



“Moldova has made significant steps forward in reforming its judiciary. The judiciary reform strategy is a very good endeavor, but it is difficult to implement.”

Gabriella Battaini-Dragoni,
Deputy Secretary General of
the Council of Europe.

THE REFORM IN A NUTSHELL

SCM will be helped by two nongovernmental organizations



Signing of the Cooperation Agreement between the SCM, LRCM, and Soros-Moldova Foundation. Photo by: LRCM

On May 22, 2014, the Superior Council of Magistracy and two nongovernmental organizations – the Legal Resource Centre of Moldova (LRCM) and the Soros-Moldova Foundation have signed a Cooperation Agreement by which the NGOs intend to support SCM in the process of judiciary reform. The main goal of this trilateral agreement is to consolidate the judicial system through professional performance evaluation, selection of judges and promotion of the rule of law in the light of self-administration of courts.

Bender Court of Appeal will be closed



Building of the Bender Court of Appeal. Photo by: noi.md

A decision on this has been made on June 3, 2014 by the Superior Council of Magistracy. The liquidation of this court is part of the program for court optimization, which is set out in the Judiciary Reform Strategy for 2011-2016. Oleg Efrim, minister of Justice explains that this court examines a small number of cases and therefore, the costs for maintenance of the building are not justified. All the duties of this court shall be taken over by the Chisinau Court of Appeal.

In the first five months of 2014, the College for Evaluation of Judges' Performance has evaluated

116 judges.



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

Mechanism of Judges' Disciplinary Sanctioning to Be Modified

The draft Law on Disciplinary Liability of Judges, voted in first reading by the parliament, will modify the mechanism of disciplinary sanctioning of magistrates. According to it, violation of the provisions of Judges' Code of Conduct will not be sanctioned as a disciplinary breach, the way it is now. The Venice Commission recommends introducing as forms of disciplinary sanctions the temporary dismissal from the position, withdrawal of cases or assigning other judicial duties to judges.

In April 2014, the magistrate Ion Cotea from the Cahul court was sanctioned by the Disciplinary College (DC) of the Superior Council of Magistracy (SCM) with a severe reprimand as he had allegedly failed to observe the deadlines for writing court decisions and sending them to the participants in the trial. At the same time, the DC decision reports judge Cotea had an undignified attitude during the exercise of his job duties, specifically through his behavior towards the participants in the trial. However, the magistrate says the reprimand was applied against him unjustly, and the members of the Disciplinary College did not take into account his explanations. “I failed to write those decisions in time due to well-grounded reasons. We had a high staff turnover, and three court secretaries changed in one year, and the responsibility for writing a court decision lies not only with the judge, but also with the judicial assistant and the court secretary”, the judge of Cahul court explains. Regarding the accusation of having had an undignified attitude to the trial participants, he says that such violation relates to the judges' Code of Conduct and should not be subject to disciplinary sanction.



During January–May 2014, the Disciplinary College within SCM issued 24 decisions against judges, including:

Application of warning	4
Application of reprimand	2
Dismissal from the position of judge	1
Dismissed proceedings	17

Teo Cirnat, SCM member, says the rules of Judges' Code of Conduct should be taught to each magistrate: “Judges have different interpretations of the Code. They should learn the rules, as professional deontology represents the image of a judge.”

So far, the breach of the Code of Conduct has been considered a disciplinary violation, however, in the new draft law on disciplinary liability, which was voted in Parliament in first reading at the end of 2013, this provision was excluded. Nadejda Hriptievski,

expert of the Legal Resource Centre of Moldova says not every ethical breach should be disciplinarily sanctioned. “In order to be subject to disciplinary sanctions, a breach should have a certain level of seriousness. Therefore, some serious breaches of the Code of Conduct represent disciplinary violations at the same time, while some others do not,” N. Hriptievski explains. She also believes no sanctions are required for the breach of the Judges' Code of Conduct, but rather a mechanism that would help magistrates understand how to act in certain sensitive situations that may engender ethical issues. “This mechanism should be developed by the Judicial Inspection Authority or the Superior Council of Magistracy”, the expert adds.

Venice Commission Recommends Temporary Dismissal as a Disciplinary Sanction

On June 11, 2014, the draft Law on Disciplinary Liability of Judges was examined addition-

ally by the Legal Commission for Appointments and Immunities of the Parliament, after the Venice Commission made some recommendations regarding this draft. According to the recommendations, the disciplinary procedure should be initiated in case of serious improper or inexcusable professional conduct, which tarnishes the honor of the judiciary. “Applying disciplinary sanctions for an action that could only “affect the activity of the court” is excessive. At the same time, the existence of a reasonable number of possible sanctions facilitates the observance of the proportionality principle, when the competent body needs to decide on a sanction. In this connection, the authors of the draft law could consider adding the “temporary suspension from the position” as an additional possible disciplinary sanction. Other possible sanctions could be case withdrawal or assigning other judicial duties to judges”, the recommendation of the Venice Commission also sets out.

Less Complaints against Judges this Year

In the first five months of 2014, the number of complaints against judges has decreased by over 100 compared to the same period of the previous year. In their complaints citizens report the violation of the reasonable term for case settlement, the disagreements with the court decisions and the failure by judges to write the decisions within the term required by law.

On June 5 of this year, three hearings were scheduled in the Courtroom No. 1 of the Chisinau Court of Appeal; all cases have been under examination for over one year. In one of the civil litigations that had to be examined, Nina

Volosciuc from Micauti village, Straseni raion was a party. She has been going to the court for more than three years in connection with this case. After the case was examined at the Straseni Court, Mrs. Volosciuc has appealed the decision to the Chisinau Court of Appeal. “The trials take very much time because different situations occur. Today the hearing will certainly be postponed again since my attorney could not come. I do not know when a final decision will be made,” N. Volosciuc says.

The violation of the reasonable term for case settlement, as well as the failure to write the decisions within the term stipulated by law

or the disagreement with the court decisions are some of the reasons reported by those who have filed complaints to the SCM within the period January-May 2014. According to Valeriu Catan, member of the Judicial Inspection Authority, 1083 petitions were examined within this period or over one hundred petitions less than in the same period of the last year.

Some of the judges against whom most of the petitions were addressed have left the judiciary

Victor Zaharia, executive director of the Institute for Penal Reforms (IRP) believes that one of the rea-

sons for the drop-off in the number of petition is the smaller number of infringements committed by judges. “Some of the judges against whom most of the petitions were addressed, including petitions against violation of the reasonable term for case settlement, have left the judiciary”, the expert says. The IRP Director says the implementation of new mechanisms for performance evaluation, career growth, and accountability of judges contributes to a sound and professional conduct by the magistrates. “Although the results of the judicial reform may not be seen immediately, the changes occurring already have an impact”, Victor Zaharia concludes.