

NEWSLETTER

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ELECTIONS
AND GOOD GOVERNANCETHE CONSTITUTIONAL COURT REFUSED TO EXPLAIN
WHY IT IS NOT POSSIBLE TO VOTE ABROAD USING THE
IDENTITY CARD

[On 14 January 2019, the Constitutional Court \(CCM\)](#) dismissed an application filed by the Ombudsman. It concerned two issues: the impossibility of voting abroad using the identity card and the impossibility of voting abroad using the expired passport or identity card. The application was examined in a record time - within four days and without holding a public hearing. Contrary to its practice, the CCM did not announce in a press release about the dismissal of the application, although the issue under consideration was of particular public interest in the context of the parliamentary elections as of February 2019. The public found out about the CCM solution more than a week later, when the CCM decision was published on its website.

As regards the ban to vote using the identity card, the Ombudsman argued that it is discriminatory, because the identity card is used for voting in the country and the ban to vote using the identity card abroad is illogical. According to the law, the identity card can be used abroad. The identity card data allows identification of the voter just like the passport and the electronic voters' system makes the repeated voting virtually impossible. The CCM didn't consider this issue at all.

With respect to the impossibility of voting abroad with expired documents, this limitation is not clearly stipulated by [Art. 58 of the Electoral Code](#). Between 2010 and 2018, the voting using expired documents was authorized by the Central Electoral Commission (CEC). However, the CCM found that the ban on voting using expired documents is constitutional. According to the CCM, the obligation to hold valid documents preserves the contact between the citizens from abroad and the state, prevents electoral frauds and does not represent a disproportionate measure, because the elections are announced in advance and citizens residing abroad have sufficient time to obtain valid passports.

[On 8 February 2019, the Coalition for Free and Fair Elections](#) expressed its regret regarding the decision of the CCM and encouraged the CEC to adopt a decision allowing the citizens of the Republic of Moldova to vote at the parliamentary elections of 24 February 2019 using expired documents. The Coalition argued that the decision of the CCM does not constitute a legal impediment for that. [On 28 November 2014, the Supreme Court of Justice \(SCJ\)](#) had already established that the failure to hold

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valid documents is not a condition stipulated by the law for the deprivation of the right to vote. In [2010](#), [2014](#) and [2016](#) the CEC allowed voting using expired documents. The CEC's previous practice created an expectation among citizens that they would also be able to vote at the parliamentary elections in 2019 using expired documents. The number of citizens with expired

ALTHOUGH FOR 10 YEARS IT WAS POSSIBLE TO VOTE USING EXPIRED DOCUMENTS, IN 2019 THE CEC DID NOT ALLOW IT

documents is impressive. There were 409,791 citizens with expired passports in October 2016.

On 14 February 2019, [the CEC issued a press release](#) suggesting that it would not adopt a decision to allow voting using expired documents. The CEC referred to the CCM decision.

ON THE EVE OF THE ELECTIONS, FACEBOOK BLOCKED OVER 200 FAKE ACCOUNTS TARGETING THE REPUBLIC OF MOLDOVA

On 13 February 2019, 10 days before the parliamentary elections, [Facebook social network announced that it had blocked](#) over 200 accounts and web pages addressed to the Moldovan public. These were managed by people who were hiding their real identity. However, Facebook found that some of these people were linked to employees of Moldovan government.

FACEBOOK FOUND THAT SOME ADMINISTRATORS OF FAKE ACCOUNTS HAVE CONNECTIONS WITH THE EMPLOYEES OF THE MOLDOVAN GOVERNMENT

Administrators of the blocked accounts mostly distributed news on the most sensitive political or local issues, discussed education in Russian and English languages or promoted unification with Romania. They also distributed fake pictures, messages meant to divide society or discredit web pages that fought with fake news.

168 of the blocked accounts were Facebook accounts, 28 were web pages, and eight were Instagram accounts. One of the removed pages had over 54,000 subscribers. Blocked pages included "MoldovanDream", "Times New Moldovan" or "StopFals" project clone. Facebook specified that the blocked accounts paid nearly USD 20,000 to promote their posts on Facebook and Instagram, and payments were made in US dollars, Euro, and Romanian lei.

In November 2018, [Facebook announced that it blocked 115 accounts on the eve of the intermediary elections in the USA](#), a country with a population 100 times larger than in the Republic of Moldova. In 2019, Facebook blocked [148 accounts from Ukraine](#) that spent about USD 25,000 to promote their posts. Taking into account the population of the Republic of Moldova compared to the USA or Ukraine, the number of blocked accounts targeting the Republic of Moldova is particularly high and speaks of a high degree of manipulation of the population of the Republic of Moldova through social networks.

POLITICIANS AND PUBLIC AUTHORITIES DISTURBED BY PROMO-LEX REPORTS ON ELECTION MONITORING

In the run-up to the parliamentary elections of 24 February 2019, several politicians and public authorities seemed to be disturbed by Promo-LEX [election monitoring reports](#). Among other things, Promo-LEX reports highlight the practice of some political parties to use administrative resources, the absence of financial reports for all expenditures incurred during the electoral campaign or offering of gifts during the electoral period.

FOR THE FIRST TIME SINCE 2009, NGOS WERE NOT ALLOWED TO COMMUNICATE ABOUT THE DEVIATIONS OBSERVED ON THE ELECTION DAY

One day later, the leader of the Political Party SHOR, [Ilan SHOR threatened](#) to sue Promo-LEX for defamation, arguing, inter alia, that the organization is not independent and is subordinated to political parties.

On 10 January 2019, the member and the former chairperson of the Central Electoral Commission (CEC), Iurie CIOCAN, [stated](#) that the monitoring reports drafted by Promo-LEX represent an interference in the electoral process and may influence the voters' opinion. On the same day, Maxim LEBEDINSCHI, adviser to the President and the member of the PSRM, made similar statements in a [television show](#).

On 24 February 2019, the CEC [prohibited](#) Promo-LEX from making public statements on the election day, although, during all previous parliamentary elections Promo-LEX was allowed to provide regularly information on elections during the election day. On 22 January 2019, the members of the Civic Coalition for Free and Fair Elections (CALC) issued a [statement](#) in support of Promo-LEX. The Coalition rejected repeated defamatory attacks on Promo-LEX, reiterating that the Mission has the necessary qualification to monitor the elections, as evidenced during several monitored electoral campaigns.

On 25 February 2019, one day after the elections, the CALC also [expressed its opinion](#) on the CEC decision to prohibit Promo-LEX observers from making public statements. The

CALC noted with concern that, it was the first time since 2009, when civil society representatives were intimidated and subjected to unjustified accusations by electoral authorities.

MOLDOVA DOWNGRADED IN INTERNATIONAL RANKINGS ON DEMOCRACY AND THE RULE OF LAW

Moldova ranks 83rd out of 126 countries in the [Rule of Law Index for 2018-2019](#). Moldova obtained the lowest score for the absence of corruption, ranking 12th out of 13 at the regional level and 109th at the global level, downgrading as compared to the [Rule of Law Index for 2017-2018](#). The police sector remains the most corrupt in Moldova. The first position in the ranking on the absence of corruption is held by Denmark. Moldova holds the second weakest position in the field of regulatory enforcement, being ranked 107th. Moldova takes 91st place as concerns the constraints on government powers. As regards the criminal justice system, Moldova ranks 11th out of 13 at the regional level and 97th in the world. The domain with the best score obtained by Moldova is the order and security of persons and property - the 28th place in the world and third at the regional level.

In [the World Democracy Index](#), developed by [the Economist Intelligence Unit](#), Moldova ranks 79th out of 165 states and registers a decrease. The Republic of Moldova obtained a score that ranks it among countries with hybrid governance regimes. In Europe, the Index shows that the state of democracy has worsened over the last three years. Countries

that continue to dominate the world rankings are Norway, Iceland and Sweden. [The Index](#) is based on 60 indicators from five categories: electoral process and pluralism, functioning of government, political participation, democratic political culture and civil liberties. Moldova has the lowest score for democratic political culture.

[The Global Status of Democracy](#) is another [report](#) that analyses biennially the current trends and challenges with impact on democracy at the global level. The index comprises [an aggregated database](#) of 158 countries, based on five indicators: representative government, fundamental rights, checks on government, impartial administration and participatory engagement. In terms of representative government, Moldova has been steadily downgrading since 2010. As regards the access to justice, equality and social rights, Moldova is in the same position as in 2016. A significant decrease within the period of 2010 - 2017 was registered regarding the monitoring of the Government. Transparency and absence of corruption in administration obtained a better score than in 2016, but anyway five levels lower than in 2010. As regards the engagement of civil society, Moldova obtained a score similar to that of 2016.

