

## JUSTICE SECTOR REFORM

### Judges Put Forward Proposals for Justice Sector Reform

During a conference held on 20 May 2015, the Center for Judicial System Reform (CJSR) made public [a package of legislative amendments](#) (only in Romanian) that covers 17 different aspects. The CJSR was founded by a group of 14 judges. Its co-chairs are the President of the Supreme Court of Justice (SCJ) and the President of the Superior Council of Magistracy (SCM).

The foregoing 17 amendments refer to the judicial organization, the civil procedure and the criminal procedure. The initiatives on *judicial organization* involve reorganizing the Supreme Court of Justice so that 17 judges to be appointed from among career judges and 16 – from academic circles, lawyers and civil society; dividing the Chisinau Court of Appeal into two courts of appeal – for Chisinau municipality and the district courts from the central region of the country, respectively; increasing the number of judicial inspectors from 5 to 15 and employing additional staff to assist them, as well as selecting the majority of judicial inspectors (8 of 15) from the civil society; entitling the SCM with the right to check the judges' assets and to dismiss them if they cannot prove the legality of acquiring such assets; transferring the Department of Judicial Administration from the Ministry of Justice (MJ) to the SCM; regulating by law the possibility to include the EU trainers in the National Institute of justice (NIJ) organizational chart; establishing a Permanent Parliamentary Committee to monitor the enforcement of court judgements; introducing the right of persons to appeal to the Constitutional Court, as a national filter, before applying to the European Court of Human Rights (ECtHR) and increasing the number of Constitutional Court judges from 6 to 12.

Initiatives on *civil procedure* cover the state fee payment after the case is solved and not at the submission of the complaint, as it is the case now; the introduction of a single review for simple cases; imposing mandatory mediation in the civil cases at first instance; and examination at first instance of cases on foreign investment that are of general public interest, or those of high resonance, by a panel composed of one career judge and two honorary judges (the institution of honorary judges is a new one for Moldova). Amendments proposed to *the criminal procedure* cover appeals against sentences delivered for minor and less grave offences by means of appeal to the courts of appeal, ruling out the possibility of examining such cases by the SCJ; applying misdemeanor sanctions for judges exclusively by judges and creation of jury trials. The authors of the initiatives also propose to establish a deadline for examining both civil and criminal procedure cases – 6 months for the first instance and for the court of appeal and court of review – three months each.

Although on 20 May 2015 a consultation period of 30 days was announced, consultation was closed on 18 June. On 18 June 2015, 19 NGOs presented [their joint opinion on the launched initiatives](#) to the CJSR. The signatories expressed their surprise at the haste with which the initiatives were promoted and the substance of the proposed initiatives, because most proposals were not stipulated by or contradicted with the Justice Sector

## CONTENTS

### JUSTICE SECTOR REFORM

Judges Put Forward Proposals for Justice Sector Reform .....	1
The LRCM Recommends Improving the Procedure for Appointment and Promotion of Judges .....	2
The Parliament Adopted in the First Reading the Law on the Prosecutor's Office .....	2
The Law on Professional Integrity Testing is Unconstitutional .....	3
The Extended Confiscation and Illicit Enrichment are Constitutional .....	3
The Procedure of Holding the Judges Responsible for Disciplinary Offences is Flawed .....	4
The Process of Appointing a Judge to the Constitutional Court is Delayed .....	4

### ACTIVITY OF THE SUPERIOR COUNCIL OF MAGISTRACY

The LRCM Recommends to Increase Transparency of the SCM .....	4
The SCM Revoked the Disciplinary Sanction Imposed on a Judge of the SCJ .....	5
Serious Failure of Providing Reasons for a Judgement Remained Unpunished .....	5
Investigation of Irregularities in the Random Distribution of Cases is Delayed .....	5
Green Light for specialization of district court judges .....	5

### HIGH PROFILE CASES

The SCM Refused to Allow Prosecution of Three Judges of the Supreme Court of Justice .....	6
The "Aroma Floris" Case Ended .....	6

### HUMAN RIGHTS

Although not All the Ombudspersons were Appointed, Their Salaries Had been Already Reduced .....	7
Civil Society calls for the Amendment of the "2% Law" .....	7
Equality and Discrimination Legislation to be Improved .....	7
2015 EU-Moldova Human Rights Dialogue .....	8

IN BRIEF .....	8
----------------	---

TO FOLLOW .....	9
-----------------	---

Reform Strategy for the period of 2011–2016 (JSRS). The 19 NGOs reiterated that the Republic of Moldova should strive for the successful implementation of the JSRS by the end of 2016, rather than venture into promoting some proposals that are not provided by the JSRS, or even endanger the judicial system as a whole. The NGOs were also surprised by the fact that although the legislative package had been developed by judges, it did not refer to any of the serious issues that could be solved without the major legislative intervention, such as: insufficient reasoning of judgements, lack of respect of the principle of random assignment of the cases, the audio recording of the court proceedings, lack of transparency in the appointment of judges, promotion of the worst evaluated judges to higher courts, lack of uniform judicial practice, including at the SCJ, etc.

