

## CONSTITUTIONAL COURT

### The Constitutional Court: prohibition for the diaspora to finance political parties is not an issue!

About 30% of Moldovan voters live abroad. Art. 26 of the Law on political parties prohibits financing parties from revenues obtained abroad, and art. 38 of the Electoral Code provides for a similar ban for campaign financing. Such [bans are not uncommon and exist in half of the countries of the world](#). Despite this, following the monitoring of local elections in 2015, [the OSCE has recommended the exclusion of this prohibition](#), because in the case of the Republic of Moldova, it may represent an excessive restriction. [The Venice Commission also considers](#) that such a ban should not exist.

On 29 July 2016, the MP [Grigore Cobzac, requested](#) (only in Romanian) the Constitutional Court of Moldova (CCM) to declare unconstitutional the provisions above. He claimed that they discriminate against citizens from the diaspora and violate the right of political parties. On 6 September 2016, the [CCM rejected the complaint](#) (only in Romanian). The CCM noted that the disputed issues are related to the discretion of the Parliament and the ban itself is not contrary to the European Court of Human Rights (ECtHR) jurisprudence. Several judgments contesting the ban of the diaspora to vote were invoked, where the ECtHR had the assumption that the diaspora is less linked to the everyday problems of the country and knows less about them, as well as the difficulty of carrying out election campaigns abroad and the risk of influencing the country's problems from abroad.

The CCM's position and the manner it was expressed, may generate speculation. Surprisingly, it did not mention in its judgment the recommendation of the OSCE and Venice Commission's position, even though they were expressly mentioned in the complaint. Also, the CCM has not ruled on the alleged violation of the right of the political parties, limiting its analysis to issues related to the rights of the diaspora. On the other hand, the invoked jurisprudence refers to the prohibition to vote and not to the right to fund political parties and the reasons put forward by the ECtHR are clearly irrelevant for the Republic of Moldova. Moreover, even though it was a particularly important, complex and sensitive issue, the CCM decided to dismiss the complaint without holding a public hearing and without hearing the parties. On 26 September 2016, the [CCM refused to consider a similar request](#) (only in Romanian) made by the Action and Solidarity Party.

### The Constitutional Court: the Supreme Court's acts for uniform judicial practice may affect the independence of judges

On 22 July 2016, the CCM has ruled on a [complaint](#) (only in Romanian) claiming, *inter alia*, that the explanatory decisions of the Supreme Court of Justice (SCJ) are contrary to the constitutional principle of judicial independence. In its [judgment](#) (only in Romanian),

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the CCM noted that judges are subject only to the law and exercise the same authority of law, regardless of the court or position where they operate. The Court noted that the subordination of judges to court presidents or to higher courts when examining cases is a violation of the principle of independence of judiciary. Meanwhile, the CCM highlighted that this does not preclude the obligation of a judge of a lower court to comply with a previous judgment of the superior court regarding the interpretation of applicable law (judicial precedent/case-law).

CCM noted that the SCJ's practice to issue decisions/explanations for the lower courts „involves the risk that judges behave like civil servants, who receive orders from their superiors” and „does not favour the emergence of a truly independent judicial power”. CCM also stressed that „recommendations/explanations cannot constitute the basis of a judgment, which is to be based solely on the law”. The CCM

also noted that a judgment cannot be quashed merely on the ground that it is contrary to the established practice of the SCJ. CCM mentioned that, according to ECtHR jurisprudence, there is no right to consistent case-law, and changing the case-law is permissible and does not violate the principle of legal certainty if two conditions are met: „*the new approach has to be consistent at the level of that jurisdiction and the court which decided to change the interpretation has to reason in detail what determined it to decide in that manner*”.

On 28 July 2016, the SCJ published a [press release](#) (only in Romanian) in which it noted, *inter alia*, that it's explanatory decisions, advisory opinions and recommendations “represent assessments of the existing judicial practice. They are advisory and cannot form the formal basis of judgments, because they are not official sources of law. These cannot be referred to in judgments”.

## The reform of the investigative judge institution: constitutional or not?

On 9 July 2016, the Parliament passed in the final reading the [Law no. 126](#) (in Romanian), which changed the manner of appointment of investigative judges. Under the new law, investigative judges are appointed by the Superior Council of Magistracy (SCM), with their consent, at the court president's proposal from among judges who worked as a judge for at least 3 years. Their term of office is three years, without the possibility of exercising two consecutive terms. The new law also stipulates that all investigative judges in the country should be appointed until 30 September 2016, for them to have 3 months for training and reduce the workload of the ordinary judge. The law also provides for a ban for investigative judges who in the past 3 years have exercised these powers to hold this position for the next mandate.

On 28 September 2016, the MP Adrian Lebedinschi [notified](#) (only in Romanian) the CCM to review the constitutionality of that law. The MP considered that the final and transitional provisions relating to prohibition of exercising duties as investigative judge constitutes interference of the independence of judges, contrary to the principle of separation of powers and judicial independence. On 12 October 2016, the CCM [declared the complaint inadmissible](#) (only in Romanian). The Court noted that the legislator has the prerogative to establish the organization of courts. The CCM noted that through the contested provisions, the legislator did not intervene in the exercise of justice. It has just regulated the organization and the office term of investigative judges.

