LRCM | LEGAL RESOURCES CENTRE FROM MOLDOVA

NEWSLETTER

NO. 16 | OCTOBER-DECEMBER **2017**

GOOD GOVERNANCE

BPO: 86% OF MOLDOVANS BELIEVE THE REPUBLIC OF MOLDOVA IS NOT GOVERNED BY THE WILL OF THE PEOPLE

According to the Barometer of Public Opinion as of November 2017, 77.4% of the respondents believe that things are going wrong in the Republic of Moldova, 86.2% believe that the Republic of Moldova is not governed by the will of the people, while 76.3% said that the elections in the Republic of Moldova are not free and fair. 11.1% of respondents consider that the political situation in the country is stable and other 83.4% disagree with this statement. Only 11.3% of the respondents believe that the current Parliament, elected on 30 November 2014, represents their interests and other 82.1% disagree with it.

The trust in public institutions remains very low. Only 15.7% of the respondents trust the Government and 80% do not; 11.3% trust the Parliament and 85.2% don't; 15.5% trust the National Anticorruption Center and 72.5% don't; 15% trust the Prosecutor General's Office and 73.5% don't; 13.6% - trust the judiciary and 79.1% don't. Data regarding the trust in the judiciary is quite worrying given the implementation of the Justice Sector Reform Strategy (JSRS) for 2011-2016. In November 2011, 18% of respondents trusted the judiciary and 76% did not trust it. Comparing the data of 2011 and 2017, it appears that the reform of the justice sector did not have a positive impact on the public confidence in the judiciary. In fact, more people had confidence in the judiciary at the beginning of the SRSJ implementation than after 7 years of implementation of the reform. These data should determine the decision-makers to undertake real and effective measures to reform the judiciary.

90.5% of the respondents declared they were dissatisfied with what the leadership of the country was doing to fight against corruption, and only 4.8% said they were satisfied. When asked what they believe about the actions to fight against corruption undertaken by the authorities (arrest of some public persons, including judges, customs officers and businessmen, dismissal of some heads of institutions, etc.), 21.5% of the respondents answered that these actions were just settling the scores between oligarchic groups; other 21.1% of the respondents believed that these actions represented an imitation of reforms and would further aggravate the situation in the country; the other 21% believed that these actions were done on purpose during the electoral campaign to raise the rating of a party or political candidate and only 14.4% said that these actions are the beginning of the real reforms in our country.

CONTENTS

Only 7.2% of respondents believe that money stolen from the banking system 3 years ago will be returned to Moldova, while 88.9% do not believe this. 55.8% of the respondents believe that the Constitutional Court took a committed decision, playing the game of some political forces, when suspending the president of the country on 20 October 2017 because of the repeated refusal to appoint as the Minister of Defence the candidate proposed by the Prime Minister.

> 7 YEARS AFTER THE IMPLEMENTATION OF JUDICIAL REFORM, THE CONFIDENCE IN THE JUDICIARY IS LOWER THAN WHEN IT STARTED

INVESTIGATION: CRIMINAL PROCEEDINGS INITIATED AGAINST THE MAYORS FROM THE OPPOSITION

According to an investigation conducted by the Centre for Investigative Journalism (CIJ), published on 3 November 2017, in five years, from 2013 to 2017, prosecutors initiated more than 100 criminal cases against mayors and Presidents of the raions. Most often, the elected local representatives of the opposition parties fell under the spotlight of the law enforcement authorities. Between 2013 and 2014, the National Anti-corruption Center (NAC) investigated 51 criminal case targeting mayors of the Republic of Moldova. Nearly half of the criminally charged mayors were members of the Liberal Democratic Party of Moldova (PLDM) and a quarter - members of the Party of Communists. The CIJ obtained these figures and the list of mayors from the NAC at the beginning of 2015, before the local elections of that year. In the summer of 2017, the NAC, the Anticorruption Prosecutor's Office and the Ministry of Internal Affairs refused the request by the CIJ to provide similar information.

> IN 2018, LOCAL AND REGIONAL DEMOCRACY OF THE REPUBLIC OF MOLDOVA WILL BE SUBJECT TO COUNCIL OF EUROPE MONITORING

The investigation shows that, according to NAC activity reports, which are public, 12 mayors were criminally prosecuted in 2015, 15 mayors and one raion President - in 2016, and at least ten mayors - in 2017. In nearly 90% of cases, the elected local officials are charged with abuse of power or excess of official authority. Out of almost 30 cases made public by the NAC and the Prosecutor's Office between 2015 and November 2017 and analysed by the CIJ, eight criminal cases concerned current mayors from Liberal Democratic Party, ten others - mayors from Our Party (PN), three cases - mayors from Liberal Party, two cases - mayors from Democratic Party, and one case - a district chairperson from the Party of Communists. The CIJ has not identified any case in which prosecutors initiated criminal proceedings against mayors from the Party of Socialists. As a rule, only a small part of these cases are brought to trial and the number of mayors convicted of criminal offences is insignificant. Instead, at least in the last two years, several mayors with criminal files have left the parties they belonged to, and joined the Democratic Party (PDM).

In January 2018, in an interview in, Mr. Viorel FURDUI, executive director of the Congress of Local Authorities from Moldova (CALM), stated that, after the change of the electoral system into a mixed one, the political importance of local councils and mayors has increased. He noted that the political dependence of the mayors is quite high in the Republic of Moldova, because the system is excessively centralized and all the financial and economic resources are concentrated at the central level. About 600 mayors out of 898 are members of the PDM, an impressive number that exceeds the number of mayors affiliated to the Party of Communists during the period in which it was ruling. Mr. Furdui also referred to the large number of criminal cases initiated against mayors and noted that a climate of fear is widely spread in the local public administration. According to the Barometer of Public Opinion as of November 2017, after more than 100 mayors elected in 2015 migrated to the PDM, 55.8% of respondents believe that they were bought; 21.2% considered that they had been imposed by coercion and only 6.7% responded that they had switched voluntarily.

The situation of mayors from the Republic of Moldova was also discussed at the October 2017 session of the Congress of Local and Regional Authorities of the Council of Europe. The participants voted a resolution, according to which, in 2018, the Republic of Moldova will be subject to monitoring as concerns local and regional democracy.

EASTERN PARTNERSHIP: 20 DELIVERABLES FOR 2020

On 24 November 2017, the Eastern Partnership Summit was held in Brussels. It was attended by the representatives of the Member States of the European Union (EU) and 6 European countries members of the Eastern Partnership - Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova and Ukraine. All leaders agreed on a joint declaration, reconfirming their commitment to the Eastern Partnership. The EU acknowledged the European aspirations and European choice

of partners who signed association agreements with the EU, namely Georgia, the Republic of Moldova and Ukraine; while recognising the right for other partners to choose the level of ambition they aspire to in their relations with the EU.

The declaration identified 20 deliverables for 2020 for the Eastern Partnership countries, including Moldova. These include: (1) a vibrant civil society that is an indispensable partner for the government as driver of reform and promoter of accountability; (2) gender equality and non-discrimination that will allow the partner countries to take full advantage of the economic and social potential within their societies; (3) enhancing rule of law and anti-corruption mechanisms by supporting the establishment and further development of sustainable structures to prevent and fight against corruption, strengthen transparency and fight against money laundering, ensuring effective systems of declaration of assets and of conflicts of interest with easily searchable databases, steps towards implementation of applicable international recommendations on political party funding, independence of anti-corruption bodies, development of legal framework and mechanisms for recovery and management of assets and effective tools for financial investigations will be pursued in this context; (4) implementation of key reforms on independence, impartiality, efficiency and accountability of the judiciary, transparent and merit-based recruitment and promotion of judges, improved access to justice, comprehensive and effective training of the judiciary; (5) implementation of Public Administration Reforms in line with international principles to establish a professional, depoliticised, accountable and ethical public administration.

MOLDOVA WILL RECEIVE 100 MILLION EURO FROM THE EU ONLY IF IT COMPLIES WITH THE AGREED CONDITIONS

The Republic of Moldova can benefit from macro-financial assistance from the EU following a Grant Agreement signed on 23 November 2017. The Agreement and the Memorandum of Understanding, which is part of the Agreement, provide for granting of up to EUR 100 million, comprising a loan of up to EUR 60 million and a grant of up to EUR 40 million. Assistance will be granted in three instalments. The first instalment will amount to up to EUR 30 million, the second instalment will amount to up to EUR 30 million and the third instalment will amount to up to EUR 40 million. This assistance will be used to cover budget expenditures. The disbursement of the three instalments of the assistance will be conditional on a positive assessment by the European Commission of macroeconomic and structural policy indicators.

The Memorandum of Understanding provides for 28 actions to be performed before the disbursement of each instalment. These refer to public administration reform, public procurement system, transparency and accountability in state-owned enterprises, prevention of money laundering and fighting the terrorism financing, banking activity and supervision of banking and investment companies, the operational capacities of the National Integrity Authority and the Crime Assets Recovery Agency, the regulatory framework of the energy sector, the adoption of new laws on the Court of Accounts, the Customs Service and a new Customs Code, the selection and promotion of judges, the Law on Disciplinary Liability of Judges, the implementation of the National Integrity and Anti-corruption Strategy for 2017- 2020, substantial progress in the implementation by the authorities of the strategy for recovering fraudulent bank assets, adoption of the legislation to strengthen the position of the Superior Council of Magistracy.

In addition to these conditions, the Memorandum of Understanding also provides for a number of political preconditions, namely that the authorities of the country shall respect effective democratic mechanisms, including a multi-party parliamentary system and the rule of law and respect for human rights, and will make satisfactory progress towards improving governance, ensuring a free, independent and pluralistic media, strengthening the independence of the judiciary and implementation of the Association Agreement, including the Deep and Comprehensive Free Trade Area Agreement. The European Commission and the European External Action Service shall monitor the fulfilment of the political pre-conditions throughout the entire period.

JUSTICE AND JUDICIAL ACTIVITIES

CONSTITUTIONAL COURT: INTELLIGENCE SERVICE SHOULD NOT VERIFY JUDGES

On 5 December 2017, the Constitutional Court (CCM) rulled on the exception of unconstitutionality raised by the judge Domnica MANOLE, regarding the periodic verification of judges by the Security and Intelligence Service (SIS). The judge Manole

was dismissed after SIS submitted an opinion to the Superior Council of Magistracy (SCM) on her incompatibility with the position of judge, under Law no. 271 as of 18 December 2008 on the verification of holders and candidates for public positions. According to Law no. 271, SIS checks the holders and candidates for public positions and issues an opinion on their compatibility with the public position, on the basis of which the public authorities take a decision.

