

## GOOD GOVERNANCE

### In 2016, the democracy score in the Republic of Moldova dropped

According to [Freedom House](#), a U.S.-based NGO that publishes the annual report “[Nations in Transit](#),” the situation of democracy in the Republic of Moldova worsened in 2016 compared to 2015. The score granted to the Republic of Moldova is 4.93, compared with 4.89 in 2015 (on a scale of 1 to 7, where 1 means the most democratic and 7 – the least democratic). The decrease is mainly due to the intimidation of judges who are not in line with political agenda, lack of reforms to ensure integrity in the appointment of judges and politicized decision of the Constitutional Court that preempted a popular mobilization in favour of direct presidential elections.

At the same time, the Freedom House report mentioned the non-transparent manner of appointing the Filip Government; the unprecedented concentration of power in the hands of the Democratic Party (DPM), a party ranked 4th in the 2014 parliamentary elections; deficient implementation of the Roadmap on the Priority Reform Agenda; the delay in the “theft of the billion” investigations and the reform of the National Bank; the delay in the reform of the National Anti-Corruption Centre (NAC) and failure to adopt a new Audio-visual Code, as well as the fact that the Government has not signed a new electricity supply contract with more favourable terms. The report concluded that the year 2017 will be decisive for Moldova and that the Government needs to implement important reforms in areas such as justice reform, fight against corruption, audio-visual sector, and stabilization of the banking sector. The report also states that DPM will probably try to modify the electoral system from proportional to majoritarian or mixed one to gain an advantage during the next parliamentary elections.

### A step backwards for the democracy in Moldova - the electoral system changed against the Venice Commission's recommendations

On 20 July 2017, the Parliament passed in the second reading the draft law on the change of the electoral system by introducing the mixed electoral system ([Law no.154 of 20 July 2017](#)). The electoral system was changed despite the fact that the parties from the parliamentary and extra-parliamentary opposition, a number of non-governmental organizations and development partners of the Republic of Moldova have strongly opposed this initiative (see [the LRCM newsletter no.13](#)). Moreover, the Venice Commission expressly recommended, in [its opinion of 19 June 2017](#), that the mixed electoral system should not be adopted, expressing a number of concerns in this respect.

The representatives of the European Commission (the executive body of the European Union), the High Representative of the Union for Foreign Affairs and Security Policy / Vice-President of the Commission, Federica MOGHERINI and the European Commissioner for European Neighborhood Policy and Enlargement

## CONTENTS

### GOOD GOVERNANCE

In 2016, the democracy score in the Republic of Moldova dropped .....	1
A step backwards for the democracy in Moldova - the electoral system changed against the Venice Commission's recommendations .....	1
The Constitutional Court: the presence of the russian troops in the transnistrian region is unconstitutional .....	2

### JUSTICE

Constitutional Court – lifting the immunity of the judge cannot be a quasi-automatic procedure .....	3
The constitutional reform of the SCM and the career of judges delayed due to unexplainable reasons .....	3
The draft scm regulation on the publishing the court judgments raises concerns .....	4
Victor MICU, the fourth member of the SCM promoted within the judiciary while being a SCM member .....	4
The Constitutional Court and the Supreme Court of Justice preoccupied by the salaries of judges .....	5

### NOTORIOUS CASES

Eduard GRAMA, former minister of Agriculture and Food Industry, investigated for passive corruption .....	5
Valeriu TRIBOI, former deputy minister of Economy, convicted for abuse of power, without being prohibited to occupy public positions .....	6
Iurie CHIRINCIUC, former minister of Transport and Road Infrastructure, convicted for abuse of power and traffic of influence .....	6
Dorin CHIRTOACĂ, mayor of Chişinău municipality, investigated for traffic of influence .....	7
Chiril LUCINSCHI arrested before transmitting control on his television to a journalist association .....	7
Ilan SHOR convicted to 7 years and 6 months for causing damages in the “billion theft” case, but without prohibition to occupy functions in the banking system .....	8

### HUMAN RIGHTS

Inadmissibility decisions of the single judge at the ECtHR will be reasoned .....	9
New legislative amendments - attempt to stop media propaganda? .....	9
Participation in protests against changing the electoral system limited by authorities .....	9
Lawyers criminally accused for failure to disclose information about their clients .....	10
Problems encountered in applying pre-trial detention were discussed between legal professions .....	10

### CIVIL SOCIETY

Actions of denigration and sabotage of the activity of the non-governmental sector continue .....	11
Can civil society organisations get involved in political activities? .....	11
Participation of the civil society in the decision-making process - regional study .....	12

IN BRIEF .....	12
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Negotiations, Johannes HAHN, [criticized the introduction of the mixed electoral system contrary to the recommendations of the Venice Commission](#). They mentioned that the change of the electoral system will be assessed depending on the Republic of Moldova's compliance with the obligations resulting from the Association Agreement and the membership of the Council of Europe. The US Embassy [has also expressed disappointment](#) with the Parliament's decision to ignore the recommendations of the Venice Commission in adopting the mixed electoral system.

The main recommendation of the Venice Commission ignored by the Parliament was the very introduction of the mixed electoral system. The Venice Commission unequivocally stated that in the light of a series of concerns raised by the introduction of the mixed electoral system *"and the lack of consensus on this polarizing issue, such a fundamental change, while a sovereign prerogative of the country, is not advisable at this time"*.

A number of other concerns and recommendations that were ignored by the Parliament in adopting Law no.154 also resulted from the Venice Commission's opinion. For example, the Parliament did not address the Venice Commission's concern regarding the danger of corruption and influence of the candidates elected in majoritarian/uninominal constituencies by business people or other actors who follow their separate interests. This is one of the greatest risks that may affect the election of candidates in uninominal constituencies. At the same time, the Parliament has not solved the problem of non-transparent funding of political parties, another issue raised by the Venice Commission. Thus, the electoral process risks to further be seriously affected by corruption.

Another key issue identified by the Venice Commission was granting the Central Electoral Commission (CEC) the responsibility to establish uninominal constituencies based on vague criteria, leading to the risk of political influence on this important function. The Parliament has not addressed this concern either, granting the competence to create electoral constituencies to a commission whose composition is established by Government Decision ([Article 74 para. \(2\) of the Electoral Code](#)). Thus, the process of creating uninominal electoral constituencies being even more politicized. In addition, there is a high risk that this change favours only the governing party/parties.