GOVERNMENT AMENDS THE LEGISLATION ON PROCUREMENT AND OFFERS ELECTORAL GIFTS CONTRARY TO THE LAW

On 11 February 2019, two weeks before the parliamentary elections, the Government, through the assumption of responsibility under Art. 106¹ of the [Constitution](#), amended the Budget Law for 2019, [increasing the salaries of the heads of educational institutions and some police officers](#). On 7 March 2019, the Government, through the assumption of responsibility, approved [granting of a lump sum allowance of MDL 600 \(EUR 30\)](#) to over 600,000 people and [increased pensions](#). On the same day, [the monthly allowance paid to the holders of state awards](#) was increased. Also on 7 March 2019, the Government amended the legislation, [excluding procurement of medicines from the electronic procurement system Mtender](#) until 2021 (Mtender significantly increases the transparency of public procurement).

Under Art. 106¹ of the Constitution, the Government, de facto, replaces the Parliament while adopting laws. However, the

Government is dismissed if the Parliament, within three days following the adoption of the law, expresses the vote of no confidence to the Government. The purpose of this norm is to allow the Government to promote important reforms that cannot be promoted by the Parliament for political reasons. Under Art. 43 par. 2 of the [Law on the Government](#), assumption of responsibility can only take place in case of "urgent" measures. The same norm also stipulates that assumption of responsibility can only take place if the failure to adopt the act promptly affects the "protection or realization of the public interest".

None of the above mentioned draft laws stipulates what was the urgency of adopting them, especially since the Parliament adopted the Budget Law for 2019 and the Budget for Social Insurance few months ago. Furthermore, it is not clear why an increase of social benefits or lump sum allowances is an emergency. Introducing them a few weeks later could not have

significant negative consequences for the society. Moreover, reducing the transparency of the public procurement system cannot serve a public interest in a democracy.

Another conceptual issue is whether the Government, in general, can pass laws through the assumption of responsibility after the expiry of Parliament's term of office. On 30 November 2018, the mandate of the Parliament expired, and after that it could not pass organic laws (the laws on the allocation of funds are organic laws). Taking into account that the assumption of responsibility by the Government is an act of substitution of the Parliament, and that after 30 November

2008 the Parliament could not adopt organic laws, it follows that the Government could not assume responsibility for such acts either. This conclusion is also supported by the fact that, after 30 November 2018, the Parliament could not, de facto, dismiss the Government, because it was not functional. In 2013, [the Constitutional Court explained](#), in a similar situation, that such a behaviour violates the principle of the separation of powers. The opposition did not appeal against the above mentioned acts to the Constitutional Court, nor did it react trenchantly. Apparently, the cause of that is that the opposition did not want to be accused of being against the increase of social benefits for the population on the eve of elections.

JUSTICE

INTERNATIONAL COMMISSION OF JURISTS: IN MOLDOVA THE INDEPENDENCE OF JUSTICE IS FRAGILE

On 13 March 2019, [the International Commission of Jurists \(ICJ\)](#) presented [at a public event a report on the independence of judges in the Republic of Moldova](#). The report was drawn up following the visit to the Republic of Moldova at the invitation of the Legal Resources Centre from Moldova in November 2018. The report includes recommendations to ensure the full independence of judges and increase the efficiency of justice in the country. The ICJ also drafted reports on justice in the Republic of Moldova in [2004](#) and [2012](#).

In the 2019 report, the ICJ acknowledged that important progress had been achieved in many areas, including in efforts to secure audio-recordings of all court hearings, the introduction of a system of random allocation of cases, and staff and salary increases for all judges. However, the implementation of the most crucial legal reforms is significantly lagging behind and often lacks political will. The ICJ concluded that, although some legislative reforms are needed, it is much more important to change the mentality of judges, who must protect their independence.

A culture of excessive hierarchy remains prevalent among judges. The Superior Council of Magistracy (SCM), instead of playing its crucial role of defending the independence of judges, has become an instrument of pressure and a threat for them. The members of the ICJ mission heard stories about judges who live in fear: the fear of expressing their opinion about the situation in the justice or the fear of prosecution for

ACHIEVING JUDICIAL
INDEPENDENCE
REQUIRES, PRIMARILY,
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ATTITUDE

issuing decisions contrary to the interests of the prosecutor's office or the people in power.

The ICJ recommended the SCM and other public institutions to encourage judges to exercise their duties independently. Transparency, pluralism and free, respectful and competent opinion, even if critical, should be the cornerstone of the judiciary. The ICJ proposed to change the composition of the SCM by removing the ex-officio membership of the Minister of Justice, the Prosecutor General and the President of the Supreme Court of Justice (SCJ) and to increase the number of elected members from among the judges from the first instance courts. The ICJ also recommended to abolish the initial appointment of judges for a period of five years, which considerably affects the independence of judges. The ICJ also recommended the repeal of Art. 307 of the Criminal Code, which allows judges to be convicted for judgements that prosecutors consider contrary to the law. This is a tool of pressure on judges in hands of the Prosecutor's Office.

The ICJ recommended the SCM to provide reasons for its decisions on the appointment and promotion of judges and not impede judges from participation in events, allowing them to speak freely about the challenges they face. The Association of Judges from Moldova was encouraged to act openly and consistently for the defence of the independence of judges. A plurality of opinions must be ensured in the judiciary, including through the establishment of additional associations or groups that will contribute to strengthening the independence and efficiency of the judiciary.

MORE THAN 80% OF LAWYERS BELIEVE THAT JUDGES IN MOLDOVA ARE NOT INDEPENDENT

In January 2019, CBC AXA launched [the results of a survey among lawyers on the judiciary](#) in the Republic of Moldova. The survey was conducted in November - December 2018 at the request of the Legal Resources Centre from Moldova. 14% of all active lawyers in the Republic of Moldova were interviewed.

Only 43.7% of respondents consider that the quality of justice is better in 2018 than in 2011.

In 2015, 37.2% appreciated the quality of justice being better than in 2011. These figures implicitly suggest a moderate increase in the quality of justice in the last seven years.

45.3% of respondents consider that the exclusion in 2012 of the obligation of the first instance court to provide reasoning for judgements in civil cases was an appropriate measure, and 36% disagree with it. Only 22% of respondents believe that mandatory judicial mediation of civil cases, introduced in 2012, reduced the workload of judges. These reforms were promoted by the leadership of the Supreme Court of Justice of that time.

81% of the surveyed lawyers consider that the judges of the Republic of Moldova were not independent in 2018. Only 28% of lawyers believe that judges were more independent

in 2018 than in 2011. These figures suggest that there are some serious challenges with the independence of judges in Moldova.

ONLY 29% OF LAWYERS BELIEVE THAT THE LAW IS APPLIED EQUALLY TO ALL LITIGANTS

Only 29% of respondents believe that the law is applied equally to all litigants and only 35% of lawyers consider that the decisions of judges are fair and adopted without external influence.

The lawyers who do not believe that solutions given by judges are fair, consider that they are influenced by: politicians (90.7%), prosecutors (83.9%), other judges (68.2%), Superior Council of Magistracy (65.1%), parties to the trial (58.3%), policemen (38.5%) and the press (27.6%).

As regards the evolution of the corruption phenomenon in the country since 2011, only 26.7% of the respondents answered that corruption had decreased, 31.3% said it was at the same level and 38.7% declared that it had increased. As regards the evolution of the corruption phenomenon in the justice sector, 26% of the respondents answered that, since 2011, the corruption in justice had decreased, 35.3% claimed that it was at the same level and 33.7% said that it had increased. These answers confirm the general perception among the population that corruption is widespread in Moldova and that results in fighting corruption are not encouraging.

WHAT ARE THE FACTORS THAT INFLUENCE THE CONFIDENCE IN THE JUDICIARY AND HOW IT VARIED OVER TIME?

In March 2019, the sociologist Vasile CANTARJI, in collaboration with the Legal Resources Centre from Moldova, published an [analytical note regarding the confidence of the population in the justice system of the Republic of Moldova between 2001 and 2018](#). The document analyses the confidence in the judiciary and explains the factors that could have influenced it. The author concludes that the first group of factors influencing the confidence in the judiciary is related to the interdependence of confidence in the judiciary and confidence in the other state institutions. The factors from the second group are related to the media coverage of the judiciary. The third group of factors refers to personal experience or the experience of the social circle of the

individual coming into contact with the judiciary.