The CCM noted that the SIS has unlimited and unattended access to data about any person when drafting its opinion. All public authorities and legal entities have the obligation to present the information required by the SIS, SIS not being obliged to provide reasons for their request. Also, there are no criteria in the law limiting the access to those data, and legal safeguards regarding their use are not sufficient and appropriate. The CCM noted that the SIS is a military, intelligence, conspiracy structure and does not meet the conditions for necessary safeguards to respect of correspondence, family and private life. In the opinion of the CCM, the verification of holders and candidates for public positions must be carried out by a civilian body that is subject to democratic scrutiny.

> THE SIS OPINIONS COULD BE USED AS "POLITICAL WEAPONS" AND FOR DISMISSAL OF "UNCOMFORTABLE" OR "UNLOYAL" JUDGES

The CCM also mentioned the lack of an effective remedy to challenge the SIS opinion. The persons verified by the SIS can not challenge separately the SIS opinion in court, but only in the court litigation together with the act on dismissal or refusal of employment. As a result, the rights of the verified person can be protected at a relatively late stage, especially in cases where dismissal has already been applied.

The CCM has thoroughly examined the impact of the SIS opinions on the judiciary. The CCM has pointed out that the SIS opinion is automatic and mandatory, because the public authority has to adopt the decision on the compatibility of the person within the framework of the SIS opinion. The SCM confines itself to a formal examination of the SIS opinion on verification of a judge or candidate for the position of judge without verifying and assessing the actual existence of the conditions or circumstances stipulated by the law for establishing the incompatibility of a person with the position of judge on the basis of the presented evidence. Such a situation clearly leads to the suppression of the constitutional role of the Superior Council of Magistracy, of a guarantor of the independence of the judiciary, turning it into an illusory and inefficient one. According to the CCM, the contested law violates the principles of separation of powers and independence of justice. The SIS is a body under the control of another power, the director being appointed and dismissed by the Parliament. By accepting the SIS opinion, the discretionary and uncontrolled intervention of a body outside the judiciary in the work of the judiciary will be admitted. The dismissal of a judge from office can only be ordered through the mechanisms of judicial self-administration. The CCM stressed that, given the legal consequences of the SIS opinion, there is a risk that it would be used as a "political weapon" against judges. On the basis of the SIS verifications, politically "uncomfortable" or "unloyal" persons can be dismissed.

The CCM indicated that the verification of holders and candidates for public positions exceeds the verification for the purposes of national security, an inherent area of the SIS. National legislation already has a number of regulations in the field of qualifications, integrity and conflict of interest assessment, such as Law no. 132 as of 17 June 2016 on the National Integrity Authority and Law no. 133 as of 17 June 2016 on the declaration of personal assets and interests. The CCM declared unconstitutional the provisions of art. 5 letter a) and art. 15 par. (2), (4) and (5) of Law 271 in the part that refers to the verification by the SIS of candidates for the position of judge and acting judges because they violate art. 6 of the Constitution (separation of powers) and art. 116 of the Constitution (independence of the judiciary). The CCM issued an Address to the Parliament requesting to exclude legislative parallelism with regard to the verification of integrity of all holders of or candidates for the public offices.

ELECTION OF THE SCM MEMBERS - REDUCED LEVEL OF TRANSPARENCY AND FEW CANDIDATES

The term of office of several members of the SCM expired in October - December 2017. At the Superior Council of the Magistracy (SCM) meeting as of 8 August 2017, the SCM decided to convene the General Assembly of Judges (GAJ) on 20 October 2017 to elect six judges to the position of a member of the SCM. As provided by the law, the SCM has given interested candidates the deadline of one month for the submission of files, the deadline being 14 September 2017.

According to p. 21 of the Regulation on the functioning of the GAJ, the materials submitted by the candidates (CVs and activity programs) should be placed on the SCM website

immediately after the deadline for submitting the files, to allow judges and civil society to get acquainted with the files and to express views on the suitability of candidates. However, the SCM published the list of candidates and their files only 32 days after the deadline for filing the documents and only 3 days before the GAJ. The SCM invoked as legal ground p. 25 of the Regulation, which refers to the publication of the final lists of candidates on the website of the Council. In 2013 and 2014, the SCM published the list of candidates and the materials submitted by them shortly after the deadline for submission of the documents.

> **Comparing to 2013 elections, in 2017 fewer candidates sought to become SCM members, and the SCM published the CVs and programs of the candidates only three days before the election**

On 20 September 2017, the LRCM sent a letter to the SCM, requesting the publication of the files submitted by the candidates and organization of the debates between the candidates. The CSM did not react to this request. On 5 October the list of candidates for membership in the SCM was published on the CSM website, without their CVs and activity programs. In 2017, only eight candidates applied for six vacancies. Six of the eight candidates were proposed by the general assemblies of the courts, two candidates for each level of courts. Only two candidates for the first instance level applied individually. Thus, the judges had to choose two candidates out of four for the level of the first instance, and for the positions at the Supreme Court of Justice (SCJ) and the courts of appeal there was no competition. In the contests of 2013 and 2014 between two and eight candidates from the each court level applied for vacant positions of the SCM member.

On 12 October 2017, five NGOs invited all candidates for the position of the SCM member to a public debate. The aim of the initiative was to facilitate the organization of free and fair elections for the position of the SCM member within the GAJ and to help strengthen the authority and integrity of the judiciary. As some candidates refused, and others did not reply, the public debate did not take place. In this context, on 17 October 2017, the five NGOs released a statement expressing their regret about the low level of transparency of elections to the SCM, comparing to 2013 and 2014. On the same day, the SCM published the CVs and programs of the candidates for the position of the SCM member. The chairperson of the SCM and other members of the SCM did not answer the journalists' requests concerning the reason for non-publication of the list and relevant information about the candidates in time.

On 20 October 2017, all six members of the SCM from among the judges were elected at the GAJ, as it follows: from the judges of the SCJ - Victor MICU (92% of participants) and Petru MORARU (83%); courts of appeal - Nina CERNAT (93%) and Alexandru GHEORGHIEȘ (91%) and judges - Anatolie GALBEN (65%) and Dorel MUSTEAȚĂ (70%). All elected candidates were nominated to the position of the SCM member by the collectives of judges from the courts where they worked or should have worked. The candidates who have submitted their candidatures on their own behalf have not been elected to the SCM - Gheorghe BALAN (15%) and Viorica PUICĂ (39%).

By the Decision of the Legal Committee for Appointments and Immunities of the Parliament (Parliamentary Committee) no. 240 as of 4 December 2017, a contest for filling three vacant positions in the SCM from among university lecturers in law was announced. The deadline for the submission of documents was 11 December 2017. Compared to the contest announced by the Parliamentary Committee in 2013, the list of eligibility criteria for the candidates was reduced, the procedure and stages of selection were not stipulated and the criteria for candidates' evaluation were not indicated. Against this background, on 6 December 2017, several organizations sent a letter to the Parliamentary Committee requesting to ensure a transparent and merit-based procedure for the selection of the CSM members from among university lecturers in law. The Committee did not respond.

On 12 December 2017, the names of the candidates for the SCM membership from among university lecturers in law were published in the media and on 13 December 2017 the Committee heard and proposed to the plenary Parliament the candidates for the appointment. The election of candidates for the position of the SCM member was not initially on the agenda of the Parliamentary Committee meeting of 13 December and the information about candidates is missing on the website of the Parliament. On 14 December 2017, civil society organizations issued a statement expressing their regret about the absence of a clear procedure and the low level of transparency in appointing university lecturers as members of the SCM, qualifying the contest as a regression in comparison with the one organized in 2013. By the decision of the Parliament as of 15 December 2017, Mariana TIMOTIN, Ion POSTU and Serghei ȚURCAN were elected as members of the SCM from among university lecturers in law.

REFORM OF THE INSTITUTION OF INVESTIGATIVE JUDGE: ONE STEP FORWARD AND TWO BACKWARD

On 9 July 2016, the Parliament passed in final reading Law no. 126, promoted by the Ministry of Justice. It amended the procedure of the investigative judges' appointment. According to the new law, investigative judges had to be appointed by the Superior Council of Magistracy (SCM), with their consent, at the proposal of the chairperson of the court. According to an analysis carried out by the LRCM in 2015, the majority of the investigative judges were either former prosecutors or former investigating officers, and their activity aroused much criticism. For this reason, the 2016 law introduced as a condition for the appointment of a investigative judge the experience of at least 3 years as a judge. According to the reform, the term of office of the investigative judges should be 3 years, without the possibility of holding two consecutive terms. The new law also provided that all investigative judges had to be appointed three months before the expiry of the term of office of the acting investigative judges, in order to have sufficient time for training and reduce workload of the newly appointed investigative judges. The law also provided for a ban to serve as investigative judge for judges who worked as investigative judges in the last 3 years. The law should have entered into force on 1 January 2017.

The reform of the investigative judge institution was slowed down by two laws promoted by the MPs without any public consultation and contrary to the reform adopted in July 2016. The first amendment took place just five months after the adoption of Law no. 126. On 9 December 2016, the MPs passed Law no. 266, by which they postponed the new system for the appointment of the investigative judges for one year. It had to be put in place from 1 January 2018, instead of 1 January 2017.

Another law, adopted on 22 December 2017, which came into force on 12 January 2018, excluded the minimum of 3 years of experience in the position of judge requirement for newly appointed investigative judges. This amendment was added in the second reading to a draft already adopted by Parliament in the first reading and which concerned a totally different subject (the secretariat of the courts). The amendment was proposed by the MPs from the Democratic Party - Igor VREMEA and Corneliu PADNEVICI. MPs reasoned the amendment by saying that "*the activity of the* investigative judge *does not anyhow differ from the activity of a simple judge, they both are the exponents of the judiciary, and both administer justice in order to defend and secure the exercise of the fundamental rights and freedoms of citizens.*" The amendment was introduced contrary to the spirit of the reform of the investigative judge institution voted in 2016. The specifics of the activity of the investigative judges (the promptness with which the decision is to be taken and the impact of these decisions on human rights) requires extensive experience in the position of a judge.

After all legislative modifications, the SCM appointed investigative judges for the next 3 years. Under Law no. 266, the SCM should have appointed all investigative judges by 30 September 2017, gradually reducing their workload as a common law judges and providing them training at the National Institute of Justice before they take the office. The SCM has appointed the overwhelming majority of the investigative judges only on 19 December 2017. The rest of the investigative judges had been appointed by the SCM on 16 January 2018, after the amendment that excluded the requirement of having minimum 3 years of experience in the position of judge entered into force.