Law no.154 also introduced the requirement for any candidate, on registration in the electoral competition, to submit a

"certificate of integrity" issued by the National Integrity Authority ([Article 44 para. \(1\) letter e1\) of the Electoral Code](#)). Given that many law enforcement bodies in the Republic of Moldova suffer from a lack of independence, this verification mechanism carries high risks of becoming another means of "filtering" the uncomfortable candidates and another blow to the principle of political pluralism.

In the context of political pluralism, the Venice Commission mentioned both in [its opinion of 2014](#) and in the [opinion of 2017](#) that the minimum threshold of 6% required for a party to enter the Parliament is rather high. According to the Venice Commission, in a mixed system that benefits dominant parties, it is even more important to lower the threshold for entering the Parliament. However, when adopting Law no.154 the Parliament has maintained the 6% threshold. In practical terms, maintaining the same 6% threshold the accession to the Parliament of small parties has become significantly more difficult.

**The Venice Commission unambiguously recommended not to introduce the mixed electoral system in the Republic of Moldova**

Law no.154 provides for financial facilities for political parties that will observe the quota of at least 40% of women candidates proposed in uninominal constituencies and will reduce twice the number of signatures necessary for the registration of female candidates compared to that indicated for the registration of male candidates. However, none of the provisions actually increases the chances of a woman to be elected in uninominal constituencies. Both the Venice Commission and

the [national organizations specialised in gender equality](#) mentioned that the majoritarian and mixed electoral system disadvantages women, while the proportional system ensures a greater representation of women in the Parliament. Thus, the provisions introduced in Law no.154 are not sufficient to overcome the disadvantaging of women in the mixed system.

In light of the above, the adoption of Law no.154 on the introduction of the mixed electoral system is one of the biggest regressions of the Republic of Moldova's democracy in the recent years. Besides the fact that it will increase corruption both locally and at the level of candidates and political parties, it will favour large parties (with a lot of money or administrative resources) and will disadvantage women, along with national minorities that are not geographically concentrated, and citizens of the Republic of Moldova living abroad (diaspora), which will be underrepresented compared to the population in the country.

## The Constitutional Court: the presence of the russian troops in the transnistrian region is unconstitutional

[On 26 May 2014, a group of liberal MPs](#) asked the Constitutional Court (CCM) to interpret art. 11 of the Constitution (the

principle of permanent neutrality) in light of the following aspects: (1) if the fact that at the date of the adoption and entry

into force of the Constitution, military troops of another state were deployed on the territory of the Republic of Moldova, would that invalidate the provisions of this article 2) if derogation from art. 11 of the Constitution is possible, in case the perpetuation of neutrality could lead to the dismemberment or even the disappearance of the state; and (3) if the deployment on the territory of the Republic of Moldova of the military troops of groups of states or under international mandate contravenes the provisions of art. 11 of the Constitution.

[The CCM noted that neutrality is related to foreign policy and state security](#), being closely linked to the historical context, the military occupation of the Eastern area being a determining factor in proclaiming neutrality in the Constitution. First, permanent neutrality means that the Republic of Moldova undertakes to remain neutral in any present and future conflict, regardless of the identity of the belligerents and the place and timing of its initiation. The status of neutrality is not opposable to the aggressor state, because the state cannot abstain when it is attacked. A neutral state has the right to legitimate self-defence (individual and collective) in an armed attack against the sovereignty and territorial integrity of the state.

Considering the above circumstances, the CCM, by its [Decision no.14 of 2 May 2017](#), found that the military occupa-

tion of a part of the territory of the Republic of Moldova at the moment of the declaration of its neutrality, as well as the lack of recognition and international guarantees of the neutrality status, does not affect the validity of the respective constitutional provision. The CCM stated that in the event of a threat to such fundamental constitutional values as national independence, territorial integrity or state security, Moldovan authorities are required to take all necessary measures, including military, which would allow them to efficiently defend themselves against the threat. The deployment on the territory of the Republic of Moldova of any troops or military bases, run and controlled by foreign states, is unconstitutional (note: the Russian Federation has not withdrawn its occupation troops from the East of the country but, on the contrary, has strengthened its military presence in the Transnistrian part of the Republic of Moldova), constitutes a violation of both constitutional provisions regarding the independence, sovereignty, territorial integrity and permanent neutrality of the Republic of Moldova, as well as international law. In conclusion, the CCM stated that the participation of the Republic of Moldova in collective security systems, such as the United Nations, peacekeeping operations, humanitarian operations, etc., which would impose collective sanctions against international law aggressors and criminals, does not contravene the status of neutrality.

## JUSTICE

### Constitutional Court – lifting the immunity of the judge cannot be a quasi-automatic procedure

Usually, judges in the Republic of Moldova can be criminally investigated, apprehended or searched only at the request of the Prosecutor General and only after the Superior Council of Magistracy (SCM) approval. Art. 23 para. 2 of the [Law on the SCM](#) provides that the request of the Prosecutor General is examined without assessing the quality and veracity of the materials submitted. This limitation was appealed to the Constitutional Court, which on 27 June 2017 declared it unconstitutional.

[The Constitutional Court noted](#) that the independence of judges is a guarantee against external pressure, being justified by the need to allow judges to fulfil their role as protectors of human rights. According to art. 23 par. 2 of the respective Law, the SCM is obliged to proceed to a quasi-automatic approval of initiating criminal investigation or con-

ducting criminal investigation actions against judges. Given the role of the SCM as a guarantor of the independence of the judiciary, it is its duty to examine the materials submitted in this respect and to refrain from admitting any abusive claims by the prosecuting authorities regarding judges. The SCM has the task of assessing the materials submitted by the criminal investigation body. It must reason its decisions, without limiting itself to general and abstract wording. However, the SCM should limit its verification to the presence of abuses by criminal investigation bodies and should not make any conclusions as to the judge's guilt.

The Constitutional Court also noted that its decision does not automatically involve the revision of the SCM earlier decisions to lift the immunity of judges.

### The constitutional reform of the SCM and the career of judges delayed due to unexplainable reasons

In September 2015, the Ministry of Justice sent for public consultations the [draft law for amending the Constitution](#) (arti-

cles 116, 121<sup>1</sup>, 122 and 123) drafted in the context of the implementation of the [Justice Sector Reform Strategy for 2011–2016](#)

(Action 1.1.6, p. 6 and Action 1.1.9 p. 3). The draft provides for several changes, including the initial term of appointment of judges for a 5-year term, an existing provision that negatively affects judges' independence and has been criticized several times before. The draft also provides for changing the composition of the SCM by excluding the Prosecutor General and the President of the Supreme Court of Justice (SCJ), for most of SCM members to be judges. Changing the membership of the SCM should strengthen the independence of the SCM, in particular by diminishing the influence of politics on the SCM. LRCM submitted to the Ministry of Justice [a legal opinion](#) supporting the draft to a large extent, except for some aspects, such as the Ministry's proposal to exclude from the Constitution the condition of 10 years of experience as a judge until the nomination of the candidate to the SCJ.

