

JUDICIAL PRACTICE

„Guma” case - more questions than answers

On 17 April 2013, [the High Court for Cassation and Justice of Romania convicted](#) by final judgment Mr. Valeriu Guma, ex-Democratic Party MP, to 4 years imprisonment for committing three corruption offenses (buying influence, complicity in giving bribe and complicity in taking bribe). Mr. Guma was accused of bribing a public official in order not to annul the contract for privatization of a company whose shareholder he was. Mr. Guma absconded from criminal investigation and could not be heard by Romanian authorities.

On 30 October 2014, the Romanian authorities asked the Republic of Moldova to recognize and enforce the criminal sentence. The Ministry of Justice required the Buiucani Court from Chisinau to order to the enforceability of judgment of 17 April 2013 on the territory of the Republic of Moldova. The Moldovan Prosecutor’s Office called for maintaining the sentence imposed by the High Court of Cassation and Justice from Romania.

On 20 November 2015, [a judge of Buiucani District Court of Chişinău mun., Mr. Ghenadie PAVLIUC, admitted the request of the Ministry of Justice](#) and, pursuant to Art. 558-559 of the Criminal Procedure Code (CPC), acknowledged that the judgment in question is legal and can be enforced in Moldova. The judge ruled that the facts of the case fall under Art. 326 par. (3) a) (traffic of influence, which provides for imprisonment from 3 to 7 years), Art. 333 par. (3) a) (taking bribe, which provides for imprisonment from 3 to 10 years) And art. 334 par. (3) a) (giving bribe, which provides for imprisonment from 3 to 7 years) of the Criminal Code of the Republic of Moldova (CC). By applying Art. 90 of the CC (*conditional suspension of the execution of punishment*), the judge ruled that the penalty of four years imprisonment should be conditionally suspended for a period of 4 years, obliging Mr. Guma not to change his residence without the consent of the authority in charge of execution of the sentence.

On 15 December 2015, the Chisinau Court of Appeal (Judges Ghenadie LÎȘÎ, Iurie IORDAN and Silvia VRABII) [by a final judgment](#), dismissed as inadmissible [the appeal of the prosecutor](#). The court noted that it cannot examine the appeal of the prosecutor, because, in such cases, an appeal may be filed only by the Ministry of Justice. The Ministry of Justice did not appeal and its representative was not presented at the hearing in the court of appeal. Thus, the solution ordered by Judge Pavliuc became final.

Moldovan judges prevented incarceration for corruption of a former MP

The position taken by Judge Pavliuc raises big question marks. Art. 558-559 CPC, which provide for the procedure for enforcing foreign judgments on the territory of the Republic of Moldova, provides that the court recognizes the foreign judgment if it finds that three conditions required by law are met. The court would mainly consider whether imprisonment applied by the Romanian judges falls within the minimum and maximum limits set by the Moldovan legislation. Judge Pavliuc found that the Romanian sentence met that condition. In such circumstances, the court may not fix another sanction. Furthermore, the issue

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of suspension of the imprisonment sentence was examined by Romanian judges at the request of Mr. Guma's lawyers and was rejected by the [High Court for Cassation and Justice of Romania](#). Contrary to Art. 558–559 CPC, Judge Pavliuc modified the sanction legally imposed by the Romanian authorities.

The judgment of the Buiucani Court District Court is not available on the website of the court, although under [SCM Regulation on the publication of judgments on the website](#), judgments must be published no later than 12 working days from the expiry of the legal deadline for their reasoning.

Why do accused persons disappear before the judgment is being issued?