AMENDMENT OF THE CONSTITUTIONAL PROVISIONS REGARDING THE CONSTITUTIONAL COURT – A FAILED INITIATIVE

At the end of 2016, the Government submitted to the Parliament an initiative to amend the Constitution. The draft provided for the increasing of the Constitutional Court (CCM) judges from six to seven judges (the 7th being elected by the President of the country), increasing the term of office of the CCM judges to nine years (compared to six at present) without the possibility to hold the second term of office, as well as for the extension of the term of office of the current judges of the CCM (initially elected for a term of six years) to nine years. According to the information note, the scope of the amendments was to strengthen the independence of the CCM, which was also recommended by EU experts following an institutional assessment in 2015.

Although the draft was registered on 21 December 2016 and was approved by the CCM, the MPs did not hurry to adopt the amendments. The draft was proposed for debate at the plenary session of the Parliament as of 21 December 2017, i.e. on the last day it could vote for the bill. According to the Constitution (art. 143 par. (2)), the initiative to amend the Constitution is deemed null and void if the Parliament does not adopt it within one year from the day of registration in the Parliament.

The draft has generated many controversial discussions in the debates on 21 December. The MPs from several parliamentary

factions (socialist, liberals and liberal democrats) insisted on amending the draft, disagreeing with the proposal to extend the term of office of the current judges of the Court to nine years, suggesting that this provision should apply only to future appointed judges. Other critical comments on the draft were formulated in the context of the potential financial impact of the draft on the state budget and the alleged lack of financial transparency of the Constitutional Court.

The representative of the Government explained the necessity of the amendments and, together with the Legal Committee for Appointments and Immunities of the Parliament, recommended voting of the draft in two consecutive readings in the same day. As a result of the debates and due to the lack of the possibility for the MPs to submit amendments to the draft, it was supported only by 53 MPs out of necessary 67. Following the vote, Andrian CANDU, the President of the Parliament, declared the initiative to amend the Constitution null and void.

Previously, another amendment to the Constitution, referring to the Superior Council of Magistracy and the career of judges, has been dragged for unexplained reasons (for more details, see LRCM Newsletter no. 14).

MOLDOVA HAS LOST 28 MILLION EURO AIMED TO SUPPORT THE JUSTICE REFORM

On 11 October 2017, European External Action Service of the European Union (EU) announced that it would not transfer EUR 28 million to the state budget of the Republic of Moldova for the reform in the justice sector. The EU has closely followed the reform process and noted that the Moldovan authorities have shown insufficient commitment to reforming the justice sector between 2014 and 2015. Due to insufficient allocation of funds and understaffing, the necessary reforms have not been implemented and, as a result, the progress has not been sufficient.

Ambassador Peter MICHALKO, Head of the EU Delegation to the Republic of Moldova, said that “the EU continues to support Moldovans in their efforts for a better future. Now we are reflecting on how we can help citizens in the following years. Priority will be given to projects directly aimed at improving the living standards of Moldovans.”

> **Moldova lost EUR 28 million because, between 2014 and 2015, the authorities have shown insufficient commitment to reforming the justice sector**

We would like to remind that the Republic of Moldova and the European Union concluded Financing Agreement regarding the support of the reforms in the justice sector. Under the Agreement, the total cost of the budget support offered by the EU is EUR 60 million, of which 58.2 million - in the form of budget support and 1.8 million - complementary technical assistance. The budget support had to be disbursed in four instalments, the first three in the amount of up to EUR 15 million each, and the fourth in the amount of EUR 13.2 million. Out of four instalments, only the first two were transferred, the first - in the amount of EUR 15 million and the second - in the amount of EUR 13.2 million. The following two instalments were missed by the Republic of Moldova as a result of failure to fulfil the conditionalities of the Agreement.

Back in August 2017, the news portal newsmaker.md wrote about the possible cancellation of funds, referring to three sources, including from the public institutions of the Republic of Moldova. According to the publication, among the causes of freezing the EUR 28 million would be failure to fulfil all the obligations stipulated in the Justice Sector Reform Strategy (2011-2016). In particular, Protocol 12 of the ECHR has not been ratified and no amendments have been made to the Constitution regarding the procedure of appointment of judges and members of the Superior Council of Magistracy. Also, the quality of justice regressed instead of progressing and its independence was undermined. Asked to comment on the EU decision not to provide funding for justice reform, the Minister of Justice Vladimir CEBOTARI said that “We have to do our homework and do not admit the same mistakes in the future, even if another party was in the government.”

THE SUPERIOR COUNCIL OF PROSECUTORS HAS A NEW MEMBERSHIP

On 1 August 2016, the Law no. 3 as of 25 February 2016 on the Prosecutor’s Office entered into force. The law provides for a new composition of the Superior Council of Prosecutors (SCP): the Prosecutor General, the Chief Prosecutor of ATU Găgăuzia, the chairperson of the Superior Council of the Magistracy (SCM), the Minister of Justice, five prosecutors and three representatives of the civil society. The members of the previous SCP continued their activity until the expiry of their term of office, i. e. until December 2017.

The new members were to be elected according to the new rules provided by the new Law on the Prosecutor’s Office. Five

members of the SCP are elected by the General Assembly of Prosecutors (GAP) from among the prosecutors in office, by secret, direct and freely expressed vote, as follows: a) one member from among the prosecutors of the Prosecutor General's Office; b) four members from among the prosecutors from the territorial and specialized prosecutor's offices. Prosecutors who have accumulated the highest number of votes at the GAP are considered elected. The next prosecutors on the list of candidates, who have accumulated the highest number of votes, fill vacant positions according to the number of votes obtained, in descending order. The members of the SCP are seconded from position for the period of their term of office. The Parliament, the head of the state and the Academy of Sciences of Moldova were each to elect a representative of the civil society as a member of the SCP. Previously, the Parliament elected three members from among university lecturers in law.

On 12 October 2017, the SCP decided to convene the GAP on 17 November 2017, with a view to elect prosecutors as new members of the SCP. At the GAP of 17 November 2017, 5 members of the SCP were elected. 573 out of 632 prosecutors attended the meeting. The following candidates, who have obtained the highest number of votes, were elected: Inga FURTUNĂ - prosecutor of the Torture Combating Department of the Prosecutor General's Office (473 votes); Andrei ROŞCA – the Chief Prosecutor of Rezina Prosecutor's Office (411 votes); Adrian BORDIANU – the Chief Prosecutor of Criuleni Prosecutor's Office (377 votes); Angela MOTUZOC - the Deputy Chief Prosecutor of Chişinău Prosecutor's Office (331 votes) and Constantin ŞUŞU - prosecutor of Sangerei Prosecutor's Office (297 votes).

The term of office of the new SCP began on 19 December 2017. On the same day, at the first meeting, by votes of 9 out of 10 members of the SCP present at the meeting, Angela MOTUZOC was elected as chairperson of the SCP.

By Decision of the Legal Committee for Appointments and Immunities of the Parliament (Legal Committee) no. 239 as of 4 December 2017, the contest for filling the position of the SCP member from the civil society was announced. The deadline for submitting applications was 11 December 2017. On 6 December 2017, several civil society organizations called the Legal Committee to ensure a transparent and merit-based selection procedure for the member of the SCP from the civil society. On 12 December 2017, the names of the candidates enrolled in the competition were published in the media. On 13 December 2017 they were heard by the Committee and proposed to the Parliament for appointment. The election of candidates for the position of the SCP members was not initially on the agenda of the Legal Committee meeting. On 14 December 2017, civil society organizations issued a statement expressing their regret about the lack of a clear procedure and the low level of transparency of elections to the SCP and considered the contest a considerable regression in comparison with the one organized in 2013 by the same Committee. By the decision of the Parliament of 15 December 2017, Lilia MĂRGINEANU was elected as a member of the SCP from civil society.

On 12 December 2017, the LRCM sent a letter to the President of the Academy of Sciences of Moldova, requesting to launch a contest for the selection of the SCP member from civil society. On 5 January 2018, the Academy of Sciences elected Mr. Ion GUCEAC as SCP member. No information on the procedure of this contest is available on the website of the Academy.

On 29 December 2017, the contest notice and the decree on the approval of the Regulations regarding the organization and running of the contest for the selection of the candidate to the position of the SCP member from civil society were published on the website of the Presidency of the Republic of Moldova. On 2 February 2018, the Decree of the President, by which Dumitru PULBERE was appointed as the SCP member, was published in the Official Gazette. Contrary to the Regulations on the selection of candidates, no information on the stages and results of the contest are provided on the website of the Presidency.

The term of office of the SCP members, including the Chairperson, is of 4 years, except for the ex officio members of the Council. The same person can not hold the position of the SCP member for two consecutive terms.

THE MINISTRY OF JUSTICE RESTORED THE POSSIBILITY OF SEARCHING COURT JUDGMENTS BY NAMES OF THE PARTIES

On 10 October 2017, the SCM approved a Regulation introducing new rules for the publication of court judgments on the national portal of courts. The new Regulation of the SCM was adopted while numerous journalists, lawyers and representatives of civil society organizations (CSOs) protested in front of the SCM headquarters. The protesters have expressed their disagreement with an initial version of the Regulations proposed by the SCM and the National Center for Personal Data Protection (CNPDCP). It provided, among other things, for the anonymization of the names of the parties in court judgements published on the web portal of the courts. Approval of the initially proposed provisions would have limited the possibility for the

public to identify judgements in high profile cases as well as the information on the examination of these cases. It would have created significant obstacles for investigative journalism.

Expressing disagreement with the SCM draft, more than 80 representatives of civil society, CSOs and journalists signed a joint declaration requesting the SCM to abandon it and to use as a basis for discussion the alternative draft prepared by the Supreme Court of Justice (SCJ). The SCJ Regulations provided for the obligatory publication of the names of the litigant parties, as well as clearer exceptions aimed at ensuring the protection of personal data of individuals.

Finally, the alternative Regulation elaborated by the SCJ was approved by the SCM on 10 October 2017. The new Regulation provide for the possibility of searching court judgements on the web-portal of national courts by the names of the parties. Meanwhile, the SCM intervened with two important amendments. The first amendment refers to the exclusion of the possibility of deleting from the national portal of courts the information concerning the list of cases set for trial after the court sessions have been finished. The second amendment empowers the Courts Administration Agency (AAIJ) to ensure the accessibility of judgments on the national portal of courts, including the possibility of searching court judgements by the names of the parties. Both amendments were implemented in response to the concerns expressed by civil society in the joint declaration submitted to the SCM on 9 October 2017.

Shortly after the publication of the new Regulations in the Official Journal, the Ministry of Justice restored the possibility of searching court judgements by the names of the parties on the web-portal of national courts, the function that was excluded without any explanation in January 2017.

