



„Monitoring the Justice Sector Reform for Increased Government Accountability”

**Quarterly Report No. 1
on the Monitoring of the
Implementation of the Justice Sector
Reform Strategy**

Chisinau – 2013

INTRODUCTION

This report was prepared within the project “Monitoring Justice Sector Reform for increased Government’s accountability”, implemented by the Promo-LEX Association and the Association for an Efficient and Responsible Governance (AGER), with the financial support of the European Union.

The monitoring focused on the observation of two main components: assessing the implementation of activities contained in the Action Plan for the implementation of the Justice Sector Reform Strategy, and trial monitoring.

The monitoring mission includes 36 national monitors, whose work is coordinated by a Network Coordinator, and three national experts that form the Analytical Team. The monitors within the network attend trial hearings in precinct and district courts, in the Courts of Appeal and the Supreme Court, and in specialized courts. Overall, 1872 trials will be monitored throughout the project. The monitors will produce quarterly reports on the progress registered in implementing the activities listed in the Action Plan, verified in the field.

Methodology. *The Methodological Guidebook for Monitoring the Implementation of the Justice Sector Reform Strategy in Moldova* provides a mechanism for monitoring the activities covered in the Action Plan, including interviewing relevant subjects/institutions to determine the outcome of these actions (conducted studies, developed bills, approved methodologies, etc.). The findings herein were formulated based on the responses to the questions in the quarterly report. In each district center, monitors interviewed lawyers, representatives of judicial enforcement offices, notaries, mediators and representatives of regional offices of the National Council of State Guaranteed Legal Aid to determine whether these subjects are aware of particular actions, and in what capacity; whether or not they were involved in their implementation, and their opinion on the respective actions. At the same time, in order to effectively assess the implementation of each activity, interviews were conducted with representatives of all institutions responsible for their implementation, but also with beneficiary organisations.

Two categories of actions/activities were analysed for the purpose of this report, as follows:

- Actions set for completion in the first quarter of 2013.
- Overdue actions that had to be completed in 2012.

We note that this report includes only overdue actions for 2012 that were automatically transferred for implementation in 2013. Actions that are due for completion in the first quarter of 2013 are analysed in full and qualified in this report as implemented or not implemented, as appropriate.

Moreover, in order to be tracked more easily, actions were grouped into the following seven categories:

- Group I. Needs assessment and current practices studies; suggestions and recommendations for reform;
- Group II. Development of methodological recommendations and professional training programs;
- Group III. Improving the legal framework and drafting bills and regulations;
- Group IV. Professional training activities for different parties of the justice sector;
- Group V. Development and use of the awareness and information tools;
- Group VI Acquisition and installation of equipment; software modernisation/upgrade;
- Group VII. The set up and streamlining of the work of the justice sector bodies (committees, colleges, etc.).

The Promo-LEX Association and the Association for an Efficient and Responsible Governance (AGER) sincerely thank to all the parties that devoted time and attention to the monitors and answered their questions thus contributing to the development of this report.

EXECUTIVE SUMMARY

We note that the work of the seven working groups established to monitor the implementation of the JSRS Action Plan was largely productive. Although the number of Working Groups meetings varied from one group to another during the first quarter of 2013, most meetings were deliberative in the sense that they were attended by representatives of most of the institutions invested with voting rights. However, there was a case when Working Group 5 had to postpone a meeting due to lack of quorum.

The documents produced as part of the Justice Sector Reform Strategy are undoubtedly very important. At the same time, we found that only a small part of the developed studies are posted on the website of the Ministry of Justice, in the Justice Sector Reform compartment. In this context, we suggest that all documents developed as part of Justice Sector Reform Strategy implementation be placed on the website of the Ministry of Justice, in the section dedicated to the reform, because now it is difficult for an interested person from outside the system to locate a specific document or learn who developed it. The same applies to studies, reports and bills. Another suggestion to working groups is that meeting agendas be posted on the website in advance, while the time period for the content analysis of actions planned, either implemented or not, should match the problems addressed.

Implementation of actions planned for completion in Quarter I, 2013

With regard to the implementation of actions provided in Pillar I, „Judicial System”, we state the following: three actions were due for completion by the end of quarter I of 2013 (*action 1.1.9 p.2, action 1.2.2 p.4, and action 1.3.8 p.2*), of which only one, namely the latter, was implemented. At the same time, we note that action 1.1.9. p.2 was completed in April, and will therefore be analysed and marked as completed in the next Quarterly Report. We also note that many actions are overdue since 2012. Of the total 21 overdue actions, only six actions were completed in the first quarter of 2013, leaving the remaining 15 actions unfulfilled.

Five actions were due for completion in the first quarter of 2013 in Pillar II, „Criminal Justice”, (*action 2.2.5 p.1, action 2.2.6 p.1, action 2.2.7 p.1, action 2.2.8 p.2 and action 2.4.2 p.1*). Other two important actions (*action 2.1.1 p.1 and action 2.1.5 p.2*), overdue since 2012, were also closely monitored. Although the responsible institutions did take certain steps toward implementing the mentioned actions, none of these activities (overdue since 2012 or due by end of Q1, 2013) was completed by the end of the reporting period.

