

NEWSLETTER

NO. 23 | JULY – SEPTEMBER 2019

GOOD GOVERNANCE

THE MIXED VOTING SYSTEM WAS ANNULLED

On [15 August 2019](#), the Parliament [adopted](#) at the second reading the ACUM Bloc's draft law on the annulment of the mixed voting system. After the [endorsement](#) of the amendments by the Government, the law came into force on 17 August 2019, reinstating the party list proportional representation system. The mixed voting system had been voted on by the Democratic Party (DPM) and the Party of Socialists of the Republic of Moldova (PSRM) in July 2017 despite the negative opinion of the Venice Commission and the OSCE/ODIHR and the lack of political and social consensus (see [LRCM's Newsletter no. 14](#) for details).

The draft law restored the prohibition of the electoral turmoil on elections day and the previous day. The integrity certificates issued by the National Integrity Authority for candidate registration for elections were cancelled. The minimal representation threshold for entering the Parliament was reduced from 6% to 5% for political parties and from 8% to 7% for electoral blocs. The maximal thresholds for donations to political parties were also reduced from 200 to 6 national average monthly salaries for individuals and from 400 to 12 national average monthly salaries for legal entities. Civil servants and high-level public officials will not be allowed to donate more than 10% of their annual income. For the first time in the Moldovan history, Moldovans with income earned abroad will be allowed to donate to political parties sums up to three national average monthly salaries. In 2020, the national average monthly salary is [MDL 7,953](#). The draft law also changed the voting rules in the diaspora, who can now vote in out-of-country polling stations with the identity cards or expired passports.

Earlier, on 26 April 2019, the Constitutional Court (CCM) [decided](#) that the mixed voting system must be applied in snap parliamentary elections, without offering reasonable arguments justifying that decision (see [LRCM's Newsletter no. 22](#) for details). On 16 October 2019, three members of the Parliament from the parliamentary groups PAS, PPDA, and PSRM [filed](#) an application with the CCM to clarify what voting system must be applied in case of a possible snap parliamentary election, considering the annulment of the mixed voting system. The application is still pending before the CCM.

STARTING WITH 2019, MOLDOVANS FROM THE
DIASPORA CAN MAKE DONATIONS TO POLITICAL
PARTIES, BUT THEIR DONATIONS MAY NOT EXCEED
THREE NATIONAL AVERAGE MONTHLY SALARIES
(MDL 23,860 IN 2020)

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ECTHR STARTED THE EXAMINATION OF THE CASE ON THE INVALIDATION OF THE 2018 LOCAL ELECTION IN CHIȘINĂU

On 11 July 2019, the European Court of Human Rights (ECtHR) [communicated](#) Andrei NĂSTASE's application to the Government of the Republic of Moldova. The application referred to the invalidation of the election for mayor of Chișinău — won by Năstase — by Chișinău Court in 2018. Judges substantiated the invalidation of the election by the fact that, on the second election round, Andrei NĂSTASE had posted four video messages on social networks, calling on voters to vote. Judges interpreted this as electoral turmoil on Election Day, which was prohibited under the law and had allegedly significantly influenced the election results. The [SCJ upheld](#) this decision.

At the ECtHR, Năstase claimed that the annulment of the election was politically charged and that the invalidation of the election results represented an unjustified restriction of

his freedom of expression. Under the [ECtHR Regulation](#), the communication of an application to a Government imposes the latter's obligation to submit written observations on the case, usually within 16 weeks. These observations are transmitted to the applicant, who must submit their stand on the case within six weeks. The period from the submission of the applicant's observations on the case to the adoption of a decision by the ECHR usually lasts between 12 and 24 months.

On 8 October 2019, 12 days before the general local election, [Chișinău Court of appeals validated the local election of 2018](#) and declared Andrei NĂSTASE the mayor of Chișinău. This happened after the [court decisions of 2018 regarding the refusal of validation had been quashed](#) on 25 September 2019, following the communication of the application by the ECHR.

THE CONSTITUTIONAL COURT HAS A NEW COMPOSITION AND A NEW CHIEF JUSTICE ELECTED UNDER SUSPICIOUS CIRCUMSTANCES

The Constitutional Court (CCM) is formed of six judges: two appointed by the Parliament; two by the Government; and two by the Superior Council of Magistracy (SCM) for a term of six years. After the dismissal of all Constitutional Court judges in June 2019 (see [LRCM's Newsletter no. 22](#) for details), all six offices became vacant. In summer 2019, the Parliament, the Government, and the SCM appointed new Constitutional Court judges. The appointments were preceded by competitions even though the law did not expressly require the selection of Constitutional Court judges on a competitive basis.

On 1 July 2019, the Government approved the [Regulation](#) on the selection of its candidates for Constitutional Court judges. Under the Regulation, the selection had two phases: the shortlisting of applications and an interview. The Regulation also set out the candidate assessment criteria. On 2 July 2019, the Government [published](#) the competition announcement, and on 7 July 2019, it [approved](#) the members of the Selection Committee. Of the [23 applicants](#), the Selection Committee [admitted 13](#) for an interview. On 8 August 2019, the Selection Committee [proposed](#) the Government a short list of four candidates, namely [Liuba ȘOVA](#), [Eduard SERBENCO](#), [Vladimir GROSU](#), and [Nicolae ROȘCA](#). The Committee [published](#) the assessment sheets and the interviews with the candidates. On 15 August 2019, the Government [appointed](#) two of the candidates proposed by the Selection Committee as Constitutional Court judges, namely Mrs. Șova and Mr. Roșca, both of whom were academics.

On 2 July 2019, the SCM [announced](#) the competition for the selection of two candidates to fill the Constitutional Court judge vacancies, but did not specify the selection criteria. [Fourteen candidates registered](#) for the competition. On 15 July 2019, several civil society organizations (CSOs) [requested](#) the SCM to announce the candidate selection criteria and to ensure public access to the interviews. On 16 July 2019, the SCM [decided](#) to extend the application deadline. The SCM also decided to use the selection criteria set out in the Government's Regulation. [Three more candidates](#) applied after the deadline extension. On 29 July 2019, one day before the competition, then Justice Minister Olesia STAMATE [opined](#) that the selection and appointment of some candidates could have tarnished the image of the new membership of the CCM. The opinion was expressed in a confidential letter addressed to SCM members, but somehow it got into print. On 30 July 2019, following [public interviews](#), the SCM [selected](#) two candidates to fill the Constitutional Court judge vacancies: [Eduard ABABEI](#) and [Serghei TURCAN](#). Mr. Ababei is a former judge, and Mr. Turcan is an academic and an SCM member.

On 2 July 2019, the Parliament [announced](#) the competition for the selection of two candidates to fill the Constitutional Court judge vacancies. The Parliament Legal Committee for Appointments and Immunities (Legal Committee) was to organize the competition based on a [Regulation](#), and the Parliament's Plenum, to vote on the proposed candidacies. Under para. 26 of the Regulation, the first two highest-scoring

candidates are considered competition winners, and their candidacies are submitted to the Parliament for appointment as Constitutional Court judges. The Legal Commission [admitted](#) 16 out of the [23 registered candidates](#) to an interview. On 24 July 2019, after the [interviews](#) and the filling out of the [candidate assessment sheets](#), the Legal Commission [announced](#) that the first two highest-scoring candidates were [Nicolae EȘANU](#) and [Vladimir GROSU](#). At that time, Mr. Eșanu was a secretary of state at the Ministry of Justice, and Mr. Grosu was former justice minister. Both were academics.

Despite the nomination of the competition winners, on 16 August 2019, the [Parliament appointed two other persons as Constitutional Court judges](#), namely Mrs. Domnica MANOLE and Mr. Vladimir ȚURCAN. Mrs. Manole is an ex-judge and the ACUM bloc's candidate in the February 2019 parliamentary election, and Mr. Țurcan is an influential member of the Party of Socialists of the Republic of Moldova (PSRM). Ms. Manole participated in the competition announced by the Parliament but ranked ninth out of the 16 candidates admitted for the interview. Mr. Țurcan did not participate in the competition at all. Apparently, Ms. Manole was proposed by the Dignity and Truth Platform Party (PPDA), and Mr. Țurcan, by PSRM. The Parliament did not offer any explanation for overriding the competition results and taking the decision of 16 August 2019.

The political reasoning behind the nomination of the two judges is confirmed by the fact that, on [15 August 2019](#), [another person known to be on close terms with PSRM](#), ex-Chief Justice of the CCM Dumitru Pulbere, was put forward for Constitutional Court judge before the Parliament. Mr. Pulbere did not participate in the competition, too. His candidacy was withdrawn, however, after he had been disqualified because he had held two judicial terms at the CCM earlier.