Until 2001, the confidence in the judiciary was higher than in the other central state institutions (the Parliament, the Government, and the President of the country). The “soaring” in the level of confidence in the central state institutions that registered after the Party of Communists (PCRM) came to power in 2001. This, however, did not determine the increase of confidence in the judiciary. During the entire period of the PCRM governance (2001-2009), the level of confidence in the judiciary was around 30%, lower than in the other state institutions. After 2009, the levels of confidence in the judiciary and other central state institutions equalized and now vary around 15-20%.

CHANGES IN THE PROCEDURE OF SELECTION AND PROMOTION OF JUDGES - WHAT ARE THE NEW RULES ABOUT?

On 20 December 2018, based on a [package of laws](#) on the judiciary adopted by the Parliament in July 2018, the Superior Council of Magistracy (SCM) drafted a new [regulation](#) regarding contests for the appointment and promotion of judges. Many innovations of the new Regulation were [recommended by the Legal Resources Centre from Moldova back in 2017](#).

The new Regulation introduces the rule of organizing contests twice a year. This will allow candidates to plan their career in advance and ensure greater predictability in the system of appointment and promotion of judges. Additionally, it will save resources and time for the SCM, as until December 2018, the SCM has been running separate contests for each vacancy.

Another important change regards the obligation of all candidates for the position of judge to express their choice for the vacant positions announced in the contest, but also giving the priority of choosing vacant positions to the candidates with the highest score, in the descending order of their average grade at the contest. In case of an equal score, priority will be given to candidates with more work experience in the field. This will constitute an advantage for the best candidates. This system will also ensure that all vacancies are filled in, including

those in the regions remote from the capital, which are less preferable. Between 2013 and May 2017, on average, 12.2 candidates for a position of judge took part in the contest in Chişinău municipality, while for other positions this figure did not exceed 2.2 candidates per contest. Most of the contests were cancelled because no candidates applied.

The results of the examinations at the National Institute of Justice in the case of candidates who want to become judges and the performance evaluation results for the judges in office have a weight of 50% of the score, while 30% of the score represent the results of the evaluation by the Board for Selection. For the first time, interviews with the SCM will have a weight of 20% of the score. Thus, the SCM will have the opportunity to give a new appreciation and directly influence the final score obtained by the candidates. Until December 2018, although formally, the SCM could not directly score the candidates, the results of the interview with the SCM were often decisively influencing the results of the contests. Between 2013 and May 2017, out of 115 judges proposed by the SCM for appointment following a contest involving participation of more than one candidate, at least 72% were candidates who did not receive the highest score in the selection and evaluation procedures.

THE SCM APPROVED NEW REGULATIONS ON DISCIPLINARY PROCEEDINGS AGAINST JUDGES

On 14 October 2018, amendments to the [Law on Disciplinary Liability of Judges](#) entered into force (more details about the amendments can be found [in the LRCM Newsletter no. 19](#)). In order to comply with them, by the [decision of the Superior Council of Magistracy \(SCM\) no. 505/24 as of 13 November 2018](#), the new Regulation on the activity of the Disciplinary Board was approved. It specifies the issues related to the selection of the members of the Disciplinary Board and adapts the mechanism for examining disciplinary complaints against judges.

On 19 October 2018, the amendments to the [Law on the SCM](#) entered into force. The amendments provide for an increase in the number of judicial inspectors from five to

seven and operational autonomy for the Judicial Inspection, as well as regulate in more detail the activity of the Judicial Inspection. In order to comply with this law, the Regulation on the organization, competence and functioning of the Judicial Inspection was approved by the [SCM Decision no. 506/24 as of 13 November 2018](#).

The Guide on notification of the Judicial Inspection was approved [by the SCM Decision no. 5/1 as of 15 January 2019](#) in order to inform the litigants about the Judicial Inspection. It contains graphical information on the procedure for examining a complaint and an example of a form for notification of the Judicial Inspection.

THE SCM TOOK STOCK OF THE ACTIVITY OF THE JUDICIARY AND ITS OWN ACTIVITY FOR 2018

The General Assembly of Judges was held on 1 March 2019. On the same day, the Superior Council of Magistracy (SCM) published on its web page the [report on its own activity and the activity of the judiciary in 2018](#). According to the

SCM annual activity report for 2018, the SCM proposed to the President the appointment of 19 new judges (eight from among the graduates of the National Institute of Justice (NIJ) and 11 from among experienced specialists). In 2017,

61 judges (17 from among the graduates of the NIJ and 44 from among experienced specialists) were proposed for appointment. In 2018, nine judges were promoted to higher courts (three to the Supreme Court of Justice (SCJ) and six to the courts of appeal), and four judges were transferred within the courts of the same level. In the same year four disciplinary sanctions were applied to judges, 28 judges resigned or were dismissed (eight from the SCJ, eight from the courts of appeal and 12 from the district courts). The SCM also examined 14 requests of the Prosecutor General on initiation of the criminal prosecution against nine judges (of which 12 were allowed and two were dismissed).

In 2018, the SCM ordered specialization of judges and/or panels in several areas: cases [involving minors](#), [insolvency and liquidation](#), [administrative proceedings](#), [professional integrity testing](#), [human trafficking and related crimes](#), and so on.

The SCM set the following priorities for 2019: implementation of the Law on the Reorganization of Courts, specialization of judges and their distribution among the courts and establishment of mechanisms for observing professional ethics in the justice sector.

As regards the activity of the courts, in 2018, they received a total of 303,750 cases. The number of cases per judge decreased from 648 in 2017 to 603 in 2018. In 2018, a judge received monthly, on average, 60 files and materials. This workload varies depending on the court level, as follows: SCJ

- 43 files, courts of appeal - 45 files, and district courts - 66 files.

In 2018, the courts examined a total of 248,882 cases. The number of cases examined in 2018 decreased by 1.7% as compared to 2017. The highest number of cases was examined by Centru District Court from Chişinău (44,574), Rîşcani District Court from Chişinău (22,217), Buiucani District Court from Chişinău (20,714), Centre District Court from Bălţi (17,550) and Botanica District Court from Chişinău (13,069). The fewest number of cases were examined by the courts in Vulcăneşti (1,392), Taraclia (1,318) and Bender (1,071).

**IN 2018 THE NUMBER
OF COURT CASES
DECREASED AS
COMPARED TO 2017**

In 2018 the courts of appeal had a total of 43,924 cases, decreasing by 7%. Chişinău Court of Appeal examined 33,596 of them, which represents 75% of all cases examined by the courts of appeal. In 2018 the SCJ registered 10,944 files, by 2% more than in 2017.

As to applied criminal penalties, unpaid community service was applied most often (3,385 persons), followed by a fine (2,833 persons), incarceration (2,277 persons) and suspended imprisonment (2,796 persons). One person was sentenced to life imprisonment (in 2017 - 3 persons), while imprisonment for more than 15 years was applied to 50 (in 2017 - 74 persons).

In the 27,536 of examined contravention cases 16,246 sanctions were applied, of which: arrest (264 persons), unpaid service (1,848 persons), fine (8,672 persons), warning (6 persons). In 4,781 contravention cases were discontinued.

THE PROSECUTOR GENERAL'S OFFICE TOOK STOCK OF THE ACTIVITY OF THE PROSECUTOR'S OFFICE FOR 2018

At the beginning of the year, the Prosecutor General's Office published its activity report for 2018. According to the [report](#), the institution managed, among other things, to increase the procedural independence of prosecutors, to ensure their specialization and to strengthen the operational capacities of the specialized prosecution offices. At the same time, the report lists as challenges the imperfect legal framework, as well as the delay in investigation of criminal cases.

Prosecutors conducted criminal prosecution in 47,514 cases (compared with 54,093 in 2017) and exercised criminal prosecution in 4,429 cases (compared with 3,220 in 2017). While the decrease in the number of criminal cases in 2018 is not explained in the report, according to it, the increase in the number of criminal cases investigated by prosecutors'

was determined by the legal amendments introduced in 2018. These amendments put several offences under the exclusive competence of the prosecutor, such as violation of labour rules, copyright infringements or numerous environmental and economic crimes.

**IN 2018 A RECORD
NUMBER OF
WIRE-TAPPING CASES
WAS AUTHORIZED**

According to the Prosecutor General's Office report, prosecutors submitted 5,578 requests for the authorization of special investigation measures and only 66 (1.1%) of them were rejected. The most common special measures in criminal prosecution remain the interception of communications and images - 3,928 cases. These data, however, differ considerably from the data published by the Agency for Court Administration (ACA). According to the [statistical report](#) for 2018, the courts accepted 12,128

requests of the prosecutors for wire-tapping, the highest number of interceptions ever registered in the Republic of Moldova. The difference in statistical data results from the different methodology used by the Prosecutor General's Office and the ACA, the Prosecutor's Office calculating the number

of intercepted warrants, without prolongations, while ACA calculates also prolongations. The number of wire-tapping cases in the Republic of Moldova is constantly increasing, fact confirmed both by the statistical data used by the Prosecutor General's Office and by the ACA.