# JUSTICE REFORM

## Interesting facts regarding the reorganization of courts

The Law on reorganization of courts provides for an administrative merger of the first instance courts, from 1 January 2017, so as to have only 15 out of the 44 previously existing courts. The *de facto* merger of courts' premises shall be carried out gradually, until 31 December 2027, as the new headquarters are built or the existing premises are adapted to a larger number of judges (at least 9 per court). Until then, the judges will work in the same premises as before the reorganization.

On 6 September 2016, the SCM approved [a plan to implement the law](#) (only in Romanian). It provides, *inter alia*, a redistribution of judge positions starting with 1 January 2017, even if the physical unification of premises will take place

**The SCM transferred without contest judges in Chişinău, including a current member of SCM**

later. Nevertheless, on 29 September 2016, the SCM transferred without competition and without this procedure to be announced in advance, four judges to Chişinău District Court and a judge to Căuşeni District Court. Among those transferred is the [current member of the SCM, Mr. Dorel MUSTEAŢĂ](#) (only in Romanian), who has previously worked in the Anenii Noi District Court.

According to the [specialists' assessments](#), the majority of the courts' premises that will remain after the reorganization can not handle the increased number of judges provided by the court reorganization. In the summer of 2016, the Ministry of Justice drafted a plan for construction of buildings.

It was approved by the Government on 12 December 2016 and [submitted to Parliament for adoption](#) (only in Romanian), but has not yet been adopted. According to this plan, in 2017 the construction of the Ungheni District Court will be completed, which started a few years ago, and the design of Edineț, Orhei, Hâncești, Căușeni and Chișinău district courts will begin. Their construction will start in 2018. These will be the biggest courts in the country and will be expensive. It is uncertain whether such resources could be identified in such a short period. On the other hand, the construction of the Chișinău District Court, which will accommodate more than 25% of all judges in the country, when there is still no local experience in planning and construction of the premises of the courts, may present risks of irrational spending of funds or unsuccessful planning of the building. At the stage of drafting the plan, LRCM recommended the Ministry of Justice to begin the construction of the Chișinău District Court

after the construction of the first new premises and after learning lessons from smaller premises.

Apparently, the SCM did not understand how the random distribution of case files is going to be applied after 1 January 2017, when the courts should have consolidated and before the physical unification of premises. Several members of the SCM were of the view that the distribution must take place between all newly created courts' judges, regardless of the headquarters the judge operates. That would have meant that a case of a person from Ocnița will be examined in Briceni, at a distance of over 40 km. On 16 December 2016, [the Parliament passed a law](#) (in Romanian) stating that until the functioning of courts in single premises, civil cases will be examined in the premises of the court in which the action was filed. This clarification was made for the convenience of litigants.

## The Superior Council of Prosecutors has new rules of activity

In order to comply with the new Law on prosecution, on 14 September 2016, the Superior Council of Prosecutors (SCP) approved its [Rules of activity](#) (only in Romanian). The new law on prosecutor's office increased the role and powers of the SCP in respect of management of the prosecutor's system, drafting the budget and regarding the selection, career and discipline of prosecutors.

According to the new rules, the SCP's activity will have higher standards of transparency and efficiency. SCP's meetings will be broadcasted in real time and will be video/audio recorded. The SCP decisions are to be adopted in public sittings with the open vote of the members. In situations that cannot be postponed, the SCP will adopt decisions by electronic means (e-mail).

A special section of the Rules is dedicated to the election of the Prosecutor General. According to the new Law on prosecution,

**The new SCP regulation: Public sittings, open vote, on-line broadcasting of sittings.**

the SCP selects the Prosecutor General based on a public competition, and proposes him/her for appointment to the President of the Republic of Moldova. The new rules detail every stage of this competition, the requirements for the candidates to the position of Prosecutor General and the assessment of candidates. The SCP Secretariat is has to publish in advance the CVs, letters of motivation and concepts of management and institutional development of Prosecution submitted by candidates. The interview stage is to be held in public hearings and video broadcasted online in real time. The results of the contest will be made public no later than 24 hours from of the end of the interview with the publication of the average score obtained by each candidate.

In order to implement the new Law on prosecution, rules for selection, performance evaluation and disciplinary liability of prosecutors are also being drafted.

## The newly selected members of the Superior Council of Prosecutors' boards

On [22 September 2016](#) (only in Romanian), the SCP selected Mrs. Elena BELEI and Mrs. Adriana EȘANU to the position of civil society representatives in the Board for selection and career of prosecutors, Mr. Ion CĂPĂȚÎNĂ and Mr. Ivan JECEV as representatives of civil society in the. On [29 September 2016](#) (only in Romanian), the SCP selected Mr. Pavel JURCAN and Mr. Oleg TELEVCA as representatives of civil society in the Disciplinary and Ethics Board. The selection and evaluation procedure of candidates from the civil society took place under the [SCP Rules](#) (only in Romanian). The Rules provides the evaluation of candidates' files, interview and assessment of candidates by each member of the SCP, based on an evaluation form.

By a [press release](#) (only in Romanian) from September 2016 new presidents of the SCP boards were announced. As Chairman of the Performance Evaluation Board was selected Mr. Valeriu BODEAN, Deputy Chief Prosecutor for the Prosecution on Fighting Organized Crime and Special Cases. As Chairman of the Selection and Career Board was selected the Prosecutor of Chisinau municipality, Mr. Igor POPA. In the past, Mr. Popa was involved in several [controversial case files](#) (only in Romanian), and [during the events of April 2009](#) (only in Romanian) he asked the then President of the Rîșcani District Court of Chișinău to bring judges to the police commissariats to examine cases of [arrested young protesters](#) (only in Romanian). Mr. Popa requested arrest warrants in cases related to the events of April 2009.