A single action included in Pillar III, „Access to Justice and Enforcement of Court Decisions”, was due in the first quarter of 2013, and remained unfulfilled: *Drafting a bill to amend the law on the mechanism of recognition and enforcement of judgments issued by foreign courts*. Other 13 actions, which had to be completed by the end of last year, remained unfulfilled.

None of the actions included in Pillar IV, „Integrity of Justice Sector Actors”, was due by the end of quarter I of 2013. At the same time, four actions (*action 4.1.5 p.1, action 4.3.2 p.1, action 4.3.4 p.1, and action 4.1.1 p.1*) remained overdue since 2012 and were not completed.

Pillar V, „Role of the Judiciary in Economic Growth”, did not provide for any actions that were due in Q1, 2013. At the same time, the monitoring focused on other six important actions (*action 5.1.1 p.1, action 5.1.2 p.1, action 5.3.1 p.1, action 5.3.2 p.1, action 5.2.1 p.2, and action 5.2.1 p.3*) overdue since 2012. None of these actions was completed during the monitoring period.

Pillar VI, „Respect for Human Rights in the Justice Sector”, provides for six actions to be completed in quarter I of 2013 (*action 6.5.1 p.1, action 6.5.2 p.2, action 6.5.1 p.2, action 6.5.4 p.1*). At the same time, other nine important actions (*action 6.2.3 p.1, action 6.2.1 p.2, action 6.3.2 p.3, action 6.4.3 p.2, action 6.4.3 p.4, action 6.4.4 p.1, action 6.4.5 p.1, action 6.4.6 p.1, and action 6.2.3 p.3*), overdue since 2012, were also monitored. A single action, 6.2.3 p.3, overdue since 2012, was fully implemented in the reporting period, and the Ombudsman’s webpage was officially launched. The other 12 actions, overdue since 2012 or due by the end of the first quarter of 2013, remained unfulfilled, although, in some cases, significant progress was made towards their completion.

There were no actions provided by Pillar VII, „Well-Coordinated, Well-Managed and Responsible Justice Sector”, due for completion in the first quarter of 2013. At the same time, of the five actions overdue since 2012 (*action 7.1.4 p.1, action 7.2.3 p. 1, action 7.2.2 p.4, action 7.2.2 p.2, and action 7.2.2 p.3*), none was completed in the monitoring period.

All the unfulfilled actions are transferred to the next period and will be monitored until their successful completion.

Trial monitoring and Assessment of the Level of User Satisfaction with the Act of Justice

The monitoring mission involved 36 monitors, who worked in the first three months of 2013. They received advanced training on the methodology and principles of monitoring, reporting and interviewing. All monitors had been previously involved in civic monitoring activities of democratic processes, carried out by the Promo-LEX.

To assess the level of user satisfaction with the act of justice, a questionnaire was developed within the project to be completed by each participant in the court proceedings attended by observers. A total of 354 questionnaires were distributed and completed voluntarily by trial participants. Thus, we can present an overview of the level of satisfaction of the involved parties. We note, in this regard, that, in most of the questionnaires, the rate of persons who were more satisfied with the act of justice was higher than that of less satisfied users. These results seem to divert from reality, even if they are contained in the questionnaires completed by the participants in judicial trials, in a context when the judiciary is very much criticised in opinion polls and investigations.

Other indicators worth noting are: the rate of 80% of respondents who said that they were fully satisfied with judges’ politeness and attitude, 69% of respondents fully satisfied with the availability of case materials, and 70% of respondents fully satisfied with the professional training of the court clerks; in contrast, only 43% of people were satisfied with court facilities and buildings, and 33% were satisfied with the quality of court websites. Most of the user suggestions referred to the need to improve the technical conditions of the courts; the timely start of hearings; the lack of information on how cases are examined, and increasing the professionalism of judges, prosecutors and lawyers.

In order to measure the quality of justice through direct trial monitoring, during the three months

of the first quarter of 2013, monitors sat in 300 hearings, which were randomly selected from all national courts. Thus, according to analysed data, court hearings were monitored in different levels of courts, as follows: 252 trials in regular courts, 12 trials in special courts, 30 trials in Courts of Appeal, and six trials at the Supreme Court of Justice. Unlike the above indicators, this type of monitoring involved a personal assessment of the observer. The trials were selected randomly; some lasted several minutes, others took many hours. It is important to note that, in terms of access to justice, independence and impartiality of judges, the assessment was mostly positive. However, about one half of the monitored trials were not audio recorded. Also, in more than two thirds of the hearings, cases were examined in judges' offices.

Both questionnaires were based on the methodology developed within the project, which was inspired from the Model Methodology for Measuring User Satisfaction of the European Commission for the Efficiency of Justice (CEPEJ) and the Council of Europe's Handbook on Article 6 of the European Convention on Human Rights.