Several CSOs expressed their [disagreement](#) with the nontransparent way the Parliament of the Republic of Moldova appointed the two judges to the Constitutional Court. The CSOs stated that such a way of appointing, based on political

WITHOUT INVOKING ANY REASON, THE PARLIAMENT SCRAPPED ITS OWN COMPETITION AND APPOINTED TWO JUDGES TO THE CONSTITUTIONAL COURT BASED ON POLITICAL CRITERIA

criteria and failing to explain the reasons for overriding the competition results, disregarded the importance of the institution of CCM and undermined its credibility in the eyes of the public.

On 16 August 2019, the six new judges of the Constitutional Court [took the oath of office](#). Three days later, on 19 August 2019, the Constitutional Court judges [elected](#) Vladimir

ȚURCAN as president by secret ballot. Two candidates were put forward for this position: Vladimir ȚURCAN and Liuba ȘOVA. Four judges voted Mr. Țurcan.

The election of Mr. Țurcan as the CCM president sparked a storm of discussion in the media. In a statement, then Prime Minister Maia SANDU [said](#) that the election process, which resulted in a representative of PSRM take the office of the CCM president, may have been corrupted and called on all judges of the CCM to disclose publicly who they had voted for.

PPDA leader Andrei NĂSTASE also [requested](#) that judges either declare publicly how they had voted or resign. [Mrs. Șova](#) and [Mr. Roșca](#) said that they had voted Mrs. Șova. [Mrs. Șova declared](#) that she had received a [message](#) from a Parliament employee, calling her to vote Mr. Țurcan, and that he had arranged that scenario to prevent the election of the CCM president by the drawing of lots. The Prosecutor General's Office [stated](#) that it had not received reports that Constitutional Court judges had been intimidated or pressed. Mrs. Șova [communicated](#) that she had not called law enforcement authorities because she had not trusted them.

On 20 August 2019, Judge Domnica MANOLE [filed](#) an application for the revision of the decision to appoint Mr. Țurcan as the CCM president. In her application, Mrs. Manole cited possible frauds with vote results based on Mrs. Șova's statements. The same day, the application was [dismissed](#). Only Mrs. Șova was summoned for the hearing, during which she said that her vote could not have been influenced. The other judges did not testify, although, in her application for revision, Mrs. Manole had mentioned that she had voted against Mr. Țurcan and, therefore, there was a parity of votes, which necessitated a different voting procedure.

THE PRESIDENT OF THE CCM WAS ELECTED BY FOUR OUT OF SIX VOTES, ALTHOUGH THREE CONSTITUTIONAL COURT JUDGES SAID THAT THEY HAD NOT VOTED FOR HIM

THE SANDU GOVERNMENT'S PRIORITIES IN THE FIELDS OF JUSTICE, ANTICORRUPTION, HUMAN RIGHTS, AND CIVIL SOCIETY

On 30 August 2019, by Decision No. 420, the Sandu Government approved the [Government's Action Plan for](#)

[2019 – 2020](#) (repealed by Decision No. 636 of 11 December 2019 of the Chicu Government). The adoption of the Action

Plan was preceded by [public consultations](#) on the draft of the Plan. The proposed priorities in the fields of justice, anticorruption, human rights, and civil society responded to current requirements and could have contributed to significant improvements in those fields had they been applied.

The key priorities in the field of justice included the reform of the Supreme Court of Justice (SCJ) through the revision of judges' duties, the change of the appointment conditions and criteria for judges, and the decreasing of their number; the strengthening of the independence of the judiciary by amending the Constitution to restrict judicial immunity; the unification of the judicial appointment procedure; the annulment of the initial five-year term for judicial offices; the change of the composition of the Superior Council of Magistracy (SCM); the exclusion of SCM members at law; and the ensuring of representativity and transparency at the SCM. Other interventions included the improvement of the system of disciplinary liability for judges; the selection, performance review, and promotion processes for judges; and the repeal of Article 307 of the Criminal Code. The Government also intended to ensure the efficiency of the work of prosecutors, the Prosecutors Inspection, and the Superior Council of Prosecutors (SCP), as well as to strengthen the role of the Constitutional Court (CCM) by amending the Law on the CCM in the part referring to its composition, judge selection criteria, and the prohibition of the appointment for a new term in office for its judges.

The Government's anticorruption priorities included the improvement of the mechanism for checking assets and

interests by banning practices of asset acquisition at an understated price or from persons who cannot justify the assets' origin, prioritizing the verification of declarations with higher risk, and introducing an automated risk identification register. To ensure an efficient investigation of corruption cases, it was proposed to narrow the scope of the Anticorruption Prosecutor's Office to high-level corruption and to clarify the scope of the National Anticorruption Center. It was also proposed to improve the Law regarding the identification of crimes of money laundering and terrorism financing and the way of applying penalties for such crimes. In the field of integrity, it was proposed to improve integrity inspectors' work methods by setting up a team of foreign experts to offer methodological support for the National Integrity Authority.

In the field of human rights, the Government planned to widen the ombudsperson's role and to review the system of criminal penalties to ensure the observance of human rights. It was also proposed to improve the regulatory framework on equality.

To strengthen the role of civil society, the Government proposed to fully involve civil society in the development and monitoring of public policies and to ensure efficient mechanisms for involving civil society in decision-making, including by introducing the obligation of public institutions to subject collective petitions signed by a significant number of citizens to debate. The Government also set the implementation of the Civil Society Development Strategy for 2018 – 2020 as a priority.

THE JUSTICE REFORM AND ANTICORRUPTION FORUM HOSTED BY THE LRCM

On 23 July 2019, the Legal Resources Centre from Moldova (LRCM), in partnership with the Moldovan Government, hosted the [Justice Reform and Anticorruption Forum](#) in Chişinău. The event dwelt on the priorities in justice reform and anticorruption as seen by the Government and representatives of the justice sector and civil society. The over 150 attendance included representatives of the judiciary, prosecution, the National Integrity Authority (NIA), the Ministry of Justice (MoJ), the Government, the Parliament, the presidency, civil society, and the development partners of Moldova, as well as foreign experts from around the region. Prime Minister Maia SANDU and the ambassadors of the EU and the USA spoke at the Forum.

The MoJ announced its intentions regarding the reform of prosecution authorities, stressing the limitation of the scope of the Anticorruption Prosecutor's Office to high-level corruption, the review of the role of the Prosecutors Inspection and the

strengthening of the NIA, and the improvement of the asset declaration procedures for civil servants. The messages and recommendations of other speakers and participants stressed that the Anticorruption Prosecutor's Office and other structures must set the crackdown on high-level corruption as their top priority. The NIA was recommended to focus on senior officers and significant shortcomings in asset declaration, without wasting time on minor activities. Some voiced the urgent need for the reform of prosecution authorities, which had shown biased attitudes over the past years, especially by initiating criminal cases against those who had been inconvenient to the Government and by the abusive wiretapping of opposition representatives, independent journalists, and civil society members.

Justice Minister Olessea STAMATE announced the intentions to amend the Constitution to annul the initial five-year term for appointing judges, to exclude the Parliament from the

appointment of judges to the Supreme Court of Justice (SCJ), and to increase the independence of the Superior Council of Magistracy (SCM). One of the top priority reforms is the reform of the SCJ to transform it into a court that ensures the consistency of judicial practice and the reduction of the number of judges efficiently. Minister Stamate also announced the intention to introduce *ad hoc* assessments of SCJ judges by an independent external entity.

In their messages and recommendations, other speakers suggested repealing Article 307 of the Criminal Code (the deliberate issue of an illegal court judgment) to reduce the pressure prosecutors put on judges based on this article, revising judge selection and promotion criteria, and enhancing transparency in judge selection and promotion procedures. A representative of the SCM assured that this entity would offer better reasoning—including on candidates' integrity—in its future decisions regarding the selection and

promotion of judges. The judiciary, especially the SCM and the National Institute of Justice (NIJ), was encouraged to work more openly and more transparently, to ditch the past years' practice of selectively collaborating with only some players, and not to impose unreasonable restrictions on judges' participation in public events. Judges should have the freedom to decide themselves whether to participate in events and trainings or not.

Several judges spoke about issues they encountered, particularly their large workload, inefficient communication with the SCM, pressures from chief judges, the lack of the SCM's reaction to public attacks on them. In their turn, MoJ representatives encouraged judges to get more involved in the promotion of the reforms they considered necessary, by putting forward ideas about how to improve the proposals made by authorities or by proposing the MoJ their own initiatives.