## GRECO finds deficiencies in the manner of selecting the SCM members

On 5 July 2016, the Group of States against Corruption (GRECO) of Council of Europe has published its [fourth assessment report](#) on the Republic of Moldova. The document refers to combating corruption among MPs, judges and prosecutors. Paragraphs 85–138 refer to the activity of the SCM and the judiciary.

The GRECO evaluation group expressed concern about the composition of SCM, namely the presence of the Minister of Justice and General Prosecutor as ex officio members. In this regard, the [draft law no. 187 of 3 May 2016](#) (only in Romanian) has been registered in the Parliament. It increases the number of judges, while excluding the Minister of Justice and the General Prosecutor from the SCM. The draft law also proposes to expand the access of non-judge members of the SCM to the entire civil society (currently, non-judge members of the SCM may become only teaching professors). On 16 April 2016, [the Constitutional Court endorsed](#) (only in Romanian) this initiative.

Regarding the election of the SCM members from among judges, GRECO found that judges are not provided with sufficient information about the candidates for SCM positions, and the time

from the announcement of the candidates and their selection is too short and does not offer a real opportunity to get to know the candidates' profile and their activity program. GRECO also criticized the selection procedure of SCM members from among law professors by the Parliament from 2013, which resulted in the appointment of Mr. Gheorghe AVORNIC, Mrs. Violeta COJOCARU and Mr. Teodor CÂRNAȚ. The selection procedure took place in a hurry, with the announcement of the selected candidates in the day of the contest, without any explanation on the selection criteria. GRECO recommended that SCM members, both among judges and non-judges are selected through a clear and transparent procedure.

Another concern expressed by GRECO refers to insufficient reasoning of SCM decisions regarding the selection, career and disciplinary liability of judges. This practice affects the trust of judges and public that SCM decisions are taken within a clear and objective selection process. GRECO recommended that SCM decisions be duly reasoned and, with the possibility to be challenged in courts both on the substantive and procedural aspects.

## Negative trends in the field of transparency of justice

Lately, on the one hand, there have been made efforts to ensure the transparency of judiciary, and on the other hand, the transparency was limited. By the Decision [no. 520/22 of 26 July 2016](#) (only in Romanian) the SCM approved the Guidelines on the relationship between the judiciary and media in the Republic of Moldova. The document was drafted to facilitate the access of media and the public to information of general interest. Subsequently, the SCM has drafted the Rules on [access to courts](#) (only in Romanian), which limited the public nature of court proceedings. The media could have access to a hearing only by a written request, submitted 24 hours in advance and third parties upon written request submitted 30 minutes before the opening of the hearing. Under these Rules, the access of the media or third parties to court hearings may be prohibited by the presiding judge without any justification. Following the media and civil society vehement criticism on these restrictions, the SCM suspended the action of these Rules and promised to amend it.

LRCM found in a number of reports from [2013](#), [2015](#) (only in Romanian), [2016](#) that SCM has the practice to examine almost all matters in deliberation. Even though the deliberation is a specific procedure for courts and not self-governing bodies, the SCM enters the deliberation every time it gets to discuss the merits of an issue. The SCM examines in deliberation even

matters that do not contain personal or confidential data, such as, for example, the adoption of opinions on draft laws, courts' budgets or offering distinctions.

Also, from unknown reasons, the SCM does not publish the decisions regarding the General Prosecutor's request to initiate criminal investigations against a judges and the verification of judges. Also, for no reason, the SCJ established the practice not to publish the reasoned decisions in the disciplinary cases against judges. The law does not provide for an exception regarding publication of the judgments mentioned above. Therefore, these decisions should be published.

According to the law, judgments are public. Lately, we are following the excessive depersonalization or absence of decisions on the websites of courts. In some judgments even the information about the judges, prosecutors and lawyers is depersonalized. The SCM and the Court Administration Agency explained that this is the fault of the Integrated Case Management Program (ICMP). Also, at the beginning of 2017, the websites of the courts excluded the possibility to search for judgments according to the names of the parties. These trends, altogether, raise a number of questions, given that lately more and more criminal cases are initiated against officials and public servants, which are of high public interest, and these limitations complicate their monitoring.

# INTEGRITY AND ANTI-CORRUPTION

## Professional integrity testing in public service - unprecedented in other European countries

Law no. 102 of 21 July 2016 introduced a new system of integrity testing. The law was adopted to implement the [Decision no. 7 of 16 April 2015 of the Constitutional Court](#) (only in Romanian), which declared unconstitutional several provisions of the Law on professional integrity testing. The Law no. 102 does not solve some key issues raised by [the Venice Commission](#) and [the Constitutional Court](#). It does not provide an adequate judicial review of the integrity testing, it does not require the existence of reasonable suspicion to start the professional integrity testing of a specific person and there are no guarantees that the integrity testers will not provoke to commit crimes. The new system also creates prerequisites for unlimited influence by the National Anticorruption Centre (NAC) in respect to any public entity. The law empowers NAC to carry out checks on public

entities and to challenge the refusal to dismiss the assessed head of the entity, i.e. to directly influence the dismissal of any manager of public institutions in the country. In addition, the judicial oversight over the activity of professional integrity testing will be exercised by judges appointed by the SCM under rules approved after consultations with the NAC and the Security and Intelligence Service (SIS). Such a provision raises serious questions of possible interference in judicial independence by SIS and NAC.