Out of those 17 initiatives, the NGOs support without any reserves only the creation of opportunities for the employment of the EU trainers with the NIJ. Other five proposals were supported in principle, although in a different form than that proposed by the CJSR. The other 11 initiatives are not supported either because they contradict the reforms promoted so far or are dangerous within the context of the Republic of Moldova. The NGOs also stated that proposals to amend the legislation contain neither a compelling justification nor the cost analysis, especially the initiatives related to changing the way of collecting the court fees, increasing the number of judges of the Constitutional Court and judicial inspectors, establishing the jury trials and of honorary judges.

## The LRCM Recommends Improving the Procedure for Appointment and Promotion of Judges

On 25 June 2015, the LRCM presented the policy document [The Involvement of the Executive and Legislature in the Appointment and Promotion of Judges – Counterbalance or Curtailment of the Judicial Independence?](#) (only in Romanian). The document analyses the involvement of the executive and the legislature in the appointment of judges, their reappointments after the first 5 years of activity,

## The Parliament Adopted in the First Reading the Law on the Prosecutor's Office

Two years after the initiation of the process of drafting a new Law on the Prosecutor's Office, on 13 May 2015, the Government approved the draft law and submitted it to the Parliament. 10 days later, the Parliament approved the [draft law](#) (only in Romanian) in the first reading (no. 202), without major amendments. Although, according to the estimates, the law had to be passed in the final reading by the end of July 2015, it did not take place, apparently for political reasons. The Draft Law was [examined by the Venice Commission](#) and was subsequently improved. It narrows the Prosecutor's Office and the Prosecutor General's powers, increases the powers of the Superior Council of Prosecutors, reduces the political involvement in the

On 19 June 2015, the CJSR organized a public event within the framework of which the CJSR initiatives were officially submitted to the Minister of Justice. Although the package was subject to public consultation, by 25 August, no information on the results of the consultation was published, neither the opinions received, nor those considered or the text submitted to the Minister of Justice. It seems, however, that the initiatives on the introduction of the individual appeal to the Constitutional Court, the honorary judges and the jury trials were not included in the package submitted to the Minister of Justice. By mid-September, the package of laws has not yet been set for approval by the Ministry of Justice.

In July 2015, the CJSR [proposed to establish specialized courts for examining corruption related offenses](#) (only in Romanian). The initiative proposes the establishment of a separate court, a separate court of appeal and a specialized panel at the SCJ to examine corruption related cases. The inconsistent judicial practice and questionable individualization of sentences in the corruption cases are invoked as a justification. [The LRCM study on specialization of judges](#) recommends giving up the practice of establishing the specialized courts and strengthening the mechanism of specialization of the judges in the existing courts. The recommendation is justified by the insufficient number of cases for establishing the specialized courts and the problematic experience of the Republic of Moldova regarding the specialized courts.

transfer and promotion of judges. The authors recommend to exclude the powers of the Parliament in the appointment and promotion of judges, as well as to clarify the procedures for appointment, reconfirmation and promotion of judges by the President of the country. Recommendations are based on best European practices and standards of the Venice Commission.

appointment of the Prosecutor General, strengthens anti-corruption prosecutor's office etc.

The new Draft Law on the Prosecutor's Office provides that the law shall enter into force on 1 January 2016. However, the new law will have a limited impact if the collateral legislation is not amended (procedure codes, regulations on the status of criminal investigators etc.). The draft amendment to the collateral legislation was finalized by the Working Group on the reform of the Prosecutor's Office in July 2015. It is now at the Ministry of Justice. It is not certain yet when the draft project is submitted for adoption by the Parliament.

## The Law on Professional Integrity Testing is Unconstitutional

On 16 April 2015 the Constitutional Court declared the Law on Professional Integrity Testing partially unconstitutional (no. 325/2013). The court relied mainly on the [Opinion of the Venice Commission as of December 2014](#) regarding this law. The Constitutional Court established that the guarantees of a fair trial in criminal proceedings are applied to the procedure stipulated by Law no. 325, given the severity of the charges and the consequences of the integrity testing failure, which include dismissal, while the procedural guarantees under Law no. 325 are insufficient to ensure a fair trial. The court also established that the law lacked sufficient guarantees to protect private life.

The Constitutional Court found several shortcomings in the Law no. 325. The law does not clearly establish the subjects to whom professional integrity testing is applied; the integrity testing procedure can be launched without the existence of preliminary grounds that the person is prone to commit acts of corruption; the integrity testers have unlimited discretionary powers in performing testing and the tested person can defend him/herself only after being disciplinary sanctioned. Moreover, the person tested does not have full access to relevant evidence, and Law no. 325 does not give any discretionary power to the disciplinary bodies, they being obliged to dismiss a person if he/she “admitted” a breach of his anti-corruption obligations. The compulsory dismissal from his/her position of a public official who “admitted violations under article 6 par. (2) of the law” does not ensure the observance of the proportionality principle of violations committed and the penalty imposed.

