? îmbun?t??iri semnificative

paik · Thursday, March 3rd, 2016

The Legal Resources Centre from Moldova (LRCM) calls the decision-makers to amend the legislation on the disciplinary liability of judges by strengthening the status and 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.

The LRCM examined Law no. 178 on the disciplinary liability of judges and its application throughout the first year of implementation and drafted a public policy document entitled "Assessment of Needs to Improve the Legal Framework on the Disciplinary Liability of Judges". The document highlights several shortcomings in the existing system of disciplinary liability of judges, caused both, by a flawed legal framework, and a problematic practice in terms of its implementation.

Law no. 178 created a quite complicated judges' disciplinary liability mechanism. Thus, a complaint related to 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 rejected by the Judicial Inspection as manifestly ill-founded. 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 rejected as manifestly ill-founded, reveals that the Judicial Inspection, although does not comply with the time limitation for rejecting the complaints as manifestly ill-founded, 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. In such a system the risk of rejecting well-founded complaints is very high.

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. Such a system affects the rights of judges and the system's capacity for self-accountability.

During the first year of Law no. 178 implementation, statistics show 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 extended. Thus, if in 2014 an action was brought for every 48 disciplinary complaints, then in 2015, an action was brought for every 61 complaints. Additionally, the rate of 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.

Upon adoption of Law no. 178 no recommendations of the Venice Commission and national or international experts were taken into account. Following one year since its implementation, the involvement of decision-makers in assessing and improving the judges' disciplinary liability system seems totally timely and appropriate, so as to make it effectively ensure judges' accountability and contribute to increase of the litigants' credibility in judiciary. The document "Assessment of Needs to Improve the Legal Framework on the Disciplinary Liability of Judges" includes a series of recommendations. These relate, in particular, to granting the Judicial Inspection a functional autonomy from the Superior Council of Magistracy, power to verify the disciplinary complaints, to reject those that do not contain indications of disciplinary offence and to present charges on the grounds of disciplinary cases directly in the plenary of the Disciplinary Board. In order to ensure the accountability of the Judicial Inspection, the decisions to reject the complaint and the decisions to dismiss the disciplinary proceedings by the Judicial Inspection have to be published on its website and are to be appealed before the Disciplinary Board panels. For the purpose of ensuring a fair trial within a reasonable time, the decisions of the Disciplinary Board are to be directly appealed before the Supreme Court of Justice.

The policy document "Assessment of Needs to Improve the Legal Framework on the Disciplinary Liability of Judges" will be released within a roundtable attended by the representatives of the Parliament, the Ministry of Justice, the Superior Council of Magistracy, the Disciplinary Board, the Supreme Court of Justice, the donor community and civil society. The full text of the document can be downloaded here.

The event is designed to launch discussions with decision-makers and, thus, enhance the process of improving the legislation on disciplinary responsibility of judges.

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The Policy Document "Assessment of Needs to Improve the Legal Framework on the Disciplinary Liability of Judges" was developed by the Legal Resources Centre from Moldova within the project "Promoting effective judicial accountability Mechanisms in Moldova", with the financial support of Soros Foundation-

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