ANTI-CORRUPTION AND INTEGRITY

MOLDOVA WITHOUT ANY PROGRESS IN THE FIGHT AGAINST CORRUPTION

On 29 January 2019, Transparency International launched the [Corruption Perceptions Index 2018](#) (CPI 2018). The index uses a scale of 0 to 100, where "0" means high corruption and "100" means a total absence of corruption. More than two-thirds of countries covered by the index scored below 50 points, with an average score of just 43. At the top of the ranking are Denmark and New Zealand. Somalia, South Sudan and Syria are at the opposite pole of it.

With a score of 33 points, Moldova ranks [117th out of 180 countries](#). As regards corruption, our country is worse than Niger, Zambia and Ethiopia and is at the same level with Pakistan and Vietnam. Between 1999 and 2018, the average corruption index in Moldova was [29.65 points](#), reaching an all time high of 36 points in 2012 and a record low of 21 points in 2002.

CPI 2018 reflects the perception of common routine corruption. In the case of the Republic of Moldova, the amounts of common informal payments paid by the population to the representatives of state institutions are ridiculous if compared

to the means stolen from the banking system following the theft of the billion. The issues identified in 2018 include delays in investigation of the theft of the billion, in identification of its final beneficiaries, and in [recovery of the defrauded funds](#). Moreover, adopting on the sly the law on the "[capital amnesty](#)" (which allows the legalization of means of dubious origin) and the law on conferment of the citizenship of the Republic of Moldova through investment increased the perception of corruption.

According to the Report of the World Bank "[Doing Business 2018](#)", Moldova did not register any significant progress in the business environment as well. Our country remains 44th out of 190 countries. The position of the Republic of Moldova has relatively improved in three criteria (procedure of property registration, business registration and protection of minority investors), five criteria have worsened (taxation, connection to energy supply systems, getting credits, resolution of insolvency proceedings and those regarding international trade) and two criteria remained unchanged (obtaining construction permits and contract execution).

NIA ACTIVITY IN 2018 - MINOR RESULTS, GREAT CHALLENGES

On 13 February 2019, at the meeting of the Integrity Council, the National Integrity Authority (NIA) presented its [activity report for 2018](#). According to the report, the level of public positions employment in the NIA is 34.21% or 26 employees out of 76 available units, and in case of integrity inspectors - 9 out of 46 (19.5%). The first integrity inspectors were employed in July 2018 (read in the [LRCM Newsletter no.18](#) about the procedure of selection). On 24 April 2019, the NIA [launched the fourth contest](#) for the selection of integrity inspectors.

On 1 December 2019, the new [Law on the Unitary Pay System in the Budgetary Sector](#) entered into force. According to the new law, the salary of integrity inspectors decreased by 59%. NIA [announced](#) that it had already made proposals to

the Government with a view to increasing salaries of integrity inspectors, but the procedure of their approval would take time.

In 2018, [integrity inspectors](#) examined 263 complaints and adopted 38 decisions. Out of these, nine were on the termination of the proceedings and 29 on the violation of the law (non-declaration of assets - 0, conflicts of interest - 18, incompatibilities - 9, restrictions - 2). Although the NIA regularly publishes press releases on findings of violation of law, [at the moment a single decision is published](#) (as of 11 September 2018). Para. (5) of art. 34 of the [Law on the NIA](#) stipulates that the inspector's decision (the finding act) shall be published on the official web page. According to the NIA, only the acts

that have become final are published. In fact, the provision in question imposes the obligation to publish the inspector's decision regardless of whether the act is final or not.

For the year 2019, the institution sets as priorities to increase its activity's efficiency, to complete its legal framework of activity and to increase the public trust in the NIA.

NOTORIOUS CASES

VEACESLAV PLATON: RESTRICTION OF ACCESS TO LAWYERS AND THE IMPOSSIBILITY TO GIVE TESTIMONIES AGAINST PLAHOTNIUC

Veaceslav PLATON was sentenced to 25 years of imprisonment in "BEM case" (fraud) and in "Moldasig case" (attempted fraud and active corruption). For more details on these cases, see the LRCM Newsletters [no. 20](#), [no. 16](#) and [no. 14](#). Mr. Platon is detained in Penitentiary no. 13 in Chişinău. According to a [newspaper article](#) published on 4 February 2019, Mr. Platon was asked to make statements against the leaders of ACUM Bloc in exchange for freedom. According to Mr. Platon's lawyers, between September 2018 and 4 February 2019, they had access to their client only once a week, and from 4 February 2019 they were not allowed to meet Mr. Platon.

THE PROSECUTOR'S
OFFICE DOES NOT SEE
A PROBLEM IN REFUSING
MR. PLATON TO HAVE
MEETINGS WITH HIS
LAWYERS

On 20 February 2019, a [letter](#) from Alexandru SIRGHI, cellmate of Mr. Platon, was published by media. In the letter it was written that Mr. Sirghi was proposed to kill Platon in exchange for his freedom. On 23 February 2019, the Prosecutor General's Office published [a press release](#), according to which Mr. Sirghi wrote the letter at Mr. Platon's dictation.

On 22 February, 2019, the press wrote that Mr. Platon's relatives [were informed](#) that he had been stabbed in the penitentiary. The National Administration of Penitentiaries (NAP) [denied](#) this fact. However, the lawyers were not allowed to have a meeting with Mr. Platon, because all the meeting rooms were occupied. The following day, the Ombudsman paid an unannounced visit to Penitentiary no. 13 and had a discussion with the administration of the penitentiary and with Mr. Platon. The Ombudsman [pointed out](#) that Mr. Platon did not invoke health problems. However, the lawyers were still denied access to Mr. Platon for the same reason. The lawyers of Mr. Platon mentioned that they had come to the penitentiary several times a day, including being the first lawyers who appeared in the morning, but had no access to their client anyway.

The Ombudsman's Office initiated a [mediation procedure](#) between the administration of Penitentiary no. 13 and Mr. Platon's lawyers. It failed on 1 March 2019, after the refusal of the administration of Penitentiary no. 13 to meet Mr. Platon's lawyers

on the grounds that the penitentiary did not limit their access to their client. On 5 March 2019, the Ombudsman [announced](#) that the Director of Penitentiary no. 13, Mr. Igor PÎNTEA, had informed him that Mr. Platon's lawyers will meet their client the following day. On 6 March 2019, Mr. Platon's lawyers, [accompanied](#) by the president of the Moldovan Bar Association, Emanoil PLOŞNIŢA, came to the penitentiary to meet with their client, but without success. The reason for the refusal was the same - absence of free rooms for meetings. On 7 March 2019, the Ombudsman's Office published [a press release](#) requesting the NAP to immediately ensure Mr. Platon's right to meet his lawyers as well as access to healthcare. It also indicated that it would request the Prosecutor General's Office to initiate criminal proceedings against the management of Penitentiary no. 13. On the same day, after more than a month of unsuccessful attempts, Mr Platon's lawyers [were allowed](#) to have a 30-minutes meeting with their client. Between 7 March 2019 and mid-April 2019, Mr. Platon lawyers were also refused to have meetings with their client, even if the law provides that meetings with the lawyer cannot be restricted. Mr. Platon requested initiation of criminal prosecution against persons guilty of limiting his right to meet with his lawyers. On 20 March, 4 April and 5 April 2019, Chişinău Prosecutor's Office adopted three orders on refusal to initiate criminal investigation regarding Mr. Platon's complaints, as, "according to the Registry of evidence of persons visiting penitentiary No. 13, premises for meetings with lawyers were occupied."

On 18 March 2019, an anticorruption prosecutor [had to interrogate](#) Mr. Platon in the criminal case opened in Romania, which concerns Vladimir PLAHOTNIUC, on the organization of a criminal group, fraud and money laundering. Mr. Platon's lawyer, Valeriu PLEŞCA, was subjected to body search at the entrance to the penitentiary, his papers were checked and he was requested to present for reading the documents he had with him. The lawyer refused on the grounds that these documents are protected by professional secrecy. The lawyer was denied access to the penitentiary and Mr. Platon refused to make statements in the absence of lawyers.

CASES BROUGHT AGAINST GHEORGHE PETIC – IS THIS A SELECTIVE JUSTICE?