The Constitutional Court also ruled that the assessment of the employees’ professional activities refers to the powers of the public entities in which they work, it being a task unfit for the National Anti-Corruption Center (NAC), and the “professional integrity testing plan”, which is confidential and approved by the NAC, does not correspond to the minimum requirements for formal authorization of a agents provocateurs’ activity. The Court also found that Law no. 325 allows the use of a false identity by the integrity testers and allows provocations to commit crimes.

Regarding the violation of the right to private life, the Constitutional Court stated that the use of technical means, including audio/video recording, in order to obtain data for integrity testing is, per se, one of the special investigation methods stipulated by Article 132/2 of the Criminal Procedure Code. The use of covert technical means intended to obtain the information secretly without the authorization of the judge equals with insufficiency of procedural guarantees required to protect the right to private life. The Court also stated that “by designating an executive body as a national authority in the field of testing the integrity and working in the area of information, there is a risk to misinterpret the purpose of the Law on Professional Integrity Testing by using the powers conferred under this Law by the Intelligence Services”.

The Constitutional Court concluded that Law no. 325 does not provide for a genuine mechanism of control, ensuring a permanent and effective verification of compliance with the legal provisions by the authority conducting the testing, including the type of the retained data, the length of time they are stored for, their destruction in cases provided by law, as well as the bodies and institutions that are allowed access to such data. The Court also determined that NAC, where the director is appointed and dismissed at the Prime Minister’s proposal, is a body under the control of the executive and therefore cannot meet the requirements in terms of independence. The use of this institution for testing the integrity of judges is in direct contradiction with Articles 116 (par. 1) and 123 (par.1) of the Constitution. The same conclusion is also valid, *mutatis mutandis*, in testing of the NAC members by the Intelligence and Security Service.

Essentially, the mechanism stipulated by Law no.325 became inapplicable under the decision of the Constitutional Court. Following the Constitutional Court’s decision, the Ministry of Justice elaborated [a new Draft Law](#) (only in Romanian), intended to remove the shortcomings established by the Constitutional Court. In July 2015 the draft law was subject to public consultations. Apparently, it does not remedy all shortcomings identified by the Court.

## The Extended Confiscation and Illicit Enrichment are Constitutional

The Ombudsman Tudor LAZAR challenged Article no. 106<sup>1</sup> (the extended confiscation) and Article no. 330<sup>2</sup> (the illicit enrichment) of the Criminal Code in the Constitutional Court. They allow the confiscation of public officials’ assets that could not be obtained otherwise than illegally. The contested provisions were included in the Criminal Code by adopting the package of anticorruption laws on 23 December 2013. The author of the interpellation considered *inter alia* that the application of the rules in question violates the non-retroactivity of the law, the presumption of innocence and the presumption of lawful acquirement of assets provided by the Constitution.

On 16 April 2015, [the Constitutional Court adopted Ruling no. 6](#) (only in Romanian) by which it dismissed as unfounded the ombudsman’s interpellation. The Court noted that combating corruption was declared as a national objective by several policy documents (the National Anticorruption Strategy for 2011–2015, the Justice Sector Reform Strategy for 2011–2016, etc.) and fighting corruption is also monitored by the international and European bodies which adopted several documents aimed at confiscating and recovering assets held by the criminals (the Convention on Money Laundering, Search, Seizure and Confiscation of the Proceeds from Crime as of 8 December, 1990, the Directive 2014/42 / EU, the Council of Europe

Convention on Money Laundering, Search, Seizure and Confiscation of Proceeds of Crime, as of 16 May 2005). The Court also took into consideration the extensive practice of the ECtHR with reference to assets confiscation as a crime-fighting tool.

At the same time, the Court ruled that the application of the extended confiscation would not infringe the right to private property and would not affect the principle of presumption of innocence to the extent that the presumption of the lawful acquisition of goods is rebutted by the evidence of the state bodies (par.74). The Court relied on [its previous](#)

[decision](#) (only in Romanian), which established the principle of absolute presumption of the lawful acquisition of the goods, assigning the burden of proof only to the state bodies. The Constitutional Court noted that Art. 320<sup>2</sup> of the Criminal Code does not require the public official to provide a reasonable explanation about his/her wealth in relation to his/her revenues, and the exclusive responsibility of proof of the unlawful nature of the goods lies only with the state bodies. The Constitutional Court, however, noted that the disputed rules cannot be applied retroactively on goods acquired before the entry into force of the provisions, i.e. before 25 February 2014.

## The Procedure of Holding the Judges Responsible for Disciplinary Offences is Flawed

The Law on the Disciplinary Responsibility of Judges (no. 178 as of 26 July 2014) entered into force on 1 January 2015. Law no. 178 provides for a number of improvements as compared with the legislation in force until 1 January 2015, but still has many shortcomings. Mainly, the role of the Judicial Inspection is not clarified. The Judicial Inspection is competent to return incorrectly drawn complaints and to reject obviously unfounded complaints. The inspection also prepares reports on registered complaints for the Disciplinary Board, but it does not legally qualify the facts imputed to a judge and does not present the accusation before the Disciplinary Board. Law no. 178 does not

clarify the time of presenting the accusation to the judge and his/her ability to present his/her defence, in practice the filed complaint that could indicate the imputed offence incorrectly is being sent to a judge. In addition, the law does not clearly identify the term until which the judge should give explanations.