In [February 2016](#), the European Commission issued a statement in which, inter alia, expressed its concern about the lack of independence of judiciary and law enforcement bodies. In response, in March 2016, the Government adopted the [Roadmap for Priority Reform Agenda](#). In point 5.5 it stipulated that in March 2016 the Government will adopt the draft amendment to the Constitution regarding the initial term of appointing judges and the selection of judges at the SCJ, as well as specifying the role of the SCM in the process

## The draft SCM regulation on the publishing the court judgments raises concerns

At the end of June 2017, after a break of several months, the SCM [re-launched the discussions](#) on amending the Regulation on the manner in which judgments are published on the national courts' web portal. [The draft](#) has been developed by a working group [established for this purpose as early as February 2017](#). Although, [several Civil Society Organizations](#) (CSOs) have repeatedly expressed their willingness to participate in the activity of the Working Group, no representative of these has been invited to the meetings. Moreover, [no recommendation](#) of CSOs from those sent to the SCM members and the Working Group was taken into account.

[The draft](#) prepared by the Working Group raises several concerns. The authors proposed, inter alia, the extension of the categories of judgments that will no longer be published. Among the reasons for non-publication of the judgment will be "the interest in respecting morality" or "special

**Depersonalization of judgments should not hinder access to information**

of self-administration of the judiciary, its composition and competencies. In April 2016, the [Government](#) and the [Constitutional Court](#) approved the draft law for amending the Constitution, and on [13 April 2017](#), the Parliament adopted the draft law in the first reading. In May 2017, the Government withdrew this draft from the Parliament.

In June 2017, the Ministry of Justice submitted for public consultations a [draft law for amending the Constitution](#) identical to that of 2015, and the [informative note](#) does not explain the reason for resumption of the public consultation process of the same text already approved in the first reading in April 2017 by the Parliament. The LRCM submitted again a [legal opinion](#) on the draft law.

Without proper explanation from the authorities, we can conclude that there was not enough political will to promote the constitutional amendments regarding the judiciary so far. The non-promotion of these changes can be explained also by the desire to maintain the status quo of the SCM, given that the mandate of judges and law professors of the SCM expires in autumn 2017. In the absence of constitutional changes, the composition of the SCM will remain the same, including the manner of appointing and/or electing the SCM members.

circumstances in order not to prejudice the interests of justice". These reasons, which are very vague, may leave room for a wide range of interpretations and possible abuses, including non-publication of court judgments in resonance cases. The Regulation also provides for controlled access by third parties to court judgments in full, through a registration procedure.

The new amendments to the SCM Regulation do not in any way solve the issue of restricting the search for judgments by the names of the parties, a function excluded from the [national court portal](#) since January 2017 (see details in the [LRCM Newsletter no.13](#)). In this context, on 25 July 2017 the signing CSOs once again sent the SCM a [position paper](#) on the subject, presented at the public consultation meeting organized by the SCM on 4 August 2017. The next consultation meeting of the Regulation should take place in September 2017. Updates on this issue will be included in next newsletter.

## Victor MICU, the fourth member of the SCM promoted within the judiciary while being a SCM member

On 6 June 2017, with 9 votes pro and 1 against, the Superior Council of Magistracy [proposed Mr. Victor MICU](#), the president

of the SCM (judge, District Court Chişinău, Rîşcani branch), for promotion to the SCJ. Two more judges participated in

the contest, Viorica PUICĂ (Botanica branch) and Mihail DIACONU (Buiucani branch) of the Chişinău District Court. In the reasoning of its decision, the SCM indicated that Mr. Micu accumulated the highest score awarded by the Evaluation Board and the Board for the Selection and Career of Judges, and that he was selected as a result of the voting procedure. In March 2017, [Mr. Micu said](#) he was not sure whether he would submit a request for promotion to a higher court. Mr. Micu's mandate in the SCM expires in January 2018.

Previously, other judges, members of the SCM, were proposed by the SCM to be promoted to a higher court during their mandate as SCM members. For example, [Nichifor COROCHII](#) was proposed on 21 January 2014 for promotion to the Chişinău Court of Appeal, about 4 months after the termination of his mandate as a member of the SCM. [Anatolie TURCAN](#) was proposed on 23 June 2015 for promotion to the SCJ. Another member of the SCM, [Dorel MUSTEATĂ](#), was transferred on 29 September 2016 from Anenii-Noi Court to

### The SCM members should refrain from career advancement during their mandate

the Centru Court following the reorganization of the judicial map.

Mr. Micu was elected a member of the SCM as a representative of the district courts, and Mr. Turcan – as a representative of the courts of appeal. After their promotion to the SCJ, they no longer represent the level of courts that elected them as members of the SCM. [Mr. Micu said](#) there was no incompatibility in this respect.

We believe that promotion of the SCM members during their mandate or immediately after its expiration raises suspicions of using membership as a trampoline for career advancement and further erodes the trust of the public and judges in justice. In order to avoid these situations and promotions that may raise suspicion of favours from the SCM colleagues, the SCM members should refrain from requesting to be promoted during their term of office and for 6 months after its termination, similar to the rules set out in the [Regulation of the Superior Council of Prosecutors](#) (p.2.20).

## The Constitutional Court and the Supreme Court of Justice preoccupied by the salaries of judges

On 16 December 2016, the Parliament adopted [Law no. 281 \(article XVII\)](#) by which it completed [Law no. 328 of 23 December 2013 on remuneration of judges and prosecutors](#) with article 10<sup>1</sup>. The respective article stipulated that the salaries of judges and prosecutors “shall be reviewed annually as of 1 April, within the allocations provided for this purpose in the national public budget.” On 3 April 2017, the Supreme Court of Justice (SCJ) [challenged the respective provisions before the Constitutional Court \(CCM\)](#), noting that this amendment violated the principle of the independence of the judiciary. The Government argued that the contested provisions pursue the legitimate aim of ensuring the country's economic stability. On 2 May 2017, the [CCM adopted its decision finding the unconstitutionality of the contested provisions](#). The CCM noted, among other things, that the maintenance of remuneration is one of the guarantees of the judge's indepen-

dence and the contested provisions do not ensure the foreseeability of its amount.