On 12 October 2018, Gheorghe PETIC was retained, being charged with rape. He is a reserve lieutenant colonel who has worked for more than 20 years in the Border Police. He [made disclosures about the schemes of cigarette smuggling](#).

On 13 October 2018, the General Police Inspectorate distributed a [press release](#) stating that an expert conclusion showed that there was sexual intercourse between the victim and Mr Petic. The police published [the recorded call to emergency number 112](#) in which a person declared that she was physically assaulted and raped by a man in her own home. Previously, a blogger, who is writing articles favourable to the Democratic Party, published several [media materials about the alleged sexual harassment](#) committed by Mr. Petic.

Mr. Petic's lawyers [stated in a press conference](#) that the criminal case was being examined in rush. The criminal case was completed within 29 days and submitted for examination to Orhei Court. Contrary to the established practice, the lawyers were not given the opportunity to object to the case materials until the case was submitted to the court. The first hearing was set for 20 November 2018, and on 20 March 2019, the court sentenced Gheorghe PETIC to three years and six months of imprisonment and a fine of MDL 30,000.

Throughout the entire period of proceedings Mr. Petic was under arrest. During detention, Mr. Petic [was registered as an electoral competitor](#) of the [electoral bloc ACUM](#) for the parliamentary elections of 24 February 2019. [On 7 February 2019](#), the Court of Appeal dismissed Mr. Petic's request for release in order to campaign. On 22 May 2015, Ilan SHOR was released from home arrest, invoking the impossibility of detaining an electoral candidate under arrest. Under Art. 46 para. 5 of the Electoral Code, electoral candidates can

be arrested only with the consent of the electoral body at which they have been registered (see for details the [LRCM Newsletter no.8, p. 6](#)). The electoral bodies did not give their consent for the detention of Mr. Petic during the period of electoral campaign.

Gheorghe PETIC declared that he [had been subjected to inhuman and degrading treatment](#) in the penitentiary, and that the conditions in which he was detained were very poor. On 20 March 2019, [the Prosecutor General's Office issued a press release](#) stating that Mr. Petic's allegations had been checked in a criminal procedure and dismissed as ill-founded. On 26 April 2019, [a press release](#) was published on the web page of the Ombudsman's Office. Employees of the Office found that the conditions in which Mr. Petic was detained in Penitentiary No. 13 were contrary to the provisions of Art. 3 of the European Convention on Human Rights. Following the recommendations of the Ombudsman, the [penitentiary administration transferred Mr. Petic](#) to another cell.

The Members of the Parliament (MPs) of ACUM bloc requested a meeting with the detainee Petic in the penitentiaries of [Rezina](#) and [Chişinău](#) several times. The MPs invoked the Law on the Status of the MP and Art. 181 of the Executive Code of the Republic of Moldova, which stipulates that the MPs have the right to visit the penitentiary institutions without special permission. The penitentiary administration refused every time access to MPs, arguing that [no decision of the Standing Bureau of the Parliament had been presented](#).

Meanwhile, another criminal case for aggravated hooliganism was initiated against Mr. Petic, [a crime that had been allegedly committed 15 years ago](#). On 28 March 2019, the [first hearing](#) on this case was held at Taraclia Court.

ECTHR - SANCTIONING WITH IMPRISONMENT FOR EXTRAVAGANT PROTEST WAS CONTRARY TO THE FREEDOM OF EXPRESSION

On 15 January 2019, the European Court of Human Rights (ECTHR) delivered the judgement in the case of [Mătăşaru v. Moldova](#). The ECTHR found that sanctioning the applicant with imprisonment for hooliganism (Art. 287 of the Criminal Code) is contrary to the right to freedom of expression guaranteed by Art. 10 of the European Convention on Human Rights.

The applicant, Anatol MĂTĂŞARU, protested on 29 January 2013, the professional holiday of the prosecutors, starting 10.00 am, in front of the Prosecutor General's Office. He brought two hand crafted objects that resembled genital

organs. He placed the pictures of some politicians and leaders of the prosecutor's office on them. According to him, by protesting he wanted to draw attention to the influence of politics on prosecutors. The protest lasted for about an hour, being interrupted by the police.

Rîşcani District Court from Chişinău sentenced the applicant to two years of imprisonment, with the suspension of the sentence for three years. The judge noted that the applicant had been previously fined for similar acts, which did not change his behaviour. The judge considered the protest immoral,

because comparing state employees with genitals exceeds the limit allowed in a democratic society. This judgement was upheld by the Supreme Court of Justice, which considered that, given the obscene character of the protest, it was not protected by the right to freedom of expression.

The ECtHR stated that freedom of expression is applicable in this situation. The ECtHR wondered why the deed was classified as criminal hooliganism if it could be qualified as administrative offence. According to judicial practice, only serious hooliganism accompanied by violence can be

qualified under the Criminal Code. The ECtHR also noted that no judge had examined the proportionality of the applied sanction with the right to freedom of expression. The most severe punishment had been applied – imprisonment with suspension for three years. In fact, the sanction had a chilling effect on the manifestation of freedom of expression not only in relation to the applicant, but also to other persons.

The plaintiff was represented in the ECtHR by Vladislav GRIBINCEA and Pavel GRECU from the Legal Resources Centre from Moldova.

HUMAN RIGHTS

MOLDOVA, ONCE AGAIN “LEADER” IN TERMS OF THE NUMBER OF APPLICATIONS FILED TO THE ECtHR

On 25 January 2018, the [Legal Resources Centre from Moldova \(LRCM\)](#) launched an [Analytical Note](#) regarding Moldovan cases at the European Court of Human Rights (ECtHR) in 2018. The analysis carried out by the LRCM was based on the [ECtHR's Activity Report](#) for the respective year and the study of the [ECtHR's jurisprudence](#) on Moldovan cases.

Although in 2018 the ECtHR registered by 32% fewer applications than in 2017, the decrease is mainly determined by the fall of popularity of the ECtHR, after it rejected, without a clear motivation, of 300,000 requests in 2011-2018. This has had a discouraging effect on lawyers.

Despite the decrease registered in 2018, the number of per capita applications filed to the ECtHR against Moldova is very high. Moldova ranked 5th out of 47 member countries of the

Council of Europe in this regard. In 2018, Moldovans applied to the ECtHR 2.5 times more often than the European average. By 31 December 2018, the ECtHR delivered 387 judgements in Moldovan cases, of which 33 were delivered in 2018. The most frequent types of violations found by the ECtHR in Moldovan cases are non-enforcement of court judgements (old violations), ill-treatment, inappropriate investigation of ill-treatment and deaths, detention in bad conditions, arbitrary detention and unlawful quashing of final court judgements. Based on all judgements and decisions delivered by 31 December 2017, the Republic of Moldova was obliged to pay over EUR 16.5 million (EUR 234,050 in 2018).

On 31 December 2018, 1,204 Moldovan applications were still pending at the court, and 93% of them are prima facie successful.

THE REDRESS MECHANISM FOR THE DETENTION IN POOR CONDITIONS HAS COME INTO EFFECT

Until 31 December 2018, the European Court of Human Rights (ECtHR) found violation of Art. 3 of the European Convention on Human Rights due to poor conditions of detention in 45 judgements. The first such convictions were made as early as in 2005. On 15 September 2015, the ECtHR indicated in [Shishanov](#) case that Moldovan authorities must introduce a national redress mechanism for detention in poor conditions. [Legislative amendments introducing a redress mechanism for detention in poor conditions were published in the Official Gazette](#) on 20 October 2017 (see Articles 178, 385, 473²-473⁴ of the

PERSONS DETAINED IN
POOR CONDITIONS ARE
ALREADY ENTITLED TO
DEMAND A REDUCTION IN
SENTENCE OR FINANCIAL
COMPENSATION

Criminal Procedure Code (CPC)). They had to enter into force on 1 January 2018, but later the Parliament decided to [postpone the term](#) of entry into force of these provisions until 1 January 2019.

A detainee can benefit from this mechanism if at the stage of prosecution or trial of the case s/he has been detained in poor conditions for at least 10 days. The action shall be filed to the court in the territorial area of the penitentiary institution where the person is detained or has been detained until the release. The case shall be examined

by the investigative judge with the participation of the detainee and the penitentiary institution. The burden of proof lies with the penitentiary institution. It shall report to the court within 10 days, responding to all the claims made by the person, mentioning the measures taken to remove the challenged detention conditions.

If the judge finds that the person is detained in poor conditions, s/he shall oblige the administration of the penitentiary to remove the poor conditions of detention within a maximum of 15 days. The penitentiary institution shall inform the court about the execution of the ruling. The maximum time limit for examining the case is one month. The ruling of the investigative judge is enforceable immediately and can be appealed in 10 days from the date of delivery.