The incomplete legal framework on the Judicial Inspection adversely affects its work and the effectiveness of the entire mechanism of the judges' disciplinary responsibility. The Status of the Judicial Inspection, including the disciplinary proceedings, should be improved as soon as possible.

## The Process of Appointing a Judge to the Constitutional Court is Delayed

A position of judge at the Constitutional Court is vacant from October 2014, when the mandate of the judge Petru RAILEAN expired. The Government had to fill this position until the mandate expired. [The non-governmental organizations have repeatedly called](#) (only in Romanian) the Government to initiate a transparent contest for appointing the judge to the Constitutional Court. They demanded, among other things, the public hearing of the candidates, adoption of a decision

stating the reasons why a particular candidate was selected and the publication of the decision. The given appeals were not successful, the position being vacant even today. In March 2015, [the NGOs expressed their concerns](#) (only in Romanian) that a political party would require this position as a result of voting the new Government in February 2015. Negotiations and appointment of a judge in the Constitutional Court on political grounds are unacceptable.

# ACTIVITY OF THE SUPERIOR COUNCIL OF MAGISTRACY

## The LRCM Recommends to Increase Transparency of the SCM

Having monitored the SCM sittings, on 10 June 2015, the LRCM made public the document [Organizing Meetings and the Transparency of the Superior Council of Magistracy – Challenges and Perspectives](#) (only in Romanian). The document analyses the organization of meetings and the adoption of decisions by the SCM from the perspective of transparency. Its purpose is to analyze the activity of the institution, including the assessment of how the recommendations for the SCM stated in the [LRCM Report on the efficiency and transparency of the SCM](#) launched by the LRCM in 2013, were implemented. The

document refers to the way of drawing up the agenda for the SCM meetings, conducting meetings, as well as the way decisions of the SCM are adopted and reasoned. The document recommends drawing up a more detailed agenda for sessions, respecting the Law on the SCM and publishing of the draft decisions and materials to be submitted for examination, the minutes of the SCM sittings, acts of control of the Judicial Inspection, and the judges' declarations of personal interest on the website of the SCM. The LRCM recommends the SCM to stop the practice of taking decisions in-camera ("deliberation").

## The SCM Revoked the Disciplinary Sanction Imposed on a Judge of the SCJ

By decision no. 2rh-286/14 from 10 December 2014, the Supreme Court of Justice (SCJ) found that the judge Ion DRUȚĂ participated twice in the examining of the same case. He upheld the court action lodged by a lawyer in the first instance court and established that the plaintiff, a foreign company, had to pay more than MDL 3 million in the lawyer's benefit. Later, as a judge of the SCJ, Mr. Druță took over the review application and upheld the judgement delivered by him in the first instance, ordering the payment 3 million Lei from the state budget.

The disciplinary proceedings were instituted *inter alia* against Mr. Druță for repeated participation in examining the same case. On 27 March 2015 the Disciplinary Board [sanctioned him with a reprimand](#) (only in Romanian). On 2 June 2015, the SCM invalidated [the disciplinary proceedings and cancelled the disciplinary sanction](#) (only in Romanian) on the grounds that the limitation period of making the judge liable

passed and because the law did not prohibit the repeated participation of examining the case in the procedure of review. A member of the SCM signed a [dissenting opinion](#) (only in Romanian) according to which, the law prohibits the repeated participation of the judge to examine the merits of the case. By admitting the review request, Mr. Druță not only ruled on the review, but also decided on the original claims of the applicant, recovering the amounts of money requested by the latter. Regarding the limitation period, the SCM member said that it began to run from 10 December 2014, when Mr. Druță's misconduct was found and therefore one-year deadline to bring him to account did not expire on 27 March 2015, when the decision of the Disciplinary Board was adopted. The judge, who is disciplinary sanctioned with a reprimand, may not be promoted or held the position of the chairman or deputy chairman of the court instance for 2 years. The position of the vice-president of the SCJ is currently vacant.

## Serious Failure of Providing Reasons for a Judgement Remained Unpunished

On 29 December 2014, a member of the SCM ordered disciplinary proceedings in respect of three judges of the SCJ. The disciplinary proceedings deals with a decision of the SCJ to release a person from detention, without reasoning. [On 30 January 2015](#) (only in Romanian), the Disciplinary Board of judges dismissed the action on the grounds that no misconduct was committed. [On 3 March 2015](#) (only in Romanian) the SCM upheld the appeal of the petitioner, found that the SCJ judges committed the imputed disciplinary offence and sanctioned them with a warning. [On 30 April 2015](#) (only in Romanian), the Supreme Court admitted the request for summons of the three judges and cancelled the SCM decision on the grounds that the procedure was violated.