The CCM decision of 2 May 2017 is the second judgment on remuneration of judges. On 6 November 2014, at the SCJ notification, the [CCM decided that the changes in the calculation of the judges' salary](#) (the transition from the “average wage forecasted by the Government” to the “average salary achieved in the economy in the previous year”) is constitutional, provided that it does not apply to judges in office at the time when the law enters into force. Previously, the CCM has also issued a decisions on judges' pensions. In 2011, the CCM [declared unconstitutional](#) the provisions of a law that reduced the special conditions for retirement of judges, while maintaining them in respect of the other categories provided by the law. In all three cases, the SCJ challenged the laws before the CCM.

## NOTORIOUS CASES

### Eduard GRAMA, former minister of Agriculture and Food Industry, investigated for passive corruption

On 15 March 2017, the Minister of Agriculture and Food Industry Eduard GRAMA, was apprehended by the National Anticorruption Center (NAC) officers. On 16 March 2017, he

was indicted and on 17 March 2017, the Chişinău Court issued a home arrest warrant for a term of 30 days. Also, on 17 March, Eduard GRAMA filed a request for resignation from

the position of the Minister of Agriculture and Food Industry. On the same day, the Prime Minister Pavel FILIP asked the President Igor DODON to dismiss him. On 20 March, the head of state signed [a decree to this effect](#).

Initially, Mr. Grama was [accused of passive corruption, allegedly](#) because he had received amounts in particularly large proportions exceeding MDL 200,000 and later this file was merged with the case of the attempt to alienate about 38 hectares of land belonging to the College of Viticulture and Winemaking from Chişinău. On 29 June 2017, the [accusation](#)

[file was sent to court](#), and on 3 July 2017, the former minister was provisionally released under judicial control.

Previously, Eduard GRAMA was appointed by the Liberal Democratic Party of Moldova as Deputy Minister in the Găburici Government and the Streleţ Government, and at the beginning of 2016 he was appointed minister in the Filip Government. At the beginning of March 2017, while on business trips, [Mr. Grama actively promoted](#) the introduction of the “majoritarian electoral system” in the campaign launched by the Democratic Party of Moldova.

## Valeriu TRIBOI, former deputy minister of Economy, convicted for abuse of power, without being prohibited to occupy public positions

On 31 March 2016, NAC officers and prosecutors descended and searched the [office and the domicile of the former deputy minister of the economy](#) and [member of the Democratic Party of Moldova](#), Valeriu TRIBOI. On 3 April 2017, he was placed in house arrest for 30 days, being investigated for abuse of power and damages to the state budget in particularly high proportions and on 5 April, the Government discharged him from his office based on his request for resignation.

Prosecutors determined that the suspect, abusing his position through third parties, allegedly has bought from Moldtelecom JSC, founded by the Ministry of Economy, a real estate worth almost MDL 1 million. Subsequently, the property was leased for ten-years to “Electric Power Supply North”. The suspect also ordered the decision-makers of the “Electric Power Supply North” to repair the leased immovable on their behalf.

On 18 August 2017, Valeriu TRIBOI admitted his guilt in the court hearing and then paid the caused damage of over MDL 2.5 million. On 22 August 2017, the court sentenced Mr. Triboi for abuse of power by imposing a fine of 750 conventional units (MDL 37,500), without applying the complementary penalty of deprivation

**Valeriu TRIBOI  
convicted for  
abuse of power  
with a fine of  
MDL 37,500  
and without the  
prohibition to  
occupy public  
positions, after  
admitting his guilt  
and paying the  
damage of MDL  
2.5 million**

of the right to hold certain public positions (the prosecutor had also requested deprivation of the right to hold public office for an eight-year term).

Judge Sergiu LAZĂR, Chişinău Court, who issued the sentence, [did not allow the journalists to film the pronouncement of the sentence](#), although according to [art.18 par. \(4\) of the Criminal Procedure Code](#), in all cases the judgments of the court shall be pronounced in public.

We recall that, according to [Recommendation no.61 of the Supreme Court of Justice](#) on some issues related to the individualisation of criminal penalties in corruption cases, the courts must ensure the application of the punishment expressly provided for by the sanction, including the application of complementary penalties which are mandatory. The abuse of power (Article 327 of the Criminal Code) is a category of corruption offenses. It is unclear why the complementary punishment was not applied to Mr. Triboi.

On 25 August 2017, the reasoned sentence was not available on the court’s website. If necessary, we will come back with details after the full publication of the judgment.

## Lurie CHIRINCIUC, former minister of Transport and Road Infrastructure, convicted for abuse of power and traffic of influence

On 27 April 2017, Lurie CHIRINCIUC, minister of Transport and Road Infrastructure, and a member of the Liberal Party, was arrested by the National Anticorruption Center (NAC). He was suspected that, together with several officials, [between 2016 and 2017, exerted pressure on the company](#) that won a contract to reconstruct the R6 M1 - Ialoveni road, a project financed by the European Investment Bank, in order to compel it to cede a part of the workload to affiliated economic agents.

On 28 April 2017, the Anticorruption Prosecutor’s Office [made public some video records](#) showing the involvement of Mr. Chirinciuc in contracting schemes for subcontractors for road repair works and some unofficial “commissions” to be paid for his benefit. It is not clear why these records were made public.

On 30 May 2017, Lurie CHIRINCIUC [was revoked from the position of minister](#) by a Presidential decree. During the criminal investigation, Lurie CHIRINCIUC was in pre-trial de-

tention for two months, and since 14 July 2017, he was provisionally released under judicial control.

On 9 August 2017, [by the decision of the Chişinău court, judge LAZARI Serghei](#), convicted the ex-minister Mr. Chirinciuc, for abuse of power and traffic of influence to one year

## Dorin CHIRTOACĂ, mayor of Chişinău municipality, investigated for traffic of influence

On 25 May 2017, Dorin CHIRTOACĂ, the mayor of Chişinău municipality and the first deputy chairman of the Liberal Party (LP), [were apprehended by the National Anticorruption Center \(NAC\) officers](#). On 26 May, Mr. Chirtoacă was placed in house arrest for a period of 30 days, being suspected of traffic of influence in the [case of paid parking lots in Chişinău](#). According to the NAC, Chirtoacă would have given instructions to the deputy mayor Nistor GROZAVU, who was chairman of the Commission for selecting companies to implement the parking project in Chişinău, to sign the contract with EME PARKLEITSYSTEM GmbH without the approval of the Municipal Council.