THE LRCM IS ONCE AGAIN UNDER MEDIA ATTACK THAT MAKES USE OF FAKE NEWS

In July and August 2019, several articles with false information or slanted coverage about the LRCM's work appeared on the Internet and on social media. Those articles attacked the LRCM's executive director Vladislav GRIBINCEA. He was accused of having obtained undeserved sums from promoting certain draft laws and of being politically engaged. Violating every rule of journalism ethics, the articles applied the rules of disinformation by the book: they appeared on infamous websites, were unauthored, made use of speculations, did not present the opinion of the person in question, etc. Subsequently, that information was reproduced on other questionable websites that promoted politically charged messages and appeared in sponsored posts on social media. This pattern gives away the intention to manipulate and disinform. This disinformation method was documented in detail in the [Radiography of the Attacks against Non-Governmental Organizations from the Republic of Moldova](#).

The [LRCM issued a public statement](#) where it reiterated that it

was a nonprofit, independent, and apolitical organization that worked for the benefit of the public and not of its members or political parties. We cooperate with all authorities that are open to genuine reforms, regardless of political color. During its history, the LRCM has contributed with expertise and recommendations to the development of numerous draft laws in the fields of justice and human rights. The legislation passed thanks to our recommendations is highly appraised by experts. The limited effect of this legislation is explained by the faulty implementation by authorities—mainly the judiciary and the prosecution system—, rather than the quality of the laws themselves. The LRCM will keep on supporting the promotion of democratic values and good governance to strengthen democracy and the rule of law in the Republic of Moldova. We encourage everyone to contact us for information of public interest about the LRCM before publishing materials about the association. We also encourage the public to be distrustful of materials that have no author or come from unknown or suspicious sources.

JUSTICE

THE EXTERNAL ASSESSMENT OF JUDGES AND PROSECUTORS. WHAT DID THE SANDU GOVERNMENT PROPOSE?

The [Sandu Government's Program](#) voted in the Parliament upon the Government's investiture on 8 June 2019 provided for the purge of corrupt and vulnerable people from judicial authorities. It included, among other things, the adoption of a special law regarding the assessment of the integrity and professionalism of all judges and prosecutors.

On 30 August 2019, the Justice Ministry published [a draft Law on the assessment](#) on its web site for public consultations. The draft law had two parts: the reform of the Supreme Court of Justice (SCJ) and the assessment of the integrity and professionalism of judges and prosecutors. The draft proposed reforming the SCJ by reducing the number of judges from 33 to 17 and narrowing the scope of the SCJ to the unification of judicial practice.

The draft law did not propose the assessment of all judges and prosecutors, but rather only those with key offices (approximately 200 persons). The assessment was to cover all SCJ judges, the chief judges of all courts of law, and the deputy chief judges of appellate courts and the courts of Chişinău, Balti, Cahul, and Comrat. The assessment was also to include the Prosecutor General and his/her deputies, all prosecutors of the Anticorruption Prosecutor's Office, and the chief prosecutors of the Prosecutor General's Office subdivisions, the Office of the Prosecutor for Organized Crime and Special Causes (PCCOCS), and territorial prosecution offices. The assessment was also to apply to the deputies of the chief prosecutors of PCCOCS, district prosecution offices, and the territorial prosecution offices of Chişinău, Balti, Cahul, and Comrat.

A special commission would carry out the assessment based on the following three criteria: integrity and lifestyle, professional activity over the past ten years, and personal qualities of relevance for the office. According to the draft law, the special commission would be formed of 20 members: two nominated by each of the Parliament, the president, the Government, the Superior Council of Magistracy (SCM), and the Superior Council of Prosecutors (SCP), four members nominated by the Moldovan National Platform of the Eastern Partnership Civil Society Forum, and six foreign experts nominated by the Justice Minister from a list proposed by the development

partners. The commission members could not be members of political parties, persons holding public offices, and those whose spouses, parents, children, or children-in-law were judges or prosecutors.

A board of ten members of the assessment commission would carry out the assessment. The board would collect information about the property, lifestyle, and activity of the person under assessment and would have unrestricted access to main Governmental databases. The draft law required that persons under assessment have access to the collected information and be allowed to present evidence in support of themselves. The board would examine this evidence before the adoption of the decision on the assessment. According to the draft law, the judges who would fail the assessment would lose their administrative office, the SCJ judges who would fail it would be transferred to lower courts, and the prosecutors who would fail it would be dismissed.

The persons who would disagree with the assessment decision could challenge it before the other ten commission members and, after that, before the SCM or the SCP, as applicable. The SCM or the SCP could invalidate the decision of their colleagues with a two-thirds majority of the members with the voting right (SCJ judges from the SCM would not be allowed to vote) and only on procedural matters that could influence the assessment result. If the SCM or the SCP admitted the appeal, the assessment commission would assess the person again. The decision of the SCM or the SCP would not be appealable in court.

The Government requested the opinion of the Venice Commission on that draft law. On 14 October 2019, the [Commission issued an interim opinion](#) on this subject. The Commission noted that the *ad hoc* assessment of judges could be carried out only in critical situations in the justice sector, such as a very high level of corruption.

The Commission admitted that it was up to Moldovan authorities to decide whether such a situation existed in Moldova. Nonetheless, the draft law should be so detailed as to exclude the expectation that such assessments are possible on every change of Government; otherwise, it would undermine the independence of justice. The number of the assessment commission members from ex-judges should be considerably

THE VENICE
COMMISSION: IN
MOLDOVA, THE
EXTERNAL ASSESSMENT
OF JUDGES IS JUSTIFIED,
BUT ADDITIONAL
GUARANTEES ARE
REQUIRED TO PROTECT
JUDGES AGAINST ABUSE

greater, if not in the majority. The Venice Commission also mentioned that it was unacceptable that judges who failed the assessment be allowed to stay in judicial office, as stated in the draft law. It suggested that they be dismissed. Furthermore, one must comply with the current constitutional framework, including the requirement that the SCM decide on the dismissal of judges and that SCM decisions be appealable in court. The appeal should be examined by judges who are not subjected to the assessment. The commission also suggested that the assessment start with SCM members.

Justice Minister Olesea STAMATE said that the draft law would be improved based on the recommendations of the Venice Commission. On 7 November 2019, the [prime minister presented the revised concept paper](#) on the assessment of judges and prosecutors and declared that this reform would remain the top priority of the Government. On 12 November 2019, the Sandu Government was dismissed. The new Justice Minister, [Fadai NAGACEVSCHI, declared that this reform would be followed through](#), even if in a form that may be different from the one proposed by the Sandu Government.

THE FAILED ATTEMPT TO RECALL JUDGE MEMBERS OF THE SCM

On 13 September 2019, 87 judges from various courts requested the Superior Council of Magistracy (SCM) to convene the General Assembly of Judges on 20 September 2019. The judges had it in mind to revoke the mandates of the six judge members of the SCM. The letter of request did not specify any reasons or concrete legal grounds for the revocation.

The law provides for a limited number of grounds for the recall of SCM members. Under Article 12 (2) of the [Law on the SCM](#), the revocation of SCM member mandates is possible in one of the following five situations: a) there was a violation of the legal provisions on conflicts of interests; b) a situation of incompatibility was found; c) the SCM member failed or refused to present the declaration of assets and personal interests; d) a court issued an irrevocable judgment to seize the unaccounted assets; e) on proposal from the Council, when the SCM member failed to perform their SCM member duties without any good reason or when they violated the incompatibility requirements and prohibitions from the [Law on the Status of Judge](#). Under Article 23² (3) of the [Law on the Judicial Organization](#), the General Assembly of Judges may be convened in exceptional situations on the initiative of the SCM or at least 50 judges within ten business days from the request registration at the most.

The SCM meeting of 17 September 2019 did not take place for lack of quorum, and the next meeting was scheduled for 19 September 2019. At the [SCM meeting of 19 September 2019](#), it was announced that at least five judges withdrew their signatures from the request to convene the General Assembly of Judges because they had not signed for the revocation of SCM members. The SCM decided to postpone the examination of the request on the convocation of the General Assembly of Judges to allow the Judicial Inspection to verify the signatures from the request. The involvement of

the Judicial Inspection in the verification was not justified and [was qualified by many judges](#) as an attempt to intimidate the judges who had requested the convocation. On [24 September 2019, the SCM declined the request of the 87 judges](#), arguing that organizing the General Assembly of Judges was its discretion rather than obligation. Moreover, the purpose of the convocation of the General Assembly was to revoke the mandates of SCM members, but the signatory judges had not indicated the legal grounds for the revocation. The SCM concluded that the request was not justified and that the revocation was intended “to obstruct the Council to prevent the reforms initiated in the judicial system”.

Meanwhile, on 18 September 2019, 53 judges challenged the SCM's inaction on the request to convene the General Assembly at Chişinău Court of Appeals, even though the timeframe of ten business days the law allowed for the SCM would elapse only on 27 September 2019. On [20 September 2019](#), Chişinău Court of Appeals admitted the application of the 53 judges and ordered the SCM to organize the Assembly within the requested timeframe and with the requested agenda. This decision was enforceable as from the date of issue, but appealable at the Supreme Court of Justice.