[On 9 June 2015](#) (only in Romanian), the SCM dismissed the appeal lodged by the petitioner by the majority of votes because it had already been examined on 2 March 2015 and its review was not provided by law. A member of the SCM filed a [dissenting opinion](#) (only in Romanian) in which he stated that after the Supreme Court set aside the judgement, the SCM was to eliminate violations of the case and settle the case. This fact results even from Art. 39 (par. (4)) of the Law on the Disciplinary Liability of Judges, which provides that, in that case, the SCM could adopt only one of the two solutions: to maintain the decision of the Disciplinary Board or accept the appeal and adopt a new decision on the disciplinary case.

## Investigation of Irregularities in the Random Distribution of Cases is Delayed

In 2014, there were some alleged manipulations of the electronic distribution of cases in courts, including at the SCJ. On 2 February 2015, [16 civil society organizations called the SCM to investigate urgently](#) (only in Romanian) the random assignment procedures in all courts in the country, to identify vulnerabilities, to apply toughly penalties to all those who were involved in manipulating the distribution system of cases or did not report the manipulation and place the results of the control in the shortest time on the SCM website. [On 10 February 2015 the SCM asked the STC](#) (only in Romanian) to present information on manipulations admitted in 2014 in the distribution of cases in the courts of Chisinau municipality, including the Court of Appeal from Chisinau and the SCJ. Three months later the results of the investigation are not made public yet. On 28 May 2015, [15 civil society organizations](#)

[reiterated their requirements](#) (only in Romanian) of the public call addressed to the SCM on 2 February 2015. On 12 June 2015, [the SCM president replied in a letter](#) (only in Romanian) that the information about the random distribution of cases was sent for analysis to the Judicial Inspection. The SCM has not examined the issue and has not published the outcome of the investigation by September 2015.

In 2015, the web portal of the [Department of Judicial Administration](#) (only in Romanian) began to publish monthly reports on random distribution of cases, presented by the [USAID ROLISP Program](#). Reports were published for the period January 2014 - July 2015. The published reports show that 10% of the total cases were distributed two or more times during the certain months of 2014.

## Green Light for specialization of district court judges

On 24 March 2015, [SCM decided](#) (only in Romanian) on piloting the judges' specialization in the Buiucani and Rîșcani district Courts from Chișinău municipality and the Bălți district Court. Piloting is

scheduled for a period of 3 years starting 1 April 2015, and shall be carried out in civil and criminal matters, as well as in more narrow areas such as administrative proceedings or criminal cases involving



juveniles. The Presidents of the selected courts for implementing specialization were empowered to set out the nominal membership of the panels, by the field of specialization. Until now, the judges in the district courts typically examined all types of cases.

To ensure judges' specialization, the SCM requested changes to the Integrated Case Management Program (ICMP). The new version of the ICMP, which will include both specialization on case categories and specialization in the civil and criminal cases, is estimated for launching in September 2015. Until then, Presidents of the pilot courts were empowered to appoint manually the specialized judges to ensure the random assignment of cases. This is done by blocking the specialized judges in the criminal cases in the first half of the day while registering civil cases applications and vice

versa with the penal applications in the second part of the day. This process leads to delays in the registration of the applications and requires additional efforts from the registry of the court. Manual blocking of judges in the ICMP represents also a risk for ensuring the random assignment of cases, because under current conditions this involves blocking a large number of judges without the actual possibility to check the reasoning of each blocking.

The LRCM supports the judges' specialization in courts in the civil and criminal law, similar to the existing specialization in the courts of appeal and the SCJ. [The LRCM study on judges' specialization](#) confirms that it will improve the quality and efficiency of the courts. 76% of judges surveyed in the study considered that a specialized judge is more likely to take better decisions than a general-duty judge.

## HIGH PROFILE CASES

### The SCM Refused to Allow Prosecution of Three Judges of the Supreme Court of Justice

By decision no. 518/21 as of 7 July 2015, the SCM rejected the Prosecutor General's notification on the initiation of the criminal proceedings against the SCJ judges: Iulia SÎRGU, Ion DRUȚĂ and Valentina CLEVADÎ. The Prosecutor General stated that they adopted an illegal decision deliberately (Art. 307 the Criminal Code) [when ordering the recovering of over MDL 4 million](#) from the state in the "Aroma Floris" case. The SCM decision is not published and the official reasoning of the rejection is not known. From the [interview](#) (only in Romanian) of the President of the SCM to a newspaper it is known that the General Prosecutor

did not prove the deliberate nature of the judges' actions. Three members of the SCM presented dissenting opinions, in which they pronounced for the admission of the prosecutor's request. A joint opinion was formulated [by the judges Tatiana RĂDUCANU and Vera TOMA](#) (only in Romanian), and another one – by the judge [Dumitru VISTERNICEAN](#) (only in Romanian). The SCM decision no. 518/21 as of 7 July 2015 sets a dangerous precedent. Releasing the agreement to initiate the criminal prosecution, the SCM should not examine the reasoning of the prosecution, but only the lack of abuse on the behalf of the prosecutors.

