

## LRCM - UN Human Rights Award Winner

On 8 December 2016, [UNDP Moldova awarded UN Human Rights Awards](#). One of the six awards for 2016 was offered to the Legal Resources Centre from Moldova (LRCM) "for substantial contribution in justice reforms, and improvement of domestic legislation on public funding of non-governmental organizations".

„We see this award as an encouragement, in a system where there is less room for hope. We understand that, following the results in the justice system of the Republic of Moldova, it is rather a trust credit, than an appreciation of the results of our work. We assure you that we will be even more persistent“, said Vladislav GRIBINCEA, the president of the LRCM, [at the ceremony](#).

The UN Human Rights Award is awarded in Moldova annually since 2004 and aims to highlight and award the most valuable, innovative, effective and participatory initiatives and actions to protect and promote human rights.

## GOOD GOVERNANCE

### Presidential Elections Validated, but Legislation Should be Amended

On 13 December 2016, the Constitutional Court (CCM) examined the report of the Central Electoral Commission (CEC) regarding the confirmation of the results of the presidential elections as of 13 November 2016. CCM noted that the voting was organized and conducted against a backdrop of political, financial and social crisis, aggravated by the lack of trust in state institutions. CCM found a number of systemic irregularities and problems. On the day of the second round of voting, 4,031 people filed individual and collective complaints to the electoral offices outside the country. Instead of resolving them, CEC declined jurisdiction in favour of CCM. Also, the complaint of the electoral candidate Maia SANDU regarding violations of elections was mistakenly rejected by the Court of Appeal Chisinau and the Supreme Court of Justice (SCJ). The Court noted that both the electoral bodies and the courts had to examine violations reported on the day of election and not to decline their jurisdiction.

The CCM also noted that 13 out of 100 polling stations located abroad have run out of ballots until the regular closing of polling stations. At the same time, CCM concluded that there are no objective indications that the public authorities did not act in good faith. The court also found that for voters in Transnistrian region there were established four additional polling stations, which were more than in the first round of voting, where 16,728 citizens voted, compared with 6,964 in the first round. However, the CCM noted that, even in the event of vitiation of votes, 16,728 votes of Transnistrian voters and 4,031 votes that could not be realised at the polling stations abroad were not of the nature to influence the outcome of the elections.

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The CCM also found aggressive involvement in the presidential election of the representatives of the Metropolis of Moldova, that used extremist, xenophobic, homophobic and sexist expressions against the counter-candidate Maia SANDU. The Court stated that such behaviour is contrary to the Constitution and the Law on the Freedom of Conscience, Thought and Religion. The Court noted that the Ministry of Justice (MoJ) could have requested the court to suspend the religious cult for a term of up to one year but did not do so. The CCM noted the lack of mass-media autonomy over political and business interests, including due to the high concentration of ownership of media sources in the hands of some interest groups, a fact also noted by the international observers. The Court proposed to establish a mechanism for suspending the right of broadcasting for the entire period of the electoral campaign for those mass-media institutions that violate the obligation of impartiality during the electoral period.

Having stated mentioned violations, [the CCM validated](#) the results of the election. At the same time, the Court formulated 6 references for amending of the legislation. These refer to: (1) clarification of legislation regarding the examination of complaints

on the organization and holding of elections; (2) amendment of the mechanism for voting out of country and introduction of additional criteria for the geographical distribution and calculation of the number of polling stations abroad; (3) ensuring polling stations from abroad with a spare quantity of ballot papers; (4) establishment of electoral corruption in presidential elections as criminal offence in the Criminal Code; (5) establishment of prompt and immediate sanctioning mechanisms, including in criminal order, for any attempt to involve religious cults in electoral campaigns; (6) amendment of the legislation on the liability of broadcasters during election campaigns.

The CCM also noted that the legislation has gaps and ambiguities that refer in particular to the collection and verification of signatures in support of candidates, funding and conducting electoral campaigns, settlement of electoral disputes, enforcement of the provisions regarding mass-media and on the second round of the presidential elections. The Court also stressed the need for the compilation of the entire electoral legislation regarding the election of the president, parliament and local public administration authorities into a revised Electoral Code.

## Mistrust in State Institutions Reached Highest Levels

In October 2016, the Institute for Public Policy presented the results of the [Barometer of Public Opinion](#). The major part of the population is of the opinion that the direction in which the economy is going in the Republic of Moldova is wrong (84%). The issues that cause the greatest dissatisfaction among the population are: wages (71.2% are not at all satisfied and 23.5% are not quite satisfied), pensions (respectively, 74.1% and 20%), situation with work places (64.2% and 29.4%), fight against corruption (70.8% and 23.3%) and the standard of living (62.2% and 31.8%).

93% of the population do not trust the Parliament, 90.1% do not trust the Government, 91% do not trust political parties, 89.6%

do not trust the judiciary, 71.6% do not trust the police, 76.7% do not trust the National Anti-corruption Centre, and 77.4% do not trust the General Prosecutor's Office. In the opinion of the majority, the Republic of Moldova is not governed by the will of the people (86.2%). The majority is of the opinion that the elections in the Republic of Moldova are not free and fair (76.7%).

These results denote an alarming state of affairs. Having the lowest average rates of trust, state institutions need to analyse their way of activity and take real steps to regain the trust of the population.