In the recent years, in several high profile cases, defendants have disappeared from the courtrooms before or immediately after the judgment in their cases were issued and could not be found later. Thus, on 26 June 2014, judge Elena ROBU and a lawyer accused of corruption were found guilty and sentenced to prison by Ciocana District Court from Chişinău. Shortly before delivery of the sentence, the two left the courtroom and since then they are nowhere to be found. On 19 January 2015, the Court of Appeal convicted Gheorghe Papuc to four years of imprisonment for negligence with regard to the events of 7 April 2009 and abuse of office. Immediately after the judgment was issued, Gheorghe Papuc disappeared and could not be found for several months. He reappeared after the [SCJ issued its decision on 30 June 2015](#), by which he was sanctioned to

a fine. On 30 March 2015, the policeman Ion PERJU, who hit and killed Valeriu BOBOC during April 2009 protests, managed to leave the premises of the Court of Appeal Chişinău before the judges issued the sentence by which he was convicted to 10 years of imprisonment. He is announced as wanted in international search.

Leaving the courtroom before the sentence is issued is possible because the law does not oblige defendants who are not in custody to remain in the courtroom during the deliberation. It is still difficult to understand the situation of Mr. Papuc, who was allowed to leave the courtroom after being sentenced to imprisonment and the sentence was enforceable from the moment it was issued.

How uniform are the sanctions in corruption cases?

LRCM drafted [a document where it analyzed the consistency of sanctions applied by judges in corruption cases](#). The document analyzes the practice of the SCJ on applying sanctions for passive and active corruption, as well as for traffic of influence (Art. 324–326 of the Criminal Code) during 1 January 2014 – 30 September 2015. As reference for researching the SCJ judicial practice was taken the [SCJ Recommendation no. 61](#), which explains that, in order to effectively combat corruption, certain types of sanctions or legal procedures for imposing milder penalties, even if not formally forbidden by law, cannot be applied in cases of corruption.

Sanctions applied by the SCJ for corruption deeds are uniform

The study established that, unlike [2012](#), the SCJ fully observed the SCJ Recommendation no. 61. At the same time, lack of uniform practices among district courts, courts of appeal and the Supreme Court was found. The SCJ quashed more than 70% of decisions issued by courts of appeal. In their turn, the courts of appeal quashed 52% of sentences issued by district courts. Deficient examination of corruption cases is also confirmed by the large number of cases sent back for re-examination.

The consistency of the SCJ jurisprudence regarding sanctions for corruption cases does not necessarily imply that the SCJ practice is uniform in other areas. [A similar research](#) performed by LRCM found that in the years 2014–2015, the SCJ practice regarding retroactive increase of customs duties was not uniform, despite a clear recommendation of the Supreme Court in that area.

SCJ judges apply the customs legislation inconsistently

LRCM analyzed to what extent is the practice of courts in the field of customs litigation uniform. The research "[Retroactive increase of customs duties – is the judicial practice in this area uniform?](#)", launched by the LRCM in November 2015, analyses SCJ decisions issued during 18 months (May 2014 – October 2015) on the legality of post factum check of the Customs Service of the validity of the import of goods. The study examines in particular the application by the courts of Art. 181/1 para. 3 of the Customs Code and the [SCJ Recommendation no. 65](#), which prescribes the courts to annul the decisions to increase customs duties following post factum check if the established breach is not imputable to the importer.

The LRCM determined that the SCJ judicial practice in this area is not uniform. Judges have issued solutions compatible with the [SCJ Recommendation no. 65](#) in 57% of cases decided irrevocably, while in 43% of cases the recommendation was not properly

SCJ complied with its own recommendation on solving customs litigations only in 57% of cases

applied. The document also established that the SCJ changed the solution of the lower courts in half of the cases decided irrevocably (6 of 12), which suggests that Art. 181/1 para. 3 of the

Customs Code is applied differently by courts of different levels of jurisdiction. In addition, the SCJ adopted in short periods of time, divergent solutions to the import of the same products by

different companies. Even after 18 months from the adoption of the Recommendation no. 65, no tendency to strengthen the position expressed in this recommendation was observed.

In 2015, judges authorized 10,000 telephone tapings

In 2009, in the judgment *lordachi and others v. Moldova*, ECtHR found that the law on wiretapping did not contain sufficient safeguards against abuse and that the number and rate of authorizations of wiretaps was very high (in 2005 – 98.81%, in 2006 – 97.93% and in 2007 – 99.24%). [LRCM established in a research](#) that about 98% of requests for wiretaps are annually authorized in Moldova and that the number of requests for tapping has risen several times in recent years, reaching 9,962 in 2015.