On 22 June 2017, Dorin CHIRTOACĂ received another 25 days of home arrest, and on 13 July, at the request of the prosecutor of the Anti-corruption Prosecutor's Office, the judge of Chişinău court [removed his lawyers from the hearing](#) because they would have delayed carrying out procedural actions and would have intentionally created impediments to the conduct of criminal investigations. In response, the lawyer Gheorghe MALIC wrote [on a social network](#) that both he and his colleague in this case file – Tatiana IOVU – are uncomfortable for the authorities because they demand the observance of the law, and prosecutors do not like it. The Criminal Procedure Code does not give a judge or prosecutor the right to remove the chosen lawyer from his/her participation in the criminal proceedings. On [13 July 2017, the Bar Union of the Republic of Moldova](#), notified of this incident, qualified that removal as abuse and asked the General Prosecutor's Office to take all necessary measures to prevent such abuses in the future.

On 28 July 2017, [the court fully admitted the request of the prosecutor of the Anti-corruption Prosecutor's Office](#) to sus-

and four months imprisonment in a semi-closed penitentiary with the conditional suspension of execution of one-year imprisonment with a fine of MDL 35,000 and deprivation of the right to hold public office for five years. Iurie CHIRINCIUC did not appear when the sentence was pronounced, [but he had previously admitted his guilt](#).

pend the mayor Dorin CHIRTOACĂ, until a final decision was issued. The prosecutors' reasoning was based on the fact that Dorin CHIRTOACĂ, acting as a mayor, could influence more colleagues, who are also witnesses to the paid parking lots case file in which he is accused. Under the existing conditions, the interim will be exercised by the deputy mayor Nistor GROZAVU, [also investigated](#) in the paid parking lots case file. On 8 August 2017, the Chişinău Court of Appeal upheld the decision of the first instance on the suspension of Mr. Chirtoacă, but also admitted the appeal lodged at the request of the lawyers, [requesting the Constitutional Court to raise the exception of unconstitutionality](#) on art. 33 of the Law on Local Public Administration, which regulates the procedure of suspension of the mayor, but does not expressly stipulate who can bring the matter to court and how a possible suspension of office may be appealed. Currently, the mayor is on house arrest.

**Dorin CHIRTOACĂ suspended from the position of mayor of Chişinău municipality**

Unlike Chirtoacă case, [the mayor of Orhei Ilan SHOR](#), who was sentenced by the first instance court to seven years and six months of imprisonment for causing damages and money laundering through non-performing loans contracted from Banca de Economii, was not suspended from the mayor's office neither during the criminal investigation, nor after his conviction.

It is important to note that both the Chirinciuc and Chirtoacă cases were started after the Liberal Party leader publicly [mentioned that he would not support](#) the change of the electoral system proposed by the Democratic Party of Moldova. On 26 May 2017, the Liberal Party [announced that it was leaving the Ruling coalition](#) and moves in opposition as a result of the apprehension of the mayor of Chişinău and the former Minister of Transport and Road Infrastructure, qualifying them as political decisions.

## Chiril LUCINSCHI arrested before transmitting control on his television to a journalist association

On 25 May 2017, ex-Liberal Democrat Party of Moldova (LDPM) MP and owner of TV7 Channel, Mr. Chiril LUCINSCHI, was apprehended by anticorruption prosecutors. According to the [press release of the National Anti-Corruption Centre](#)

[\(NAC\)](#) published the same day, Mr. Lucinschi allegedly committed the crime of money laundering because in the period of 2012-2014 he received through two companies whose beneficial owner he was about USD 400,000 stolen from

Banca de Economii, Banca Socială and UniBank. He is also accused of not having declared, contrary to the law, that he was the owner of the two companies during the period when he was a MP, nor that he actually benefited from the amount mentioned above. He risks imprisonment for up to 10 years. On 27 May 2017, Chiril LUCINSCHI was placed under house arrest where he currently is. On 1 August 2017, [his case was referred to court](#).

Mr. Lucinschi claims that the respective amount is a debt to him from Ilan SHOR, the person who stole the money from the banking system. He cannot answer for the fact that Mr. Shor has returned his debt out of the bankrupt money because he did not know their origin, which is a mandatory element to be accused of money laundering. Moreover, money laundering involves the legalization of the money obtained through other crimes, most often the sale of drugs, weapons

or trafficking in human beings, which in this case is missing. Regarding the non-declaration of property (article 352<sup>1</sup> of the Criminal Code), the limitation period for criminal liability has expired.

We recall that on 22 February 2017, [Mr. Lucinschi announced that he was giving up his MP mandate](#) and he withdraws from politics. On the same day, [he announced that he is transferring 75% of TV7 channel shares](#) to a journalists' association that will take over the management. The transfer of shares was scheduled to take place in June 2017, but it could not be finalized yet. TV7 was one of the few equidistant TV channels in the Republic of Moldova. More than 70% of the country's media is controlled by televisions affiliated to the Democratic Party and the Party of Socialists. Since 29 June 2017, TV7 has been renamed TV8 and most of the programs are produced by journalists who are to take over the television.

## Ilan SHOR convicted to 7 years and 6 months for causing damages in the “billion theft” case, but without prohibition to occupy functions in the banking system

On 21 June 2017, the mayor of Orhei and the former Chairman of the Management Board of Banca de Economii (BEM), Ilan SHOR, [was convicted by the Chişinău District Court](#) to imprisonment for seven and a half years in the “billion theft”<sup>1</sup> case. He was sentenced to three years' imprisonment for committing the crime provided by art. 196 par. (4) of the Criminal Code (causing damages through deception or abuse of particularly high proportions) and at six years for committing the offense provided by art. 243 par. (3) let. b) of the Criminal Code (money laundering in particularly high proportions). Applying partial cumulation, the court sentenced him to imprisonment for seven years and six months. At the same time, the court changed Mr. Shor's preventive measure from home arrest to provisional release under judicial control until the sentence becomes final. He was also banned from leaving the Republic of Moldova.