## JUSTICE

### Regulations on Access to Court Premises

In September 2016, the Superior Council of Magistracy (SCM) approved [the Regulation on access to the court premises](#). The document imposed restrictions on access to courts and court hearings for journalists and citizens. According to the Regulation, mass-media access to court hearings should have been authorized by the chairperson of the hearing and only to the meeting rooms, on the basis of a written request filed at least 24 hours before the opening of the hearing. The access of other persons wishing to attend public court hearings should have been authorized by the chairperson of the hearing and was valid only for the meeting rooms. On 25 October 2016, a group of non-governmental media

organizations and media outlets [expressed their dissatisfaction](#) with the restrictions imposed by the new regulation of the SCM. On 1 November 2016, LRCM issued a [legal opinion](#) on the problematic provisions of the Regulation and requested clarification and amendment of ambiguous and improper provisions being in the document. As a result, by [the decision no. 720/30 of 1 November 2016](#), SCM suspended the implementation of the Regulation and decided to resume the activity of the Working Group for drafting the Regulation, involving the representatives of the civil society and mass-media. The Working Group met in a meeting in February 2017, the next meeting going to take place in May 2017.

## Hasty Promotions at the SCJ

On 20 December 2016, the SCM proposed to the Parliament the promotion of CSJ judges [Tatiana VIERU](#) and [Valentina CLEVADI](#) to the office of the president and, respectively, vice-president of the Civil, Economic and Administrative Board of the SCJ.

On 23 December 2016, at the last meeting of the autumn session in 2016, the Member of the Parliament Tudor DELIU requested to postpone the examination of these appointments. He [mentioned](#) (at 1:35:00) that at the meeting on 16 December 2016, the Disciplinary Board of the SCM [postponed](#) the examination of two complaints concerning these judges and that the judges were liable to sanctions, which could deprive them of the right to promotion; that the deadline of 15 days for challenging the SCM decisions proposing the promotion of judges had not expired; that in the morning on 21 December 2016, the members of the Parliamentary Legal Committee for Appointments and Immunities were imposed to include in the agenda the issue of the appointment of judges without a copy of the SCM decision or any other document; and that there was no reason for such a great hurry. The request for

postponement was rejected by the Plenum of the Parliament. At the proposal of the Speaker of the Parliament, Mr. Andrian CANDU, an additional meeting of the Legal Committee was convened on the same day for further discussions with the candidates. Finally, on the same day, on 23 December 2016, the Plenum of the Parliament voted for the appointment of candidates.

The position of the vice-chairperson of the SCJ has been vacant for about two years since Svetlana FILINCOVA submitted her resignation following allegations in manipulation within the system of random distribution of cases, presented by the President of the SCM. Mrs. Filincova continues to hold the position of judge at the SCJ. So far, no information has been submitted on the results of the investigation regarding the allegations in manipulation within the system of random distribution of cases. Previously, on 26 January 2016, the SCM [did not appoint Mrs Tatiana RĂDUCANU](#) to the office of the vice-president of the SCJ, the president of the Civil, Economic and Administrative Board, on the grounds that she did not get the necessary number of votes.

## Who and Why Hurried the Election of New Prosecutor General?

More than 9 months after the position of Prosecutor General became vacant, on 7 December 2016, the Superior Council of Prosecutors (SCP) [proposed](#) to the President of the Republic of Moldova the appointment of Mr. Eduard HARUNJEN to this position. Mr. Harunjen was nominated the winner of the contest after he had obtained the highest score from the selection board made up of the SCP members. Although the new prosecutor was chosen according to a complex procedure provided by the new Law on the Prosecution, the way in which Mr. Harunjen [was interviewed](#) raised several suspicions of the civil society representatives. In particular, the members of the SCP superficially examined the question of Mr. Harunjen's involvement in the events of April 2009 and did not ask any question about the sources of his property. Earlier mass-media [published materials](#) that confirmed Mr. Harunjen's involvement in a criminal case involving the death of a person, as well as information that he has an impressive house in a luxury neighbourhood in Chisinau that could not be built on the prosecutor's salary. In less than 24 hours after the proposal, the candidacy of the new prosecutor was [approved](#) by the President Nicolae TIMOFTI, although, according to the competences, the president has additional mechanisms for verifying the integrity of the candidates.

LRCM, together with 12 civil society organizations, [disapproved the way the new prosecutor was elected](#) and requested the President Timofti to make public the information on the integrity check-up of Mr. Harunjen. The signatories also asked the Prosecutor General for explanations in order to exclude any doubt regarding the legality of the origin of his assets and the actions related to the tragic events of April 2009 in which the prosecutor was involved. In [the official reply](#) as of 12 December 2016 addressed to the LRCM, Mr. Harunjen denied the existence of any situation that would make him incompatible with the position of the Prosecutor General. However, Mr. Harunjen avoided explaining the source of his property and his explanations were limited to the inconsistent way of presentation of the information by mass-media.

The hasty appointment of the new Prosecutor General has fuelled suspicions that the entire appointment process was orchestrated, his candidacy being previously decided upon at the political level and hurried to avoid the involvement in the selection procedure of Mr. Igor DODON, the new president of the country.