THE SECOND ATTEMPT TO AMMEND THE CONSTITUTIONAL PROVISIONS CONCERNING THE JUDICIARY

In June 2017, the Ministry of Justice published for public consultations a draft law amending Art. 116, 121[1], 122 and 123 of the Constitution of the Republic of Moldova. The draft concerns the cancellation of the initial term of 5 years for which judges are appointed, the role of the Superior Council of Magistracy (CSM) and the modification of the SCM composition, by excluding the Prosecutor General and the President of the Supreme Court of Justice (CSJ) as ex officio members. This draft law is similar to the draft on amending the Constitution promoted by the Ministry of Justice between September 2015 and April 2017 and abandoned in April 2017 (see details in the LRCM Newsletter no. 14).

On 7 November 2017, the Government approved a draft law on amendment of the Constitution drafted by the Ministry of Justice. According to the draft, from the very beginning, the judges will be appointed for a life tenue (until 65 years), thus excluding the need for their reconfirmation by the President of the country after the first 5 years of activity. Also, judges of the SCJ will be appointed by the President of the country and not by the Parliament, as it is at present. It is mentioned in the draft that the appointment and promotion of judges must be made transparent and based on merits. The draft also stipulates that only the judges and representatives of civil society will be members of the SCM and that the Minister of Justice, the Prosecutor General and the President of the SCJ will no longer be ex officio members of the SCM. The Minister of Justice was excluded as an ex officio member of the SCM after public consultations of the draft law, without public discussion or rigorous justification in the informative note of the draft law.

In the draft law promoted within the period of 2015 and 2016, the Minister of Justice remained the only ex officio member of the SCM. The draft includes some controversial provisions concerning the SCJ. Thus, the requirement for candidates for the position of the judge of the Supreme Court of Justice to have tenure of at least 10 years in the position of judge is excluded. This amendment permits legal specialist who have never worked as judges (e.g. university professors, prosecutors or legal counsellors) to be appointed to the SCJ and comes after an initiative launched in 2015 by the President of the SCJ and criticized by the civil society and judges.

On 5 December 2017, the Constitutional Court (CCM) issued a favourable opinion on amendment. Prior to the adoption of the opinion, the LRCM sent a letter to the CCM with a recommendation to consider whether it would be appropriate to provide automatic appointment of judges previously appointed for a term of 5 years, until they reach the age limit. It has also been recommended to clarify the duration of the term of office and enforcement of the prohibition to hold two consecutive terms of office for the SCM members elected until the amendment of the Constitution. The CCM did not refer to these issues in its opinion.

On 18 January 2018, the draft on amendment of the Constitution was registered in the Parliament under number 10. Under art. 143 of the Constitution, a law on the amendment of the Constitution can be adopted after at least 6 months and within no more than one year from the date of registration of the draft in the Parliament.

ANTI-CORRUPTION AND INTEGRITY

18 MONTHS - RETROSPECTIVE REVIEW ON THE APPOINTMENT OF THE NATIONAL INTEGRITY AUTHORITY LEADERSHIP

Law no. 132 of 17 June 2016 on the National Integrity Authority (ANI) entered into force on 1 August 2016. Although with considerable delay, the responsible institutions have appointed their representatives to the Integrity Council (IC), the senior governing body of the ANI (see more details about IC in LRCM Newsletter no. 13).

On 7 April 2017, the notice regarding the contest for the selection of senior officials of the ANI (President and vice-President) was placed on the ANI website, the deadline for submitting the application for the contest being 3 May 2017. Four candidates filed their dossiers, after which the Security and Information Service (SIS) opinion on the candidates was awaited. The SIS letter was received only on 31 July 2017, according to which no candidate was an operative or undercover agent of intelligence services.

The first contest for the position of the ANI President:

On 4 September 2017, the IC members examined the files of the candidates and found that all four had applied for the position of the President, and two of them also applied for the position of vice-President of the ANI. The IC has admitted to the contest for the position of the President three out of four candidates. On 12 September 2017, the IC decided to exclude candidate Anatolie DONCIU - former President of the National Integrity Committee within the period of 2012-2016, on the grounds that previously he had been in conflict of interests and did not solve it. Thus, Mr. Donciu, as the President of the National Integrity Committee, examined the case of Mr. Mihail GOFMAN, who was head of the NAC directorate and at the same time the superior of his son, Alexandru DONCIU.

The written test, which is the first stage of the contest, was held on 21 September 2017. Only two candidates, Victor STRĂTILĂ and Teodor CÂRNAȚ, participated in the respective stage, because the third candidate, Lilian CHIŞCA, withdrew his candidacy for the position of the President, requesting to run only for the position of the vice-President. The interview where the candidates presented their programs and answered the questions of the members of the Council, as well as those from the civil society, took place on 26 September. Following two contest tests, on 2 October 2017, the IC announced that the contest results are the following: Teodor CÂRNAȚ – 43.0 points and Victor STRĂTILĂ - 33.9 points. Concurrently, the IC announced that there are two candidates for the position of the vice-President of the ANI - Lilian CHIŞCA and Francisco TALMACI.

On 9 October 2017, following the polygraph test, the IC announced that none of two candidates for the position of the President of the ANI had passed it. Under art. 11 par. (11) and (12) of Law 132, only the candidates who passed the polygraph test are can be appointed. Thus, it was decided to announce a new contest to fill the position of the President of the ANI.

Shortly after the announcement of the results of the polygraph testing, the candidates for the position of the President of the ANI made several statements regarding the contest. Mr. Cârnaț said that the way this contest has finished has proved that everything has been a farce. In particular, he referred to the statements of Mr. Andrian CANDU, the President of the Parliament, who, at a TV program broadcasted by the public television, mentioned that “in his opinion “weak” candidates were fighting for this position, and that even for the third time he was not satisfied with those who run for the office...”. As a result of this contest, many public comments were made as to whether the final polygraph testing of candidates is appropriate or not.

On 23 October 2017, two candidates who competed for the position of the President of the ANI and failed polygraph testing requested to be tested repeatedly. Victor STRĂTILĂ also presented the results of a test that was conducted by an independent polygraphist from the Ukraine. He claimed to have answered the same questions, but the results were different. The IC members rejected their request on the grounds that “such procedures are not applicable in case of the contest for the selection of senior officials of the ANI”. The IC decision was challenged in the court by both candidates.

The second contest for the position of the ANI President:

On 13 October 2017, the IC announced a new contest for the position of the President of the ANI, the deadline for submitting the dossier was 6 November 2017. On 27 November 2017, the IC, examining three files that have been submitted and the SIS opinion on the candidates, found that all three candidates are admitted to the contest, namely: Rodica ANTOCI, Francisco TALMACI and Lidia CHIREOGLO. Following a written test and an interview, the highest score of 53.5 points

was obtained by Rodica ANTOCI, followed by Francisco TALMACI and Lidia CHIREOGLO. On 22 December 2017, the IC announced that Rodica ANTOCI had passed the polygraph testing and she was proposed to the President of the Republic of Moldova to be appointed as the President of the ANI.

> THE APPOINTMENT OF THE PRESIDENT AND VICE-PRESIDENT OF THE ANI LASTED MORE THAN A YEAR AND A HALF, EVEN IF THE LAW PROVIDED ONLY A FEW MONTHS FOR THAT

On 29 December 2017, the President of the Republic of Moldova signed the decree on the appointment of Mrs. Rodica ANTOCI to the position of the President. On 3 January 2018, Mrs. Antoci took the oath at the Presidency.

The contest for the position of the ANI vice-President:

The contest for the position of the vice-President of the ANI was announced simultaneously with the one for the chairperson office, on 7 April 2017. Subsequently, on 31 July 2017, the IC extended the contest. On 4 September 2017, the IC members examined the files of those four candidates and found that all four had applied for the position of the President, and two of them also applied for the position of vice-President of the ANI. The written test for the position of vice-President took place on 30 October, and the oral test - on 6 November 2017. At the meeting as of 13 November 2017, the IC summed up the scores obtained by the two candidates as follows: Lilian CHIŞCA - 47.15 points and Francisco TALMACI - 48.95 points. On the same day, the IC members took note of the content of the candidate's application, Francisco Talmaci, who announced his withdrawal from the contest for the position of vice-President of the ANI (he applied for the position of ANI President).

On 6 December 2017, the IC analysed the result of polygraph testing of Lilian CHIŞCĂ and validated the result of the contest, his candidacy being proposed to the President of the Republic of Moldova for appointment to the position. On 22 December 2017, the President of the Republic of Moldova signed the decree on the appointment of Lilian CHIŞCA as vice-President and on 3 January 2018, Mr. Chişca took the oath at the Presidency.

After more than a year and a half of delays and failed contests, since January 2018 the ANI has a leadership. The institution has to launch the Information System E-Integrity and select integrity inspectors who will check the interest and asset statements submitted by civil servants and public officials. Until then, they remain unverified.

"DECRIMINALIZATION OF CRIMES" - AN UNIJUSTIFIED PREFERENTIAL TREATMENT OF THE BUSINESS

On 31 October 2017, the Ministry of Justice opened for public consultation a draft law on amendment of some legislative acts (Criminal Code, Code of Criminal Procedure, Misdemeanors Code, etc.), hereinafter the "draft on the decriminalization of economic crimes". The draft aimed at substantial improving of the investment climate, attracting foreign investments and reducing pressure on the business environment from state institutions.

The LRCM analysed this draft and on 13 November 2017 submitted a legal opinion expressing its concerns and the risks implied by the document. In particular, the attention was drawn to the inappropriateness of introducing a new basis for the release from criminal liability for offences relating to crediting and bank management, those concerning securities, breach of shareholders' rights and the market competition, including illegal access to computerized information and illegal interception of data transmission, etc. Taking into account the embezzlement that took place in recent years in the Moldovan banking system and fraud in the insurance system, the draft significantly reduced the efforts of authorities to investigate given cases or even created conditions for release from criminal liability or conditional suspension of sanctions for actors involved in the bank fraud. The LRCM also highlighted the risks that arise from changing the powers of the prosecution authorities without sufficient analysis and justification.

On 8 December 2017, the Expert-Grup and the LRCM submitted to the authorities a Position Note, strongly recommending the exclusion of offences related to financial and banking domain, money laundering and market competition from the list of offences for which release from criminal liability or conditional suspension of sentence execution can be applied.

On 13 December 2017, a group of civil society organizations launched an Appeal requesting to withdraw the draft law and set up a representative working group involving all stakeholders, including civil society, development partners and the business community to develop legislative solutions for real problems faced by the business environment. The signatories described the draft as the one aimed at releasing "smart boys" of criminal responsibility and undermining the fight against corruption.