**Ilan SHOR, convicted by first instance court for offenses committed while holding a position in the administration of BEM, continues to administer the city of Orhei**

In the criminal proceedings, Ilan SHOR [was accused](#) of embezzling and laundering MDL 5 billion from BEM. The amount of the damage caused and/or the money laundered by him

does not result from the sentence. Although, Mr. Shor caused these damages in his position of the Chairman of the BEM Board of Directors, the court did not apply the complimentary mandatory penalty of prohibition in occupying functions in the banking system, as prosecutors have demanded. For comparison, to Veaceslav PLATON, who is also being tried in the “billion theft” case, the first instance has enforced this prohibition. At the same time, the court rejected the prosecutor's request to convict Ilan SHOR for fraud (article 190 para. (5) of the Criminal Code), which would have meant that he had obtained BEM money by deception or abuse power. The court, however, admitted the lawyers' request to requalify the fraud actions to actions of causing damage (article 196 para. (4) of the Criminal Code).

The reasoning of the sentence does not show what kind of money laundering has taken place, or art. 243 of the Criminal Code, which provides for money laundering, establishes 4 possibilities of carrying out money laundering. The court has in principle upheld the civil action brought against Mr. Shor, but decides that the amount of the compensation will be decided in separate civil proceedings, although in the case of Veaceslav PLATON, the court ordered in the criminal proceedings the restitution of an amount exceeding MDL 800 million.

On 25 August 2017, the reasoned sentence in this case has not yet been published. It can be appealed to the Court of Appeal. We recall that Mr. Shor has not been suspended from the position of mayor throughout the case and still holds this position. For other details on this case see the LRCM newsletters [no. 8](#), [no. 10](#) and [no. 11](#).

<sup>1</sup> The “billion theft” case refers to the disappearance of around 1 billion USD from Moldovan banking sector, including the nearly a third of the National Bank Reserves, or the equivalent of 15% of Moldovan GDP, within several years, with the information publicly released at the end of 2014. For a detailed explanation of the issue see <http://www.transparency.md/2016/12/20/radiography-of-a-bank-fraud-in-moldova-from-money-laundering-to-billion-fraud-and-state-debt/>.



## HUMAN RIGHTS

### Inadmissibility decisions of the single judge at the ECtHR will be reasoned

More than six years after the introduction of the “single judge” institution, the European Court of Human Rights (ECtHR) decided to inform the applicants about the reasons for the “single judges” decisions by which their applications are declared inadmissible. So far, the ECtHR was only informing the applicants of the inadmissibility of the application without any reasoning. The lack of reasoning fuelled confusions among lawyers and human rights defenders who did not understand why some applications were declared inadmissible. This change will put an end to such uncertainties and will help applicants, lawyers and human rights defenders better understand the ECtHR’s solutions.

According to a [communiqué from the ECtHR](#), as of June 2017, instead of letter-decisions, the applicants will receive the “single judge” decisions in one of the ECtHR official languages signed by the respective judge, accompanied by a letter in the state language.

This decision will, in most cases, include references to the concrete grounds underlying the inadmissibility. However, in

**Applicants will be informed of the reasons for the ECtHR’s “single judge” decisions**

some cases, the ECtHR will declare inadmissible applications by general reasoning, when they contain more unfounded, erroneous or abusive claims.

The previous practice of not informing the applicants of the reasons for rejecting their case by the single judge was set up as the ECtHR received a higher number of applications than it could have examined, more than 90% of which were clearly inadmissible. Informing the applicants about the reasons of the single judge would have further complicated the work of the ECtHR. Since 2011, more than 350,000 applications have been declared inadmissible by the single judge without rea-

soning, of which more than 8,500 were cases directed against Moldova. To date, the ECtHR has practically exhausted the stock of clearly inadmissible cases, which made it possible to change the ECtHR practice. In the [LRCM’s opinion](#), the failure to inform the applicants of the reasons for rejecting applications by

single judges had a discouraging effect on lawyers, which led to a decrease in the number of applications to the ECtHR.

### New legislative amendments - attempt to stop media propaganda?

On 30 March 2017, the Parliament of the Republic of Moldova voted in final reading [some amendments and completions to the Audio-visual Code](#), promoted by the Democratic Party (DPM). The amendments oblige televisions to increase the volume of the national product in peak audience hours from four to six hours. The national product will also include at least eight hours of daily broadcasting volume and will broadcast exclusively (in full) between 06.00-24.00. At the same time, 80% of the total product will be transmitted in Romanian. These provisions will enter into force on 1 October 2017. Holders of several broadcasting licenses [will be required to waive their licenses](#), retaining only two licenses of the same type (TV or radio).

Apparently, these changes aim to limit Russian propaganda, as private broadcasters will no longer be able to use the logo of other television stations from outside the Republic

**80% of the product broadcasted on radio and TV will be broadcasted in Romanian**

of Moldova for more than 2 hours per day. However, the adopted changes also mean that some smaller broadcasters, who will not be able to produce local broadcasts in the volume required by law, will be penalized, including with the suspension of the broadcasting license. In this regard, [experts in the field have requested](#), prior to the adoption of these amendments, to provide certain facilities to local broadcasters and local production companies so that they can carry out a larger volume of

broadcasts, proposals that have not been taken into consideration by the legislature.

Last but not least, there is a chance that by these changes [the information market will be monopolized even more](#). The amendments promoted by DPM have been criticized both by [media experts](#) and several [international organizations](#) for [violating freedom of expression](#).

### Participation in protests against changing the electoral system limited by authorities

On 5 May 2017, the Parliament adopted in the first reading the draft laws that provided for the change of the elec-

toral system. Between 5 and 14 May, several representatives of civil society and opposition parties organized a series of

protests and flash mobs against the [non-transparent and unlawful manner](#) in which the draft laws for introducing the mixed and majoritarian electoral system were adopted. On 14 May 2017, non-governmental organizations organized a massive protest, which was, however, disrupted by some actions conducted by public authorities.

[Amnesty International Moldova](#) and a [number of non-governmental organizations](#) indicated that on the day of the protest (14 May 2017) the circulation of trains throughout the Republic of Moldova was unjustifiably ceased, which created obstacles for citizens to travel to the protest site. Also, the number of “road filters” was increased on the way to the Chişinău municipality where the protest took place. Several citizens who transported protestors [reported](#) that they were stopped and fined by the police. Amnesty International Moldova has also voiced concern over statements by the President of the Republic of Moldova criticizing the non-governmental organizations that participated in the protest of 14 May 2017. He said he had instructed his counsellors to

make a list of NGOs, their activities and sources of funding. Such statements are an attack on independent and critical nongovernmental organizations.