A mechanism similar to the one described above does not exist in any European country. The law as it is leaves room for abuse. Therefore, monitoring the implementation of Law no. 325 is particularly important.

## Judge with undeclared properties promoted to the SCJ

On [26 January 2016, the SCM proposed](#) (only in Romanian) the Parliament to appoint as judge of the SCJ Mrs. Mariana PITIC. On the same day, [Mrs. Pitic was filmed driving a Porsche Cayenne](#) (only in Romanian), which costs over one million lei. A member of the SCM criticized the SCM decision. In a [dissenting opinion](#) (only in Romanian), she mentioned that the CSM did not explain why Mrs. Pitic, with 4 years experience as a judge and three years experience in the National Institute of Justice, has been chosen the winner of the competition over another judge which was assessed with a higher mark and served as a judge for over 25 years, out of which 10 years – in the Chişinău Court of Appeal. The SCM member believes that lack of reasoning on the selection of Mrs. Pitic and non-selection of other candidates amounts to an arbitrary decision. On 8 February 2016 a group of eight non-governmental organizations [have expressed concern](#) about this promotion. Mrs. Pitic did not obtain the highest score at the Selection and Career Board of Judges and of all candidates had the shortest experience as a judge.

On 27 April 2016, [during the plenary of the Parliament](#) (only in Romanian) an MP raised the question of undeclared assets of Mrs. Pitic. The chairperson of the Legal Committee on Appointments and Immunities replied that the National Integrity Commission (NIC) has not received any information

that Mrs. Pitic breached the procedure of declaration of assets. On 15 April 2016, [NIC has received a notification from the National Anti-corruption Centre](#) (only in Romanian) on Mrs. Pitic's failure to declare an apartment. Despite this complaint, the information from the public space about the luxurious properties of Mrs. Pitic and the dubious manner of her promotion by the SCM, on 27 April 2016 the Moldovan Parliament appointed her as judge to the SCJ.

The second day after the appointment, on 28 April 2016, [NIC initiated a procedure to check on the declaration of income and properties by Mariana PITIC](#) (only in Romanian). Mrs. Pitic mentioned in the statement of income and properties for 2015 that the Porche Cayenne was purchased at the price of 11.000 lei. NIC did not see any problem in the extremely low price of the car compared to the market price, but found that Mrs. Pitic did not indicate in the declaration for 2015 the right to use an apartment and a car model "Lexus LX 470". Thus, NIC has found a breach of the obligation to declare the assets by Mrs. Pitic (art. 4 para. (1) b) of Law no. 1264), but it concluded that this violation were not intentional and, therefore, the case was closed. As a result of this procedure, Mrs. Pitic received a simple warning to comply in the future with the legal provisions of declaration of income and assets.

## NOTORIOUS CASES

### „Luxurious” extradition of Veaceslav PLATON

On 25 July 2016, the head of the [Anti-corruption Prosecutor's Office said](#) (only in Romanian) that Veaceslav Platon was indicted for money laundering and bank fraud and that on his name was issued an international arrest warrant. On the same day, Mr. Platon [gave an interview](#) (only in Romanian) to journalists, where he said that he agrees to disclose the information concerning the theft of the billion visa a video conference at which journalists would have access. [He also said](#) (only in Romanian) that he was ready to testify to investigative bodies of other countries. In a few hours, the same day, Mr. Platon was apprehended by the Ukrainian authorities. The General Prosecutor [announced](#) (only in Romanian) that he will initiate extradition proceedings. Mr. Platon's lawyers [declared](#) (only in Romanian) they were surprised by the rapidity with which Mr. Platon was arrested and that he would have had Ukrainian citizenship and therefore could not be extradited. Over about a month after his arrest, on 22 August 2016, the court in the Pechersk region, Kiev, [decided](#) (only in Romanian) to place Mr. Platon in custody for extradition.

On 29 August 2016, Mr. Platon was extradited and brought to Moldova with a charter flight with a luxury plane. According to the [official information](#) (only in Romanian) provided by the General Police Inspectorate (GPI), the Ukrainian authorities escorted Mr.

Platon to the airport late, and, thus, lost the flight. GPI has also indicated that the charter flight cost USD 1,690, a sum covered from the state budget. The media [wrote](#) (only in Romanian) that the flight with the luxury plane which transported Mr. Platon would have cost at least EUR 7,600, plus other charges, which is about 4,5 times higher than the sum indicated by the GPI.

**After being extradited from Ukraine, Veaceslav PLATON was not heard by the anti-corruption prosecutors for 10 days.**

On 1 and 27 September 2016 the Buiucani District Court extended Mr. Platon's arrest warrant for another 30 days, decisions which were upheld by the Chişinău Court of Appeal. Mr. Platon was placed in pre-trial detention in Prison no. 13. On 8 September 2016, Mr. Platon [declared](#) (only in Romanian) that although he was extradited for some time, he had not been heard by anti-corruption prosecutors and he asked to be questioned. Thus, the expediency of Mr. Platon's extradition and lack of procedural actions after he was extradited is not clear. Only on 9 September 2016 and following Mr. Platon's request, the prosecutors [have questioned](#) (only in Romanian) him in Prison no. 13.