In the event of finding the detention in poor conditions during the pre-trial detention, the person sentenced to imprisonment has the right to a reduction of the term of detention. The reduction shall be calculated as follows: two days of imprisonment for a day of pre-trial arrest (Art. 385 para. 5 of the CPC). In the case of detention in poor conditions after conviction, the reduction is from 1 to 3 days for 10 days of detention in poor

conditions (Art. 473/4 para. 4 of the CPC). If it is not possible to fully deduct the reduction of the penalty, in respect of the remaining period, the convicted can request compensation up to 2 conventional units (MDL 100) for each day of detention in poor conditions. A convicted person sanctioned with a non-custodial main punishment is released from serving the sentence, if s/he has been detained in pre-trial arrest in poor conditions for at least three months.

The time limit for filing the action for financial compensation is four months from the date of termination of the detention in poor conditions and at any time during the period of such detention. In the case of persons who have filed an application to the ECtHR, they can bring an action within four months from the entry into force of the law.

Following the entry into force of the law, [the ECtHR declared inadmissible more than 100 Moldovan applications](#) with claims concerning detention in poor conditions. The Court suggested to the applicants to exhaust the new national mechanism. If they are not satisfied with the compensations they have received, they will be able to file a new application to the Court.

THE US STATE DEPARTMENT PUBLISHED THE REPORT ON THE HUMAN RIGHTS PRACTICES IN THE REPUBLIC OF MOLDOVA

On 13 March 2019, the US State Department published the [report on human rights practices in Moldova in 2018](#). Human rights issues in Moldova included torture at prisons and psycho-neurological institutions, harsh prison conditions, arbitrary arrest, selective justice, restrictions on freedom of the media, expulsion of political asylum seekers to a country where they had a well-founded fear of persecution, high-level corruption, cases of forced abortion, rape and other violence against persons with disabilities in state institutions. The report stated that impunity remained a major problem. The authorities rarely managed to punish people accused of human rights violations or corruption. Selective prosecution of officials for political reasons has intensified. Opposition parties reported increased pressure and politically motivated detentions.

The State Department has indicated that lawyers of detainees in politically sensitive cases reported difficulties and restrictions

**US STATE DEPARTMENT:
IMPUNITY REMAINS A
MAJOR PROBLEM IN
MOLDOVA**

in accessing their clients, mentioning the case of Platon (see more details in this Newsletter). The report also mentioned the [case of the seven Turkish teachers](#) expelled to Turkey under suspicious circumstances. The report also described the case of Andrei BRĂGUȚĂ, who was found dead in Prison No. 16 in August 2017. The report highlighted that the Government has made little progress in making liable the people guilty of the violence from April 2009. Prosecutors opened 71 criminal cases against the personnel of law-enforcement bodies regarding the cases as of April 2009. The Prosecutor General's Office finalized and sent to court 27 cases against 46 police officers. The judges issued final decisions in 23 cases that concern 36 law enforcement employees. The courts acquitted 36 police officers, issued four administrative fines, ten suspended sentences with imprisonment, and two imprisonment sentences. Five criminal cases against 11 law enforcement employees were still pending in courts.

THE OMBUDSMAN: THE PARLIAMENT AND THE GOVERNMENT ARE THE MAIN INSTITUTIONS THAT VIOLATE HUMAN RIGHTS

At the end of 2018, the Office of the Ombudsman presented the results of the [study "Perceptions of Human Rights in the](#)

[Republic of Moldova \(2018\)](#)", based on the research performed by iData company. The study covers the period of 2016-2018

and analyses how well people know their rights, to what extent they believe their rights are respected and how responsible institutions contribute to their observance.

43.8% of respondents stated that during the period of 2016-2018 the general situation regarding human rights did not change. At the same time, in 2018 several respondents said the human rights situation had rather improved (35.8%) than worsened (16.4%).

About half of respondents said that at least one of their rights had been violated in the past two years. The rights to healthcare, social protection and education were violated most often. Also, a large number of respondents said that the right to a fair trial was not fully respected and that they did not trust in the judiciary of the Republic of Moldova. Only 21.8% of respondents considered this right to be respected. As compared to 2016, the proportion of those who believe that their right to vote and to be elected was violated has increased. The most respected rights in Moldova are the rights to culture, cultural identity, freedom of movement, property, personal freedom and the right to privacy. There is a slight improvement in ensuring personal security and the right to receive public information, but the right to expression is in decline.

When faced with violations of their rights, almost half of the respondents prefer not to address any institution. The majority

of respondents who addressed an institution, contacted the police and the mayor's office.

The respondents stated that respect for human rights was primarily ensured by the media, followed by the non-governmental organizations, whose role increased by 16.8%. The President of the country ranks third, although in 2016 he was on the last place. The Parliament and the Government, as in 2016, remain the two main institutions that violate human rights. The last are also the institutions from which people have the highest expectations.

The level of information of the population concerning human rights has not changed significantly since 2016. In 2018, the proportion of those who consider themselves well informed increased by 2% and the proportion of people who feel they are not at all informed decreased. The least informed are people from rural areas and small towns. The accessibility of information on human rights, although some progress was attested, is still limited for persons from rural area and vulnerable groups. As regards the sources of information, in 2018 the Internet became the second most important source, after mass media (printed media, TV and radio).

More than 80% of respondents believe that elderly people, persons with disabilities, children, women and victims of domestic violence have the greatest need to have their rights protected.

THE EUROPEAN INSTITUTIONS CALLED FOR THE ADOPTION OF A REGIME OF SANCTIONS FOR SERIOUS VIOLATIONS OF HUMAN RIGHTS

On 22 January 2019, the Parliamentary Assembly of the Council of Europe (PACE) adopted the [Resolution 2252 \(2019\)](#) on the introduction of sanctions for combating impunity for serious violations of human rights. PACE noted that the impunity of the perpetrators of serious violations of human rights and corruption are threats to the rule of law. PACE recalled the [Resolution 1966 \(2014\)](#) "Refusing impunity for the killers of Sergei Magnitsky" noting that instead of holding to account the perpetrators and beneficiaries of the crimes committed against Mr. Magnitsky and disclosed by him, the Russian authorities harassed the victim's family and his former client, William BROWDER. The Resolution states that several countries, including Estonia, Latvia, Lithuania, the United Kingdom, Canada and the United States adopted "Magnitsky laws". These laws allowed for targeted personalized sanctions, such as visa bans and freezing of the assets of perpetrators and beneficiaries of serious violations of human rights. PACE called on all member states of the Council

THE DRAFT OF
"MAGNITSKY LAW"
WAS REGISTERED AGAIN
IN THE PARLIAMENT
OF THE REPUBLIC OF
MOLDOVA

of Europe to consider enacting similar legal regulations.

The European Parliament also [adopted](#) on 14 March 2019 a [Resolution](#) calling on the European Council, which brings together the leaders of the Member States, to adopt a new sanctions regime at the level of the European

Union (EU) for grave violations of human rights, in particular by freezing assets and imposing bans on entering the EU. These should target individuals, states, and non-state actors responsible or involved in grave human rights violations and systemic corruption. The members of the European Parliament indicated that the regime should be in line with the highest standards in terms of protection and respect of the procedural rights of the concerned persons or entities. Decisions to list or delist individuals or entities subjected to sanctions should be based on clear and distinct criteria and be directly related to the committed offence.

On 26 July 2018, a group of members of the Parliament of the Republic of Moldova registered a draft law called "[Magnitski law](#)". The purpose of the draft law is to create legal instruments both to protect the domestic financial and banking system from abuse and to impose restrictions on persons who commit acts of corruption and human rights violations. The draft law provides for the restriction of the entry into the Republic of Moldova of persons who have committed serious acts of corruption and violation of human rights, the withdrawal or refusal to grant the citizenship of the Republic of Moldova to

the persons concerned, the prohibition of using the domestic banking system and the application of restrictive measures on the assets possessed by the mentioned persons on the territory of the Republic of Moldova. With the expiry of the term of office of the former Parliament, this draft law became null under Art. 47 para. 12 of the [Rules of Procedure of the Parliament](#). On 25 March 2019, the Parliamentary Bloc ACUM [registered a package of laws](#), including the draft of Magnitski law (pages 52-65). The Parliament registered this package, but has not yet published it on its webpage.

