



“Often, the reforms initiated in the European states cover specific aspects; the judiciary reform in Moldova is the widest of all. It is time for the reform to generate an impact”



Eric Svanidze,
manager of the EU Project
to Support Coordination of Justice
Sector Reform in Moldova.

THE REFORM IN A NUTSHELL

Candidates Will Be Proposed Repeatedly to the Position of Judge Solely Upon the Unanimous Vote of the SCM Members

This proposal has been included in a draft law, which was signed off by the Government on August 21 inst. The draft has been prepared by a group of liberal-democrat MPs and provides for the amendment of the Law on the Superior Council of Magistracy. Therefore, if the President of Moldova turns down a candidate to the position of judge, court president or deputy-president, the same candidate shall be proposed repeatedly solely upon the unanimous vote by the SCM members. The authors of the draft law believe that this amendment will ensure higher objectivity by SCM in the process of appointment and promotion of magistrates. In addition, the authors consider that increasing the number of votes for the repeated proposals of the same candidate will increase the conviction that the appointment of the judge is based on objective criteria and meritocracy.

People’s Advocate Instead of Ombudsman

The Ministry of Justice has introduced the provisions of the draft Law on People’s Advocate (PA). According to the document, the institution of the Ombudsman will be renamed to People’s Advocate (PA), and, instead of the four existing Ombudsmen there will be only one People’s Advocate. In addition, it is planned to reorganize the internal structure by creating the Office of People’s Advocate, managed by a Secretary General; to change the procedure of selection and appointment of PA by ensuring a transparent competition with participation of the civil society; to extend the advocate’s mandate from 5 to 7 years; to regulate the social guarantees of PA; to strengthen the national mechanism of torture prevention; to increase the independence and immunity of PA, etc.

The draft has been developed in accordance with the Judiciary Reform Strategy for 2011-2016 and is intended to replace the current Law on Ombudsmen, adopted in October 1997.

1404 petitions

from individuals and legal entities were filed to the Superior Council of Magistracy in the first half of 2013. Most of the petitions relate to the disagreement with court decisions and rulings (619) and the violation of the norms of discipline and ethics (423).

The Mandates of the SCM Members Expire Elections are Coming Up

This fall, elections will be held within the Superior Council of Magistracy (SCM). On October 18, the General Meeting of Judges will elect six members of SCM from the judges’ community, and then the Parliament will appoint three more members from the tenured law professors’ community. The term of the SCM member mandate is four years. According to the Law No. 947 of 19.07.1996, SCM has 12 members, including the president of the Supreme Court of Justice, the Minister of Justice, and the Prosecutor General, the latter being ex-officio members. Experts from non-governmental organizations have noted that the appointment by the Parliament of the SCM members from the law professors’ community is non-transparent and needs to be improved.

Thirteen Moldovan judges have applied to the contest for the position of permanent SCM member from the judges’ community. Among the candidates, there are four current members of SCM (Nichifor Corochii, Dina Rotarciuc, Anatolie Turcan, and Dumitru Visternicean), as well as other magistrates from different courts in the country: Tatiana Raducanu (Supreme Court of Justice), Liliana Catan and Anatolie Minciuna (Chisinau Court of Appeal), Maria Gheras, Viorica Puica, Gheorghe Balan, and Ion Druta (Botanica Court, Chisinau) and Grigore Siscanu (Nisporeni Court).

Dina Rotarciuc, SCM member and candidate for a new mandate says the proposals were made by judges personally or by the court staff. “Four years ago, SCM members from the judges’ community used to be proposed and selected on the day the Meeting was conducted. Now the process is more transparent. The list of candidates is displayed on SCM’s website; within the General Meeting votes will be cast for every candidate and the six SCM members from the judges’ community will be selected”, Dina Rotarciuc says.