A public discussion related to another version of the draft, which excluded release from criminal liability for crimes in the domain of crediting and bank management, was held at the Ministry of Justice on 18 December 2017. The opinions

of those present at the event differed. The vast majority of the representatives of businessmen present at the event fully supported the initiative, although in their speeches they complained about the issues that were not covered by the draft (for example, the poor quality of controls of the state bodies and different interpretation of legislation by different authorities). Representatives of the Expert-Grup and the LRCM have warned of the serious risks of the draft, in particular inclusion of environmental crimes and those committed in the securities market in the list of offences subject to release from criminal liability, the impossibility of applying pre-trial detention for economic crimes and changing the powers of the National Anti-corruption Centre, Anti-Corruption Prosecutor's Office and prosecutor's office without justification and impact analysis. On 20 December 2017, this version of the draft was submitted to the Government for consideration, despite objections and negative opinions received, including the Anti-corruption expertise elaborated by the National Anti-Corruption Centre. Due to the ministerial reshuffles carried out at the end of 2017, the draft was not discussed in the Government.

On 9 January 2018, the Ministry of Justice submitted for public consultations another version of the draft. It no longer includes the ground for the release from criminal liability for a number of economic crimes, but it establishes a new mechanism for the release from the criminal liability in case of committing the offence for the first time. Among the offences to which the new mechanism can be applied are environmental crimes and a range of economic crimes, including the illegal practice of financial activity. The draft preserves the provisions on the modification of the powers of anti-corruption bodies that had previously raised concerns. On 12 January 2018, the Economic Council under the Prime Minister held a technical meeting with the involvement of all stakeholders at which it was proposed to resume discussions on the draft. It was also mentioned that the draft was withdrawn from the State Chancellery to be improved. On 22 January 2018, the LRCM submitted another legal opinion, that provided analysis of the draft and proposals to modify or exclude problematic issues, in particular those concerning the release from punishment for committing environmental offences, the prohibition of applying pretrial arrest to the person who committed economic crimes and the change of powers of anti-corruption bodies.

On 5 February 2018, at a meeting with the representatives of development partners and business community, chaired by the Prime Minister Pavel FILIP, it was proposed to divide the draft into two parts. Thus, the part that will contain the regulatory framework for the business community is to be finalized as soon as possible by the Ministry of Economy and Infrastructure. The second part will include the amendments related to the institutional framework and the powers of the law enforcement bodies and will be finalized by the Ministry of Justice. The document is to be developed with the involvement of experts from civil society and development partners and subjected to extensive analysis.

NBM PUBLISHED THE SUMMARY OF KROLL 2 REPORT

On 21 December 2017, the National Bank of Moldova (NBM) published the summary of the second investigation report prepared by Kroll and Steptoe & Johnson companies. The second report confirms the assumptions presented in Kroll Report 1, namely the involvement of Ilan SHOR in the bank frauds.

Only the name of Ilan SHOR and names of at least 77 companies of the "Shor Group" that would have been involved in the withdrawal of money from the banking system are mentioned in this summary. Among other things, the report describes the analysis of the information presented by defrauded in 2012-2014 Banca de Economii, Banca Socială and Unibank, the link of "Shor Group" with the shareholders of the defrauded banks, the money laundering mechanisms and the destination of fraudulent funds. According to the document, the total amount of stolen money makes up USD 2.6 billion.

> **Detailed information, including operative data on the follow-up of defrauded funds and the list of beneficiaries, was presented to the NBM by Kroll Company**

The Expert-Grup analysed the summary of Kroll report 2 and stated that the bank fraud in the simplest terms can be described as containing six steps and distinct elements: ensuring ownership of three banks; taking total control over three banks; directing credit resources to a single group; ensuring the necessary liquidity; implementing some money-laundering mechanisms and targeting misappropriated funds to multiple destinations and for various purposes.

Detailed information, including operative data on the follow-up of defrauded funds and the list of beneficiaries, was presented to the NBM by Kroll Company in full. Earlier, the Prime Minister Pavel FILIP declared that 90% of people mentioned in the report are honest.

THE PARLIAMENT DECIDED - NAC WILL NOT HAVE MONEY LAUNDERING PREVENTION POWERS

According to the National Action Plan for the implementation of the Moldova-European Union Association Agreement for the period 2017-2019, the new Law on prevention and combating of money laundering had to enter into force in the first quarter of 2017. The draft law was elaborated by the National Anti-Corruption Centre (NAC) and approved by the Government on 30 December 2016. According to art. 18 of the draft, the Office for Prevention and Combating of Money Laundering was established as an autonomous subdivision within the NAC, its senior officials being appointed by the NAC Director, at the proposal of the NAC Board. Such a subdivision has existed within NAC since 2007. However, it did not react promptly in the case of "Russian laundromat/laundry" or "theft of the billion", even if it was constantly informed by the banks about the bank transfers made.

On 3 February 2017, the draft was registered in the Parliament and on 30 March 2017 it was voted in the first reading. The draft was discussed for the second reading in the Parliamentary Committee responsible for the draft only in December 2017. Meanwhile, on 13 June 2017, the Parliament held a public hearing with the participation of MPs, representatives of public authorities, civil society, financial and banking institutions and development partners.

On 20 December 2017, the Committee on National Security, Defense and Public Order discussed the draft for the second reading and introduced numerous amendments thereto. According to them, the Office for Prevention and Combating of Money Laundering will no longer be within the frame of the NAC, but will be an autonomous structure, the leadership of which is appointed by the Government. The amended version of the draft law was published on the website of the Parliament only on 22 December 2017. These amendments have been introduced even if, according to a well-established practice of the Parliament, in the discussions for the second reading, no conceptual changes can be introduced in the draft laws. On 21 December 2017, the Committee proposed to pass the draft in the second reading and on 22 December 2017 the draft law was adopted by the Parliament.

HIGH PROFILE CASES

CASES AGAINST VEACESLAV PLATON: MANIPULATION OF CASE MANAGEMENT SYSTEM, SERIOUS ERRORS IN THE MINUTES AND FAST CONVICTION

On 20 April 2017, Buiucani District Court from Chişinău convicted Veaceslav PLATON to 18 years of imprisonment for fraud that led to the "theft of the billion". More details about the case examination and the judgement of the first instance can be found in the LRCM Newsletter no. 14.

Following the conviction in the first instance, the defence counsels of Mr. Platon made public several irregularities that took place during the trial in the court. Defence counsels claim that there were irregularities on random case distribution through the Integrated File Management Program (PIGD) at the Buiucani District Court from Chişinău. At a press conference on 13 November 2017, they explained that, according to the note on the case distribution and record sheets, the case was repeatedly distributed 16 times. On 18 November 2016, the case was distributed to Judge Ion MOROZAN, who abstained on 21 November 2016. Subsequently, the case was distributed to judges specialized in civil law 13 times, although the case had to be distributed directly to judges specialized in criminal law. The next two judges designated by the PIGD were Galina MOSCALCIUC and Serghei LAZARI, who also filed motions of abstention. Before motions of these two judges were examined, the case was already distributed to another judge via PIGD. A case may be redistributed to another judge only after admitting the motion by another judge. Both motions were examined by Judge Vitalie BUDECI, to whom the case was finally distributed via PIGD for the consideration of the merits. In the first instance, the case was judged by the panel of judges Vitalie BUDECI, Victor BOICO and Elena COJOCARI. The Judicial Inspection took notice of this situation. On 12 December 2017, the Superior Council of Magistracy (SCM) adopted a decision regarding the note of the Judicial Inspection in which it stated that the distribution of the case until the admission of motion for abstention of Judge Moscalciuc was lawful, because the PIGD does not have the option of blocking judges specialized in civil cases when distributing criminal cases. Regarding the inconsistency of the distribution to the following judges, the SCM noted that "*the inconsistencies between the hours registered in the note of distribution and hours of examination of the motions for*

abstention of judges Galina Moscalciuc and Serghei Lazari could also be produced due to the lack of synchronization of the time by the respective service". The SCM has only considered the Judicial Inspection note, without finding the reasons for the inconsistency in hours of the case distribution, which could also be due to the manipulation with the PIGD and human factor.

According to Mr. Platon's defence counsels, another violation committed by Buiucani District Court from Chişinău was that the minutes of the hearing as of 22 December 2016 were falsified. Mr. Platon said at the meeting that the beneficiary of the theft of the billion was Vladimir PLAHOTNIUC, but instead of this Vladimir FILAT is mentioned as beneficiary in the minutes. Also, according to the defence counsels, a great part of statements by Mr. Platon were not indicated in the minutes. Mr. Platon's lawyers discovered this at Chişinău Court of Appeal in August 2017, where the case was submitted by the court of the first instance. Until the case was sent to Chişinău Court of Appeal, the defence had no access to the minutes, which according to the reply by Buiucani District Court, had not been yet drafted. On 29 August 2017, Mr. Platon's defence counsels submitted observations on the minutes. On 15 December 2017, Chişinău Court of Appeal rejected the objections on the grounds that they were late and that they had to be formulated in the first instance. Mr. Platon's defence counsels filed an application for sanctioning the chairperson of the panel and the clerk of the court. The Disciplinary Commission of Chişinău Court was notified regarding the mistake of the court clerk for to examine whether there was a disciplinary offense. In December 2017, four months after the complaint has been submitted, there is still no decision by the Disciplinary Commission.

> **THE BOTH CASES AGAINST MR. PLATON - "BEM CASE" AND "MOLDASIG CASE" - WERE EXAMINED BY THE COURTS BEHIND THE CLOSED DOORS**

On 18 December 2017, Chişinău Court of Appeal upheld the sentence of 18 years of imprisonment for Mr. Platon in "BEM case". The court examined the case behind the closed doors and did not publish either the judgement or its operative part. According to the defence counsels, at the Court of Appeal, Mr. Platon was not heard, all requests to hear the witnesses for the defence were rejected and the judges interrupted Mr. Platon during his last plea.

In May 2017, the Prosecutor General's Office announced about the completion of the criminal prosecution of the second case against Mr. Platon ("Moldasig case") and its submission to the court. According to the accusation, being detained during 2016, Mr. Platon, as the effective manager of the majority shareholding of three insurance companies, have organized the withdrawal of funds from on the accounts of those companies. Mr. Platon was accused of an attempt fraud committed by an organized criminal group. The defendant was also accused of attempting to corrupt two guardians of the special detachment "Pantera" requesting them to allow him forbidden actions during his meetings with the defence counsels, including access to a mobile phone. The motion of abstention of Judge Galina MOSCALCIUC, to whom the case was distributed, was rejected, although a similar motion was admitted in November 2016 in the "BEM case" against Mr. Platon. On 12 December 2017, Buiucani District Court from Chişinău convicted Mr. Platon to 12 years of imprisonment in "Moldasig case" for attempted fraud (art. 27 and 190 par. (3) and (5) of the Criminal Code) and active corruption (art. 325 par. (2) letter c) of the Criminal Code). The court fined Mr. Platon with 300 thousand lei and deprived him of the right to hold office or to practice certain economic activities for a period of three years. This sanction will be added to 18 years of imprisonment for "BEM case". Buiucani District Court from Chişinău published the reasoned and anonymized judgement on 3 January 2018.