Although the legislation on tapping was amended in 2012, tightening conditions for carrying out tapping, the number of motions for authorization of wiretaps has steadily increased and the rate of approvals by investigative judges remained as high – about 98% annually. This can be explained by the fact that the

The judge is not obliged to inform the tapped person that it was illegally tapped.

investigative judges do not examine thoroughly enough the need for tapping and their exceptional character, or the proportionality of the measure with the right to private life.

Although the legislation has been improved, it still has gaps. It does not oblige the investigative judge to inform the person that his/her conversations were illegally tapped and does not mention the circumstances under which the notification of the person about the tapping may be postponed. At the same time, the legislation allows prosecutors to attach to the criminal file only the results of the tapping that they consider important for the criminal case and the defense does not have access to the remaining records, which may contain important information for the case. This leaves room for abuse and reduces the possibilities for the defense. Parliamentary oversight of wire tapping is not transparent. Prosecutor General's annual report submitted to the Parliament is not published because it is considered state secret, although much of the information contained in it is of general interest.

The LRCM proposes to simplify the manner of keeping the minutes of the court hearing

LRCM analyzed the manner in which the minutes of the court hearing is kept can be streamlined when the audio recording of the hearing takes place and recommends to simplify thereof. The findings and recommendations of the LRCM were included in a [policy document](#).

Court hearings in the Republic of Moldova have always been documented by drawing up written minutes that accurately replicate what happened in the court hearing. Since 2009, digital audio recording of court hearings takes place. However, the minutes of hearings are taken in detail,

Although the audio record court hearings in taking place, courts lose time on drafting detailed minutes of court hearings

which consumes a considerable part of courts' staff time. To optimize the work of courts, LRCM recommends, among other things, giving up the detailed minutes, having it as a record of the essential aspects of the court hearing, which, in case of contradictions, should be adjusted according to the audio recording. To facilitate the listening of the audio recording of the hearing at a later stage, court clerks should indicate in the audio file and the minutes the time when each procedural step starts. The recommendations are based on practices from England, Germany, France and from the US federal system.

THE ACTIVITY OF THE SUPERIOR COUNCIL OF MAGISTRACY

SCM proposes, in dubious circumstances, to dismiss a judge

On 3 November 2015 the [SCM proposed the President to dismiss judge Victor ORÂNDAȘ](#) on the grounds of incompatibility with his position. The reason for the incompatibility was the adoption under questionable circumstances (in a few hours from notification, superficial compliance with the requirement for confirmation by apostil, post-factum payment of court fee) of several court decisions recognizing as legal several international financial transactions worth billions of dollars.

In [its separate opinion](#), a member of the SCM mentioned that the CSM decision was issued with procedural violations. Although the SCM qualified the incompatibility of Mr. Orândaș as disciplinary violation, the disciplinary procedure itself was observed (according to disciplinary proceedings, the SCM itself cannot impose sanctions, this is the power of the Disciplinary Board of Judges). Also, the SCM member not could understand why only Mr. Orândaș's rulings

Contrary to the law, the SCM has proposed dismissal of a judge

were put into question, while similar rulings were issued by several judges and nothing happened to them. Moreover, after issuing the rulings, some of these judges were promoted.

On 5 November 2015 Mr. Orândaș [publicly declared](#) that he was pressured by the President of the Centru district Court to issue rulings in several cases, including in the case of liquidation of the Falun Dafa and Falun Gong Associations. According to statements made by Mr. Orândaș in a TV show, in the last case [he was pressured to issue a decision quickly](#) liquidating the organizations. In February 2015, the judge reported about these influences to intelligence officers. According to Mr. Orândaș, afterwards, the President of Centru district Court has taken revenge actions.

On 15 February 2016, [the SCJ quashed](#) the SCM judgment of 5 November 2015.