On 11 October 2016, 21 members of the Parliamentary Assembly of the Council of Europe (PACE) made a statement that noted the illegal extradition of Mr. Platon. They [urged](#) the Moldovan authorities to refrain from any intimidation of activists, politicians and key witnesses.

### Arrests in the “Russian Laundromat” case

On 5 August 2016, the former vice governor and two departmental heads from National Bank of Moldova (NBM) [were detained](#) (only in Romanian) for negligence in office in the period 2010–2014, which resulted in “laundering” of about 20 billion dollars from the Russian Federation (the so called case “Russian Laundromat”). The next day, all three [were arrested](#) (only in Romanian). On 26 August 2016 the Buiucani District Court placed the former vice governor of the National Bank of Moldova under house arrest.

On 20 September 2016, the SCM [approved](#) (only in Romanian) the interim Prosecutor's General request to carry out coercive measures of 16 current and former judges. Thus, 15 judges and three bailiffs [were apprehended](#) (only in Romanian) for suspicion of involvement in the case “Russian Laundromat”. Between 21 to 23 September 2016, 15 judges and three bailiffs were apprehended for a period of 30 days and [they were presented with charges](#) (only

**The authorities knew about the “Russian Laundromat” since 2012. However, the prosecution has started only in 2014.**

in Romanian) of complicity in money laundering. A judge and a bailiff were announced in international search. On 29 September 2016, the [SCM authorised the prosecution](#) (only in Romanian) of 16 judges for another offense provided for by art. 307 par. (2) let. c) of the Criminal Code (deliberate pronouncement of a judgment contrary to the law, resulting in severe consequences). Mr. Visternicean, member of the SCM, had a [dissenting opinion](#) (only in Romanian).

At the [press conference](#) (only in Romanian) on 21 September 2016, the head of the Anti-corruption Prosecutor and head of the Department for criminal investigation of NAC, declared that the criminal investigation regarding the scheme “Russian Laundromat” started in 2014. Officials explained that the criminal investigation against 16 judges and four bailiffs was launched just a week before. They avoided answering whether the names

of the judges have been provided by Veaceslav PLATON, arrested and extradited on 29 August 2016 from Ukraine.

The SCM knew about the “Russian Laundromat” since 2012, when the SIS was informed of the actions of the judge Iurie HÎRBU from Telenesti District Court. The SCM [took note](#) (only in Romanian) of the information provided by the Judicial inspection according to which that judge has decided on the collection of USD 30 million under uncertified copies of documents. The SCM also took note of the intention of a member of SCM to

initiate disciplinary proceedings against that judge and sent the materials to the General Prosecutor’s Office. Between 2012–2014, the judge Iurie HÎRBU has not been disciplinarily sanctioned and in February 2015 he [was evaluated with “very good”](#) (only in Romanian).

Media has previously written about the schemes of the “Russian Laundromat” case. [Rise.md](#) published an investigation in 2014 and the [Centre for Investigative Journalism and the Național Newspaper](#) – in 2015.

## The Shor case was sent to court. The investigation of the “theft of the billion” continues

In a [press release](#) (only in Romanian) of 24 August 2016, the Prosecutor’s General Office announced that it has completed the criminal investigation and submitted the “Shor case” to the court. Ilan SHOR is accused that between 4 and 25 November 2014, he obtained by fraud over 5 billion lei from BEM which he allegedly laundered through offshore companies. The press release states that Ilan SHOR, as chairman of the Council of BEM at the time, persuaded the Administrative Council to vote for lending credits to companies affiliated to him. As guarantee fictitious contracts were presented, which were signed with banking entities from Russian Federation. The Anti-corruption Prosecution based its charges inclusively on the Kroll report. The case will be examined by the Buiucani District Court.

According to a [press release](#) (only in Romanian) of the NBM, the first investigation of the “theft of the billion” made by Kroll company which focused on the period May–November 2014, proved the involvement of “Shor Group” (Ilan SHOR and

**Kroll Investigations have shown that the beneficiaries of the “theft of the billion” extend beyond the “Shor Group”**

individuals and companies in connection with him). The second phase of the investigation covers the period 2012–2014 and is conducted by Kroll and Steptoe & Johnson companies. They [informed](#) (only in Romanian) the NBM that in the period 2012–2014, BEM, Social Bank and Unibank granted loans worth a total of more than USD 3 billion. A significant portion of these amounts have returned to the Republic of Moldova for payment of previous loans. Over USD 600 million that have disappeared during this period, have not returned to the three banks. The results of the investigation show that beneficiaries of the fraud extend beyond companies and individuals connected to the “Shor Group”.

Prosecutor’s General Office mentioned in the [press release](#) (only in Romanian) that it submitted to court more than 20 criminal cases related to the “theft of the billion”. Also, the NAC and the Anticorruption Prosecutor’s Office are investigating other criminal cases concerning the embezzlement of money from these three banks.