Amnesty International Moldova [asked the representatives](#) of the Parliament and the Government to provide a clear reasoning for the need to stop train traffic on 14 May 2017 and to increase the number of patrol policemen, and to the President of the Republic of Moldova to explain the manner of drafting, the necessity and purpose of drawing up a list of donors and activities of NGOs. Several non-governmental organizations [asked the Prime Minister of the Republic of Moldova](#) to take an attitude and investigate the actions and inactions of the authorities that led to preventing citizens from traveling to the protest and undertake measures, so that such incidents are not repeated in the future.

In the recent years, public authorities have repeatedly taken actions to prevent people from taking part in anti-governmental protests. For details, see [the LRCM newsletter no.10](#).

## Lawyers criminally accused for failure to disclose information about their clients

In June 2016, the Prosecutor’s Office of Rîşcani District sent for examination to Drochia District Court the criminal case against the lawyers Veaceslav ȚURCAN and Maxim BELINSCHI. [The lawyers argue](#) that the criminal case was filed under Art. 352’ of the Criminal Code (false in statements) on their relationship with clients, forcing them to give statements about communication with their clients. In [October 2016](#), the Council of the Bar Union decided to hold a discussion with the Interim Prosecutor General to resolve the interference of the Prosecutor’s Office with the activity of lawyers, and in [February 2017](#) the Ministry of Justice was asked to draft a law to protect lawyers from any kind of interference.

In January 2017, the President of the European Council of Bars (CCBE) sent [a letter](#) to the authorities of the Republic of Moldova. The letter states that the right to independence and freedom to pursue their profession of the two lawyers are violated, and that any attempt to intimidate lawyers in the exercise of their functions is in direct contradiction with the basic principles recognized in international and European law. Taking into account the political situation in the Republic of Moldova, the CCBE notes that recent cases of violation of lawyers’ rights can be perceived as political.

## Problems encountered in applying pre-trial detention were discussed between legal professions

On 30 June 2017, after 10 years of activity, the Norwegian Mission of Rule of Law Advisers to Moldova ([NORLAM](#)) ended its mandate in Moldova. The conclusion of NORLAM’s work was preceded by the organization, on 31 May 2017, of the first Annual conference of legal actors. This conference, with over 150 judges, prosecutors and lawyers, was conceived as an event to be held annually, where common issues of the three legal professions can be discussed. The 2017 Conference was dedicated to pre-trial detention.

The NORLAM experts, judges, prosecutors and lawyers from the Republic of Moldova took part in the conference, among

**In 2016, in the Republic of Moldova, the number of arrested persons is as high as in 2009**

whom was the Executive director of the LRCM. In his presentation, he referred to the 2016 amendments to the procedure of examining pre-trial detention and analysed official statistics on arrest procedures. Despite the fact that the 2016 amendments increased the defendant’s guarantees in arrest procedures and made it more difficult to file for pre-trial detention, official statistical data suggest that after more than six months from the entry into force of the amendments, substantial changes in practice have not yet occurred. On the contrary, even if pre-trial detention is an exception, and the European Court of Human Rights has convicted Moldova for its excessive application during many years, prosecutors file more pre-trial

detention motions and the rate of admission of pre-trial detention motions is increasing. Thus, in 2016, prosecutors filed pre-trial detention motions in respect of 3,405 people – the highest number of cases filed after 2009 and very close to the number of cases filed in 2009, when hundreds of young people were arrested as a result of April 2009 events. In 2016,

84% of the complaints were admitted by investigative judges, which is the highest rate for the years 2011–2016 and similar to the rate of admissions in 2009. [The resolution adopted during the event](#) raises the concern for the insufficient reasoning of the pre-trial arrest requests, high rate of admissions and superficial examination by judges.

## CIVIL SOCIETY

### Actions of denigration and sabotage of the activity of the non-governmental sector continue

On 19 May 2017, more than 20 civil society organizations (CSOs), including LRCM, launched a [common statement](#) urging the authorities to immediately cease attacks against civil society organizations that have distinct or critical views in relation to the actions or initiatives of the government. The statement comes after several politicians, including Andrian CANDU, the Parliament Speaker, but also the Democratic Party affiliated media platforms, [labelled](#) organizations that publicly opposed the initiative to change the electoral system as “politically affiliated organizations.”

The signatory organizations underlined the importance of plenary involvement of civil society in public debates, especially when the promoted reforms can jeopardize the rule of law and democracy. The signatories called on the authorities to engage in an open and inclusive dialogue with all civil society organizations on truly priority reforms for the country such as poverty reduction, fighting corruption, central and local public administration reform, political party funding, justice reform and education.

The negative rhetoric regarding the activity of civil society organizations can be observed lately as well. In June 2016, in

the context of [addressing a request for information](#) from 30 SCOs active in the field of child rights protection regarding the Ministry of Labour, Social Protection and Family's (MLSF) cooperation with the Edelweiss Foundation and the public service “Child's Telephone,” the Ministry [qualified the request](#) of the civil society as a “sterile campaign with political connotations”. In May 2017, the President Igor DODON [proposed](#) to regulate the limitation of the NGOs activity financing based on Hungarian model. Earlier, president Dodon has repeatedly expressed his dissatisfaction with the work of civil society organizations and the way they are funded. On 29 June 2017, the Ministry of Health, led by the Minister Ruxanda GLAVAN, decided [to exclude](#) the Center for Health Analysis and Policies (PAS Center) from the implementation and management of the sources of the Global Fund to Fight AIDS, Tuberculosis and Malaria, after PAS Center was subjected to numerous pressures from the National HIV Program Coordination Unit.

Previously, on 3 March 2017, a group of CSOs [issued a joint statement](#) addressed to the development partners and the public at large expressing their concerns about the worsening of the working environment for civil society organizations.

### Can civil society organisations get involved in political activities?

On 24 May 2017, the [Legal Resources Centre from Moldova \(LRCM\)](#) and the [European Center for Not-for-Profit Law \(ECNL\)](#) from Budapest (Hungary) held [a discussion on the role of civil society organizations and their involvement in public affairs: political activities and public policies](#). Moldovan CSOs, representatives of national authorities and development partners took part in the discussion.

During the event the role of CSOs in a functioning democracy was discussed, it was explained that “political activity of CSOs” does not automatically mean their affiliation to a party or political candidate, but participation in public policy activities and taking positions on political issues, including commenting on draft laws and policy papers, and the prac-

tices of other countries in the field were presented.