The errors of the Disciplinary Board and of the SCM encourage impunity of judges

A lawyer notified the SCM about the improper conduct of President of Râșcani district Court from Chisinau, Mr. Oleg MELNICIUC. The lawyer argued that Mr. Melniciuc shouted at her in a criminal court hearing where she was defending a defendant, that he threatened the defendant with application of the most severe sanction if his guilt is found and addressed in an undignified manner to a witness. The admissibility panel of the Disciplinary Board declared admissible only the part of the complaint regarding the undignified attitude in the process of carrying out justice. The remaining charges were declared inadmissible for lack of evidence.

The Plenum of the Disciplinary Board (PDB) examined the case on 2 October 2015. PDB wanted to listen to the audio recording of the hearing, where, allegedly, the statements in question were made. The CDs presented by Mr. Melniciuc were found to be empty, while the CDs initially presented by the lawyer could not be found. Finally they were found in a safe. The president of the admissibility board learned about the audio recordings submitted by the lawyer only in the PDB meeting. These records confirmed that Mr. Melniciuc addressed the defendant: “[the court] warns you, if guilt will not be established – acquitted. If guilt is to be established

Suspicious disappearance of evidence in a disciplinary file resulted in non-sanctioning of a judge

– the maximum which is written in the Code is yours, understand?”. The judge also told the witness, an employee of the penitentiary, who made statements convenient for the defense: “[...] it is very interesting. I understand that this is the reality ... you check and receive money for this, but at least state it here. [...] If I send you, it will be really sad [...] Clear? Are you paid for your time when you come to court? You should not be paid; you're not at work [...]”.

[PDB has stopped disciplinary proceedings](#) on the grounds that no misconduct was found. It alleged that the lawyer's affirmations that Mr. Melniciuc would have yelled at her were not confirmed by records and the statements of the judge on the audio recording did not constitute a disciplinary violation of “undignified attitude in carrying out justice”. Two members of PDB made a [dissenting opinion](#), arguing that the statements made by Mr. Melniciuc constituted a disciplinary offence and that he should to be sanctioned with a “warning”. Regarding other alleged misconduct provided by law invoked by the lawyer, the breach of the duty of impartiality, PDB concluded that it can only examine the case within the limits of the AC's ruling. The latter did not declare this accusation admissible. On 15 December 2015, [SCM upheld the decision of PDB](#).

It is not clear why the admissibility board has not had access to audio recordings containing statements made by Mr. Melniciuc and why, following the detection of these records, the case was not sent

for further verifications, as required by Art. 32 para. (2) of Law no. 178, or why Judicial Inspection did not react based on these evidence, which were examined for the first time in the sitting of the PDB.

„Laundering billions” through courts - in the sight of the SCM?

During 2010–2014, judges from several courts have issued motions for the recognition of impressing debts of some Russian companies. Subsequently, these rulings were enforced and the money was taken out of the Russian Federation. According to a [journalistic investigation](#), such rulings were issued by 20 judges and the total value of the disputes was over USD 18 billion, 3 times more than the 2015 GDP of Moldova.

For the first time this topic has been discussed by SCM in 2012, when the Intelligence and Security Service (ISS) informed it about the actions of Telenesti District Court judge, Iurie HÎRBU. The ISS raised the question of issuing a judgment of recognizing the debt based on improperly authenticated photocopies and other violations admitted by the judge. Judicial Inspection verified the complaint and prepared a report for the SCM. In December 2012, the [SCM considered the report of the inspection and notified](#)

[the prosecutor’s office](#), while a member of SCM expressed its intention to start disciplinary proceedings against judge Hîrbu.

In 2014, the CSJ analyzed the judicial practice on this topic and found several irregularities committed by judges. The findings were brought to the attention of prosecutors, National Anti-Corruption Center and SCM. In May 2014, [CSM took note of this information](#), but did not order any further inquiry or disciplinary proceedings. At least three judges who examined these cases were subsequently promoted to administrative positions (Serghei POPOVICI) or to the courts of appeal ([Ștefan NIȚĂ](#) and [Serghei GUBENCO](#)).