## Son of a judge, convicted of influence peddling, still working as a defence attorney

In 2013, the defence attorney Dorin MELINTEANU (son of the Chișinău Court of Appeal judge, Iurie MELINTEANU), was caught red-handed while receiving the sum of EUR 800 (equivalent to MDL 14.236) with the purpose to influence judges of the Chișinău Court of Appeal to apply a more lenient sentence to a person. The defence attorney admitted the crime. The first instance court ceased the trial and applied a misdemeanour sanction. Mr. Melinteanu was released from criminal liability under art. 55 Criminal Code, even if according to the SCJ Recommendation no. 61 of 14 December 2013, the release of liability under this article shall not apply for corruption crimes. Despite this recommendation, the Bălți Court of Appeal upheld the first instance court’s decision. On [17 February 2015](#) (only in Romanian), the SCJ quashed the Bălți Court of Appeal decision on

the grounds that exemption from criminal liability and applying a misdemeanour sanction for corruption cases is inadmissible and sent the case back for retrial.

In the retrial of Mr. Melinteanu’s case, the prosecutor asked the Bălți Court of Appeal to establish a criminal penalty of MDL 24,000, although he could have been punished up to five years in prison for this crime. Finally, the defence attorney was sanctioned by the Bălți Court of Appeal with a fine of MDL 22,500. The decision was adopted on October 2015, and the prosecutor did not appeal the sentence at the SCJ. At the moment, the defence attorney Dorin MELINTEANU is working as a [defence attorney](#) (only in Romanian) and is included in the list of [defence attorneys which are providing legal assistance](#) (only in Romanian) within the legal aid system.

In 2015, [LRCM analysed the SCJ decisions on corruption offenses](#) (only in Romanian) issued between 1 January 2014 – 30 September 2015. The document analysed the SCJ decisions on art. 324 – 326 of the Criminal Code issued during the given period. According to the analytical document, the case of Mr.

Melinteanu was the only of the 23 studied cases, were the judges of the first instance and the court of appeal exempted a person from criminal liability for corruption and applied a misdemeanour sanction according to the Contravention Code instead.

## HUMAN RIGHTS

### Citizens' perception on human rights in Republic of Moldova

In July 2016, the study “[Perceptions on human rights in the Republic of Moldova](#)” (only in Romanian) was published. The study was issued by the Office of the Ombudsman and the Office of the UN High Commissioner for Human Rights (OHCHR), in consultation with the United Nations Development Programme (UNDP) in Moldova. This study reflects the current situation in the human rights field and provides recommendations for the identified problems. The study provides information about the impact of state policies on the general public and particularly vulnerable, marginalized and stigmatized groups, suggesting further concrete recommendations to improve the existing situation.

The study has found that the population has low awareness about human rights. Only half of the respondents believe they are to a certain extent informed and only 8.3% believe they are well informed about human rights. Awareness is higher among the urban population. Information about human rights and their

ability to defend these rights is considered accessible by less than half of respondents; over 80% are mostly informed through the media (radio/TV/print media). Considering the disparity between urban and rural population in terms of accessibility of information about human rights, it is imperative to focus on empowering rural population. Training activities on human rights in school and for civil servants are recommended.

A percentage of 68.2 of the respondents consider that human rights are systematically violated in Moldova. According to the respondents, the Parliament, Government, ministries and their departments are responsible for the most violations of human rights, and the most important rights in their opinion, are the right to health, right to social protection, right to education, right to work and favourable conditions of work. The study also notes that the population is not informed enough on where they could refer to in case of a violation of his/her rights or their relatives' rights.

### LRCM's recommendations in the context of the Universal Periodic Review

Every four years, the Human Rights Council of the United Nations (UN) assesses whether states have fulfilled their commitments in the human rights field in the previous period.

To give evaluators a source of verification of the data submitted by the Government, over [40 civil society organizations](#), including the LRCM, presented shadow reports on human rights progress made by the Republic of Moldova in 2011–2016. The [alternative report](#) prepared by the LRCM focuses on three areas: anti-corruption measures, justice reform progress and equality and non-discrimination.

The LRCM highlighted the limited impact of legislative measures aimed at discouraging corruption, lack of effective institutions focused on combating high-level corruption and political dependence of institutions mandated with preventing and combating corruption. In this area, the LRCM recommends, among other things, to prioritize the fight against high corruption, adoption and effective implementation of the

new law on prosecution and ensuring the independence and accountability of institutions which fight corruption (National Integrity Agency and Anticorruption Prosecutor's Office), including by appointment to key positions professional individuals with integrity, and not according to political criteria.

**The LRCM  
alternative report  
for the UPR:  
The Government  
recorded modest  
result in reforming  
the justice sector**

The alternative report notes the modest results obtained in the justice sector reform. Although some progress has been made in the period 2011 – 2013, there are several important actions of the Justice Sector Reform Strategy which have expired. LRCM recommends as a matter of priority the adoption and implementation of the law on the reorganization of the judicial map and the integrity package. A separate emphasis is put on mechanisms of selection and promotion of judges and measures to unify the judicial practice. Implementation of these actions will help to promote to the system judges with integrity who have demonstrated during their activity the highest standards of professionalism.

In the field of equality and non-discrimination LRCM notes some progress during the reporting period, mainly, the adoption of the Law on ensuring equality and the establishment of the Council for the Prevention and Elimination of Discrimination and Ensuring Equality (CPEDEE). LRCM recommends to improve the legislation

to provide the CPEDEE direct sanctioning powers, and to establish a single way of appeal by which its decisions may be challenged. Additionally, LRCM recommends to empower the CPEDEE and the judiciary with adequate resources for continuing professional development in the field of equality and non-discrimination.