## Court of Auditors on Justice Reform: „Generous Resources - Uncertain Results“

On 30 November 2016, the Court of Auditors published an [audit report](#) on the performance of the implementation of the Justice Sector Reform Strategy (JSRS) for 2011–2016. The Court of Auditors listed a number of important achievements, including the adoption of the Law on the

reorganization of the judicial map, adoption of the new Law on Prosecution, increase of wages for the actors in the justice sector, new rules on selection, appointment, performance appraisal and promotion of judges, reform of the Ombudsman's office, etc.

At the same time, the Court of Auditors also highlighted a number of shortcomings in the implementation of JSRS, such as superficial estimation of JSRS costs; failure to adjust the Action Plan; failure to comply with the deadlines while implementing the actions; distortion in reporting of the implementation of actions by responsible institutions; inefficiency of the activities of the responsible institutions; failure to ensure efficient management of public money; non-compliance with the principle of transparency in the allocation of financial means for the implementation of JSRS; absence of actions on reforming the Prosecutor's Office in 2014, which led to a reduction of the EU financial support by EUR 1.8 million; unjustified use

**While implementing justice reform, MDL 135.9 million (appr. EUR 6.5 million) were used inconsistently and inefficiently**

of MDL 79.9 million for capital investment in the courts being subjects to optimization; inconsistent, inefficient and ineffective use of resources allocated to this sector in the total value of **MDL 135.9 million**, which represents 41.5% of the audited value (MDL 327.6 million).

The Court of Auditors made eight recommendations. They mainly concern establishing and strengthening an efficient financial management and control system, adequate procedures for keeping overall accounts of external assistance provided by various external donors, elaboration of the typical structure of the plan/strategy of the activity for a court, etc.

## LRCM Study: Judicial Inspection Has a Selective Practice to Investigate the Disciplinary Cases of Judges

On 28 November 2016, [the LRCM launched](#) the policy document „[Analysis of the legislation and practice concerning disciplinary liability of judges, 2015–2016](#)” (LRCM study). According to the study, the Judicial Inspection remains one of the least reformed disciplinary bodies. The problematic legal issues result largely from the fact that the inspectors–judges are subordinated to the SCM, they carry out secretarial activities, have no competence to decide on the admissibility of disciplinary complaints, have no clear competence to qualify disciplinary offences and have a passive role at the hearings of disciplinary bodies. In a number of cases involving the chairpersons of courts or judges from higher courts, the inspectors–judges dismissed the complaints that had elements of disciplinary offence as manifestly unfounded, defended the judges in front of the Disciplinary Board and the SCM and did not investigate cases sufficiently well, and cases were submitted before collegiate bodies without evidence.

The authors of the LRCM study recommend improving the quality of reasoning of the Disciplinary Board decisions, in particular regarding the proportionality of the sanction with the circumstances of the case. Out of 14 decisions analysed within the period of 2015–2016, in seven cases the Disciplinary Board

**Judicial Inspection selectively investigates disciplinary cases against the chairpersons of courts or judges from higher courts**

did not provide reasoning for the application of the sanction. In other cases, a formal reasoning of the proportionality of the sanction with the circumstances of the case was found. The sanctions applied by the Disciplinary Board are either too tough or too lenient. In 2016, the Disciplinary Board applied 13 sanctions, five sanctions out of these were cancelled by the SCM. In 2015, the Disciplinary Board applied only five sanctions.

The authors of the study found that most often the judges are being held disciplinary liable for violating the mandatory rules, which shows that there is a serious problem in the Republic of Moldova regarding the observance of the legal norms even by the judges themselves. The authors of the study recommended that the disciplinary bodies should not condition the application of such an offence by the decision of the higher court finding this offence; otherwise, the judges who issue decisions in the last resort are relieved from responsibility. Another recommendation is to reduce the number of review procedures against the decisions by the Disciplinary Board and institute a direct appeal procedure before the SCJ, on the merits and procedure. This reform would simplify the disciplinary procedure and save the administrative resources of the SCM.

## Election of New Members to SCM Boards

On 22 October 2016, the General Assembly of Judges aimed at the election of judges–members of the SCM Boards was held. Petru MORARU (SCJ), Nelea BUDĂI (Court of Appeal Chisinau) and Dumitru GHERASIM (Bălți Court) were elected [members of the Board for Performance Evaluation of Judges](#) and Liliana CATAN (SCJ), Alexandru GHEORGHIȘ (Court of Appeal Bălți) and Mihail MACAR (Hîncești Court) were elected [members of the Board for Selection and Career of Judges](#).

In the same context, at the SCM meeting of 23 November 2016, the SCM appointed judges Oleg STERNIOALĂ (SCJ) and Ion TALPA (Court of Appeal Bălți) [members of the Board for Performance Evaluation of Judges](#). During the debates, a member of the SCM [requested to postpone the examination](#) of the matter in connection with the initiation of disciplinary proceedings against Mr Sternioală. This request was rejected.

## Any Conflict of Interest at the SCM?

On 29 November 2016, the portal [www.anticoruptie.md](http://www.anticoruptie.md) published a [journalistic investigation](#) revealing a potential conflict of interest between the SCM Chairperson, Victor MICU, and the Riscani District Court Chairperson, Oleg MELNICIUC, concerning the purchase of low-cost apartments for judges. The portal [Moldova curată](#) submitted a complaint to the SCM, but it was rejected by the decision of the Judicial Inspection.