### The "Aroma Floris" Case Ended

On 18 October 2010, Botanica District Court charged MDL 3,171,486 from a Latvian company in favour of Andrei CHIRIAC in the case *Andrei Chiriac against "Aroma Floris"*. On 1 June 2011, the Court of Appeal upheld the appeal of the enterprise, quashed the first court judgment and sent the case back for retrial. Mr. Chiriac submitted an application to the European Court of Human Rights (ECHR), alleging that under Art. 6 (ECHR) the appeal was filed late and the Court of Appeal from Chişinău failed to explain its admission.

In 2013, the Government Agent submitted a request for review to the Supreme Court of Justice in which he requested the cassation of the decision from 1 June 2011 and payment for damages as a result of the violation of Art. 6 (ECHR). On 19 February 2014, the SCJ cashed in MDL 4,346,901 from the state budget in favour of Mr. Chiriac on the grounds that the court of appeal made a mistake when it allowed the appeal. Following a request for review submitted by the Ministry of Finance on 10 December 2014, the Supreme Court of Justice quashed the decision from 19 February 2014 on the grounds that the judge

who issued the decision in the Botanica Court was also a member of the panel of judges that adopted the quashed decision.

[On 21 April 2015](#), the ECHR declared the application lodged by the lawyer of Andrei CHIRIAC as inadmissible. The ECHR stated that the appeal was filed within the term stipulated by the law, and the applicant did not even allege the delay of the application before the Court of Appeal. [On 20 May 2015](#) (only in Romanian) the Supreme Court of Justice upheld the request of the Government Agent to withdraw the application for review. The amount of MDL 4,346,901 will not be charged from the state.

However, in the *Andrei Chiriac against "Vinis NLG"* case, based on a similar procedure, also initiated by Andrei CHIRIAC, the amount of MDL 776 056 was charged from the state. The SCJ decision by which this amount was received was not appealed against. The ECHR [removed the pending application](#) at Mr. Chiriac's request as the dispute was resolved at the national level.

## HUMAN RIGHTS

### Although not All the Ombudspersons were Appointed, Their Salaries Had been Already Reduced

On 3 April 2014, the Law on the People's Advocate (Ombudsman) was adopted. It provides for the reduction of the number of ombudspersons from 4 to 2. The selection of candidates is entrusted to a special parliamentary commission following a public selection procedure. The special Commission submits two candidates for each position to the Parliament Plenum. In order to be selected as People's Advocate, a candidate is required to get the majority of votes in the Parliament.

In May 2014, the Parliament announced a public selection procedure for the election of ombudspersons and their hearing was held on 18 May 2014. On 21 July 2014, the Parliament voted on the candidates proposed by the special commission, but no candidate received the majority of votes to be appointed as an ombudsperson. The Parliament did not examine this issue in 2014 anymore.

On 3 March 2015, 120 NGOs from the Republic of Moldova made [an appeal to the Parliament urging the completion of the selection procedure of the ombudspersons](#) (only in Romanian). On 3 April 2015, the Parliament appointed Mr. Mihai COTOROBAI ombudsman. The second ombudsperson (for children's rights) did not receive the required number of votes and a new selection procedure was announced. [The two candidates nominated by the civil society](#) (only in Romanian) did not enjoy the Parliament's support.

### Civil Society calls for the Amendment of the "2% Law"

In order to enhance the financial sustainability of civil society organizations, on 18 July 2014 the Parliament adopted the "2% Law", which provides the individuals the right to redirect at most 2% of the income tax in order to support public benefit non-profit organizations and religious institutions. However, so far, the Government has not adopted any decisions regarding the implementation mechanism for the law.

On 5 May 2015 LRCM released the policy document [Impact of the 2% Law on the Financial Sustainability of the Civil Society Organizations](#) (only in Romanian), which presents an analysis of the "2% Law" and identifies the areas that require further intervention to ensure its functioning. The document recommends to provide other conditions of access to the 2% mechanism for non-profit organizations, to eliminate the competition between non-profit organizations and religious institutions by establishing equal rules on the accountability for the undue use of the percentage designations, to compel

### Equality and Discrimination Legislation to be Improved

On 26 May 2015 the LRCM and the Euroregional Center for Public Initiatives (ECPI) made public the preliminary findings of the

On 3 July 2015, Ecaterina BURLACU was appointed ombudsperson for children's rights. According to [her résumé](#) (only in Romanian), her only work experience in the area of law and human rights was related to her activity in the Parliament Secretariat, where she had been working since 2001. The Parliament's Decision as of 3 July 2015 was challenged in the Constitutional Court by a Member of Parliament on the grounds that Mrs. Burlacu did not meet the selection criteria provided for in Art. 6 of the Law on Ombudsman. Article 6 stipulates among the selection criteria for the ombudsman function, that the candidate must have recognized activity in the area of promotion and protection of human rights. NGOs submitted to the Constitutional Court a [legal opinion](#) (only in Romanian) supporting the grounds of the complaint. On 16 July 2015, [the Constitutional Court declared unconstitutional the Parliament's decision on the appointment of Ecaterina BURLACU](#) (only in Romanian). The Parliament is due to hold a new selection procedure for the appointment of ombudsperson for children's rights.