Although it was informed even in 2012 and then again in 2014 on money laundering from the Russian Federation through the courts, the SCM has not taken any action to sanction the judges involved and even promoted some of them.

Superficial examination of irregularities in random distribution of cases

In 2014, several alleged manipulations of electronic system of distribution of case files were established, including within the SCJ. On 2 February 2015, [16 civil society organizations have asked](#) the SCM to urgently carry out detailed controls on the distribution of case files in all courts in the country, identify vulnerabilities, sanction severely all persons who were involved in handling the system of distribution of files or those who did not report about the manipulation, as well as to publish quickly the results of controls on the SCM website. On 10 February 2015, the [SCM asked the CST](#) to present information on admitted manipulations in 2014 in the distribution of case files in Chisinau courts, including the Court of Appeal and SCJ. Three months later, investigation results were still not made public. On 28 May 2015, [15 civil society organizations have reiterated the requirements from the previous call](#). On 12 June 2015, [the President of the SCM replied in a letter](#) that the information about the random distribution of case files was sent for analysis to the Judicial Inspection.

On 24 November 2015, almost 10 months after requested verification, the Judicial Inspection presented the SCM an [informative note about investigating the manner of distribution of cases in the courts from Chișinău](#). The Judicial Inspection checked only the district courts from Chisinau. Contrary to the SCM’s request, it did not check the situation in the SCJ and the Chișinău Court of Appeal. The inspection found no deliberate actions to manipulate data within the case management program or to influence the random distribution of cases, except influencing the program of random distribution of cases at the SCJ and Rîșcani district Court. The report contains no details in this regard. The document also contains no analysis of the solutions adopted on the files distributed by manipulating the Integrated Case Management Program or of the vulnerabilities of the distribution system.

COMBATING CORRUPTION

Questions without answers in the criminal case against Mr. Ilan SHOR

After the parliamentary elections of 30 November 2014, the Moldovan society was stirred up by the information that from three Moldovan banks, Banca de Economii, Banca Socială and Unibank, 1 billion Euros was stolen. Although late, the national authorities have hired the “Kroll” company to investigate the circumstances of this theft. According to the [Kroll report](#), published in May 2015, the so-called “Shor Group”, involving a holding of companies related to Mr. Ilan Shor, the then President of the Administrative Council of the Banca de Economii, have benefited from a number of loans issued in dubious circumstances by the three banks.

On 7 May 2015, [in the plenary session of the Parliament](#), the NAC Director said he knew about the robbing of the three banks before the “Kroll” report and that behind the draws of this money is the “Shor Group”. On 6 May 2015, Mr. Shor was apprehended by NAC and was officially charged of stealing the billion. The same day, a judge ordered his house arrest, even if prosecutors requested for pre-trial detention. In the same period, the electoral campaign for local elections was taking place. After placing him under house arrest, Ilan SHOR has joined the race for Mayor of Orhei town. For this reason, on 22 May 2015, Mr. Shor was released from house arrest, invoking the impossibility of detention under house arrest of an election candidate. According to art. 46 para. 5 of the Election Code, election candidates can be apprehended with the approval of the electoral body. It is unclear whether prosecutors have asked permission of the electoral body for holding Mr. Shor in custody. On 1 July 2015, Ilan SHOR [won elections](#) and became the Mayor of Orhei.

For more than a year, the criminal case against Ilan Shor is still being investigated by prosecutors

On 15 October 2015, at the request of the General Prosecutor, the [immunity of the MP](#) and then President of the Liberal Democratic Party of Moldova, Vladimir Filat, [was lifted](#) and he was apprehended by NAC for passive corruption and traffic of influence. The charges against Mr. Filat were based on the [self-denunciation of Ilan SHOR](#). He admitted that he bribed Mr. Filat when he was prime-minister, to adopt a Governmental decision business-friendly to Mr. Shor. While acknowledging that he gave bribe, Mr. Shor has not been charged in this respect. According to NAC, Mr. Shor is released from criminal liability for active corruption, given the fact that he denounced himself and the criminal investigation body has not

known about these facts from self-denunciation.