ORHEI PROSECUTOR'S OFFICE: THE USE OF TEAR GAS AGAINST PROTESTERS WAS JUSTIFIED

On 20 March 2018, during a protest in front of Orhei Court, police [used tear gas](#) against protesters. According to [Amnesty International Moldova \(AIM\)](#), the pictures taken at the protest did not indicate the presence of any danger to public order, clashes or violence. Later, the protesters needed medical assistance. [Promo-LEX association](#) considered that the use of tear gas was a disproportionate measure directed against the protesters, who did not pose any danger to the police truck or to the law enforcement agents. They mentioned that about 40 people participated in the protest, and that the 20 police officers that were present there were sufficient to ensure the necessary manoeuvres without applying the tear gas. Both AIM and Promo-LEX indicated that policemen were wearing balaclava face masks, and individual identification marks of police officers were missing on their uniforms, making almost impossible to identify police officers in case of abuse.

AIM requested the Prosecutor General's Office and the General Police Inspectorate (GPI) to carry out, as a matter

of urgency, a prompt and objective investigation concerning the allegations of excessive, unjustified and abusive use of tear gas by the police forces at the protest from 20 March in front of Orhei Court. On the same day, the GPI [declared](#) that the policeman who used special means had been physically abused by one of the protesters and threatened with physical altercation by a man from the crowd.

Under Art. 4 para. (3) of the [Law on Police Activity and the Status of Policemen](#), the application of special means is allowed only if non-violent methods do not ensure the fulfilment of the police duties. Article 7 of the [Law on the Application of Physical Force, Special Means, and Firearms](#) provides for cases where special means can be used, including at the repelling of attacks on persons or buildings and the elimination of mass disorder. Under Art. 15 of the same law, the special means shall be used after the second warning on the use of force. According to [mass media](#), Orhei Prosecutor's Office considered that the use of tear gas against protesters on 20 March 2019 was justified.

CRIMINAL SUBCULTURE AND DETENTION CONDITIONS IN THE FOCUS OF THE CPT

In December 2018, the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) [published the report on its visit to the Republic of Moldova in June 2018](#). The purpose of the visit was to assess the progress made in implementing the CPT's previous recommendations on the situation in prisons, in particular as regards the phenomenon of an informal prison hierarchy (criminal subculture), inter-prisoner violence and intimidation, as well as the conditions of detention in prisons. While drafting the report, the CPT took into account the findings and recommendations of the [Baseline study into Criminal Subculture in Prisons in the Republic of Moldova](#).

The CPT noted the efforts made by the authorities to improve the relations between the staff and juveniles in the Goian Prison.

However, Chişinău and Soroca Prisons failed to provide a safe environment. There were still acts of inter-prisoner violence, intimidation and exploitation, which were the direct result of the existence of informal power structures among inmates. The CPT expressed its concern that the informal hierarchy of detainees had developed into a profit-oriented criminal organization. The CPT stated that the authorities did not even seem to be aware of the serious consequences that informal prisoner hierarchies might have on the entire penitentiary system and even on the society as a whole.

The CPT recommended that the authorities take particular actions to ensure the security and safety of detainees in the prison system. This will require the removal of the informal hierarchy in order to maintain order in penitentiaries, the

implementation of a proper distribution and classification system for detainees, the establishment of an efficient recruitment and training system for prison staff and the supervision of staff in detention facilities.

As regards the conditions of detention, the CPT noted that a considerable number of detainees from Chişinău and Sorooca prisons continued to be detained under conditions that could be easily considered inhuman and degrading.

[On 21 March 2019](#), the Government of the Republic of Moldova published a report on the visit of the CPT in June 2018. The CPT was informed about the approval of a Plan on reduction of violence in the prison system. The purpose of this document was to develop an individual plan for the prevention of violence. Beneficiaries of the programme are detainees who committed violent crimes and those with aggressive behaviour during detention, including detainees that are under the supervision of the psychologist. In 2018, 369 convicts benefited from the personal security mechanism (Art. 206 of the Executive Code) and 86 people were transferred to other

penitentiary institutions because they had refused to be part of the criminal subculture groups.

As regards the improvement of detention conditions, the Government informed the CPT about the budget allocations for investments in the penitentiary institutions. The Law on the State Budget for 2019 provides for expenses over MDL 209 million in this regard. This amount will be spent for the construction of the arrest house in Bălţi municipality (MDL 40 million), the reconstruction of Leova, Goian and Rusca penitentiaries (MDL 10 million) and the construction of the penitentiary in Chişinău (MDL 160 million). In the same context, in April 2019, the [Court of Accounts presented the audit of the consolidated financial reports of the Ministry of Justice](#). It contains data on the execution of capital investments within the penitentiary system. The Court of Accounts found that the construction of the penitentiary in Chişinău mun. is 54 months late and that during the years of 2014-2018, under the annual budget laws, a total of MDL 121.36 million was allocated for capital investments, being used only MDL 23.1 million or 19% of the total allocated funds.

CIVIL SOCIETY

THE VENICE COMMISSION ANALYSED THE RESTRICTIONS IMPOSED IN SOME COUNTRIES ON FOREIGN FUNDING OF THE NGOs

On 18 March 2019, the Venice Commission published a [report](#) on standards for limiting the foreign funding of non-governmental organizations (NGOs) in the member states of the Council of Europe. The opinion of the Commission comes at the time when Ukraine, Hungary and Russia impose limitations on foreign funding of the NGOs. The Venice Commission recommended that states, among other things, facilitate their access to finance, including to foreign one. Getting funds, including from public or private sources, local or foreign, is a prerequisite for an NGO to be able to carry out its functions independently. Freedom of association would be irrelevant if people wishing to join were not be able to access funds, including foreign ones.

**VENICE COMMISSION:
FREEDOM OF
ASSOCIATION WOULD BE
IRRELEVANT WITHOUT
THE POSSIBILITY OF
ACCESSING FUNDS,
INCLUDING FOREIGN
ONES**

the legality and honesty of the NGO sector financing or an absolute restriction on foreign funding, including the need for prior authorization before obtaining such funds, cannot be considered as a reasonable measure that pursues a legitimate aim.

It is the responsibility of the authorities to assess whether, as a whole, all imposed legislative and regulatory measures create an atmosphere of excessive monitoring of the NGOs activities by the state. The Venice Commission considers that no legal regulation in any form or manner should violate the democratic rights of individuals to express their opinions, to carry out advocacy activity and campaigns for political change under the pretext of “preventing NGOs to be used for political purposes.” Restrictions on the association activity for the mere reason that it promotes “political objectives” are illegal. Nevertheless, it is acceptable to oblige lobbyists to reveal their sources of funding. However, this obligation must be applied to all lobbyists, not just to NGOs.

Under certain circumstances, NGOs may be limited in their possibility to access foreign funds, but only with a view to preventing money laundering and combating terrorism. Restrictions on funding can be introduced to prevent real and imminent danger. The mere concern or suspicion about

THE ATTEMPTS TO DETERIORATE THE CSO ENVIRONMENT IN MOLDOVA DOCUMENTED IN A "RADIOGRAPHY"

On 20 March 2019, the Legal Resources Centre from Moldova, together with 21 other civil society organizations (CSOs), presented [a document](#) that provides evidence and analysis of the attacks against the CSOs in Moldova that took place in 2018. Based on a [similar publication](#) drafted in 2017, "the [Radiography](#)" mentions over 50 media articles and publications, statements and actions of politicians or authorities. They present the CSOs in an unfavourable light, as organizations that are involved in money laundering and promote the interests of other countries or of the opposition.

In several cases, the authors of the document found coordinated actions aimed at denigrating the image of the CSOs, committed by media portals publishing materials favourable to the Democratic Party of Moldova. "Attacks" were launched especially when the CSOs criticized actions or initiatives of the government, such as the initiatives

CSOs ARE INCREASINGLY
DENIGRATED AFTER
CRITICIZING THE
GOVERNMENT

of 2018 on decriminalization of economic crimes or laws on tax amnesty and capital liberalization.

The phenomenon of attacks on the civil society activity is not an isolated issued characteristic for the Republic of Moldova, but rather a trend in the countries with a fragile democracy. One of the many negative consequences of these actions is that it forces the CSOs and civic activists to self-censor or be

less active. Based on the experience of other states in the region, such as the Russian Federation or Hungary, stigmatization of CSOs can be a precursor to persecution. The main purpose of the "radiography" is to draw attention to the danger of orchestrated attacks

on the activity of CSOs and to determine public authorities and individuals supporting those attacks to stop them and allow the CSOs to act freely. This document also aims at enabling CSOs to formulate a prompt response to attacks against them.