## ECtHR: mere reasonable suspicion of committing a crime is no longer sufficient for pre-trial detention

On 5 July 2016, the Grand Chamber of the European Court of Human Rights (ECtHR) delivered its judgment in the case [Buzadji v. Republic of Moldova](#). In this case, the Court clarified its case-law regarding the justification of the pre-trial detention. The case concerns the apprehension and detention of a businessman for alleged fraud attempt. The pre-trial detention has been extended several times, in total the applicant being detained for a period of 10 months, of which 2.5 months in pre-trial detention and the rest – under house arrest. Before the ECtHR, the applicant has complained of violation of art. 5 § 3 ECHR (reasoning of the arrest), given that national courts justified the extension of the arrest warrant on stereotyped and abstract grounds.

**Prosecutors and judges are obliged to identify and present other reasons than reasonable suspicion starting with the first arrest warrant.**

The ECtHR noted that, in accordance with the national legislation in most of the 31 member states of the Council of Europe, examined for the present case, the competent authorities have the duty to provide relevant and sufficient

reasons for the continuing detention if not immediately, then in a few days after the apprehension, namely, when the judge examines for the first time the need to place the suspect in custody (para. 101). The ECtHR concluded that the necessity to provide relevant and sufficient reasons, by the judicial authorities, other than reasonable suspicion, is already applicable at the time of the first decision of arrest (para. 102). Thus, the new ECtHR standard is that prosecutors and judges are required to identify and present other reasons than reasonable suspicion starting with the first arrest warrant.

The ECtHR found that in the reasoning of the decision on the prolongation of the applicant's arrest, the national courts were limited to repeating formal grounds provided by law, without explaining the manner in which they are applicable in the applicant's concrete situation. The ECtHR unanimously found a violation of Art. 5 § 3 ECHR.

## The Republic of Moldova condemned by ECtHR because judges have ignored crucial aspects of the case

On 20 September 2016, the ECtHR issued a judgment in the [Nichifor v. Moldova](#) case. The applicant, Leonid NICHIFOR, held 50% of the share capital of a joint stock company. In 2009, his business partner asked the Chişinău District Economic Court to exclude the applicant from associates, because he had not fully paid his share of the equity. On 14 March 2009, the Chişinău District Economic Court dismissed the complaint as unfounded and filed after the expiry of limitation term. The Economic Court of Appeal and the SCJ had quashed the first instance decision and excluded the applicant from the list of associates. Both courts relied on a minutes from 2007, submitted by the appellant, under which the applicant admitted that he did not pay for his shares and undertook to pay within one month.

However, the national courts have not ruled on the applicant's arguments that the signature did not belong to him and that at the date indicated in the minutes he was out of the country.

Also, the courts have not ruled on the applicant's objection on the expiry of the limitation period. In 2010, in a criminal case, a graphology expert examined the applicant's signature of the minutes and concluded that it was fake.

The ECtHR noted that the expiry of the limitation period was an important argument of the applicant. Had it been accepted by the courts, it would have resulted in the dismissal of the action. Also, the ECtHR considered problematic that both the Economic Court of Appeal and the SCJ refused the applicant's legitimate request to conduct a handwriting expertise of his signature on the document which was the basis of the judgments. Also, the ECtHR took into consideration that the domestic courts ignored the applicant's argument that at the date of signing the minutes he was outside the country. The ECtHR found a violation of the right to a fair trial (Art. 6 § 1 ECHR).

## CIVIL SOCIETY

### A new law for non-profit organisations

On 14 September 2016, the Ministry of Justice hosted a [public debate](#) (in Romanian) where the concept of a new law on non-profit organizations has been presented. The draft law includes provisions on the creation, registration, reorganization and termination of the most common forms of non-profit association: non-governmental associations, foundations and private institutions. The new law will replace the existing legal framework on associations and foundations, adopted in late 90s and considered by the authors as obsolete. The changes to the new regulatory framework focus on three main dimensions: the establishment and registration of non-profit organizations; organization of self-administration bodies; and norms of transparency and the procedure for awarding public utility status.

According to the authors, the draft law meets international and European standards on freedom of association. Among the innovations, the draft law includes eliminating current territorial restrictions on activity of non-governmental associations (local, regional, national, international), and the restrictions that refer to certain categories of persons (civil servants, protected persons

**Under a single law: non-governmental associations, foundations and private institutions**

(previously named persons with limited legal capacity or without capacity), non-residents, legal entities) that currently cannot be founders, members or leaders in non-profit organizations. The draft law provides to all individuals and legal entities the possibility to establish voluntarily non-commercial organizations.

The draft law sets up a predictable procedure for registration, the necessary documents being provided exhaustively. Another good news is that the registration deadline for non-profit organizations, will be reduced to 10 days (now the term is 30 days). The draft law sets a flexible model that will allow the internal organization of non-commercial organizations depending on the preferences of its members. Also, additional safeguards are provided for cases of reorganization or liquidation of non-commercial organizations.

Compared to the current law, the draft law abolishes the non-profit organization's annual obligation to inform the registration body on the continuation of activity. Information about the result of the activity is mandatory only for applicants and holders of public utility status. LRCM is one of the authors of the draft law.