Both cases against Mr. Platon - "BEM case" and "Moldasig case" - were examined in closed hearings. The defendant did not have access to all court hearings when "BEM case" was examined and was not heard by Chişinău Court of Appeal when the appeal was examined. The courts have not published the judgements in "BEM case", although they concern a subject of a high public interest, since the actions for which Mr. Platon was convicted refer to the "theft of the billion" that affected both the economy and trust in state institutions. The way of examining "BEM case" in closed hearings and failure to publish court judgements suggest that the authorities do not want transparency in the investigation of the "theft of the billion".

REMOVAL OF DEFENCE COUNSELS FROM HIGH-PROFILE CRIMINAL CASES BECOMES TRADITION

In 2017, there have been several situations in which judges and prosecutors have removed defence counsels from examination of high-profile criminal cases. They have been replaced by the defence counsels from the system of legal assistance guaranteed by the state. As a rule, this occurs in the high-profile criminal cases that are examined

in camera, which raises questions about the fairness of the proceedings in general.

Article 52 of the Code of Criminal Procedure does not grant the prosecutor the right to remove the defence counsel hired by the accused from the proceedings. Under art. 67 par. (6) p. 3) of the Code of Criminal Procedure, the defence counsel terminates his/her participation in a case, if the prosecutor or the court removes him/her from participation in the case due to expressly mentioned circumstances. Circumstances that exclude the participation of the defence counsels in the proceedings (Article 72 of the Code of Penal Procedure) refer to the relationship of kinship or dependence on the prosecutor or the judge, if s/he previously participated in the criminal proceeding of this case in a different capacity, if s/he provided in the past or is currently providing legal assistance to a person whose interests contradict the interests of the person s/he is defending, as well as if s/he is related to or is in any other relationship of personal dependence on the person being defended.

In the first case against Mr. Platon, in which he was accused of theft at Banca de Economii ("BEM case"), the Chişinău Court of Appeal repeatedly removed the defence counsels of the defendant from the proceedings. In November 2017, Chişinău Court of Appeal removed a defence counsel of Mr. Platon after he expressed his dissatisfaction with the court when one of his colleagues was interrupted by the judges while he was supporting the appeal request. The defence counsel from the system of legal assistance guaranteed by the state requested by the court to represent Mr. Platon's interests refused to do so and left the courtroom. On 12 December 2017, at one of the last hearings, Chişinău Court of Appeal removed two of the defence counsels of the defendant after they filed several complaints. In November 2017, in the second case against Mr. Platon ("Moldasig case"), Buiucani District Court from Chişinău removed the defence counsels. Courts have motivated their removal by the fact that they hinder the smooth running of the proceedings after the defence counsels have filed or declared their intention to file more requests and complaints.

> THE JUDGES REMOVED THE DEFENCE COUNSELS OF PLATON AND CHIRTOACĂ FROM THE TRIAL, ALTHOUGH THE LAW DOES NOT ALLOW IT

On 31 May 2017, in the case against Mr. Dorin CHIRTOACĂ, at that time the mayor general of Chişinău municipality, regarding the parking lots in the capital city (for details, see LRCM Newsletter no. 15), the prosecutor removed from the proceedings two defence counsels. The reason put forward by the prosecutor was that the defence counsels would have delayed execution of actions in the proceedings and intentionally created impediments to the execution of criminal prosecution actions. On 13 July 2017, the Union of Lawyers of the Republic of Moldova qualified the removal of defence counsels in that case as abuse, stating that they had been informed about such situations and requested the Prosecutor General's Office to take all necessary measures to prevent such abuse in future. On 14 July 2017, the Prosecutor General's Office issued a press release stating that the defence counsels deliberately delayed certain procedural actions and that their actions were contrary to the Law on Bar Association and were to the detriment of the interests of their client. In reply, the defence counsel of Chirtoacă wrote on a social network that prosecutors did not respect the legal deadlines for summons, and that defence counsels were excluded from the proceedings because they demanded compliance with the law and notified on abuses, and prosecutors did not agree with them.

In the above cases against Platon and Chirtoacă there were no circumstances provided by law for removing the defence counsels from the trial, and the defendants did not request the replacement of defence counsels. Neither judges nor prosecutors have invoked any of the circumstances provided for by the Code of Criminal Procedure when they requested the removal of defence counsels. The defence strategy is decided by the defence counsel and the client and is a part of the right to defence and the right to a fair trial, and judges and prosecutors have no right to intervene, unless clear provisions of law allow this.

HUMAN RIGHTS

CONTRADICTORY REACTIONS OF THE "SYSTEM" IN BRĂGUȚĂ CASE

On 4 September 2017, the Judicial Inspection of the Superior Council of Magistrates (SCM) took notice about the death of Andrei BRĂGUȚĂ (who died in Penitentiary No. 16 in August 2017). For more details see LRCM Newsletter no. 15). Subsequently, the Prosecutor General notified the SCM and requested to hold judge Iurie OBADĂ disciplinary liable for ordering the pre-trial detention of Andrei BRĂGUȚĂ. On 24 December 2017, the Disciplinary Board of the SCM examined both complaints and decided to

terminate the disciplinary proceedings against judge Obadă on the grounds that no disciplinary offense had been committed.

The Disciplinary Board considered that the "incompetence" could not be imputed to the judge as long as it was not demonstrated by a professional assessment of the Board for Performance Evaluation. The Disciplinary Board also indicated that the judge has a professional experience in the domain and that the order on pre-trial arrest has not been challenged. Moreover, according to the Board, no one except the courts, following the established way and procedure of appeal, has the right to be involved in the proceedings on cases or to express opinion on the legality and validity of the issued judgements. No member of the Board had a dissenting opinion and it is not clear from the text of the decision whether it was adopted unanimously or not.

The Judicial Inspection and the Prosecutor General have challenged the decision of the Disciplinary Board at the SCM. Finally, the SCM Plenary admitted submitted complaints and, on 16 January 2018, adopted a new decision. It found that a disciplinary offence was committed and sanctioned the judge with dismissal. Judge Obadă challenged the SCM decision at the Supreme Court of Justice (SCJ).

On 4 December 2017, the President of the SCJ published on the website of the court an appeal to raise awareness of compliance with the positive obligations under the Convention. The opinion on how such an outcome could be avoided in this case concerns, *inter alia*, the burden of proof, the obligation to provide special medical care and appropriate treatment for detainees suffering from mental illnesses and the respect the European Court of Human Rights rulings.

On 5 December 2017, the People's Advocate (Ombudsman) released the Special Report on the results of the investigation concerning the death of Mr. Brăguță. For to carry out the investigation, the Ombudsman created a working group that undertook 23 fact-finding visits (including repeated ones) between September and October 2017 to 16 public institutions relevant to the case under consideration. The document contains a series of findings and recommendations, including: the lack of a single electronic register of people with mental illnesses in the medical system; the lack of inter-sectoral or inter-ministerial collaboration or the existence of poor collaboration; the presence of discriminatory attitude towards such category of persons at the level of state institutions; lack of reports about the existence of bodily injuries in the medical system.

Concluding observations on the third periodic report of the Republic of Moldova by the UN Committee Against Torture were published on 21 December 2017. The Committee expressed concern that, despite the fact that there is a Regulation on the procedure for the identification, registration and reporting of alleged cases of torture, inhuman or degrading treatment, none of many officers who saw Brăguță with visible injuries for 10 days reported the case to the Department for Combating Torture of the Prosecutor General's Office. The UN Committee recommended ensuring efficient and impartial investigation of allegations concerning the death of Brăguță and prosecution of the offenders.

On 21 December 2017, prosecutor Ivan FILIMON, who dealt with the case initiated against Brăguță and requested his arrest, was dismissed from office by the decision of the Board for Discipline and Ethics of the Prosecutors. The Chairperson of the Board specified that prosecutor Filimon was responsible for violation of several norms of the Code of Ethics and certain provisions of the Code of Criminal Procedure. The findings are based on an internal investigation conducted by the Prosecutor General's Office. The prosecutor Filimon challenged his dismissal at the SCP. On 19 January 2018, the SCP a rejected the prosecutor's appeal, upholding the decision by the Disciplinary Board. The SCP mentioned that the prosecutor did not consult the doctors or the medical records as a result of the visits of the medical staff to the detained person and that, when requesting the arrest warrant, the prosecutor did not take into account the seriousness and the degree of harmfulness of the offence, the personality and characterization of the accused and the state of his health.

Between October and December 2017, the Prosecutor General's Office published several press releases about the investigations of the case of the death of Andrei BRAGUȚĂ. Thus, in October 2017, the Prosecutor's Office announced that the criminal prosecution had been completed and the cases against three inspectors of the provisional detention facility of Chişinău and four detainees who were in the same cell with the deceased were brought to court. Subsequently, prosecutors announced the completion of criminal prosecution against the other 13 police officers of the detention facility and the initiation of two separate criminal cases for exceeding of powers and negligence in providing healthcare.

By 31 January 2018, the Committee for Ethics and Discipline of the Union of Barristers has not yet examined the complaint concerning the actions of the defence counsel Vladislav NEVRANSCHI, who participated in the arrest procedure against Mr Brăguță.

CHALLENGES OF THE REFORM OF PERSONAL DATA PROTECTION SYSTEM

In October 2017, the National Centre for Personal Data Protection (CNPDCP) has elaborated and opened for public consultations the drafts of the Law on the a CNPDCP and related legislation that provides for the reform of the personal data protection mechanism. The goal of the draft, according to the authors, is to strengthen the institutional and operational capacities of the CNPDCP. According to the authors of the initiative, the new law is needed, among other things, to transpose the new Regulation 2016/679 of the European Union on Personal Data Protection (GPDR), which shall enter into force in May 2018 for all EU member states. The related legislation enclosed to the draft is *de facto* a new version of the Law on Personal Data Protection, in force since 2013.