The SCM challenged the decision on 20 September 2019, citing, among other things, the lack of the court's jurisdiction to examine the request on 20 September 2019 because the SCM had time to examine the request until 27 September. On [26 September 2019, the SCJ dismissed the SCM's cassation appeal with the vote of three of five judges from the bench](#). The SCJ found that the verb “may” from Article 23² (3) of the [Law on the Judicial Organization](#) did not offer the SCM a discretionary right to convene the General Assembly and that the SCM had the obligation to convene the Assembly if 50 judges requested it. The SCJ also mentioned that the timeframe of ten business days required by the law referred

87 JUDGES REQUESTED
THE RECALL OF SCM
MEMBERS WITHOUT
INVOKING LEGAL
GROUNDS

to the organization of the General Assembly rather than the adoption by the SCM of the decision to convene it. Two judges prepared a [dissenting opinion](#) in which they mentioned that the challenged decision should have been annulled and that Chişinău Court of Appeals lacked the jurisdiction to examine the case, which should have been examined by Chişinău Court instead.

Meanwhile, on [24 September 2019, a judicial panel of three judges](#) from Chişinău Court of Appeals issued an order to enforce the judgement of 20 September 2019. They ordered that the General Assembly be convened on 27 September 2019, at 10:00 am.

On 27 September 2019, the [ad hoc meeting of the General Assembly of Judges took place](#).

At 11:20 am, the judge who presided the meeting announced that, as only 187 judges reported for the meeting, the General Assembly did not meet the quorum required to be declared deliberative (the required quorum is 198 judges). [Judges, however, continued the meeting, discussing](#) about the justice reforms announced by the Government, especially the reform of the SCJ and the *ad hoc* assessment of judges. Discussions also referred to the acts of intimidation by the SCM in relation to the convocation of the Assembly, the application of the [June 2019 Declaration on the acknowledgment of the captive state of the nation](#), and the need for unity among judges.

At 13:15 pm, it was announced that 200 judges reported for the meeting, and the meeting was declared deliberative. Of the six judge members of the SCM, only Victor MICU, who had been the chairperson of the SCM until summer 2019, came to the meeting. Although two judges [requested to have the list of signatures cross-checked against the attendance](#), arguing that the number of judges in attendance was smaller, the request was dropped. The judges present in the room voted for putting the recall of SCM members on the agenda. The judges cited the loss of trust as the reason for revocation. After that they proceeded to vote. Somewhere at 18:00, it was announced

that 210 ballots had been printed and 184 had been collected. [Most judges voted in favor of the revocation of the mandates of the SCM judge members.](#)

After the approval of the voting results, most judges present in the room at the time (considerably fewer than the required quorum) voted in favor of the amendment of the Rules of Procedure of the General Assembly of Judges. The time for announcing the election to the SCM and filing the applications was reduced from two to one month. The judges present in the room also decided to organize a new *ad hoc* meeting of the General Assembly of Judges to elect new judge members to the SCM. This meeting was set for 25 October 2019. Judges also delegated Professor of Law Ion POSTIU, SCM member nominated by the Parliament, to organize the General Assembly. The General Assembly of 25 October 2019 did not take place for lack of quorum.

The organization of the General Assembly of Judges on 27 September 2019 raised serious questions about the situation within the judiciary and the legality of adopted decisions. On the one hand, the refusal of the SCM to convene the General Assembly to allow judges to discuss issues in the system and the involvement of the Judicial Inspection in the verification of the signatures of the 87 judges (which, in fact, was never carried out) were not justified. On the other hand, the recall of the judge members of the SCM was illegal. The recall of judge members of a judicial self-administration body because of the loss of credibility is not provided for in the law and [is contrary to European standards](#), as expressly stated in the Venice Commission's opinion of 14 October 2019 on the draft law on the reform of the SCJ (para. 82). What is more, only 184 judges voted, which was fewer than the legal quorum and meant that the General Assembly did not amass the minimal number of votes to pass that decision. The legality of the General Assembly of 27 September 2019 was questioned by the [US Embassy in the Republic of Moldova](#) and the [chairman of the Venice Commission](#).

THE VENICE
COMMISSION CRITICIZED
THE RECALL OF JUDGE
MEMBERS OF THE SCM

THE PROSECUTOR GENERAL'S RESIGNATION RAISES POLITICAL-LEGAL DILEMMAS

On 11 July 2019, Prosecutor General Eduard HARUNJEN resigned from office, [citing health issues](#) and [pressure](#) from politicians. His resignation was demanded by President Igor DODON, Prime Minister Maya SANDU, and over [9,200 signatories of an online petition](#). Deputy Prosecutor General Igor POPA took up as interim prosecutor general. [Eduard HARUNJEN had appointed him as interim on 8 July 2019](#),

right before taking a sick leave.

Previously, on 14 April 2019, the members of parliament from the ACUM Bloc had registered a [draft law](#) in the Parliament to allow the election of the prosecutor general from among foreign nationals and the inclusion of several civil society representatives in the composition of the Superior Council

of Magistracy. The Parliament voted the draft law in the first reading on 11 June 2019 but dropped it afterward.

Another draft law, to amend the Law on the Prosecution Authority, was registered in the Parliament in July 2019. That draft law required that, if the position of prosecutor general became vacant, the Superior Council of Prosecutors (SCP) propose the president of the country a candidate for interim prosecutor general within three days to fill the vacancy until the appointment of a new prosecutor general. If the SCP failed to propose the president a candidate, the Parliament would do this. The real purpose of that initiative seems to have been the removal of Igor POPA from the leadership of the Prosecutor General's Office. On 19 July 2019, the Parliament passed the draft law, and on 23 July, the president of the country promulgated it. The same day, the [law was published in the Official Gazette](#) and became effective.

On 31 July 2019, President Igor DODON appointed Prosecutor [Dumitru ROBU](#) as interim prosecutor general. The appointee was nominated by the Parliament, after the SCP failed to propose the president a candidate within three days. The SCP

tried to convene on 26 July 2019 to make a nomination from [three submitted candidacies](#), but [the meeting had not been deliberative](#) as most SCP members were absent.

Since the position of prosecutor general remained vacant, on 9 August 2019, the [SCP announced a competition for selecting the prosecutor general](#). The competition was announced even though the Parliament had registered a draft law according to which the Justice Ministry would shortlist candidates for prosecutor general. The deadline for submitting applications to the SCP was 10 September 2019. [Six prosecutors](#) applied.

On 16 September 2019, the Parliament [passed a draft law in the final reading](#) which delegated an independent commission set up by the justice minister to shortlist candidates for prosecutor general and opened the competition to persons without prosecutor experience. The law entered in force on 21 September 2019, and, as a result, the competition the SCP had announced on 9 August 2019 was scrapped. We will follow up with more details on the selection of the prosecutor general in autumn 2019 in our next newsletter.

JUDGE SELECTION BY NEW RULES. HAS THE SCM GIVEN UP ITS OLD PRACTICES?

On 27 September 2018, the [Parliament passed several legislative amendments](#) that improved judge selection and promotion procedures. Under the new rules, vacancies in the system were announced all at once, in one competition, and candidates chose their preferred vacancies in the descending order of the obtained score (see [Newsletter no. 19](#) for details). On 6 August 2019, eight months after the amendment of the law, the Superior Council of Magistracy (SCM) held the [first competition](#) based on those rules. Of the 35 announced judicial vacancies, 31 were filled. Many graduates of the National Institute of Justice (NIJ) refused the available vacancies after the most attractive ones (in Chişinău and its neighboring localities) were filled. Under the law, candidates may refuse vacancies just once, after which, if they refuse any one again, they are excluded from the Register of candidates for judge and must refund the state their NIJ tuition.

At the meeting of 6 August, the SCM scored the candidates

but did not hold a real interview. The candidates reported for the SCM meeting, where they were asked about their previous experience and why they wanted to work as judges. In the end, the score offered by the SCM for similar performances varied between 4 and 20 points! The [SCM members did not offer any explanation](#) for such a disparity in the scores. There is still room for improvement before the SCM gets to hold genuine interviews and has a detailed methodology in place to score candidates. This procedure will ensure greater transparency and credibility for the competitions organized by the SCM.

The LRCM was one of the main proponents of the 2018 legislative amendment. The new rules benefit the fittest candidates, allowing them to choose their preferred positions. The new mechanism allows filling all vacancies—including those from the courts of law that are less popular among judicial candidates—through one competition.