On 2 August 2015 the Parliament passed a law that [reduced ombudsperson's salary](#) (only in Romanian). If prior to the adoption of this amendment the ombudsperson received remuneration equivalent to that of a judge of the Supreme Court, after the new amendment the remuneration is equivalent to that of a civil servant. Consequently, the salary decreased almost three times.

employers to inform employees about their right to direct 2% of the income tax, to establish a unique modality of transfer of the percentage designations, to ensure confidentiality of designations, to increase the percentage share for administrative expenses etc.

On 18 May 2015, [the NGO Council organized a meeting on the financial sustainability of civil society organizations](#) with the participation of representatives of the Parliament and the civil society. The Speaker of Parliament, a Deputy Speaker, the Minister of Finance and other high-ranking officials attended the meeting. The representatives of the Parliament agreed that the "2% Law" creates unequal conditions of access, reporting and penalties for non-profit and religious organizations. They also agreed with most of the proposals in the policy document drawn up by the LRCM, expressing their agreement to amend the "2% Law". Civil society organizations are to submit their proposals amending the "2% Law" to the Parliament. The LRCM is drafting these proposals.

analysis of compatibility of Moldovan legislation with the EU *acquis communautaire* in the field of equality and non-discrimination.

The document was drafted within the project “[Promoting Equality – Strengthening the Agents of Change](#)”, financed by the European Union. During the event various aspects regarding the discrimination in employment, education, access to goods and services, access to justice for persons with mental disabilities, the status of the Council on the Prevention and Elimination of Discrimination and Ensuring Equality (Equality Council) and the procedures for challenging Equality Council’s decisions, as well as other available procedures in court cases involving discrimination were discussed. The event was attended by the representatives of the Equality Council, the Parliament, the central public administration, the donor community and civil society organizations. The document was finalized taking into account the discussions and opinions submitted by the partners and the participants at the event.

Within the same project, during the period of March–May 2015, the LRCM and the ECPI organized 4 trainings of trainers in the field of non-discrimination for teachers and social workers. The training included 14 teachers and 13 social workers from the entire republic. The trainings focused on the role of teachers and social workers in combating discrimination and ensuring equality. The participants acquainted themselves with the basic concepts and remedies in the field of equality and non-discrimination. The trainings aimed at ensuring a level of expertise that would enable participants to develop and implement a course or sessions on non-discrimination for their colleagues – teachers and social workers from the districts of the country. Since July 2015, the trainers, with the assistance of LRCM experts, have organized cascade training sessions in the field of non-discrimination.

## 2015 EU-Moldova Human Rights Dialogue

On 10 June 2015, the European Union and the Republic of Moldova held the sixth round of the Human Rights Dialogue in Chişinău, Moldova. The [EU described the event](#) as “an open and constructive exchange on the human rights situation in Moldova and on the country’s commitment to achieving sustainable progress in this area”. The EU recommendations from this year focused particularly on the institutional reform of the Ombudsman Office, the progress and challenges regarding freedom of expression and association, combating ill-treatment and impunity, non-discrimination legislation and policy.

EU representatives welcomed current initiatives and progress in the reform of the ombudsman institution, stressing the importance of having an operational and independent institution. The EU Delegation recommended active participation of the civil society in the selection of the Ombudsman for children’s rights, including possibility of selecting a candidate from the civil society.

In regards of freedom of expression and association, EU stressed the important role of the mass-media in a democratic society, as well as the need to ensure wider powers to the broadcasting coordinating commission. The EU stressed its support for the adoption of a new Audiovisual Code. Moreover, the European partners recommended an evaluation of current policies in order to reduce foreign influence upon local mass-media.

Regarding the fight against ill-treatment and impunity, the EU’s concerns were focused on the failure to punish those responsible for the events from 7 April 2009, describing the current situation as a “limited intention to do justice”, especially due to the fact that the majority of those convicted received conditional suspended sentences. Meanwhile, the EU partners have pointed out that no period of limitation or prescription should be applicable to any act of torture and inhuman treatment, while solitary confinement, still applicable in some detention centers, should be lifted.

The EU welcomed the activity of the Equality Council and called the Government to consider conferring it the power to issue binding decisions and to apply sanctions. In addition, the EU recommended reviewing legal provisions in order to ensure a sole legal possibility to appeal Equality Council’s decisions. The EU re-emphasized the importance of ratifying Protocol no.12 to the ECHR as well as the European Charter for Regional or Minority Languages.

The Government has ensured the development of guidelines based on recommendations, as well as the analysis of legislation, creation of working groups for problem areas, together with action plans and updated information for subsequent visits.

The next round on Human Rights Dialogue between the EU and Moldova is scheduled to take place in Brussels in 2016.