According to Moldova curată Portal, the complaint was sent by the SCM Secretariat to the Judicial Inspection to carry out check-ups. On the second day of receipt, i.e. on 16 December

2016, the Inspection issued a decision citing the explanations of Mr. Micu and Mr. Melniciuc given 4 days after the decision was issued, i.e. on 20 December. The decision was drafted by the judicial inspector Valeriu CATAN and is signed by the head of the Judicial Inspection, Nicolae CLIMA. It is at least strange to fall this complaint under the provisions of the Law on the disciplinary liability of judges, since the facts concerned do not refer to the actions of a judge in the exercise of his duties, but to those of a member of the SCM. In the future, such complaints should be examined by the National Integrity Authority.

# INTEGRITY AND ANTI-CORRUPTION

## Integrity Council Was Selected, Although not Without Reproaches

Three important laws (called „Integrity Package“) came into force on 1 August 2016. They set forth the basis for a new system of declaration and control of the property of state employees. This system should be more efficient than the current system. Among the main novelties of the Integrity Package is the reorganization of the National Integrity Commission (NIC) into the National Integrity Authority (NIA). Under the law, the latter is not based on political criteria and has much wider powers than the NIC. The NIA will be headed by a president and a vice-president who will be selected based on the contest by the Integrity Council and subsequently appointed by the president of the country. The Integrity Council, the collegiate governing body of the NIA, consists of seven members designated by different entities, including two representatives of civil society selected based on a contest by a special commission.

Even if, according to the law, members of the Integrity Council had to be appointed by 30 August 2016, four of the seven members of the Council were appointed only in December 2016. The members of the Council are Mr. Victor MICU, the chairperson of the SCM; Mr. Mircea ROȘIORU, the chairperson of the SCP – both appointed by these institutions without a contest; Mrs. Victoria IFTODI, former Minister of Justice during communist Governance – appointed without a contest by the Government, Mr. Viorel RUSU – appointed by the Congress of Local Authorities; Mr. Sergiu OSTAF – selected by the Parliament based on a contest, at the last stage of which only one candidate participated; and Dumitru ȚÎRA and Tatiana

PAȘCOVSCHI – selected by a special commission based on a contest attended by 7 representatives of the civil society. The special commission that have chosen the representatives of the civil society was composed of two representatives of the MoJ, two civil society representatives and the President of the Union of Lawyers. Tatiana PAȘCOVSCHI and Dumitru ȚÎRA are journalists, the latter being also the former administrator of Publika TV and the current owner of Realitatea TV.

The selection of Dumitru ȚÎRA and Tatiana PAȘCOVSCHI triggered [the indignation of the two representatives of the civil society, members of the contest commission](#). According to them, „representatives of the Ministry of Justice have underestimated the experience, motivation and intentions of some candidates. Consequently, two people whose experience and skills in the field of public integrity do not fully reflect the expectations of the civil society have been selected“. The selection took place by awarding a score, the highest rated candidates being considered selected. The score awarded by two representatives of civil society, members of the contest commission, was quite different from the score offered by the MoJ representatives. The President of the Union of Lawyers awarded a score similar to that given by the MoJ representatives. As a result, the LRCM president who participated in the contest, who was involved in the elaboration of the Integrity Package, led the reform of the Prosecutor's Office and is known as an honest and resolute person, has not been selected.

**Representatives of the civil society in the contest commission – “Representatives of the Ministry of Justice have underestimated the experience, motivation and intentions of some candidates“**

## Capital Amnesty and Quasi-Tax Amnesty Dubiously Promoted and then Withdrawn

On 16 December 2016, the Parliament approved in first reading the draft Law on Capital Liberalization and Fiscal Stimulation ([draft law no. 452](#)) and draft law on amendments and additions to some legislative acts ([draft law no. 451](#)). Essentially, draft law no. 452 provided for an amnesty of capital, with the express prohibition to verify the origin of the legalized capital and a quasi-fiscal amnesty (covering only tax penalties, but not also the basic debt). Draft law no. 451 amends and completes other laws with a view to enforce draft law no. 452. In particular, this draft law prohibits the National Integrity Authority to verify the liberalized assets and tax authorities to audit the calculation and payment of taxes and other charges applicable during the tax amnesty period.

Both draft laws were registered in the Parliament on 1 December 2016 and signed by five Members of the Parliament, including by the President of the Parliament Andrian CANDU. They were adopted at the first reading in an unprecedented rush on 16 December 2016, in violation of all rules on transparency in the decision-making and drafting of legislative acts and without the approval by the Government and other authorities.

On 19 December 2016, a group of non-profit organizations and non-affiliated experts launched a Position paper on the legislative initiative regarding the tax and capital amnesty (available in [Romanian](#), [Russian](#) and [English](#)). The signatories noted that the proposed capital amnesty could lead to the legalization of previous acts of corruption and the retention of corrupt officials in office, which is in contradiction with the goals

of the fight against corruption (especially the big corruption) due to the fact that the relevant institutions will not be able to verify the origin of the declared assets. The draft laws had a series of other important risks, such as the risk of higher increase of tax evasion, the risk of increased corruption and money laundering, reputational risk for the banking sector, already damaged after the bank frauds and cases of large-scale money laundering and with international resonance, as well as the risk of worsening relations with development partners, by undermining the principles of the rule of law, efforts to ensure integrity in the public sector and reform the banking system – the key conditions for budgetary support by the main development partners. The signatories requested the authors to withdraw draft laws no. 451 and 452 and initiate a comprehensive reform that would diminish the shadow economy.