### The Government wants to re-launch the National Participation Council. Does the civil society want it?

On 30 September 2016, the State Chancellery organized a [public debate](#) (in Romanian) dedicated to the proposal to re-launch the activity of the National Participation Council (NPC). The NPC was a collegial advisory body within the Government (active during 2010 – 2014) composed of representatives of the civil society, whose mission was, among other things, consultation on policy documents and strategic draft laws launched by the Executive.

Although several participants in the meeting noted the low impact of the past activity of NPC, the Government representatives assured that the new platform will be improved so as to meet the expectations of the civil society in terms of strengthening the mechanisms for transparency in decision making and insuring good governance. According to the proposals of the representatives of the State Chancellery, the mandate of the new NPC would be limited to exclusive consultation on strategic policy documents. The NPC membership will be reduced to 25

members (compared to the previous number of 30 members), while the members will be selected through a transparent and fair contest. The NPC president's mandate will be limited to 3 months (compared to two years earlier), so that all the NPC members exert this function by rotation.

Earlier, on 30 June 2016, the LRCM in partnership with 21 other civil society organizations, have developed a [public opinion](#) (in Romanian) on the effective participation of civil society in decision-making. The signatories pointed the negative aspects of institutionalized communication platforms according to the NPC model and expressed concern about limiting public consultations only with NPC and ignoring consultations with other representatives of the civil society. The signatories have proposed a [series of actions](#) (in Romanian) to ensure the effective participation of civil society in decision making, without the need for its institutionalization.

## IN SHORT:

#### Extension of expired mandates of magistrates

On 12 May 2016, the Constitutional Court of Moldova (CCM)

issued a [decision](#) (only in Romanian) at the request of the SCJ where it decided that the SCJ judge, whose mandate expired by

reaching the age limit, shall exercise its duties until the appointment of a new judge. Also, the CCM judge whose term has expired shall exercise its duties until the oath of the newly appointed judge.

## The Anticorruption Prosecutor's Office has a new deputy chief

On 14 July 2016, the former interim head of Transportation Prosecutor's Office, Mr. Ștefan ȘAPTEFRAȚI [was nominated winner](#) (only in Romanian) of the contest for one of the positions of deputy chief of the Anticorruption Prosecutor's Office. He was appointed even though two other candidates had a higher score. Earlier, a [journalistic investigation](#) reported that this would be one of the wealthiest prosecutors, his fortune having shady origins.

## Will the Chișinău Court of Appeal be divided?

On 4 July 2016, the Ministry of Justice has submitted for [public consultations](#) (only in Romanian) a draft law on division of Chișinău Court of Appeal into two courts of appeal. The draft law was initiated by a group of judges, headed by the Presidents of the SCM and the SCJ, and it provides the creation of a Court of Appeal for Chișinău municipality and a separate court of appeal for the regions in the centre of the country. The proposal is not part of [JSRS](#) (in Romanian) and is contrary to the draft law on the reorganization of the court system, adopted by the Parliament in April 2016. LRCM alongside other civil society organizations [criticized the initiative](#) (only in Romanian), arguing that it will not solve the problem high workload of judges in the Chișinău Court of Appeal, which is the main argument for the division.

## Comparative analysis on the impact of the percentage designation mechanism

During 8–9 September 2016, in Bratislava (Slovakia), an [international conference](#) took place where a [report](#) on the impact assessment of the percentage designation mechanism from 6 countries in Central Europe was launched. The analysis showed that the amounts arising from percentage designation represents about 2% of NGOs' sources in all 6 countries. At the same time, they are an important and sometimes only source to many local NGOs. During the event, Sorina MACRINICI, LRCM legal advisor, [presented](#) the draft 2% mechanism in the Republic of Moldova.

## Workshop on mobilizing local resources

On 13 September 2016, the European Centre for Not-for-Profit Law (ECNL) and the LRCM held a [workshop](#) (only in Romanian) on mobilization of local resources. During the workshop, the 2% mechanism and the experience of other countries in Central Europe in implementing this mechanism were presented. Also, at the workshop the potential of philanthropy and fundraising by NGOs were discussed.

## One of the "judges from hell" elected as a member of the Disciplinary Board of Judges

On 21 October 2016, the [General Assembly of Judges elected Mr. Anatolie GALBEN, judge in Râșcani District Court as a member of the Disciplinary Board of Judges](#) (only in Romanian). Judge Galben was one of the judges who went to police stations for applying preventive measures to people who participated at the protests of April 2009. Further details regarding Mr. Galben can be found in the [Analysis of the legislation and practice on disciplinary liability of judges, 2015–2016](#), p. 27.



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## ABOUT LRCM

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

## LRCM TEAM

Vladislav GRIBINCEA  
Nadejda HRIPTIEVSCHI  
Ion GUZUN  
Sorina MACRINICI  
Pavel GRECU  
Ilie CHIRTOACĂ  
Olga BURUCENCO  
Aurelia CELAC  
Natalia ȘEREMET

## CONTACTS

Centrul de Resurse Juridice din Moldova

📍 Str. A. Șciusev 33, MD-2001  
Chișinău, Republica Moldova

☎️ +37322843601

☎️ +37322843602

@ contact@crjm.org

🌐 www.crjm.org

📘 CRJM.org

🐦 CRJMoldova