It is inexplicable why the criminal investigation bodies did not examine, as one version of robbing the banks, corrupting high level officials. According to Mr. Shor there is a link between robbing banks and bribing Mr. Filat. Furthermore, it derives from Mr. Shor self-denunciation that he bribed Mr. Filat with 250 mln. US dollars. In [his income declaration](#), Mr. Shor declared much smaller revenues than the

alleged bribes. This raises serious doubts about the credibility of Mr. Shor's declaration of income. In such circumstances, the inaction of the National Integrity Commission and prosecution it is inexplicable, which would have had to examine if at least we are dealing with false statements in official declarations.

Criminal proceedings against Mr. Shor were initiated in May 2015 and so far the case file has not yet been sent to court. In contrast, Mr. Filat is criminally investigated from 15 October 2015 and for already more than two months some of the charges were already [sent](#) to court.

Low-cost apartments for judges and prosecutors

In 2012, the [SCM approved a list](#) of employees of Chişinău courts and other judges residing in Chişinău and employees of the SCM who were seeking improvement of living conditions. The list was prepared by the Association of Judges of the Republic of Moldova in order to obtain a land in Chişinău for the construction of two apartment buildings, in which judges can buy apartments at a lower price. According to [journalistic investigations](#), in the list of beneficiaries of these apartments were enlisted magistrates who already owned property. The association has allowed judges to be included in this list to buy apartments for their children.

In 2014, the Chişinău Municipal Council (CMC) has provided the SCM free of charge [two sites](#)

The courts found that the Prosecutor General's Office's refusal to provide information to journalists about prosecutors who have received apartments at low prices was legal

[for the construction](#) of several apartment buildings. A private company has built five apartment blocks on these sites. At least 133 apartments in these blocks (nearly half) have been distributed to judiciary employees, including 41 judges. They will pay between 300 and 360 EUR per square meter, which is about 40% less than the market price.

The prosecutor's office has also obtained free of charge from the CMC a plot of land for construction of apartments for prosecutors. General Prosecutor's Office refused to provide Ziarul de Gardă the list of beneficiaries of apartments. Both [Râşcani District of Chisinau](#), [Chişinău Court of Appeal](#) and [SCJ](#) concluded that the refusal to provide this information was

legal, without clearly explaining why. Journalists have determined that both [judges](#) and [prosecutors](#) who have previously received

housing from the state or who owned other property benefited from low-cost apartments.

Screening „De ce eu?” in the Republic of Moldova

Between 8 – 12 December 2015, LRCM and Expert Forum (Romania), with the support of Embassy of the Netherlands, screened in Cahul, Chişinău and Bălţi the [film “De ce eu?”](#). The film is based on a real case that took place in Romania in the early 2000s, when a prosecutor committed suicide in the midst of investigating a corruption case. The criminal investigation had extremely high level implications. The purpose of the screening was to promote awareness of corruption and its effects, and to encourage prosecutors and criminal investigation officers to properly investigate corruption cases.

Film screenings were followed by discussions involving students, prosecutors, judges, representatives of civil society and the general public. Questions addressed by public were related to the fight against corruption in Romania, the activity of the National Anti-corruption Directorate, anti-corruption policies, successes and impunity in investigating corruption involving public officials, etc. Romanian experts Laura ŞTEFAN and Sorin IONIŢĂ participated in the debates.