SEVERAL JUDGES DENOUNCED IMPROPER INFLUENCE FROM THE CHIEF JUDGE OF CHIŞINĂU COURT OF APPEALS

On [11 July 2019](#), MP Sergiu LITVINENCO wrote on his Facebook page that he had come into possession of certain documents from several ex-judges of Chişinău Court of Appeals (CA) that proved that Ion PLESCA, the chief judge

of Chişinău CA, and Adriana BEŢISOR, the deputy chief of the Anticorruption Prosecutor's Office, had been influencing the ex-judges to adopt certain decisions between the years 2016 and 2018. The decisions referred to criminal cases

involving Constantin TUTU, Ilan SHOR, Vlad FILAT, and Grigore PETRENCO. Mr. Litvinenco said that he had passed this information to the Superior Council of Magistracy (SCM) and the Superior Council of Prosecutors.

The same day, appearing on a TV show, the ex-judge Ludmila OUS [confirmed these allegations](#). The judge mentioned more than one improper action taken by the chief judge of Chişinău CA. She implied that she had adopted different solutions in the cases of ex-Prime Minister Vlad FILAT, who had been convicted, and the Democrat MP Constantin TUTU, who had been acquitted. The judge had never reported this alleged improper influence to the SCM. The Judicial Inspection

decided to dismiss the complaints of the ex-judges Ludmila OUS and Svetlana BALMUS and to send the case to the Prosecutor General's Office for investigation. The judges challenged this decision, but their appeal is still pending examination.

Deputy Prosecutor General Igor POPA refused to prosecute Mr. Pleşca. In September 2019, Interim Prosecutor General Dumitru ROBU annulled the order of Mr. Popa and ordered the re-examination of the complaint.

Earlier, Judge Mihai MURGULET had also reported improper influences (see [Newsletter no. 22](#) for details).

JUDGES REQUEST SYSTEMIC CHANGES FROM THE SCM

On [23 July 2019](#), the Superior Council of Magistracy (SCM) examined two statements from the judges of Chişinău Court. The [statement, signed by 31 judges](#) from Chişinău Court, Centru Office, denounced issues in the judicial system and requested actions to ensure the independence of judges, to set up a platform for communicating with judges, and to implement reforms. The judges requested reforms in the judiciary to decrease the public perception that court decisions were taken under external pressure. They declared that they were ready to contribute to those reforms. [One of the judges also came with her personal statement](#) in which she criticized the SCM. She accused SCM members of having contributed to the establishment of a “dependent and subservient” system and having tolerated abuses against

judges. The judge asked the SCM members to resign.

The SCM [welcomed such reactions and proposals](#) of reform. In a press release of 24 July 2019, the SCM encouraged judges to report the acts of improper influence on them.

On 13 March 2019, the International Commission of Jurists (ICJ) had released a report on the independence of justice in the Republic of Moldova (see [Newsletter no. 21](#) for details). The members of the ICJ mission had been told about judges living in fear: fear to express their opinions on the situation in the justice sector or fear of criminal prosecution for issuing decisions contrary to the interests of the prosecutor's office or the people in power.

TURBULENCES AT THE NATIONAL INSTITUTE OF JUSTICE

The [Superior Council of the Magistracy](#) (SCM) recalled three judge members of the [Board of the National Institute of Justice \(NIJ\)](#): [Mariana PITIC](#), [Ghenadie PAVLIUC](#) and [Viorica MIHAILA](#). This [decision](#) was taken on 23 July 2019, on the request of [Minister of Justice Olesea STAMATE](#). The minister claimed that these members did not satisfy the integrity criteria. The Justice Minister spoke about this at the [Justice Reform and Anticorruption Forum](#) held on 23 July 2019, where she stated that the NIJ harbored corrupt people within its walls. In response, the NIJ's CEO Diana SCOBIALA came with a [counterstatement](#) explaining that the NIJ ensured the promotion of the fittest candidates. The justice minister's allegations also prompted NIJ students to make a [statement](#), which was published on the NIJ's web site and is the only document authored by them that is published on the web site of the institution. They wrote how well the NIJ procedures

were organized and that they had never bribed anyone to get enrolled at the NIJ.

In [its address of 29 July 2019](#), Prime Minister Maia SANDU requested the immediate resignation of the NIJ's management, claiming that this institution had missed its goals, the justice sector in a catastrophic situation. The prime minister stated that, over the years, this institution had kept on hiring people with integrity issues. [The NIJ's CEO replied](#) in a video post that the prime minister had no powers to ask her resignation, that admission at the NIJ was based on an electronical examination, and that the training provided by the NIJ is in line with the international standards. PSRM did not support the request that the NIJ's CEO resign, and she remained in office. Her term will expire in early 2020.

ANTI-CORRUPTION AND INTEGRITY

A FLURRY OF MANAGEMENT RESHUFFLE AT THE ANTICORRUPTION PROSECUTOR'S OFFICE

On [26 April 2019](#), the Chief Prosecutor of the Anticorruption Prosecutor's Office Viorel MORARI filed his resignation from office. Although he had been accused in an [anonymous letter](#) of having protected certain businesspeople, Mr. Morari [explained](#) that he resigned in order not to damage the image of the prosecutor's office and not to influence the investigation initiated against him. Prosecutor Adriana BEȚISOR—who oversaw the investigation of the billion theft—took over as interim. She had come into prominence after investigating the case against [ex-Prime Minister Vlad FILAT](#). On 3 July 2019, Adriana BEȚISOR [resigned](#) from the office of interim chief of the Anticorruption Prosecutor's Office—retaining, however, the office of prosecutor—and [left the country](#), taking [an annual vacation leave](#). On 6 August 2019, Adriana BEȚISOR [quitted her job](#) at the prosecution authorities due to “personal reasons,” despite having initially said that she would continue working as a prosecutor. After Mrs. BeȚisor, the interim office passed to Eduard VARZAR, who had been the [deputy chief prosecutor of the Anticorruption Prosecutor's Office](#) since August 2017.

On 5 July 2019, Eduard VARZAR requested to have Adrian POPENCO from Chișinău Prosecution Office posted to the Anticorruption Prosecutor's Office because, after the resignation of Adriana BEȚISOR and other prosecutors, the [workload of anticorruption prosecutors increased significantly](#). It seems that, after this transfer, the workload receded quite quickly. On 6 August 2019, Dumitru ROBU [ended the temporary posting](#) of Adrian POPENCO on the latter's request. Adrian POPENCO is known for having [conducted the hearing of Ilan SHOR](#) in 2015, at the latter's office in Casa Sindicatelor. At that hearing, Mr. Shor had denounced Vlad FILAT.

Eduard VARZAR's incumbency as the interim chief prosecutor of the Anticorruption Prosecutor's Office did not last long. On 17 September 2019, Interim Prosecutor General Dumitru ROBU reinstated Viorel MORARI as the chief prosecutor of the Anticorruption Prosecutor's Office. According to the [press release](#) of the Prosecutor General's Office, the reinstatement came as a result of a settlement agreement in a litigation initiated by Morari to challenge the legality of his dismissal.

GRECO: MOLDOVA SHOULD INTENSIFY ITS EFFORTS TO CRACK DOWN ON CORRUPTION AMONG MEMBERS OF THE PARLIAMENT, JUDGES, AND PROSECUTORS

On 24 July 2019, the Group of States against Corruption (GRECO) [published a mid-term report](#) in which it reviewed the implementation status of the recommendations from the [2016 assessment report](#). The GRECO mentioned that, out of the 18 recommendations, Moldova had implemented four completely, nine partially, and had not implemented five at all. The GRECO requested Moldovan authorities to intensify their efforts to crack down on corruption among members of the Parliament, judges, and prosecutors.

GRECO rated as insufficient the efforts made until then to improve transparency in the legislative process of the Parliament. The institution recommended to publish draft laws and related information on time to enable meaningful

GRECO: THE EFFORTS MADE TO IMPROVE TRANSPARENCY IN THE LEGISLATIVE PROCESS OF THE PARLIAMENT ARE INSUFFICIENT

public and parliamentary debates on the drafts of regulatory acts. In addition, the GRECO criticized the failure to adopt a code of conduct for members of the Parliament and to take enough action on conflicts of interests.

GRECO expressed its concern about the composition of the Superior Council of Prosecutors (SCP), namely about the fact that the justice minister and the chair of the Superior Council of Magistracy (SCM) were still *ex officio* members of the SCP. The same was recommended in relation to the composition of the SCM and the annulment of the quality of *ex officio* member of the justice minister and the prosecutor general. GRECO requested Moldovan authorities to present a report on the implementation of the recommendations by 30 June 2020.