The legislative initiative regarding capital and quasi-tax amnesty was critically appreciated by the main development partners supporting Republic of Moldova, including the International Monetary Fund and [the World Bank](#), that informed the Government of the risks of the draft laws even before their adoption at the first reading. The initiative was criticized by the representatives of political parties in the parliamentary opposition and extra-parliamentary parties. On 12 January 2017, the National Anti-corruption Centre presented [the Anti-corruption Expertise Report on draft laws no. 451 and 452](#), indicating a number of risks. [On 28 February 2017](#), the President of the Parliament, Mr. Andrian CANDU, declared that draft laws no. 451 and 452 were withdrawn.

## NOTORIOUS CASES

### It is Final: Former Chairperson of the Centre District Court of Chisinau Escapes Disciplinary Sanction

[Previously the LRCM wrote](#) about the disciplinary case of the former chairperson of the Centre District Court mun. Chisinau, Ion TURCAN. In the given case the Security Intelligence Service (SIS) filed charges against Mr. Turcan stating that he would have exerted influence on the subordinate judges to issue certain solutions, would have obtained gifts from a person with alleged connection with the criminal underworld and that he was in a conflict of interest with some people he hired. The Judicial Inspection initially rejected SIS complaint as manifestly unfounded. Subsequently, when the disciplinary case file reached the Disciplinary Board, both the SIS representative and a member of the Disciplinary Board criticized the Judicial Inspection for failing to take sufficient actions to elucidate all the circumstances of the case. As a result, for the lack of

evidence, [the Disciplinary Board did not find any disciplinary offence](#) committed by Mr. Turcan.

SIS challenged the decision by the Disciplinary Board. Examining the appeal, the SCM relied on the findings of the Judicial Inspection and the Disciplinary Board, and on 5 July 2016, [issued a judgement](#) rejecting the appeal. A member of the SCM, Tatiana RADUCANU, had a [separate opinion](#). According to her, the disciplinary file shows that Mr. Turcan received a hunting gun from a representative of the criminal underworld – Ion VANAGA, thus accepting a favour for the issue of an order. Also, the SCM member invoked that judge Turcan had exerted pressure on judge Victor ORANDAS requesting to issue a decision, the fact which was confirmed by the latter.

Mrs. Raducanu concluded that the disciplinary case of Mr. Turcan is „an example of selective treatment of some judges who upon committing disciplinary offences, finally, in any event, are not held disciplinary liable“.

**The disciplinary case against Ion TURCAN is an example of selective treatment of some judges**

The SIS also challenged the SCM judgement as of 5 July 2016. The SIS representative has repeatedly invoked the accusations made before the Disciplinary Board and the SCM before the SCJ. He also stressed that the judicial inspector who carried out verifications regarding Mr Turcan's case, Valeriu CATAN, was in a conflict of interest with the judge and therefore did not carry out sufficient investigations in the given case. The SIS representative added that Ion TURCAN misled the SCM and the SIS, noting that the power of attorney by which

the gun was given to him was in a case file at the NAC. The SIS requested the original of the receipt. Such a document, however, did not exist in the NAC case file. Respectively, Mr. Turcan had no proof that the gun was purchased. However, on 11 October 2016, [the SCJ rejected appeal](#) filed by the SIS. The SCJ

noted that it is competent to examine appeals only as concerns the issue/adoption of the SCM judgements, and the SIS invoked only matters of fact.

In 2015, the CSM proposed Ion TURCAN for another mandate as chairperson of the Centre District Court of Chisinau, but the president TIMOFTI refused to appoint him to this position on the basis of the information provided by the SIS.

## The Court of Appeal Chisinau and the SCJ - the Conviction of Vlad Filat Is Correct

On 27 June 2016, former Prime Minister Vlad FILAT was convicted by Buiucani District Court, mun. Chisinau, to nine years in prison for passive corruption and traffic of influence. The criminal case against Mr. Filat was examined in closed hearings at the request of the prosecutor, and the reasoned decision was not published on the web portal of the court. The judgement of 27 June 2016 was challenged by the prosecutor, Mr Filat, his former wife and several companies whose property was confiscated. The prosecutor requested a heavier punishment (12 years in prison), and Mr. Filat requested acquittal. The Court of Appeal Chisinau also examined the appeals behind closed doors. The Court of Appeal rejected a few exceptions of unconstitutionality, although this appears to be contrary to the recent jurisprudence of the Constitutional Court, refused to hear foreign witnesses allegedly involved in his corruption and who said in the press that they had never been to Moldova, and also refused controversial hearing of Mr. Shor in the court of appeal.

**„It is final – Vlad Filat will stay in prison for nine years“**

Chisinau Court of Appeals delivered the judgement on Friday, 11 November 2016, on the eve of the second round of the presidential elections. The court of appeal rejected the prosecutor's appeal and partly admitted the appeal of Mr Filat, his ex-wife and two companies. The court of appeal upheld the findings of the first instance as regards the guilt and imprisonment imposed on Mr. Filat, but reduced the amount of received illicit remuneration from MDL 791 million to MDL 472.5 million. The court also acknowledged in principle that it is inadmissible to violate the rights of the former wife of Mr. Filat and the property rights of the two companies by confiscation, but left this to be settled in the civil proceedings, maintaining the seizure applied to the assets. The judgement by the Court of Appeal Chisinau was not published. On 22 February 2017, [the SCJ dismissed as inadmissible the appeal](#) of the prosecutor, Mr. Filat, his ex-wife and five companies, on the ground that the decision by the appeal court is legal and well founded.