HUMAN RIGHTS AND THE CONSTITUTIONAL COURT

Legislation on countering extremism must be improved

On 23 November 2015, the [Constitutional Court declared unconstitutional](#) the provision that prohibited the propagation and public exhibition of Nazi logos, symbolic or alike attributes (art. 1, let. b) of Law no. 54 on counteracting extremist activity). The Constitutional Court noted that legal rules must be sufficiently accessible, clear and predictable. Without indicating a list or a concept of attributes and Nazi symbols, the provisions in question are imprecise and unclear, not making citizens understand which symbols are banned, which are similar to those of Nazi and at the

same time, give the courts extremely broad discretion in applying these provisions. The Constitutional Court has referred to the Falun symbol, an orange swastika on red background accompanied by Yin-Yang symbols. This means luck in Buddhist culture, while in Falun Dafa – the miniature of the universe. On 17 February 2010, the Buiucani District Court of Chişinău found that the symbolic of Falun symbol is not extremist. On 20 January 2014, in another set of proceedings, the same court reached the opposite conclusion. The latest ruling was upheld by the [Supreme Court](#).

The candidate for the position of Constitutional Court judge was nominated

On 30 October 2014, a position of judge of the Constitutional Court became vacant. This vacancy is to be filled in by the Government.

On 23 October 2015, the Government adopted a [Regulation on the organization and carrying for of the contest](#) for filling the vacancy and created a Commission to select candidates. According to the Regulation, the competition consisted of three stages, pre-selection of candidates on the basis of submitted applications, written test and interview. At the written test 7 persons were admitted. After [taking the written test](#), only one candidate (Mr. Veaceslav ZAPOROJAN) accumulated the necessary number of points (minimum 45 points) to be promoted to the next stage. Following the [interview](#),

which took place on 27 November 2015 and was public, the Commission decided that Mr. Zaporozjan be proposed to the

Although the candidate for the position of the judge of the Constitutional Court has been identified, for more than five months, the Government is not appointing him

Government to be appointed as Constitutional Court judge. Unfortunately, although more than 5 months passed after the nomination, the Government has not filled in the vacant position of judge at the Constitutional Court. Such a procedure of selection of judges to the Constitutional Court was held for the first time in the Republic 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 the Parliament, two by the Government and two by the SCM.

Pro TV Chişinău was sanctioned for violating private life

On 21 December 2015, the Rîşcani District Court of Chişinău found that the TV station ProTV Chişinău violated the right to privacy by broadcasting a video of a private character. The court found that ProTV Chişinău committed an unjustified interference in private life and ordered the founder of television company to express public apologies acknowledging the committed unjustified interference in private life and violation of legal and ethical norms. The court also granted MDL 40,000 for moral compensation.

Earlier, over 20 civil society organizations have boycotted the media institution ProTV Chişinău in connection with the dissemination of the video in question. [Through a public call](#), the signatory organizations have reported lack of adequate response from the television to stop interference in private life and remedying the damage caused to the applicant. Rîşcani District Court's judgment can be appealed within 30 days.

CIVIL SOCIETY

Good practices for implementing the 2% mechanism discussed in Budapest and Bratislava

Between 16 and 20 November 2015, representatives of the Ministry of Finance, State Tax Service and Ministry of Justice, accompanied by [Sorina MACRINICI](#) and [Ilie CHIRTOACĂ](#), legal advisors at LRCM, conducted a [study visit to Hungary and Slovakia](#). The purpose of the visit was to study the best practices of implementing the mechanism for percentage designation, i.e. the possibility for taxpayers to transfer part of their income tax to civil society organizations. The intention was to identify the best solutions for effective implementation in the Republic of Moldova of the "2% Law". In Hungary and Slovakia this mechanism is implemented for over a decade.

The participants in the study visit discussed specific aspects of implementation mechanisms

for percentage designation. The discussions focused on describing the technical procedures for processing forms and statements for designation and assessment of the resources for distribution, verification and control of the amounts designated by the beneficiaries of this mechanism.

**LRCM
contributes to the
implementation
of a sustainable
2% mechanism
in the Republic of
Moldova**

The experience gained in the study visit will help strengthening the joint efforts of the authorities and civil society to implement a sustainable mechanism for percentage designation in the Republic of Moldova. The percentage designation mechanism adopted in 2014 is inoperative. Currently, a draft amendment to the mechanism for percentage designation is examined in Parliament.