Pirkka TAPIOLA, Ambassador, Head of the EU Delegation to the Republic of Moldova, [mentioned](#), inter alia, that the involvement of the civil society and its empowerment are part of the fundamental principles of the European Union; that the civil society should not be overregulated and limited in its competencies and that CSOs that provide comments on draft laws cannot be considered as politically affiliated. Julie STUFFT, Deputy Head of the Diplomatic Mission, US Embassy in the Republic of Moldova, noted that any society requires a robust civil society and that the government and civil society need to continue the dialogue between them. Veronica CREȚU, President of the Institute for Open Government,

mentioned that there is the need for co-creation and co-design of public policies, as provided by the Open Government Partnership agenda. Eduard SERBENCO, Deputy Minister of Justice, noted that the Ministry of Justice is firmly committed to strengthening the civil society and that their representatives are holders of important expertise for public policies. Ms. Anna RURKA, President of the Conference of International Non-Governmental Organisations of the Council of Europe, highlighted the importance of the transition from electoral democracy to participatory democracy, referring

to the Council of Europe standards on participation in the political decision-making process and to the [Recommendation of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe](#). Mr. Luben PANOV, Program Consultant at ECNL, spoke about [Regulating the Political Activities of Non-Governmental Organizations paper](#), developed by the Conference of International Non-Governmental Organisations of the Council of Europe and the practice of other states in regulating the CSO's political activities.

## Participation of the civil society in the decision-making process - regional study

In May 2017, the Council of Europe published a [second Study on civic participation in decision-making process in the Eastern Partnership countries](#), which refers to the practice of implementing national law in the respective countries. It contains 24 case studies from Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova and the Ukraine and in-

cludes a set of recommendations for each country. The document also includes a [Regional strategy for the development of civic participation in decision-making in the Eastern Partnership countries](#). [The first study](#) was launched in May 2016 and analysed the challenges and opportunities in the field of participatory policies in the Eastern Partnership countries.

## IN BRIEF

On 18 April 2017, the Government adopted the [new membership](#) of the [National Participation Council](#) (NPC). The new NPC, consisting of 26 representatives of the non-governmental sector, will have the role of consulting the Government in drafting policy documents and strategic legislative projects launched by the executive. The activity of the NPC platform resumed after a three-year break during which it was not operational. Earlier, the LRCM together with 21 other CSOs highlighted [the disadvantages of an institutionalized communication platform](#) based on the NPC model, in particular the de facto limitation of the participatory process for organizations that will not be part of the NPC.

On 20 April 2017, the Chişinău District Court, Buiucani branch, [sentenced](#) Veaceslav PLATON to 18 years imprisonment for a fraud that led to "billion theft". The court decided in favour of restitution of the damage caused to Banca de Economii in the amount of MDL 869,224,839.76, with the deprivation of the right to hold positions in the banking system for 5 years. The reasoned decision has not yet been published. The case was examined entirely in closed hearings. In January 2017, the panel of judges [removed](#) Mr. Platon from the hearing and [he was not entitled to the last word](#). On 22 May 2017, the [Prosecutor's Office announced](#) about sending to court of the second case against Mr. Platon. The accusation relates to actions that took place in December 2016, when Mr. Platon was in pre-trial detention and which was related to the insurance field.

The Parliament has launched the [E-petition](#) web page. Both individuals and legal entities can complete and send peti-

tions in electronic format to the Parliament. The webpage for electronic petitions was created with the support of UNDP Moldova.

On 22 May 2017, [the second meeting](#) of the EU-Moldova Civil Society Platform was held in parallel with the meeting of the [EU Moldova Parliamentary Association Committee](#). The EU-Moldova Civil Society Platform is one of the institutions created under art. 442 of the [Association Agreement](#) between the European Union and the Republic of Moldova. The members of the platform discussed the implementation of the Association Agreement and adopted a [common statement](#). The statement mainly refers to a series of reforms such as: creating an independent and responsible judiciary; fight against systemic trans-party corruption at all levels; eliminating the politicization of state institutions; ensuring transparency, accountability, resilience and good governance, including in the management of public finances; increasing the competitiveness of Moldovan products, promoting active labour market policies to provide productive and decent jobs for all, and issues related to changing the electoral system.

On 16 June 2017, the Republic of Moldova became a full member of the [International Criminal Court](#) (ICC). The [Agreement on the Privileges and Immunities of the International Criminal Court](#) (APIICC) provides ICC officials, prosecutors and employees with the possibility to act and conduct investigations throughout the territory of the Republic of Moldova concerning persons from the Republic of Moldova who have committed genocide, war crimes, crimes against humanity, and

aggression crimes. The ICC is a permanent and universal international justice court based in the Netherlands, whose mission is to judge people who have committed genocide, war crimes, crimes against humanity and aggression crimes. The Republic of Moldova signed the ICC's Rome Statute in 2000 and [ratified it in 2010](#). In 2017, Moldova joined APIICC. The Republic of Moldova is to adapt the national legislation to the provisions of the Rome Statute of the International Criminal Court.

On 20 June 2017, the eighth round of the Moldova-EU dialogue on human rights observance took place. The debates were a continuation of the developments as a follow-up to the last [2016 Dialogue](#) and referred to the following areas: freedom of expression, media pluralism and audio-visual reform, electoral law, protection of vulnerable groups, children's rights, impunity, inhuman treatment and protection of human rights in the justice system. According to a [press release](#) from the European External Action Service, the EU appreciated the establishment of the Council for Torture Prevention as a national mechanism for preventing torture and the signing of the Istanbul Convention on Combating Violence Against Women and Domestic Violence and recommended the granting of necessary resources to the Office of the Ombudsman and the Equality Council for the fulfilment of their mandate. In the same context, the EU reiterated the hope that Moldovan authorities will study the [common opinion](#) of the Venice Commission and OSCE Office for Democratic Institutions and Human Rights regarding the electoral legislation and follow the recommendations.

On 23 June 2017, LRCM sent to the Parliament proposals for amending and completing the draft of the new Strategy on the Development of the Civil Society from the Republic of Moldova 2017 - 2020. The LRCM recommendations can be consulted [here](#).

On 2 June 2017, Oleg ROTARI was elected Governmental Agent of the Republic of Moldova. Previously, Mr. Rotari served as a [detached jurist](#) at the European Court of Human Rights, where he worked since 2012. The position of governmental agent has been vacant since October 2016, when the former governmental agent Marin GURIN was detached on a mission in Mali (Africa).



*This newsletter is made possible by the generous support of the American people through the United States Agency for International Development (USAID). The contents are the responsibility of LRCM and do not necessarily reflect the views of USAID or the United States Government.*

## 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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