## Former First Deputy Prosecutor General Sentenced and Amnestied the Same Day

On 11 October 2017, Andrei PÎNTEA, former First Deputy Prosecutor General, was detained by the Anti-corruption Prosecutor's Office for 72 hours. He was investigated for the abuse of power in 2013 when he would have resumed a criminal case against a criminal leader and subsequently submitted the case to the judicial bodies in the Russian Federation. Subsequently, that criminal case was closed and the criminal leader can no longer be investigated.

Shortly after the arrest, Mr Pîntea pleaded fully guilty. According to the [statements of the prosecutor who carried out the criminal prosecution](#), the former First Deputy "expressed sincere regret about the actions he has committed and were incriminated

against him" and collaborated with the investigation. These facts determined that the accusation against the former prosecutor was modified for a milder one. In addition, the prosecutor of the case proposed to the court that Mr. Pîntea should be amnestied under the newly adopted [Law on Amnesty](#).

On 16 January 2017, the court [found the former First Deputy Prosecutor General guilty](#), but released him on the same day on the application of the amnesty. The court banned to Mr. Pîntea from serving as prosecutor or judge for three years. Currently Mr. Pîntea holds the lawyer's license, obtained shortly after his resignation from the prosecution bodies.

## The First Judge Detained in *Flagrante Delicto* for Bribery was Acquitted

On 8 December 2016, [the Court of Appeal Chisinau acquitted](#) the judge Gheorghe POPA. He is the first judge detained in *flagrante delicto* while taking a bribe of USD 200 from a lawyer in a civil case. He was sentenced on 8 April 2014 by Buiucani District Court of Chisinau to 7 years in prison with execution. The Court of Appeal Chisinau examined the case after the Criminal Board of the [SCJ sent the case back to court](#). The appeal court found that before the initiation of special investigation measures, there was no indication that judge Popa had been involved in any corruption activity and no evidence that he had requested the bribe. Criminal prosecution bodies did not examine the complaint of the lawyer's client that was filed against both the judge and the lawyer to

determine who actually the beneficiary of the bribe is. The criminal prosecution bodies did not confine themselves to passive investigation of the criminal activity, but determined the lawyer to give the bribe and the officers of the Anti-corruption Prosecutor's Office set the date of its transfer. The court of appeal found that the lawyer's actions had the purpose of provocation and that the offence would not have been committed without the intervention of the provocateur. Therefore, the Court of Appeal of Chisinau decided that the deed did not meet the elements of the offence and that judge Popa was the victim of an unlawful provocation by the criminal prosecution body. The Prosecutor's Office appealed against the decision by the Court of Appeal Chisinau to the SCJ.

## HUMAN RIGHTS

### Government Priorities in the Field of Human Rights for 2017 - 2021

On 18 November 2016, the Minister of Justice ordered the creation of a working group for the elaboration of the National Human Rights Action Plan for 2017–2021 (PNADO III). The plan will incorporate [recommendations of the Universal Periodic Review \(UPR\) addressed to the Republic of Moldova](#), as well as the recommendations of other international human rights monitoring mechanisms to which Moldova is a party.

The first meeting of the working group was held on 16 December 2016. The working group consists of human rights experts (representatives of civil society, the donor

community, and state institutions). The members of the group have developed a matrix composed of the recommendations of the international mechanisms and the action plan for their implementation over the next four years. Among the priority areas of interventions included in the document are strengthening justice and national institutions for the protection of human rights, prohibiting torture and degrading treatment, freedom and security of persons, as well as combating trafficking in human beings. PNADO III is to be adopted by the Parliament at the beginning of the autumn session in 2017.

**Strengthening justice and national institutions for the protection of human rights are among the priorities of the PNADO III**

### LRCM Informed the Committee of Ministers of the Council of Europe on the Conditions of Detention in the Country

ECtHR condemned the Republic of Moldova for poor conditions of detention in Penitentiary no. 13 in more than 15 judgments. The ECtHR criticized in particular overcrowding of cells, anti-sanitary conditions in cells and the quality and quantity of food served to detainees. The authorities of the Republic of Moldova are to comply with these rulings and to prevent similar violations in the future.

The Committee of Ministers of the Council of Europe (CoM) supervises the enforcement of the ECtHR rulings. On 21 October 2013, the Government of the Republic of Moldova presented to the CoM an [Action Plan for the enforcement of these rulings](#). It provides for improved legislation on penitentiary system and detention conditions, increased funding for the penitentiary system, review of existing ways and practices in the process of

application of preventive arrest measures with the view to reduce the number of arrested persons, as well as introduction of an effective appeal for detention in poor conditions.

[LRCM analysed the impact of the measures taken by the authorities of the Republic of Moldova](#) and submitted its findings to the CoM. LRCM found that in September 2016, 94% of the cells in Penitentiary no. 13 were overcrowded, and this problem remained extremely acute. The funds allocated for the detainees' food were clearly insufficient to feed a detainee from this penitentiary, spending less than one Euro a day. Moreover, since 2012, this amount has dropped from EUR 0.93 to EUR 0.67 (28%). The problem of overcrowding in Penitentiary no. 13 has been intensified by the increase of the number of persons in pre-trial detention in 2014–2016. Since 2013, the number of requests



for preventive arrests and arrested persons has increased by 20–25%, and the rate of admitted requests for arrest has increased from 77% to 82%. [These issues were also discussed at a round table](#) organized on 8 November 2016 in Chisinau.