Public utility certificate – more constraints than benefits

On 21 December 2015, [the National Council of NGOs](#) organized a round of [public debates](#) in which participants had the opportunity to discuss the practice and procedure for receiving the public utility status for non-governmental associations. Public utility status is granted by the Certification Commission of the Ministry of Justice. After obtaining the certificate, organizations can benefit from facilities in accessing public funds and certain operational facilities (exemption from the lease of state property).

Civil society representatives noted that, currently, the public utility certificate became less attractive; the benefits granted by this status are insignificant. The members of NGOs Council have noted that the procedure for obtaining a certificate of public utility has become less predictable in the newly elected in 2015 Certification Commission.

According to the information available on the [official website](#) of the Certification Commission, by 31 December 2015, there were issued decisions on 44 organizations demanding a public utility status. In 77% of cases (34 decisions) public utility status was refused. According to the Certification Commission's representatives present at the debate, the refusal to grant public utility status is due to non-compliance with the provisions stipulated by law. Most often, the Commission refused to grant the status on grounds of lack of a body to supervise the activity of the association in its organizational structure or lack of clauses in the status of the association which would provide the ban on political activities, or to distribute assets and revenues between members of the association in case of liquidation.

SHORTLY

On 5 October 2015, LRCM submitted to the Ministry of Justice an [opinion on the draft law amending the Constitutional provisions concerning the judiciary](#). The LRCM made recommendations for improving the draft law. [The version of the draft approval of the Constitutional Court](#) reflects the majority of the LRCM's recommendations.

On 19 October 2015, LRCM called the Ministry of Justice [to waive the draft law for the creation of the Anti-Corruption Court and of the District Chişinău Court of Appeal](#). This initiative does not meet the real needs of the judiciary, is not sufficiently substantiated in terms of financial and economic point of view and contradicts the Justice Sector Reform Strategy for 2011–2016 (SRSJ).

On 27-28 October 2015, Ilie CHIRTOACĂ, legal advisor at LRCM, participated in the International Forum “Civil Society and Justice Forum” in Kiev, Ukraine. The forum hosted representatives of the judiciary and active representatives of the civil society from the United States, Ukraine, Moldova, Bosnia and Herzegovina. Ilie presented LRCM's contribution to reforming the justice sector in Moldova, sharing the LRCM's experience regarding monitoring transparency and efficiency of the judiciary.

On 29 October 2015, SCM has [consented to initiate criminal investigation](#) of the ex-judge of Străşeni Court, Vasile RUSU. He is charged of knowingly issuing of judgments contrary to the law. The judge accepted 11 applications of foreign citizens requesting establishment of the facts that offered the right to obtain the citizenship of the Republic of Moldova or Romania.

On 10 November 2015, [Mr. Gămurari was appointed](#) member of the Disciplinary Board of Judges on behalf of the civil society after the position became vacant following the [revocation of Mrs. Olga DORUL](#). The reason for revocation was the incompatibility of the position of Head of Cabinet of the Minister of Internal Affairs with the position of member of the Disciplinary Board.

From 23 to 24 November 2015, the [National Forum of Non-Governmental Organizations](#) from the Republic of Moldova took place. [Ion GUZUN](#), legal adviser at LRCM, was elected member of the new NGO Council. The participating organizations have also adopted a [resolution](#) that called on the authorities to streamline the process of decisional transparency and full involvement in implementing the Civil Society Development Strategy for 2012–2015.

On 26-27 November 2015, LRCM held a workshop with representatives of the SCM, Disciplinary Board and the Judicial Inspection on the “Needs to improve the legislation on disciplinary liability of judges”. The special guest of the event was Mr. Cristi DANILEȚ, judge and member of the SCM from Romania.

The LRCM, in cooperation with ECPI, published the [Compatibility analysis of Moldovan legislation with the European standards on equality and non-discrimination](#). Such an analysis was performed for the first time in Moldova. The document includes recommendations for improving the regulatory and institutional framework. The analysis was developed within the project “[Promoting equality – Strengthening the agents of change](#)”, financed by the European Union and implemented by LRCM and Euro-regional Center for Public Initiatives (Romania).



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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.

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