The CNPDCP reform is an ambitious one. Although necessary, it raises several concerns because it confers the CNPDCP, the authority responsible for ensuring the protection of personal data, very broad powers, without ensuring a counterbalance in the control of its activity *(checks and balances)*. Contrary to the provisions of the new EU Regulation 2016/679, which does not require the registration of companies as the operators of personal data in exchange for their implementation of the necessary technical and organizational facilities for data protection, the CNPDCP preserves this power in the new law and can apply sanctions for non-compliance. At the same time, the appropriateness of amendments concerning some of the CNPDCP powers is at least questionable. The draft law also provides for the possibility of the CNPDCP to interfere in the activity of public authorities and economic agents to investigate the way they comply with the protection of personal data without the need for a legal basis and in the absence of judicial control of the legality of investigative measures (for example, in the case of a search at the headquarters of a company).

The drafts also include other amendments that go beyond the goal set by the authors in the informative note. These refer to the modification of powers of judicial authorities (Supreme Court of Justice (SCJ) and Superior Council of Magistracy (SCM)) in the part related to their obligation to ensure anonymization/depersonalization of court judgements. In case of their approval, the SCM and the SCJ would be obliged to cease the publication of personalized court judgements on their official pages and would have the immediate obligation to depersonalize the entire database of court judgements currently available to the public without any restrictions on the websites of courts and the SCJ. All these amendments require careful attention and analysis.

In October 2017, the CNPDCP initiatives were disapproved by the SCM, due to the lack of competence of the CNPDCP to come with legislative initiatives. During the same period, the draft law was reviewed by an expert of the Council of Europe, who made a series of recommendations for to improve the draft. The expert noted, among other things, that some of the definitions used in the draft did not correspond to the Community Aquis and recommended the exclusion from the law of the exception regarding the processing of personal data in the spying and counterintelligence activities, as well as the improvement of the proposed mechanism of receiving and solving the complaints provided in the draft, which is deficient procedure in the current version.

On 25 October 2017, the LRCM submitted several recommendations to the CNPDCP, highlighting the risks of the drafts for the transparency of the judiciary. The LRCM called on the CNPDCP representatives, among other things, to ensure a fair balance between the protection of personal data and access to information of public interest in its work and launched initiatives. It has also been recommended to consult the draft laws on the reform of personal data protection with representatives of public authorities, the judiciary, civil society organizations and mass-media representatives until the procedures for registering the draft law in the Parliament start.

> **THE PROPOSED REFORM OF THE CNPDCP GIVES IT VERY BROAD POWERS, WITHOUT ENSURING A COUNTERBALANCE AGAINST POSSIBLE ABUSES. IT REQUIRE SUBSTANTIAL IMPROVEMENTS**

NEW DRAFT LAW ON VIDEOTAPING REGIME INCLUDES WORRISOME PROVISIONS

On 27 November 2017, the National Centre for Personal Data Protection (CNPDCP) initiated public consultations on the draft law on videotaping regime (first draft version). The aim of the draft is to create a regime for the use of videotaping to ensure the right to privacy and the protection of personal data. Following public consultations, on 5 February 2018, the CNPDCP published a new version of the draft law on its web page, with some improvements (second draft version), but without publishing the table of divergences. By 20 February 2018, the draft law has not been submitted for approval to the Government.

In the second edition, the draft has been substantially improved with regard to data storage deadlines, reducing

them from 6 months or 1 year to 30 days. In the first edition, the draft provided for a maximum of 6 months for all categories of video records, provided that the storage of such data is strictly necessary to exercise a legitimate interest. The draft also provided for 1 year term for records obtained in high-risk facilities. The Court of Justice of the European Union in the case *Digital Rights Ireland*, considered the term of 6 months for data storage unjustified and unnecessary. The latest version of the draft no longer provides for the terms of 6 months and 1 year, the general storage period being 30 days, which can be extended in exceptional cases provided by the law.

The draft law still generates important concerns, in particular on how to regulate the use of videotaping in a journalistic context, video surveillance at work and the use of drones.

The draft law provides that the processing of data via videotaping in a journalistic context is done with the consent of the personal data subject, without making any delimitation between public and private space. Such a general provision can significantly affect the activity of journalists, who mostly rely on capturing images through the use of videotaping, and if this activity was conditioned by consent, it could create impediments for access to information.

> **The draft law generates concerns as to the use of videotaping in a journalistic context, video surveillance at work and the use of drones**

The draft also regulates the video surveillance at work. In the current version, the rules on surveillance at workplace have been improved in comparison with the first version, specifying that video surveillance shall be used upon the consent of the employees and with notification of the CNPDCP. However, the draft still creates the impression that video surveillance at work is the rule and not the exception. According to the European Court of Human Rights decision in the case of *Kopke v. Germany*, video surveillance at the workplace is not forbidden, except for the fact that there must be a balance between the interests or property of the employer and the right to private life of the employee. Also, there must be reasonable suspicion of an existing infringement or committing of a criminal offence for video surveillance of the person.

Another problematic provision concerns the establishment of a legal regime for the use of drones. The draft provides for the general rule prohibiting the use of drones in localities. This could make access to information more difficult, especially in the context of investigative journalism. The use of the drones is not yet regulated in the European space and it is not clear how the use of these devices would affect privacy and personal data. In this context, the regulation on the use of drones in the Republic of Moldova for the time being is premature.

CIVIL SOCIETY

EFFECTIVE PARTICIPATION OF CIVIL SOCIETY IN DECISION-MAKING IS POSSIBLE ONLY IF THERE IS A FAVORABLE ENVIRONMENT FOR THE CSO

On 7 December 2017, the Legal Resources Centre from Moldova (LRCM) and the European Center for Not-for-Profit Law (ECNL) from Budapest, Hungary organized a round table "Transparency and Participation of Civil Society Organizations (CSOs) in the decision-making process: European Standards and Practices in the Republic of Moldova". At the event there were presented Guidelines for civil participation in political decision making recently adopted by the Council of Europe (27 September 2017), as well as examples of good practices in the various Member States of the Council of Europe demonstrating the benefits and mechanisms of the CSOs involvement. According to the Guidelines, effective participation can take place when there is a favourable environment for civil society, based on the effective application of freedom of association, freedom of assembly, freedom of expression and freedom of information.

The experts mentioned several proposals for amending the legislative framework that would improve the transparency in the decision-making process in the Republic of Moldova, such as regulating the rules of public consultations in the Parliament Regulations and regulating the procedure for adopting the normative acts in emergency regime. It was proposed to introduce two remedies for non-compliance with the legislation on decisional transparency, namely the Government's restitution of the draft normative act to the institution that did not observe the consultation procedure and the right to challenge the normative act adopted in violation of the transparency rules in the administrative proceedings. Another trend that may be taken by the Republic of Moldova is the creation of governmental platforms where citizens can promote issues of public interest on the agenda of the authorities.

THE DRAFT STRATEGY OF THE CIVIL SOCIETY DEVELOPMENT FOR 2018 - 2020 WAS REGISTERED IN THE PARLIAMENT

On 22 December 2017, a new strategy of the civil society development was registered in the Parliament by a group of MPs. The priorities of the new strategic document continue the efforts undertaken within the framework of implementation of previous civil society development strategies, with the three development directions being organically reflected: participation of civil society in the decision making process, financial sustainability of the sector, and the development of active civic spirit and volunteering. Initially, the Strategy was designed to be implemented starting with 2017, but due to the delay in the process of drafting of the strategy by the Parliament, the implementation deadlines indicated in the Action Plan were modified for the years 2018-2020.

The draft of the new strategy was developed by an intersectoral working group (divided into three working subgroups according to the general objectives of the Strategy) with the support and involvement of civil society organizations, development partners, the Government and the Parliament. In this part, the process of drafting the document has been an example of good practice of involving civil society in decision-making process. The content of the document reflects, mostly, the recommendations made by the civil society representatives within the framework of the working group. However, the budget support for several actions is missing. This may pose a risk for the implementation of expected actions requiring financial coverage. The low level of implementation caused by the lack of financial resources allocated for the implementation of the actions was also notified previously in the evaluation report of the Civil Society Development Strategy for 2012-2015. The new strategy is to be voted at the beginning of the Parliamentary session in the spring of 2018.

ACTIONS ON DENIGRATION AND SABOTAGE OF NON-GOVERNMENTAL SECTOR CONTINUE (4)

In the previous newsletters, we wrote about the negative actions and rhetoric of the representatives of state authorities and persons affiliated with the state power regarding the activity of civil society organizations. In October - December 2017, there were several actions that could be concerned as attacks on civil society organizations.

On 25 October 2017, at the 9th Annual Conference of the Eastern Partnership Civil Society Forum, Marian LUPU, chairman of the Democratic Party (PDM) faction in the Parliament, stressed that civil society should remain outside of the politics. Mr. Lupu statements have been cast back by European experts who spoke about the importance of non-governmental organizations (NGOs) in democratizing of a society. Jeff LOVITT, one of the experts present in the debate, argued that it is right that NGOs should not be involved in political partisanship, but stressed that in dictatorial states "civil society is also working with political opposition, they are cooperating and doing actions and plans for democratizing the society". Statement of Mr. Lupu contradicts the actions of the party he is a part of. On 2 October 2017, the representatives of the PDM announced the launch of the Foundation for Modern Democracy which, according to them, will have the role of "promoting European and social-democratic values that society needs". It is hard to understand why PDM representatives support non-involvement of NGOs in politics, but at the same time create foundations, being members of the governing party that make politics every day.

Another action aimed to denigrate the image of civil society was the publication on 12 December 2017 of the second poll carried out by the sociological company IMAS at the order of the Democratic Party. The poll contained tendentiously formulated questions about civil society. For example, the question "*Some NGOs, with the support of the PCRM, DA Platform and Our Party, came up with the initiative to hold a referendum to cancel the mixed vote." What do you think about it?*" is deliberately distorted by the phrase "with the support of PCRM, DA Platform and Our Party" to induce non-acceptance responses, motivating respondents who do not like these political formations to provide negative answers. Moreover, this question distorts the reality, because the decision of the NGOs to hold the referendum was not determined by the support of political parties. Also, the question "How much or little trust do you have in the civil society of the Republic of Moldova" was placed after the questions about the initiative of the NGOs to organize a referendum, which emphasize the source of costs for the referendum, and the negative attitude of the respondents in this case is predictable.

On 18 December 2017, 45 NGOs issued a joint statement condemning the manipulative actions of IMAS and the Democratic Party, noting that they represent an attack against CSOs. Two days before the statement was published, IMAS published a press release where mentioned about "guerrilla actions based on blackmail and threatening by mail messages denigrating the activity [imas]". IMAS described criticism of civil society as

an attempt to enforce censorship and threatened to conduct a national qualitative survey on citizens' perception of the civil society in Moldova. IMAS press release was seen by NGOs as an action designed to prevent the publication of their joint statement, the text of which at that time was consulted among NGOs.