If the election of SCM members from the judges’ community is more transparent, then the procedure of election by the Parliament of the SCM members from the community of law professors is more opaque. This is the opinion of Nadejda Hriptievshi, expert within the Legal Resource Centre (LRC), who says the Parliament should adopt urgently a Regulation on selection of SCM members in an objective, fair and transparent way. “Several non-governmental organizations have submitted an address to the Parliament regarding the need to organize a public contest to select the SCM members from among the tenured law professors. The regulation should be developed as soon as possible, as the mandate of university professors who are currently SCM members expires on November 27. It is important to organize a transparent public contest to allow professional



Current membership of the Superior Council of Magistracy

| Full name | Position | Elected/appointed by |
|----------------------|---|---|
| Oleg Efrim | Ministry of Justice | Decree of the President of Moldova No. 124 - VI of 06.05.2011 |
| Mihai Poalelungi | President of the Supreme Court of Justice | Parliament Decision No. 9 of 16.02.2012 |
| Corneliu Gurin | Prosecutor General | Parliament Decision No. 81 of 18.04.2013 |
| Dumitru Visternicean | Judge at the Supreme Court of Justice | Decision of the General Meeting of Judges, 28.11.2009 |
| Dina Rotarciuc | Judge at Chisinau Court of Appeal | Decision of the General Meeting of Judges, 28.11.2009 |
| Anatol Turcan | Judge at Chisinau Court of Appeal | Decision of General Meeting of Judges, 28.11.2009 |
| Nichifor Corochii | SCM president | Decision of General Meeting of Judges, 31.10.2009 |
| Boris Negru | University Professor | Parliament Decision No. 76-XVIII of 27.11.2009 |
| Vasile Cretu | University Professor | Parliament Decision No. 76-XVIII of 27.11.2009 |
| Alexandru Arseni | University Professor | Parliament Decision No. 76-XVIII of 27.11.2009 |

rather than politically affiliated candidates to win. It will be a pity if the Parliament treats this address as an ordinary petition and fails to respond to the call of organizing a public contest”, LRC expert says.

Raisa Apolschii, president of the Legal Commission for Appointments and Immunity of the Parliament of Moldova reported that the address of the non-governmental organizations has been recorded and will be examined by the Commission members.

According to the law, six SCM

members representing the community of judges, including two acting members, are elected through secret vote by the General Meeting of Judges to represent all levels of courts. A candidate is considered elected if he/she has gathered more than half of the votes of those attending the meeting, in decreasing order of the votes obtained. SCM members, except for the ex-officio members, may not exercise other remunerated activity than the didactical and scientific activity.

About 50 Vacant Positions in the Domestic Courts

Currently, there are 460 magistrates working in the courts of Moldova, or 50 judges less than the number established by the Law No. 514 of 06.07.1995 on the Organization of Judiciary.

At Taraclia court, there are only two out of the five judges the court should have. Evghenii Dvurcenschii, court president, says one of the judges has retired, another one is on maternity leave, and yet another magistrate is on annual vacation leave. “There is only two of us left, while the caseload is really big. I have filed several requests to SCM asking them to send some judges to our region, but none of the vacant positions have been filled yet”, E. Dvurcenschii explains.

In the Chisinau municipality the situation is not much better. Thus, in the Riscani Court, only 16 out of the 22 judges work, including two investigative judges.



Archive of Taraclia Court, where case files are stored after decisions have been pronounced

Court president Oleg Melniciuc complains that there are 60 hearings daily in his court and judges are overwhelmed by cases.

Although many court presidents say the number of judges should be increased, Ion Druta, president of Judges Association

of Moldova thinks that increasing the number of magistrates will not improve the quality of justice delivery. “The existing number of judges is sufficient for our country. However, sometimes unexpected situations arise, which need to be settled. I think a backup entity should be created under the SCM, composed of several magistrates who could be delegated to the courts to replace judges who go on maternity leave or on longer sick leaves. Thus, there will no need to supplement the number of judges, Ion Druta says.

Law No. 514 of 06.07.1995 on Organization of the Judiciary establishes a number of 504 judges for all the courts in the country, including 33 judge positions for the Supreme Court of Justice. According to SCM, in the first half of 2013, about 460 judges were working in the country.