As an issue of maximum priority, LRCM recommended the construction of a new penitentiary in Chisinau, that will replace Penitentiary no. 13. Until the construction of the new penitentiary

is finished, steps must be taken to reduce the overcrowding of Penitentiary no. 13 by extending the practice of non-deprivation of liberty measures and rapid transfer of convicted detainees from Penitentiary no. 13 to other penitentiaries. LRCM also recommended the substantial increase of funds allocated to the detainees' food and the introduction of an effective internal restoring and compensatory remedy for detention in poor conditions.

## Ambassadors of the EU Countries - the Judiciary Should not be Used Selectively

On [15 December 2016](#), the Heads of Mission of the European Union residents in Chisinau issued a [local human rights statement](#). The Heads of Mission drew attention to the importance of impartially in law enforcement and judiciary and that selective application of the law or the selective use of judiciary for other purposes only serves to undermine the Rule of Law in the Republic of Moldova. In this context, the Heads of Mission also underlined the importance of the right to a fair trial, respect for the presumption of innocence and the importance of respecting the public character of court hearings. They also indicated that holding court proceedings behind closed

**Contrary to the Government's commitments, the allocations for the detainees' food decreased and the number of persons in pre-trial detention increased**

doors and obstructing access to court buildings by media and observers deprive citizens of the possibility to follow trials. Such practices continue to raise questions regarding the fairness of the process. At the same time, the document refers to [the European Union Council Conclusions on the Republic of Moldova of 15 February 2016](#), which highlighted, among others, the importance of the independence of the judiciary. This statement came in the context of the closed-door examination of several major corruption cases, as well as the adoption by the SCM of the Regulations that severely restricted access to courts for the media and general public.

## To What Extent Human Rights are Respected upon Application of Special Investigation Measures

[The SCJ answered](#) to two questions of the CCM regarding the application of special investigation measures in the context of a lawyer's [complaint](#) in the interest of his prosecuted clients. The first question concerns the provisions of article 132<sup>5</sup> para. (7) of the of Criminal Procedure Code (CPC) and the positive obligation of the authorities to notify the person subject to the special investigation measures on the results of investigation. The SCJ noted that the right of persons who have been subject to special investigation measures to be informed about it is recognized by the laws of Germany, Belgium, Bulgaria, Ireland, the Netherlands, Sweden. The SCJ noted that, according to the CPP, the prosecutor or court investigator has the obligation to inform the person subject to special investigation measures only if the legality of such measures is established. In the case of finding the application of the special investigation measure unlawful, the criminal procedure law does not oblige the prosecutor or the court investigator to do so.

The second question of the CCM referred to the way in which the principle of equality of arms in the criminal proceedings is respected, in the situation provided by art. 132<sup>9</sup> para. (12) of the CPC, when the prosecutor decides on the relevance of the materials obtained by intercepting telephone conversations, not presenting these materials in full to the defence. The SCJ noted that, according to CPC, the court investigator is obliged to order the destruction of the illegal records. The CPC does not provide any means of challenging this decision. The SCJ has pointed out that, at least theoretically, some illegal records may be in favour of the accused. But s/he cannot benefit from them because they are destroyed. The SCJ considered this mechanism as problematic because art. 132<sup>9</sup> of the CPC from the very beginning denies adequate protection of defence.

## CIVIL SOCIETY

### Start of Registration in the List of 2% Beneficiaries

On 30 November 2016, the Government approved [the Regulation on the percentage designation mechanism](#). The Regulation was published on 2 December 2016 and entered into force. The Regulation establishes the registration procedure of the beneficiaries of the percentage designation and the procedure by which individuals can redirect 2% of their income tax. Previously, on 29 November 2016, [44 NGOs requested](#) the Government to publish the Regulation urgently in order to allow the application of 2% mechanism since 2017.

From 2 to 29 December 2016, non-governmental organizations acting in the public interest and religious entities of the country had the opportunity to file an application to the MoJ to register in the List of beneficiaries of percentage designation. In the coming years, they will be able to apply for registration at the MoJ between 1<sup>st</sup> and 30 September of each year. Once registered, organizations will be automatically included in the list for the

coming years. On 2 January 2017, the MoJ published the List of beneficiaries of percentage designation, which includes [413 NGOs](#) and [71 religious cults and their component parts](#). Between 1 January and 30 April 2017, individual taxpayers may assign 2% of their income tax to organizations listed on this list.

In order to facilitate the process of registering organizations in the List of 2% beneficiaries, LRCM has compiled a guide in [Romanian](#) and [Russian](#) and an infographic in [Romanian](#) and [Russian](#). The guide explains who may be beneficiary of the percentage designation, what are the criteria that organizations must meet to participate in the mechanism, when and where they can register, what set of documents is required for registration, and which are the obligations of the beneficiaries after registration. The infographic visually presents the synthesis and the scheme of the application process for 2% mechanism.