CONCLUSIONS AND RECOMMENDATIONS

Some actions are unclearly formulated, which leads to their various interpretations by the parties involved in their implementation and, as a result, they remain unfulfilled or are deemed only partially implemented. Moreover, some experts suggest that certain actions should be deemed inappropriate, such as, for example, developing a Regulation on the execution of European Court for Human Rights judgments, or the need for various studies, when there are analyses and proposals available in the respective institutions, and the actual need is to amend certain legal provisions. Therefore, it is necessary to adjust the Justice Sector Reform Strategy Action Plan by eliminating or adding relevant actions, and changing the timeframes for certain actions.

Probably the best interagency cooperation was noted in the strategic direction „Improving the System of State Guaranteed Legal Aid”. Moreover, this area received substantial and continuous support from donors, and the planned actions were executed in time or with deviations that did not affect the activity plan.

On the other hand, the large number of unfulfilled actions pertaining to strategic direction 3.3 points to the lack of good cooperation between the Ministry of Justice and judiciary execution officers' administration body. Therefore, in this section, a strict delimitation of responsibilities of the Ministry of Justice and National Union of Judicial Officers for each action is advisable.

We noted that the Ministry of Justice is established as a directly responsible institution for most of the actions included in the Action Plan. In consequence, the Ministry is overloaded with work because of the requirement to develop various studies, conduct working groups, draft bills and so on. Hence a formula must be found to delegate some of those responsibilities to other structures (within their functional competencies), or the Ministry of Justice should hire additional staff for certain strategic directions of the Justice Sector Reform Strategy.

The inclusion in the Action Plan of a large number of studies, and the direct involvement in justice reform processes of many legal professional associations and national experts led to a sudden decrease in offers from eligible persons to develop studies and recommendations. For example, specific directions 3.2. and 3.1 remain unfulfilled due to lack of expertise, although there are financial resources to carry out the actions. This situation creates other risks, such as inviting foreign experts, who are not entirely familiar with the Moldovan law and practice, to develop studies. See, for example, the judicial execution officers' information system project.

Another conclusion lies in the fact that the studies and bills developed within the various working groups and the results of public discussions organized by the Ministry of Justice and other relevant associations are not aggregated on a single web portal that would contain all information about the Justice Sector Reform.

The work of Working Group 5 is endangered because of the systematic and massive absence of WG members from its meetings. For the first time, a Working Group meeting had to be adjourned for lack of quorum.

Seven actions provided in Pillar II were set for completion during the monitoring period. None of these actions was finalised.

Six actions provided in Pillar V were set for completion during the monitoring period. None of them was finalised.

Thirteen actions included in Pillar VI were to be completed in the monitoring period. Of 13, only

one action was finalised, and the other 12 remain unfulfilled.

The analysis of the actions referred to in the Justice Sector Reform Strategy Action Plan allowed us to highlight some important issues which might be useful to the parties involved, both in the context of future strategic planning and in the implementation of current actions.

Thus, it appears that the institutions responsible for implementing the largest number of actions provided in Pillar I, especially the Ministry of Justice and the High Council of Magistrates, are doing quite well in the field of "developing bills, regulations, etc." However, the performance indicators established for such actions should be revised. These indicators are limited to general formulations such as "bill developed and sent to the Government for consideration." The job of the institutions responsible for these actions may be considered fulfilled at this stage - but how can a result be considered achieved when the bill is not approved by the Government or suffers significant changes, including in parliamentary debates?!

We also note the reduced capacity of the responsible institutions to develop studies and analyses, and their heavy reliance on external assistance in this regard. Thus, of the three relevant actions due in the first quarter of 2013, two were fulfilled largely because of external assistance.

With regard to the degree of implementation of actions overdue since 2012, the largest arrears refer to Pillar I, where, of the 21 actions reported as unfulfilled by the 2012 Monitoring Group Annual Report, 15 remain unfulfilled at the time of publishing this report.

The qualification of certain actions in the pillar activity reports also raises concerns. Thus, for example, action 1.2.1 p.2, *Revising High Council of Magistrates regulations on the transparency of Council and subordinate institutions*, is qualified as "partially implemented"; the „conducted activities” graph contains a very general description of a started process of regulation development and reference to studying the practice of other countries, while in the "difficulties" graph, it says that there is no relevant law (what law?).

We suggest that the comments contained in the reports on the implementation or difficulties faced during the implementation of actions, be more explicit and consistent, and that the deadlines for implementing actions be extended.

A general recommendation would be that the webpage dedicated to the Justice Sector Reform be updated to include all publications developed in the context of implementing the Action Plan. Otherwise, unless (s)he participates in the relevant working group meetings, an interested person has no way to know who prepared a certain study and where one can find it.

Finally, if we refer to the degree of implementation of actions provided in Pillars I, IV and VII, the picture is as follows: three actions provided in Pillar I were due by the end of the first quarter of 2013, of which two were implemented, and one remained unfulfilled. Of the ones overdue since 2012, six were implemented, and other 15 remain unfulfilled. Pillar IV had four outstanding actions since 2012 that have not been implemented; five actions contained in Pillar VII remain to be finalised.