For the Minister of Justice at that time, Vladimir CEBOTARI, it seems that the opinion of the NGOs is not important because they would not represent a significant part of the population. During the debates as of 18 December 2017 on the draft law on the decriminalization of economic crimes promoted by the Ministry of Justice and criticized by several independent NGOs, Mr. Cebotari, the Minister of Justice at that time, asked the representatives of the NGOspresent at the debates whom they represented, giving as an example representatives from the private sector representing "hundreds of employees". The remark of the Minister of Justice suggests that NGOs that do not represent a particular group of people are not representative and their involvement in public policies, respectively, is not so important, as opposed to the companies or business associations that supported the draft. Such an approach suggests excluding or limiting the NGOs that act in the public interest from important public policy processes, contrary to the rules of democracy and an open society.

Mass-media politically affiliated to the ruling party often and groundless use the phrase "politically affiliated NGOs" with the aim of denigrating the civil society. In December 2017, the Centre for Investigative Journalism (CIJ) published an investigation on party donors in 2016, in which it was noted that several members of the NGOs donated to political parties, including members of the Legal Resources Centre from Moldova (LRCM) and the Institute for European Policies and Reforms (IPRE). Later on, at least 8 media portals (Moldova24.md, Hotnews.md, Democracy.md, 24h.md, Evenimentul.md, Stiridinmoldova.com, Publika.md, Timpul.md) published almost identical articles on the same day, according to which the NGOs finance opposition parties. The articles argued that the NGOs donated to opposition parties, although the CIJ investigation showed that donations were made by some members of NGOs and not by the NGOs. These publications have overlooked the CIJ investigations on funding issues that concern Democratic Party. The articles concluded that NGOs are politically affiliated and referred to the results of the IMAS survey published in December 2017.

We should mention that according to art. 26 of the Law on Political Parties and the best international practices, any natural person, including members of the NGOs, has the right to make donations to political parties from his/her income after s/he has paid taxes to the state. Moreover, the transparent financial support of a political party is an indispensable element of democracy and contributes to the accountability of the parties. At the same time, party funding by people from the associative sector does not mean support of the party by the entire organization. Support and promotion of hidden party interests in a state is far more dangerous than the transparent financial support of parties by individuals.

IN BRIEF

New intentions to regulate civil society activity - after the authorities gave up the problematic initiative to limit the external financing of NGOs in September 2017, at a press briefing, Prime Minister Pavel FILIP announced about the intention to create a state fund to finance the NGOs that will be responsible for monitoring public policies. The presented initiative provides that the state institutions will have a special budget for the relationship with the civil society, to which, in particular, they will appeal for the expertise of the public policy projects. The Prime Minister's initiative would be a part of a wider range of changes aimed at facilitating the work of civil society organizations. These include a new draft law (no. 362 as of 27 November 2017) which provides for the reduction of the registration term for non-commercial organizations to 15 days and for the modification of the state body empowered to register non-commercial organizations established in the Parliament.

Public lectures on the rule of law and the challenges of the judiciary in the Republic of Moldova held in Balți and Cahul - the LRCM held two public lectures on democracy and the rule of law on 18 October 2017 at "Alecu Russo" University in Balți and on 1 November 2017 at Bogdan Petriceicu Haşdeu University in Cahul. The speakers explained to young people what is democracy, what is its role in a rule of law state, why it is important to have an independent and fair justice in a democratic state and what are the challenges of the judiciary in the Republic of Moldova. The public lectures are a part of a series of activities meant to train students and young professionals in the field of justice and to strengthen the civic spirit of the new generations, carried out by LRCM in partnership with the Expert-Forum Romania, within the framework of the project "Strengthening the civil society in Moldova for to request justice", implemented with the financial support of the US State

Department/International Bureau for Criminal Justice and Law Enforcement of the US Embassy in Moldova.

The Dutch film screening about of justice and human rights in Chişinău, Edineț and Anenii Noi – between 27 September and 1 November 2017, the LRCM, in partnership with Expert-Forum Romania, screened the first part of the series of short films based on interviews with 12 Dutch judges – **'Kijken in de ziel'** (translation "Looking into the Soul"). The films raise the ethical issues faced by judges in their work. The first screening took place in Chişinău for a mixed group of judges, defence counsels and prosecutors. Two more screenings were held in Edinet on 31 October 2017 and Anenii Noi on 1 November 2017 for the staff of the respective courts. The films were followed by debates on the ethical dilemmas faced by judges in their everyday work versus their own standards and valuesthat judges have as individuals. The film screenings are a part of the project "Ethical Dilemmas in the Judiciary of the Republic of Moldova" implemented by the LRCM in partnership with the Expert-Forum Romania and financially supported by the Embassy of the Kingdom of the Netherlands.

Information campaign on the judicial map reform - between February and October 2017, the Superior Council of Magistracy organized an information campaign for judges and the general public on the implementation of the judicial map optimization and other relevant aspects of the implementation of the Justice Sector Reform Strategy. The events took place in 15 districts, in the towns where the courts have their headquarters.

Eastern Partnership - On 25-27 October 2017, in Tallinn, Estonia, the Annual Conference of the Eastern Partnership Civil Society was held. The conference was attended by more than 300 representatives of the civil society organizations from seven Eastern Partnership countries and the European Union, including about 25 persons from Moldova. The event was attended by representatives of the public authorities from 7 countries, with whom the situation of civil society in each country was discussed. A declaration addressed to the Heads of States that participated at the Eastern Partnership Summit as of 24 November 2017 stating particular measures to be taken was adopted at the Conference. At the Conference Mr. Petru MACOVEI was elected the new coordinator of the Eastern Partnership National Civil Society Platform of the Republic of Moldova.

Reorganization of the judicial map discussed in the Parliament - on 15 November 2017, the Legal Committee for Appointments and Immunities held hearings on the enforcement of Law no. 76 as of 21 April 2016 on the reorganization of the courts. The event was attended by the MPs and representatives of the Superior Council of Magistracy (SCM). There is no information on the content of the debates on the Parliament website. At the same time the press release of the SCM states several impediments and/or gaps concerning the reform presented from the SCM perspective. These include the lack of a transport infrastructure to access the courts; the negligence of recent investments in some courts (Rezina, Ceadir-Lunga, Basarabeasca, etc.); failure to consider the location of prisons; determining the constituencies of the courts of appeal; the transfer of the Centre District Court from Chişinău to the unadjusted building, without the consent of the SCM, etc. A decision by the SCM in this regard was not published until the end of February 2018.

The "Big Brother" Law on the Parliament agenda - on 29 November 2017, members of the Parliamentary Committee on National Security, Defense and Public Order were to examine draft law no. 161 (the so-called "Big Brother Draft"). However, the subject was removed from the Committee agenda, and the chairperson of the Committee Roman BOȚAN said that the draft would come back to the committee for review within a week or two. The draft was included on the agenda of the Committee meeting as of 20 December 2017 and approved by the Committee to be submitted to the Plenary of the Parliament. At the meeting, the representative of the Ministry of Internal Affairs said the draft had been improved and that the recommendations of the Venice Commission had been taken into account. In January 2018 only the initial version of the draft was published on the website of the Parliament without the amendments mentioned at the meeting as of 20 December 2017.

A new Deputy Head of the Anti-Corruption Prosecutor's Office appointed - on 19 December 2017, the Superior Council of Prosecutors announced that Prosecutor Adriana BEȚIŞOR was the winner of the contest for the position of the Deputy Chief Prosecutor of the Anti-corruption Prosecutor's Office. She obtained a total score of 152.2 points, her opposing candidates were Vladislav BOBROV, who is also a prosecutor in the case of false declarations initiated against former MP of the Liberal Democratic Party, Chiril LUCINSCHI, and Dumitru ROBU, prosecutor in charge of the case of influence peddling initiated against the ex-mayor of the capital, Dorin CHIRTOACĂ. Adriana BEȚIŞOR started her activity in the prosecutor's office in 2011, and since 2015 she has dealt with several high-profile cases, such as that of the former Prime Minister Filat, accused and convicted of influence peddling and passive corruption.

The Government sends three secondment lawyers to the ECtHR - on 31 May 2017, the Ministry of Justice (MJ)

announced a contest for the appointment of three second-level lawyers to participate in the work of the Registry of the European Court of Human Rights (ECtHR). Selected lawyers will be ranked as the ECtHR Assistant Lawyers, except for the fact they are not considered the Council of Europe (CoE) employees. On 11 July 2017, the MJ selected 4 candidates, and their files were submitted to the CoE for final selection. CoE has requested four more candidates to be able to make a more varied choice. Thus, on 18 August the MJ announced a new round for the selection of candidates. As a result, on 17 October 2017, the MJ selected 4 more candidates for the respective positions. The finalists of both contests took a final test organized by the CoE. On 1 December 2017, the MJ received from the CoE the final results of the contest. The initial duration of the contract of the delegated lawyers will be one year, with the possibility of extending it for a new term. They will be involved in the work of the Registry and will assist in the case of applications against our country.

A new strategy in the justice sector - on 17 November 2017, the Ministry of Justice (MJ) at a meeting made public a sketch of the next **Justice Sector Development Strategy (JSDS).** The MJ proposes the next strategy to be a continuation of the work done within the framework Justice sector reform Strategy for 2011-2016 (extended for 2017), which was largely focused on the approval of the legislative framework, but the new strategy would predominantly represent actions to implement existing legislation. On 30 November 2017, the LRCM submitted a legal opinion to the address of the MJ, which includes proposals on the future strategy. The LRCM proposes that the future strategy should have the following strategic directions, determined by the challenges faced by the judiciary at present: 1. Access to justice and the quality of justice administration, 2. Strengthening self - management, independence, accountability and transparency of legal professions and 3. Enhancing the efficiency of justice. The LRCM believes that structuring the new strategy according to the problems of the sector could ensure a better impact than the institution-based structure. This will reduce the shortcomings identified in the implementation of the previous strategy, such as, for example, institutional resistance to change.

USAID FROM THE AMERICAN PEOPLE

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.

LRCM TEAM

Vladislav GRIBINCEA
Nadejda HRIPTIEVSCHI
Ion GUZUN
Sorina MACRINICI
Ilie CHIRTOACĂ
Daniel GOINIC
Olga BURUCENCO
Aurelia CELAC
Natalia ŞEREMET
Mihaela CIBOTARU

CONTACTS

Legal Resources Centre from Moldova

A. Şciusev street, 33, MD-2001
Chişinău, Republic of Moldova
+37322843601
+37322843602
contact@crjm.org
www.crjm.org
CRJM.org
CRJMoldova
CRJM