HIGH-PROFILE CASES

FIVE YEARS ON, THE INVESTIGATION OF THE BILLION THEFT IS TAKING SHAPE

On 10 June 2019, the Parliament [set up](#) a parliamentary commission for the investigation of the billion theft, formed of three members of the Parliament from the ACUM Bloc and two from the parliamentary group of PSRM. The goal of the commission was to offer a political appraisal of the actions/inactions of the Government employees who had facilitated and/or had arranged the devaluation of the Moldovan banking system from the year 2011 through 2015. The commission interviewed 26 persons and studied the documents presented by governmental institutions and the reports *Kroll 1* and 2.

Unlike the report [Kroll 1](#), *Kroll 2* was not published. Previously, in November 2018, the European Parliament [requested](#) the publication of the entire versions of both Kroll reports. In January 2019, the governor of the National Bank of Moldova (NBM) [said](#) that the report *Kroll 2* had been transmitted to the prosecutor's office and that he did not have it. Neither the prosecutor's office nor the NBM had transmitted the report *Kroll 2* to the investigation commission. The commission [received](#) the report *Kroll 2* on 3 July 2019, directly from Kroll, but without the appendix with the beneficiaries list. The commission decided unanimously to have the report [published](#).

It seems, however, that the document published by the investigation commission represented only [the first part of Kroll 2](#). On 12 July 2019, Renato USATII, the president of Partidul Nostru, [published](#) the second and third parts of *Kroll 2* but refused to disclose his source.

Kroll 2 refers to the period from 1 January 2012 through 31 December 2014. It mentions 77 companies from the Shor group, as opposed to 39 companies in *Kroll 1*. The report carefully describes the decision-making on the loans for the companies from the Shor group and interbank payments, the schemes for retrieving funds from the three Moldovan banks, the foreign banks used to transfer money abroad, the involved individuals and legal entities, etc.

On 20 September 2019, the chair of the investigation commission [said](#) that Kroll company had offered him two documents with the list of the bank fraud beneficiaries but that the commission members had been bound to secrecy in order not to damage the prosecutors' investigation. Earlier, then Prosecutor General Eduard HARUNJEN [had said](#) that *Kroll*

2 did not contain any list of beneficiaries. The commission decided, however, to make public the names of some of the individuals and legal entities from that list, citing public interest.

According to the commission, the main beneficiary of the billion theft was Vladimir PLAHOTNIUC, followed by the groups led by Vladimir FILAT and Ilan SHOR. An [investigation](#) by Ziarul de Garda showed that shortly after the transmission of *Kroll 2* to Moldovan authorities in March 2018, Vlad PLAHOTNIUC and Ilan SHOR had alienated a considerable part of their assets in Moldova, which suggested that they had been aware of the report's content.

THE PARLIAMENTARY
INVESTIGATION
COMMISSION: VLAD
PLAHOTNIUC IS THE
MAIN BENEFICIARY OF
THE BILLION THEFT

This was the first time that a governmental institution officially named Mr. Plahotniuc as a beneficiary of the billion theft. The [Strategy for the recovery of the funds](#) stolen from the three banks—published by authorities in June 2018—had not mentioned Mr. Plahotniuc as a beneficiary but had mentioned the groups of Shor and Filat.

On 17 October 2019, the parliamentary investigation commission [presented](#) its report in the [Parliament plenum](#). The report mentioned that the devaluation of the banking system had taken place in three phases. The first one had happened in the years 2011 and 2012 and consisted in the consolidation of the minority interest at Banca de Economii a Moldovei (BEM), the subordination of competent institutions, and the takeover of Unibank by Ilan SHOR. The second phase had taken place in 2013, when the shareholders of BEM changed, Ilan SHOR took over Banca Sociala, and BEM issued additional shares, after which the state lost the control of BEM. The third phase had taken place in 2014 and consisted in the offering of bad loans, mainly to the group of 77 companies affiliated to Ilan SHOR, the Government's offering of sovereign guarantees worth MDL 13.5 billion to the three banks, the amendment of the banking legislation by undertaking the Government's responsibility and without the special administration of the three banks, the delayed placement of the three banks under special administration between 27 - 30 November 2014, and the decision of 27 November 2014 of the Supreme Court of Justice to return BEM to the state after devaluation.

The commission's report stated that the National Anticorruption Center (NAC) and the Intelligence and Security Service had fully informed the country leadership about the situation in

the banking system, but the NBM lead by Governor Dorin DRĂGUȚANU and Prime Minister Iurie LEANCĂ had not intervened to halt the violations. The Prosecutor's Office ordered an inquiry to find out the precise amount of the loans offered by the three banks. This inquiry has been going on for more than four years and is still unfinished.

The commission also indicated that, from the year 2015 through 2019, the Prosecutor General's Office had effectively sabotaged the investigation of the devaluation of the banking system, starting fragmented criminal cases on multiple episodes without a systemic and integrated approach. The report mentioned that, on 9 August 2019, after the change of leadership at the Prosecutor General's Office, the latter had started a joint criminal case on the bank fraud.

On 17 October 2019, having heard the investigation commission's report, the Parliament [decided](#) to request, among other things, that the Finance Ministry carry out an audit within 90 days to assess the legality of the allocation of emergency loans for the three banks by the NBM in 2014 and 2015. The Parliament requested the Prosecutor's Office to submit a report within 30 days on the investigation of the devaluation of the banking system and to cooperate with foreign special services, especially the US Federal Bureau of Investigations (FBI), to investigate the bank fraud and to recover the stolen funds. The Parliament also requested that the Government and the NBM declassify and publish all materials related to the devaluation of the banking system, to the extent that this would not damage the investigation, and initiate the signing of tax information exchange agreements with all the countries of the off-shore area.

The state authorities started requesting foreign assistance to investigate the billion theft. On 17 July 2019, the Prosecutor General's Office [announced](#) that it had set up a joint investigation team with EUROJUST - a European Union agency dealing with judicial cooperation in criminal matters among the agencies of the EU member states. A number

**THE PARLIAMENTARY
INVESTIGATION
COMMISSION: NEITHER
THE NBM NOR THE
PRIME MINISTER
INTERVENED TO HALT
THE VIOLATIONS IN
THE BANKING SYSTEM,
AND THE PROSECUTOR
GENERAL'S OFFICE HAS
EFFECTIVELY SABOTAGED
THE INVESTIGATION OF
THE BANK FRAUD**

of rogatory letters were sent to several states. On 19 July 2019, Prime Minister Maia Sandu [requested](#) assistance from American authorities, including FBI, the US Central Intelligence Agency, and the US Department of Justice, in the investigation of the bank theft, and asked them to freeze the assets of the individuals involved in the theft that are located

in the US territory. According to the [information](#) published by the Anticorruption Prosecutor's Office and the NAC, as of July 2019, authorities had initiated approximately 197 criminal cases on the billion theft, had seized assets worth MDL 3 billion, and had recovered MDL 2.276 billion, including MDL 1.2 billion's worth of the bank's own assets and MDL 1.07 billion's worth in enforceable titles.

On 16 September 2019, before the release of the investigation commission's report, on the request of the interim prosecutor general, the Parliament [approved](#) the withdrawal of the immunity of MPs Mariana TAUBER and

Reghina APOSTOLOVA on account of their involvement in the devaluation of the banking system. The same day, the members of parliament [were arrested](#). The following day, the Anticorruption Prosecutor's Office [carried out](#) 21 searches as part of the banking fraud case, including those related to MPs Tauber and Apostolova. On 18 and 19 September 2019, Chișinău Court, Ciocana Office, decided to put Ms. Tauber under house arrest for 30 days, rejecting the prosecutors' motion on putting her on remand, and, respectively, to put Ms. Apostolova on probation for 30 days, rejecting the prosecutors' motion on house arrest. Chișinău Court of Appeals subsequently rejected the anticorruption prosecutors' cassation appeals on detention measures applied in this case. On 3 October 2019, the Constitutional Court [dismissed](#) the application filed by three members of the parliamentary group of the Shor Party on the constitutionality of the parliament decisions to withdraw the immunities of MPs Tauber and Apostolova. The Court stated that the interim prosecutor general was empowered to request the withdrawal of the immunities of the members of parliament, invoking an earlier decision in which it had ruled that the interim prosecutor general had had the same powers as the prosecutor general.

PROSECUTORS STARTED A CRIMINAL CASE AGAINST THE SCJ CHIEF JUSTICE

On [23 September 2019](#), Interim Prosecutor General Dumitru ROBU initiated prosecution against the Chief Justice of the Supreme Court of Justice (CSJ) Ion DRUȚĂ under Article 330² of the Criminal Code (unlawful enrichment). The prosecution rested on a report from the Intelligence and Security Service,

which had analyzed the assets acquired by the members of the DruȚă family during the years 2016 through 2019 and had found material discrepancy between them and the declared legal income. On [24 September 2019](#), the Superior Council of Magistracy (SCM) admitted the Prosecutor General's

application. The SCM examined the application in a [closed session](#) and did not publish its decision on the web site. Under the law, if the court finds the SCJ judge guilty of the deed he is incriminated with, he risks a fine of up to MDL 500,000 or a prison term of up to 15 years, as well as the loss of the right to hold judicial offices for 10 to 15 years.