## IN BRIEF

**In September-October 2016**, LRCM organized three workshops for judges (Balti, Chisinau and Cahul) and a workshop for lawyers (Chisinau) entitled „The System of Disciplinary Liability of Judges in the Republic of Moldova – Procedure and Disciplinary Offences“. The subjects discussed included the relevant international standards, legal procedure, clarification of powers of each competent institution, as well as the analysis of some disciplinary offences in the light of the practice accumulated by the Disciplinary Board since the implementation of the new law. The long-term goal is to help prevent disciplinary offences by judges by promoting knowledge on disciplinary jurisprudence.

**On 5 October 2016**, the European Commission for the Efficiency of Justice (CEPEJ) presented [the report "European Judicial Systems – Efficiency and Quality of Justice – 2016 Edition"](#). The report presents an assessment of the status of the judicial systems of the member states of the Council of Europe. It covers the Republic of Moldova as well, including the increase of the budget allocated to the judiciary, bigger number of judges and prosecutors compared to the countries of Western Europe, etc. The document was completed by a thematic report on the use of information technologies in European courts and a database accessible on-line ([CEPEJ-STAT](#)), which allows viewing and comparing of information to understand how courts function and illustrate the main trends in court systems. Documents are based on 2014 information.

**In November 2016**, the UN Human Rights Committee [adopted final conclusions](#) following the hearing of the [Third Periodic](#)

[Report](#) of the Republic of Moldova on the Implementation of the International Covenant on Civil and Political Rights. The conclusions refer to pre-trial detention (§ 25-26), conditions of detention (§ 27-28), the right to a fair trial and administration of justice (§ 29-30), etc. The document also refers to the initiation of criminal investigations against Judge Domnica Manole following her decision to validate the referendum initiated by the “Dignity and Truth Platform” civic movement.

**On 25 November 2016**, [Botanica District Court](#) ordered MDL [415,000 to be recovered from the State Enterprise „Moldatsa”](#) in favour of Mrs. Mariana TABUICA, the sister of the Minister of Justice. Of these, MDL 342,300 represents the salary for the period of absence from the workplace, and MDL 73,300 – compensation “instead of re-employment“, although Mrs. Tabuica left the workplace on her own initiative. The decision of the first instance court is not final.

**On 28 November 2016**, [the Government notified](#) the Constitutional Court and requested the approval of the draft law to amend the Constitution with provisions on the attributions and structure of the Constitutional Court. The draft law proposes: the right of courts of all levels to refer to the Constitutional Court for the settlement of exceptions of unconstitutionality; increase of the number of constitutional judges from 6 to 7; appointment of the Constitutional Court judges for a 9-years term that cannot be renewed; as well as the 3-years extension of the term of

judges of the Constitutional Court who are in office at the date when the law enters into force. On [6 December 2016](#), the Constitutional Court issued its Opinion on the draft law amending the Constitution of the Republic of Moldova. With reference to these aspects, the Constitution is to be amended within 6 months.

**Vladimir MOLOJEN** (former Minister of Information Development in 2005–2008) was charged of abuse of office because he had concluded contracts with the company of his family while he was a minister. According to the accusation, the contracts violated the rules on conflict of interest and were unnecessary, as the state enterprise "Registru" is anyway a monopolist in the field of identity documents. The Anti-corruption prosecutor requested a sentence of 6 years of prison for Vladimir MOLOJEN, who was investigated for the abuse of power and negligence in the workplace which led to serious consequences (art. 327, 328, 329 Criminal Code), causing damage of MDL 2 million. On 29 November 2016, the former Minister was [acquitted by the Court of Appeal Chisinau](#), which upheld [the acquittal sentence Buiucani District Court, mun. Chisinau](#). The Court of Appeal Chisinau found that the prosecutor did not prove the damaging consequences of the acts committed by Mr. Molojen, so the actions of Mr. Molojen do not contain the constitutive elements of the alleged crimes.

On 2 December 2016, LRCM representatives attended the [biennial meeting](#) of the European Court of Human Rights (ECtHR) with civil society, held in Strasbourg. The challenges and developments related to the work of the ECtHR were discussed during the meeting. One of the most pressing issues is the non-enforcement of the ECtHR judgments. A non-governmental organization, [European Implementation Network](#) (EIN), was founded based on a partnership with European national NGOs in order to facilitate settlement of this issue. LRCM [is a founding member](#) of the EIN.

On 9 December 2016, the Parliament [voted a postponement](#) for 1 year of [the reform of the appointment of investigative judges](#), approved by the Parliament on 9 July 2016. Among other things, the reform provided for a limited term of office of 3 years, without the possibility of exercising two consecutive terms; a prohibition for court investigators, who have been in office for the past 3 years, to hold this position for the next term and appointment of all court investigators in the country until 30 September 2016 to have 3 months for their training at the National Institute of Justice (NIJ) and reducing the workload of a common law judge. The author of the bill on postponement of the investigative judges' reform [has argued this initiative](#) by the fact that many judges do not have the minimum 3-year's work experience as judges and that training at the NIJ has not taken place.

On 23 December 2016, LRCM, in partnership with the NGO Council, organized a thematic training session dedicated to the percentage designation mechanism: "[What is 2% mechanism and how it can be used by the NGOs in the Republic of Moldova](#)". LRCM legal officers [Sorina MACRINICI](#) and [Ilie CHIRTOACA](#) explained the particularities of the new mechanism and how NGOs can benefit from these sources.



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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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