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Moldova: more work needed to implement judicial reforms

Chisinau, Moldova – Reform of the Moldovan judicial system needs further commitment from parliament, government, the judiciary and judicial bodies, if recent legislative measures are to bring real change, according to a report launched today by the International Commission of Jurists (ICJ) and the Soros Foundation-Moldova (SFM).

The report *Reforming the Judiciary in Moldova: Prospects and Challenges*, which follows an ICJ mission to this country in September 2012, analyses the recent progress made in reform of the Moldovan judicial system.

Today's report welcomes many of the comprehensive legislative reform that have been enacted in the past year, but warns that further measures are needed to build a strong and independent judiciary, in practice as well as in law, and to ensure that effective mechanisms of judicial accountability are applied fairly and are compatible with judicial independence.

"Judges are responsible for one of the most important functions in any society – the fair and effective administration of justice. The priority that is being given in Moldova to judicial reform is therefore welcome," said Róisín Pillay, Director of the ICJ Europe Programme. "A strong and independent judiciary is essential to ensure that everyone can be confident of a fair hearing when they come before the Courts, and of an effective remedy when their rights have been violated."

"Judicial independence goes hand in hand with judicial accountability – judges are not above the law. But the reforms must always ensure that there are effective safeguards against any improper interference so that judges can adjudicate impartially without fear of victimization," Pillay added.

"The Soros Foundation-Moldova is particularly concerned with the lack of equal attention to accountability, independence and transparency of the judiciary. We are confident that this could not be achieved unless every judgment is properly reasoned," mentioned Victor Munteanu, Justice Program Director at SFM.

The report calls the current reforms the most ambitious undertaking in decades, but warns against poor implementation of good laws and initiatives. Among other measures, the report recommends reconsideration of the necessity of the initial five-year appointment period for newly appointed judges and modification of the system of security checks on judges.

It also stresses that any periodic evaluation of judges must not lead to the dismissal of judges before they have been given an adequate opportunity to redress any failings, and must not serve as a back door for dismissing judges.

In addition, the report emphasizes the need to raise judicial salaries as a matter of priority, and supports enhanced judicial training, in particular on human rights law. In parallel with raising judicial salaries, consideration must be given to the current laws on early retirement of judges and the system of receiving salaries and pensions in parallel.

It further underlines the importance of reasoned judgments in ensuring a fair hearing and expresses serious concerns at the recent amendment to the Civil Procedure Code, which removes the requirement for first instance judges to give reasons for decisions in civil cases. The ICJ recommends that the impact of this amendment should be monitored, and consideration should be given to repealing it, should it be shown to give rise to any barriers to access to justice.

Regarding accountability measures, the report finds that the removal of the requirement for the Superior Council of Magistracy's authorization for prosecution of a judge, in regard to crimes of judicial corruption, may help to re-establish the credibility of the judiciary. However, given the concerns as to the potential abuse, any prosecutions of judges on corruption charges under the new legal provisions, must be carefully monitored and scrutinized.

Clear and detailed procedures for disciplinary action, including for hearings before the Disciplinary Board as well as the Superior Council of Magistracy, should be developed, to ensure the greatest possible consistency and predictability in the application of disciplinary measures, the report says.

The ICJ also expresses concern at the presence of the Minister of Justice and the Prosecutor General on the Superior Council of Magistracy, and in particular their resulting power to initiate disciplinary proceedings, and recommend their removal as ex officio members.

The report was developed within the "Improving the observance of the Right to Liberty and Security of Person in Moldova" project, implemented by Justice Program of the SFM in partnership with the Superior Council of Magistracy and the Supreme Court of Justice. The project advocates for the development of coherent and sustainable accountability mechanisms for judges.

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- Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952 and active on five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.
- The Soros Foundation-Moldova is a non-governmental, non-for-profit and non-political organization which was established in 1992 by the financier and the philanthropist George Soros to promote the development of an open society in Moldova. The Foundation contributes to the society's democratization by developing and implementing a range of programs, such as: media, cultural policy, legal reform, good governance, civic engagement and public health.