Also on 24 September 2019, the [Anticorruption Prosecutor's Office](#) carried out searches in Mr. Druṭă's office and at his home and put him under arrest for 72 hours. Prosecutors requested putting Mr. Druṭă on remand. On 4 October 2019, Chişinău Court dismissed the motion. The court did not apply any other pretrial measure, and he resumed his office. [After that](#), the prosecutors seized several movable and immovable assets worth MDL 12 mln in the same case.

On [22 October 2019](#), the interim Prosecutor General filed

another report with the SCM, in which he requested the withdrawal of the immunity of the SCJ chief justice. The latter is suspected of having committed the crime of interfering in the administration of justice. The criminal case was initiated after the searches in the judge's office, during which the prosecutors had found notes with succinct descriptions from many cases pending before the SCJ or already examined, with the indication of the judges who would be assigned to them and the solutions to be adopted. The decisions pronounced by [judges corresponded to the solutions indicated](#) in the notes found at Ion DRUṬĂ.

On [1 October 2019](#), Mr. Druṭă filed a letter of resignation from the office of SCJ chief justice, and on [13 December 2019](#), he filed a letter of resignation from the office of judge. On [19 December 2019](#), the Parliament decided to dismiss him from the offices of judge and chief justice of the SCJ.

HUMAN RIGHTS

THE PARLIAMENT: SIS' EXPULSION OF TURKISH TEACHERS FROM THE REPUBLIC OF MOLDOVA WAS ARBITRARY

On 2 August 2019, the Parliamentary Committee for National Security, Defense, and Public Order [released the results of the investigation](#) on the expulsion of Turkish teachers from the Republic of Moldova. They had been detained and expelled illegally from the country on 6 October 2018 (see [Newsletters nos. 19](#) and [22](#) for details). The Committee found that the expulsion of five of the seven teachers was illegal because they were asylum seekers. Moreover, they could not be expelled to Turkey, where their life and safety were under threat. According to the Committee, the Migration and Asylum Office (MAO) had not participated in the expulsion of the Turkish teachers, although it had been the only authority empowered by law for such tasks. The expulsion of the Turkish nationals was organized by the employees of the Intelligence and Security Service (SIS), who acted on orders from SIS' CEO Vasile BOTNARI. To ensure the transportation

of Turkish teachers, SIS had spent MDL 340,000 from the state budget on a charter flight. According to the chairperson of the Commission Chiril MOŢPAN, the expulsion decision was arbitrary and had severely tarnished the image of the Republic of Moldova.

According to a [press release](#), Chişinău Prosecutor's Office initiated a criminal case against several MAO and SIS employees. Olga POALELUNGI, the MAO's CEO, was [suspended from office](#) and put under investigation for exceeding the service duties. SIS' ex-Deputy CEO Alexandru BALTAGA was put under house arrest. According to prosecutors, the estimated damage to public interests in this case exceeded MDL 2,5 million, in accordance with the [damages the ECtHR had awarded](#) to the Turkish teachers' families in June 2019.

IMPUNITY FOR PERSISTING HATE SPEECH IN THE REPUBLIC OF MOLDOVA

On 30 July 2019, Promo-LEX Association released the report [Hate Speech and Incitement to Discrimination in the Public Space and Media in the Republic of Moldova](#), which covers the period of 1 January through 1 April 2019. In the three monitoring months, there had been 319 registered instances of hate speech or incitement to discrimination, an increase of 83% from 2018. 170 instances of hate speech were based

on sex/gender; 68, on political affiliation; and 52, on LGBT identity. The [authors of the study concluded that politicians had used hate speech most often](#). The Party of Socialists of the Republic of Moldova had been the party that generated most instances of intolerance in the public space, albeit registering a decrease of 25% from 2018, whereas the Democratic Party, the Liberal Democratic Party of Moldova, and the Action

and Solidarity Party had not generated any instance of hate speech. On the other hand, the instances triggered by Partidul Nostru and the Party of Communists of the Republic of Moldova increased alarmingly by 50%. Hate speech remains completely unpunished in the electoral context, including due to the lack of proper legislation.

Back on 8 December 2016, the Parliament had passed [Draft Law No. 301](#), introducing criminal and administrative penalties for hate speech, in the first reading, but the draft law is still pending the final reading. In 2018, the European Commission against Racism and Intolerance (ECRI) had released its [fifth report on the Republic of Moldova](#), in which it had found that hate speech, especially against the Roma and the LGBT communities, and sexist speech—the first ever registered increase in sexist speech in our country!—had become more

frequent in the public discourse in the Republic of Moldova. The report also found that public authorities had failed to take a stand and appropriate actions. ECRI had recommended authorities to take urgent action to make sure that anyone who resorted to hate speech was properly persecuted and punished and the Audiovisual Coordination Council to take firm action in all instances of hate speech and to enforce appropriate penalties whenever necessary. ECRI had recommended authorities to condemn hate speech and to promote counter speech by politicians and high-ranking officials. ECRI had also recommended authorities to discuss with the leadership of the Moldovan Orthodox Church ways in which the Church could use its moral standing to prevent and combat hate speech and to ensure that their representatives refrained from making derogatory comments. So far, these recommendations remain unattended.

CIVIL SOCIETY

FOR TWO YEARS THE ASSOCIATION OF FORMER MINISTER OF INTERIOR EMPLOYEES HAS BEEN THE MAIN BENEFICIARY OF THE 2% LAW

The Legal Resources Centre from Moldova (LRCM) [has prepared a report](#) on the results of the implementation of the 2% mechanism in 2018. The results reveal a positive trend: the number of nonprofits registered in the List of 2% beneficiaries increased by 19% from 2017; the number of taxpayers who redirected 2% increased by 34% from 2017; and the amount of validated designations almost doubled from 2017, reaching the sum of MDL 5,631,042 (USD 318,678/EUR 284,396). 92% of the amounts were redirected to NGOs (MDL 5,168,081), and 8%, to religious entities (MDL 462,960).

The 2018 tally proves that there is still much room for growth for this tool of indirect financing for nonprofits. In 2018, only 2.3% of the taxpayers with the right to designate used this right, and only 7.7% of the total amount that could have been designated was effectively designated. For the 2% mechanism to grow, both authorities and nonprofits must take steady awareness raising and promotion actions.

A peculiar phenomenon specific only to Moldova of all the Central and Eastern Europe states that implement this mechanism is that the largest amounts go to the organizations set up by the employees of state institutions. These organizations are neither active, nor visible in the nonprofit sector. For example, the Public Association of Veterans and Pensioners of the Ministry of Interior of the Republic of Moldova ranked No. 1 in the sums received in 2017 and 2018 (MDL 1,374,555.89, which is 49% of the total validated sum and, respectively, MDL 1,691,298.75, which is 30% of the total validated sum). The top 10 designation recipients in 2018 include the Foundation Miron SHOR, the Association of Veterans and Pensioners of the Main State Tax Inspectorate UNI-M, and the Association of Prosecutors of the Republic of Moldova. Thus, some employers with many employees managed to convince them to assign 2% designations to their affiliated NGOs. This suggests that it is still necessary to ensure that percentage designation at state institutions is confidential, freely consented, and is not imposed by employers.

IN BRIEF

On 15 May 2019, Chişinău Court of Appeals [sentenced](#) ex-Minister of Transport and Road Infrastructure Iurie CHIRINCIUC to three years and six months of prison for influence peddling and malfeasance in office. The court found that, in 2016 and 2017, Mr. Chirinciuc had coordinated criminal schemes devised to yield undue benefits and money by putting pressure and setting impediments on certain vendors hired for road rehabilitation projects. Despite his conviction, Mr. Chirinciuc left the country. On 21 July 2019, the ex-minister posted three pictures with him on the [beach](#) on his Facebook page. On 10 December 2019, the SCJ fully [quashed](#) the appellate court's decision on the conviction of Iurie CHIRINCIUC.

From [17 through 21 June 2019](#), the Group of States against Corruption (GRECO) convened in a plenary meeting. The GRECO invited the Republic of Moldova to offer information about the legislative initiative passed on 31 July 2019 to increase the number of non-prosecutor members at the Superior Council of Prosecutors. Moldovan authorities were also called on to authorize the publication of the GRECO report adopted on 7 December 2018. More information about the GRECO and its reports are available [here](#).