## IN BRIEF

**In April 2015**, Mrs. [Elena PROHNIȚHI](#) was appointed member of the LRCM Board of Administration. Mrs. Prohnițchi is Program Coordinator at the Association for Participatory Democracy ADEPT. She substituted Mrs. Elena BELEI, who became head of the Minister of Justice Cabinet in February 2015.

**On 4 May 2015**, the LRCM began the implementation of the project “[Improving the Efficiency and Transparency of the Moldovan Judiciary System](#)”. Its main objectives are: to contribute

to the improvement of judicial practices in courts; to assess the impact of the justice sector reform; to perform the monitoring of judiciary and to strengthen the institutional capacity of the LRCM. The project is supported by the USAID Rule of Law Institutional Strengthening Program (ROLISP) in the Republic of Moldova.

**During the period of 11 – 15 May 2015**, a [delegation from the Republic of Moldova took part in the International Conference “Strengthening the Capacity of the Judiciary in Eastern Europe”](#)



(only in Romanian), held in Bucharest, Romania. The participants at the conference considered *inter alia* a range of issues regarding best practices in preventing and fighting corruption, control mechanisms of assets and declarations of interest, confiscation as a tool for preventing corruption and organized crime, independence and self-governance of the judiciary etc. The conference was followed by a two-day study visit to the major judiciary and anti-corruption institutions from Romania. The visit was organized by the LRCM, with the support of the US Embassy in the Republic of Moldova.

**On 20 May 2015**, the [SCJ rejected the appeal](#) lodged by the former judge Nicolae NOGAI. The magistrate was accused that in 2011 he had legalized the fraudulent alienation of Moldova Agroindbank shares. The Court of Appeal found him guilty of knowingly delivering a judgement contrary to law (art. 307, par. (2) c) Criminal Code) and sentenced him to a three-year suspended prison sentence and deprived him of the right to hold public office for 5 years. At the proposal of the Superior Council of Magistracy, Nicolae NOGAI was released from the office of judge in January 2015.

**In June 2015**, Ion GUZUN, legal adviser at the LRCM, was appointed by the Ministry of Education member of the [Institutional Strategy Development Council from AESM](#) (only in Romanian). The Council has the competence to coordinate the development of the institutional strategic development plan, to monitor and evaluate the effective use of financial resources, to ensure the institutional management as regards intellectual property rights and technology transfer.

**On 1 July 2015**, the LRCM initiated the project "[Promoting Effective Judicial Accountability Mechanisms in Moldova \(2\)](#)". It has the following objectives: improved efficiency and increased transparency of the Superior Council of the Magistracy (SCM); contribution to strengthening the system of disciplinary responsibility of judges and amendments to the criteria of performance evaluation of judges. The project is supported by Soros Foundation Moldova.

**On 1 July 2015**, the LRCM launched the project "[Promoting Effective Implementation of the European Court of Human Rights Judgements by the Republic of Moldova](#)". It has the following objectives: combating systemic violations of human rights in Moldova, creation of an efficient mechanism for execution of European Court of Human Rights (ECHR) judgements in Moldova and facilitation of the Committee of Ministers supervision of the execution of the ECHR judgements. The project is supported by Open Society Foundations (OSF), Human Rights Initiative.

**On 11 September 2015**, the [Extraordinary General Meeting of Judges](#) (only in Romanian) was held.

**On 15 September 2015**, the LRCM, together with the Association for Efficient and Responsible Governance (AGER), submitted an [Opinion on the draft law amending and supplementing certain legislative acts/draft law amending Law no.325 on Professional Integrity Testing to the Ministry of Justice](#) (only in Romanian).

## TO FOLLOW

**IN SEPTEMBER 2015**, the SCM should hold the selection procedure for the function of Vice President of the SCJ, which remained vacant after the resignation of Mrs. Svetlana FILINCOVA;

The Parliament should hold a new selection procedure for the function of ombudsman for children's rights, following the invalidation of the previous appointment procedure by the Constitutional Court.

## ABOUT LRCM

The Legal Resources Centre from Moldova is a not-for profit non-governmental organization based in Chişinău, Republic of Moldova. LRCM strives to ensure a qualitative, prompt and transparent delivery of justice and effective observance of civil and political rights in Moldova. In achieving these aims, LRCM combines policy research and advocacy in an independent and non-partisan manner.

## LRCM TEAM

Vladislav GRIBINCEA

Nadejda HRIPTIEVSCHI

Ion GUZUN

Sorina MACRINICI

Pavel GRECU

Ilie CHIRTOACĂ

Olga BURUCENCO

Doina DUMBRĂVEANU-MUNTEANU

Aurelia CELAC

Mihaela CIBOTARU

## CONTACTS

Legal Resources Centre from Moldova

A. Şciusev street, 33, MD-2001

Chişinău, Republic of Moldova

Tel: +373 22 843601

Fax: +373 22 843602

Email: [contact@crjm.org](mailto:contact@crjm.org)

[www.crjm.org](http://www.crjm.org)

