

EU-Moldova Civil Society Platform		Platforma societății civile UE-Moldova
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## **Report on Rule of Law and Good Governance in the Republic of Moldova**

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### **SUMMMARY**

By 1 May 2016, the Parliament and Government have implemented several actions relevant to the Association Agreement. Most relevant is the adoption of Law on Prosecution, the Law on the reorganization of the judiciary.

A series of laws were adopted in the first reading. Although the adoption of legislation was a backlog of the legislative and executive, starting with January 2016 several draft laws were adopted by a very high speed. In some cases the relevant civil society organizations called for public discussions on draft laws that have been modified compared to the original version.

### **TITLE II: POLITICAL DIALOGUE AND REFORMS, COOPERATION IN FOREIGN POLICY AND SECURITY.**

1. In April 2015, the Socialist Party faction in Moldova registered a legislative initiative to abrogate the Law no. 121 of 25 May 2012 on ensuring the equal opportunities. The Ombudsman issued a public statement condemning this initiative and qualified it as a threat to human rights and fundamental freedoms and a decrease of the already achieved level by ensuring equality in Moldova.

2. On 25 February 2016 was adopted the Law on Prosecution service, in force from 1 August 2016. The law took into account the recommendations of the Venice Commission. At the moment, the Prosecutor service has to adopt the whole set of regulations needed for the implementation of the Law - the Regulation of the Superior Council of Prosecutors (SCP), the rules of activity of the SCO Boards, etc. The Constitutional Court approved the proposals to amend the Constitution in respect of the appointment of the Attorney General. Constitution has to be amended in six months.

A package of related laws to ensure a proper implementation of the Law the prosecution service has been approved by the Government in April 2016. The document was amended without the approval of the working groups that drafted the package of laws. The document will be examined by Parliament and approved by 31 July 2016. The adoption of the draft laws without public consultation is inadmissible.

Civil society organizations have expressed concern about the appointments to leading positions in the prosecution service before adoption the new legislation. We also consider that Parliament has to withhold now from appointing the Attorney General. Under the new provisions, the Attorney General will be appointed by the president. In April 2016, the Socialist Party faction in Moldova contested before Constitutional Court the Law on the Prosecutor Service.

3. After adoption the Law on Prosecution Service of 25 February 2016, the National Anti-Corruption

Center (NAC) will have fewer powers so that the institution's mandate should be revised. However, NAC competences relating to money laundering are to be awarded to the Ministry of Finance. Government should consider the establishment of an independent agency to recover the money derived from crime.

4. From 30 October 2014, a function of a judge at the Constitutional Court became vacant. This vacancy has to be supplied by the Government. On 23 October 2015 the Government adopted a Regulation on the organization and conduction of the contest for the vacancy and established a commission to select the candidates. According to the Regulation, the competition consisted of three stages, pre-selection of candidates on the basis of submitted files, written test and interview. Following the public interview, which took place on 27 November 2015, the Commission found proposed Mr. Zaporozjan to the Government for the appointed as Constitutional Court judge. Unfortunately, although it passed more than 6 months after the nomination, the Government has not supplied the vacancy of judge at the Constitutional Court. Such a procedure of selection of Constitutional Court judges is held for the first time in the history of Moldova. Previously, candidates were appointed by the Government without a transparent selection procedure. Of the six judges of the Constitutional Court, two are appointed by Parliament, two – by the Government and two by SCM.

5. In 2014 was adopted a new law on the ombudsman. The ombudsman was appointed with a delay of one year. In 2016 the Parliament appointed the child rights ombudsman.

6. The package of laws with regard to the National Commission for Integrity (NCI) and secondary legislation was adopted in first reading by the Parliament. Civil society urges Parliament to adopt a package of laws as soon as possible and in the form in which it was consulted with civil society and development partners. At the moment the subjects of verification are about 65,000 people (councilors, mayors, officials from ministries, etc.). Thus, it is necessary to check a higher ranking officials to exclude overloading NCI.