On 27 June 2019, the Parliament Legal Committee for Appointments and Immunities (Legal Committee) [announced a competition](#) for the vacancy of CEO of the National Anticorruption Center (NAC). On 22 July 2019, the Legal Committee published the [CV and concept papers on the management of the NAC](#) submitted by the nine admitted applicants. The competition for the vacancy of the NAC's CEO took place on 29 July 2019. [Highest scoring Ruslan FLOCEA](#) won the competition. At that time, Mr. Flocea was the secretary general to the Office of President Igor DODON. Previously, he had worked at the NAC. He lived in a [160 sq. m. two-level house in the commune of Ciorescu](#), donated by his parents-in-law in December 2014. The [declaration of assets](#) of the [NAC's CEO](#) states that the property is worth MDL 1 million, but its market price is at least twice as big. The declaration of assets also specifies MDL 166 thousand's worth of income from salary, a parcel of farmland, a 29 sq. m. apartment purchased in 2018, and a car manufactured by Volvo in 2016 registered on the brother-in-law and owned by the Flocea by power of attorney since 2018.

From **1 through 6 July 2019**, the Legal Resources Center of Moldova (LRCM), in cooperation with Expert Forum Romania, hosted the third edition of the school [Applied](#)

[Democracy](#). 22 students, fresh graduates and young professionals of Moldova, learned how to become the agents of change in their community. The event aimed at raising the awareness and understanding of the challenges faced by Moldova on its way toward democracy and to encourage human rights, critical thinking, and civic activism among young people.

On 8 July 2019, [Chişinău Court acquitted Judge](#) Domnica MANOLE. On 31 May 2016, the [SCM had agreed to the initiation of criminal investigation against](#) the judge for knowingly taking an unlawful decision (Article 307 of the Criminal Code). She had been accused of having illegally had the Central Election Commission organize a referendum requested by the Dignity and Truth Party (see [LRCM's Newsletter no. 10](#) for details). Ms. Manole claimed that she had been persecuted for political reasons, for having adopted decisions that had been inconvenient for the governing party and having spoken in public about justice sector issues. In April 2018, the case had been sent to court. After the change of Government in Chişinău and more than 10 court hearings, Prosecutor Eugen RURAC dropped the charges for lack of evidence. Chişinău Court acquitted Judge Manole on the grounds of the prosecution's dismissal of charges.

On 14 July 2019, at a press briefing, Acting Minister of Interior Andrei NĂSTASE [banned the journalist Vadim UNGUREANU](#) from the press conferences organized by the [General Police Inspectorate](#) on account of his criminal conviction. In October 2018, Chişinău Court [had convicted Vadim UNGUREANU on the charges of active corruption](#). Mr. Ungureanu denied the accusations and filed an appeal. The journalist had been accused of having obtained personal data of Moldovan artists and state secrets in 2014 by blackmailing ex-Deputy Chief Dan CHIRIȚA of the Information Technology Service of the Ministry of Interior that he would publish defamatory information about Chirița.

On 19 July 2019, after a hearing with the injured party - brought in court by force - Chişinău Court of Appeals quashed the sentence against Gheorghe PETIC, [releasing him from custody](#) and sending the case for retrial. Gheorghe PETIC, former officer of the Border Police, had been sentenced for rape to three years and six months in prison in Orhei Court on 20 March 2019. He had stated that the charges brought against him had political motivation because he had publicly disclosed the smuggling schemes of senior officials (see [LRCM's Newsletter no. 21, page 9](#) for details).

On 19 July 2019, Chişinău Court convicted the prisoners who had abused Andrei BRĂGUȚĂ (more details are available [here](#)) for moderately severe injuries. The court sentenced three of them to five years on probation and one, to prison, where he is currently serving his term. Two police officers were sentenced to prison terms of four and, respectively, five years, and one was acquitted. [The lawyers of the Brăguță family](#) and [prosecutors](#) said they would challenge the sentence and would request harsher penalties for the police officers, including the acknowledgement of torture on Mr. Brăguță. [Two more criminal cases](#) on the same matter are pending in court. Those cases involve another 13 police officers from the temporary confinement facility of the Police Directorate of Chişinău (charged with having tolerated the inhuman treatment of the victim) and two doctors (charged with having negligently violated health care rules).

From [21 through 23 July 2019](#), the co-rapporteurs of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) had a documentation visit in the Republic of Moldova. The visit focused on the assessment of democratic institutions after the general election of February 2019, the political events after June 2019, the constitutional and political crisis, and the measures initiated in the field of justice and anti-corruption.

On 22 July 2019, the priest Ghenadie VALUȚA, known for his public attacks on sexual minorities, was seen driving a car with [a dog chained](#) to its rear and dragged on the road. The video of the incident became viral on social media. The priest said that he had resorted to such a method because the animal posed high threat for children. He also claimed to [have been driving at slow speed](#). The Prosecutor's Office of Anenii Noi initiated prosecution against the priest but [dropped the case on 12 August 2019](#). According to the dismissal order, the animal's condition was satisfactory and, therefore, the deed did not qualify as an offence. In his turn, [the priest said](#) that he had complained to police about the persons who had humiliated his dignity and honor on social media.

On 23 July 2019, the [SCM annulled the disciplinary penalty](#) of dismissing Judge Gheorghe BALAN from office, applying reprimand instead. Previously, Judge Balan had been dismissed in another disciplinary procedure. On [16 July 2019](#), Chişinău Court of Appeals had annulled that dismissal decision, invoking the absence of disciplinary violation. Gheorghe BALAN requested the SCM his [reinstatement](#) in judicial office. The SCM admitted the request on 24 September 2019, and on [19 November 2019](#), Igor DODON repealed the decree on the dismissal of Mr. Balan from judicial office. On

[13 December 2019](#), the SCM appointed Mr. Balan to Chişinău Court, Buiucani Office. Before the reinstatement, he had worked as the chief of the General Police Inspectorate, having been appointed by Andrei NĂSTASE.

On 26 July 2019, the Government decided to [suspend](#) for four months [the possibility of acquiring of Moldovan citizenship](#) through investment. The Government also announced its intention to repeal the law that allowed the acquisition of Moldovan nationality through investment. That law, passed in late 2016 on the initiative of the Democratic Party, had been the subject of intense [criticism](#). According to the [report](#) of the European Commission, the mechanism for conferring nationality through investment applied in the Republic of Moldova posed migration and security risks for the European Union.

In [July 2019](#), the Torture Prevention Council (TPC) released its activity report for 2018. In 2018, the TPC had had 31 visits to detention facilities. According to the report, the fight against torture had not made progress from previous years, and, in some areas, the TPC found that the situation stagnated or even became worse. The most important systemic issues were: (i) the incommensurate application of physical force or special means by police officers during arrests; (ii) the keeping of persons in pretrial custody for more time than established by the law (24/72 hours); (iii) the failure to carry out mandatory medical checks on the arrested upon their entry into, and exit from, detention facilities; (iv) the lack of procedures for complaining/sending confidential information to prosecutors, the ombudsperson, or NGOs; etc. Progress was made, however, in: (i) offering massive training for the personnel of detention facilities; (ii) providing special transport units for the transportation of prisoners; (iii) reducing the number of prisoners in the penitentiary system; (iv) enacting the compensatory remedy for bad detention conditions on 1 January 2019.

On 8 August 2019, the Prosecutor General's Office published a [press release](#) in which it informed that it had started a criminal case on the illegal wiretapping of several journalists, opposition representatives, and NGO representatives (see [Newsletter no. 22](#) for details). According to the press release, prosecutors had found multiple procedural irregularities in three criminal cases investigated by PCCOCS. This criminal case was sent to the Anticorruption Prosecutor's Office for examination. Later, several prosecutors and prosecution officers of PCCOCS were charged in this case.

On **9 August 2019**, on its website, the Office of the Ombudsperson published a [press release](#) on the initiative

to clarify the scope and role of the national torture prevention mechanism (NTPM) and the appointment of the ombudsperson as the NTPM. The press release was accompanied by an [informative note](#) and legislative amendment proposals. It was proposed to abandon the current NTPM formula by the Office of the Ombudsperson. On [15 August 2019](#), several civil society organizations expressed their concern about this initiative because of the lack of prerequisites for such a change. Over the past three years, NTPM representatives have had 75 visits to detention facilities of all types, have prepared more than 50 reports, have made more than 1,000 findings, and have addressed more than 700 systemic recommendations to the concerned institutions. These figures refute the idea that the current NTPM is inefficient and that its members do not allocate enough time to the prevention of torture.

On [16 September 2019](#), the Parliamentary Assembly of the Council of Europe approved the report on the July 2019 visit of its co-rapporteurs. The report hailed the reforms started by the new parliamentary majority, especially in the fields of justice and anticorruption.

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