THE SITUATION OF HUMAN RIGHTS DEFENDERS IN MOLDOVA IN THE FOCUS OF INTERNATIONAL INSTITUTIONS

Within the period of 25-29 June 2018 - Michel FORST, [UN Special Rapporteur on the situation of human rights defenders](#), paid a visit to the Republic of Moldova. Mr. Forst had meetings with the authorities, members of the diplomatic corps and over 110 human rights defenders on both sides of the Dniester River. At the end of the mission, he made a [statement](#) on the preliminary conclusions and recommendations (see more details on the content of the statement in the [LRCM Newsletter no. 18](#)).

At the session of the UN Human Rights Council as of 25 February - 22 March 2019, Mr. Forst presented a [report](#) on his visit to Moldova. The report states that endemic corruption is one of the factors that endangers the strengthening of democratic institutions, respect for the rule of law and the promotion of human rights. Mr. Forst stressed that human rights defenders in the Republic of Moldova face several challenges, including the shrinking of space for the activity of the civil society. The Special Rapporteur noted that public authorities had stigmatized and discredited human rights defenders and their work, including through politically affiliated mass media. Mr. Forst was informed about intimidations and threats addressed to human rights defenders from the part of public officials, especially when they criticized the decisions taken by the Government. Civil society organizations (CSOs) that promote political rights were accused of being biased and of

following a foreign agenda that is contrary to national interests. CSOs and individual human rights defenders informed the Special Rapporteur that, in practice, their contributions had not been taken into account by the authorities. Moreover, it was difficult for them to engage in real dialogue with civil servants in conducting their human rights promotion activities.

The report indicated that some groups of human rights defenders are particularly vulnerable, such as lawyers, journalists, independent judges, defenders of sexual and transgender minorities rights, women's rights defenders and human rights defenders from Transnistria. The Special Rapporteur recommended to public authorities, among other things, the adoption of the draft law on non-commercial organizations in the version that had been consulted with civil society, the implementation of zero tolerance for corruption policy and the provision of a safe and permissive environment for human rights defenders.

On 29 March 2019, the [Commissioner for Human Rights of the Council of Europe](#) published a [report](#) on the situation of human rights defenders in the member states of the Council of Europe. The report stated that authorities in the Republic of Moldova became more reluctant to involve CSOs in drafting legislation, which undermines the trust of civil society in central and local authorities.

THE 2% REGULATION HAS BEEN AMENDED

On 18 January 2019, the Government approved a series of [amendments](#) to the [Regulation on the percentage designation mechanism](#). Under the [legislative amendments of November 2018](#) all responsibilities related to drafting and maintaining the

List of 2% beneficiaries were transferred from the Ministry of Justice to the [Public Services Agency \(PSA\)](#). The application for registration in the List of beneficiaries can be submitted both in writing and electronically. The PSA is obliged to inform the organizations that are already on the list about their debts to the state budget and give them 10 working days to pay the debts.

One of the approved amendments is to inform the individual who wants to make the percentage designation about his/her debts. At the moment of the submission of the income tax declaration, the person will be entitled to request information from the tax officer about the existence/absence of income

tax debts to the budget. The persons who activated the taxpayer's personal account on the State Tax Service (STS) portal will receive a notification whether their percentage designation was validated or not.

CSOs GOT THE RIGHT TO OBTAIN FORMATION ON THE NUMBER OF PERSONS WHO HAD DESIGNATED 2% IN THEIR FAVOUR

The statistical report of the STS was completed with the following data - the age of the taxpayers who designated the percentage, the number of designations done by submitting the declaration electronically or on paper, the statistical data on the reasons

for not validating the designations and the number of refusals to validate per each reason, the total sum of designations and the sum of designations that were not validated. In addition to the statistical report, the beneficiary organizations will also be able to request information on the number of natural persons who have transferred percentage designations for their benefit and the locality from which they come from.

IN BRIEF

On **11 December 2018**, for a period of six months, [the Superior Council of Magistracy \(SCM\) reduced the workload on examination of cases by the Chairperson and Deputy Chairpersons of Chişinău Court by 10%](#), in connection with the specialization of the offices. In [December 2016](#), the SCM set the workload on examination of cases making up 25% for the Chairperson and 50% for the Vice Chairpersons of Chişinău Court. The number of judges in Chişinău courts increased from 119 (as on 31 December 2016) to [155 judges](#) (starting with 1 January 2019).

Within the period of 17-20 January 2019, the Legal Resources Centre from Moldova (LRCM) organized the [winter edition of the School "Applied Democracy"](#). The event was intended for students and graduates of law, political sciences, international relations, journalism faculties, etc., interested in promoting democracy in the Republic of Moldova. The event aimed to increase the awareness and understanding of the problems faced by Moldova on its way to democracy and to encourage the promotion of human rights, critical thinking and civic activism among young people.

In **January 2019**, the Council of Experts of the International NGO Conference published a compendium of its adopted opinions. [The Compendium](#) provides a compilation of excerpts from the opinions adopted by the Council of Experts on the

issues of compliance of proposed and adopted legislation on non-governmental organizations with European and international standards.

On **26 February 2019**, [the Superior Council of Magistracy appointed Dorel MUSTEATĂ](#) as a member of the Council of the National Institute of Justice (NIJ) for a four-year term. Mr. Musteață is a detached judge of Chişinău Court in the SCM. During his first term of office at the SCM, he was transferred from Anenii Noi Court to Chişinău District Court (see details in the [LRCM Newsletter no. 14, p. 4](#)). [The NIJ Council](#) has six members from among judges and four from among prosecutors.

On **28 February 2019**, the [Centre for Independent Journalism](#) published the [Report on the index regarding the situation of press in the Republic of Moldova in 2018](#). According to the report, the legislation is mostly sufficient and guarantees free expression. However, on-line media remains unregulated. Important aspects that happened during this period refer to drafting of the [National Concept on Mass Media Development](#) and the entry into force on 1 January 2019 of the [Code of Audiovisual Media Services](#). Experts reported multiple pressures on the press, especially on the side of politicians and officials. Public institutions treat mass media selectively. The media continued to be divided into the politically

affiliated and the independent one. The economic situation of the mass media has worsened considerably, which affects its editorial independence. The major part of the independent press is financially dependent on grants and donors. Broadcasts usually contain news and analytical programmes, and most of the topics concern Chişinău. There are many foreign products in TV content, especially Russian one. Although the security of journalists did not represent a major danger, in 2018, journalists, especially those inconvenient for those in power, were intimidated and attacked verbally. Overall, the index has not substantially changed since 2017.

Between 4-5 March 2019, the Legal Resources Centre from Moldova (LRCM) in collaboration with [Expert-Forum Romania](#), screened the Dutch documentary films „Looking into the Soul – about the profession of a judge” („Kijken in de ziel”). The film “Penalty” was shown to students from [Bălţi State University “Alecu Russo”](#) and [Cahul State University “Bogdan Petriceicu Hasdeu”](#), as well as for lawyers and probation counsellors from Bălţi and Cahul regions. The documentary reveals the challenges of judges from the Netherlands in setting the criminal penalty and the internal process that judges pass through when they give a sentence, their doubts and how the judges overcome prejudices. Each screening of a movie was followed by discussions about the role of penalties and their impact on convicts, as well as what lawyers and probation counsellors think about the setting of penalties by judges. This is the third year of short documentaries screening experience for the LRCM.

On 23 March 2019, the General Assembly of Judges took place. The activity reports for 2018 [of the Superior Council of Magistracy and the courts](#), [Supreme Court of Justice](#), [Board for Performance Evaluation of Judges](#), [Board for Selection and Career of Judges](#), [Disciplinary Board](#) and [Judicial Inspection](#) were presented within the framework of the event. Moreover, judges were awarded at the event. This time the issues of the judiciary were not discussed.

According to the report of the Council of Europe “[Prisons in Europe 2005-2015](#)” (published in 2019), comparing 2014/15 to 2005, the following indicators show a decrease in the Republic of Moldova: prison population rate (-12%), percentage of non-sentenced inmates (-23%), rate of deaths in penitentiaries (-21%), and ratio of inmates per staff (-12%). Over the same period the following indicators show an increase: average length of penal detention (+32%), prison density (+65%), percentage of female inmates (+25%), percentage of suicides (+151%), percentage of custodial staff in relation to the number of inmates (+16%), and average amount spent per day for the detention of one inmate (+92%). Comparing 2014/15 to 2005, the following indicators remain stable: median age of the population (+4%), and total budget spent by the prison administration (+4%).



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ABOUT LRCM

Legal Resources Centre from Moldova (LRCM) is a nonprofit organization that contributes to strengthening democracy and the rule of law in the Republic of Moldova with emphasis on justice and human rights. Our work includes research and advocacy. We are independent and politically non-affiliated.

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