7. Draft law on institutional integrity testing to be subject to public debate and be adopted in accordance with the expertise provided by the Venice Commission and the Constitutional Court ruling.

### **TITLE III: FREEDOM, SECURITY AND JUSTICE**

1. Implementation of the Justice Sector Reform Strategy (JSRS) and systemic reforms are delayed. The adoption of the Law on Prosecution service, reorganization of the judicial map, etc. are of those few important laws which were adopted. By 1 May 2016, no information is available to the public if the Government asked the assessment of the JSRS implementation by EU experts. This is the only way to for disbursement of EU money for the JSRS implementation funding totaling EUR 60 million.

2. Supreme Court of Justice (SCJ) has adopted several measures for the uniform practice of the law on the application of sanctions for corruption crimes (art. 324-326 of the Criminal Code). However, there is lack of uniform practices among district courts, court of appeals and the SCJ. SCJ quashed more than 70% of decisions issued by court of appeals. In turn, the court of appeals quashed 52% of sentences issued by judges. The defective examinations of such cases are confirmed also by the large number of cases sent back for re-examination.

3. Civil society organizations issued several appeals on the appointment and promotion of judges, including for the Supreme Court of Justice. SCM does not motivate decisions on which judges are promoted, creating the impression that some judges are appointed or promoted based on other criteria than those set out in law.

4. Almost a year after the adoption of the new disciplinary mechanism for judges (Law no. 178), statistics show that the rate of instituting disciplinary procedures in 2015 fell by almost 27% compared

to 2014 although subjects who can file a complaint has increased. Thus, if in 2014 a case was brought in every 48 disciplinary complaints, then in 2015 a disciplinary was initiated in each 61 complaints. Moreover, the sanctioning rate of judges decreased four times. Given that, according to recent polls, about 75% of the population do not trust the justice system, a drop so large rate of sanctions is hard to explain other than by a too complicated and formalist mechanism of disciplinary liability.

5. In April 2016, the parliament adopted the law on the reorganization of the judicial map. This implies in general, reducing the number of courts from 44 to 15 courts with a minimum of 9 judges. At the moment 28 of the courts (64%) have less than 6 judges per court.

Reorganization of courts, requires the construction of a palace of justice - a court for those five district courts in Chisinau. Construction of a court for at least 120 judges, for at least 500 employees and with a capacity for at least 50 detained people in custody, is practically impossible.

6. In 2009, in the judgment *Iordachi and others vs. Moldova*, ECtHR found that the law on wiretapping did not contain sufficient safeguards against abuses and the rate of authorization of wiretaps was very high (in 2005 - 98.81%, in 2006 - 97.93% and in 2007 - 99.24%). In an analysis conducted by the Legal Resources Centre from Moldova, was found that annually a rate of about 98% of applications for wiretaps is authorized annually in Moldova and the number of requests for interception risen several times in recent years, reaching 9.962 in 2015.

Although legislation on interceptions amended in 2012, tightening conditions for the interception, the number of requests for authorization of wiretaps has steadily increased and the rate of approvals by magistrates remained as high - about 98% annually. This can be explained by the fact that the judges did not examine thoroughly enough the need for interceptions and their exceptional character, and the proportionality of the measure with the right to privacy of individuals.

Parliamentary oversight of wiretapping is not transparent. The Prosecution Service annually submit the report to the Parliament is not published pretending to be a state secret, although much of the information contained in it is information of general interest.

7. Civil society organizations expresses their concern about the potential negative consequences that a law adopted by the Government on 30 March 2016 can have, called "Big Brother". The signatories pointed out that the draft law grants a very broad range of rights for law enforcement institutions in case of a long list of offenses, with no respect to the principle of privacy and freedom of expression, the entire burden of implementing of the bill is passed on to service providers, without a preliminary analysis of the costs and effectiveness of measures which will lead to a substantial increase of cost for access to internet services. Meanwhile, the signatories the public call acknowledges the importance of combating child sexual abuse offenses and terrorism and does not dispute the need to improve the legal framework in these areas, but stresses that the bill still far exceed the objectives pursued and leaves room for abuse.