

NEWSLETTER

NO. 27 | JULY – SEPTEMBER 2020

GOOD GOVERNANCE

A CHANGE OF MIND—THE CONSTITUTIONAL COURT ISSUES A NEGATIVE OPINION ON THE DRAFT CONSTITUTIONAL AMENDMENT CONCERNING THE JUDICIARY

On 22 September 2020, the Constitutional Court (CCM) issued [a negative opinion](#) on the draft law concerning constitutional amendments aimed at increasing the independence and transparency of the judiciary. According to the CCM, the Government has violated the procedure for approving the draft law by sending the CCM another version than the one approved at the Government's sitting. The draft law also contained several ambiguous provisions concerning the procedure of electing SCM members and the automatic termination of the mandate of the current Superior Council of the Magistracy (SCM) members elected in 2020 among law professors.

To compare, in 2017, an identical draft law received two [positive opinions](#)—one from the CCM and one from the Venice Commission. The latter [appraised the amendments](#) as generally positive and compliant with international standards. The draft law provided for the appointment of judges for life from the start, removing the constitutional requirement that the president of the country reconfirms their tenure after five years in office. The draft law strengthened the independence of the SCM by establishing a single six-year term for SCM members and clarified the conditions for electing or appointing SCM members. The draft law abolished the requirement concerning the appointment of Supreme Court justices by Parliament and their prior judicial experience of a minimum of ten years. Several aspects that were criticized in the CCM's opinion concerned the termination of the SCM member mandate and were criticized by the Venice Commission as well.

The CCM's opinion was supported by the majority of judges. Judge Serghei ȚURCAN had a [dissenting opinion](#), according to which the CCM could not examine the Government's application and should have dismissed it because the submitted draft law had not been published in the Official Gazette.

Without the CCM's consent, the Constitution may not be amended. Once again, the approval of this draft law concerning the amendment of the Constitution regarding judiciary becomes unlikely as the entire amendment procedure should start anew. In

CONTENTS

GOOD GOVERNANCE

A change of mind—the Constitutional Court issues a negative opinion on the draft constitutional amendment concerning the judiciary	1
The Law on Naturalization through Investment has been repealed	2

JUSTICE

The SCM is slow to elect a new chairperson even after the interim chairperson stepped down	2
The Chișinău Court of Appeals has a new chief judge	3
"Craved" positions in the judiciary remain vacant. Why does the SCM not fill the vacancies?	3
Unprecedented reaction to Parliament's refusal to vote on the promotion of judge Viorica PUICA to the SCJ	4
The NIA: Membership in the SCM and membership in the NIJ's Board are incompatible	4
The Justice Reform and Anticorruption Forum took place in Chișinău	5

HIGH-PROFILE CASES

Prosecutors have dropped a criminal case concerning the privatization of a part of Casa Presei and the government's cafeteria	5
Prosecutor General: Vladimir PLAHOTNIUC was the main beneficiary of Metalferos	6
The ȘOR case in 2020—the case delaying tactics keep on	7

HUMAN RIGHTS

The case of Turkish teachers—from legal loopholes to ridiculous sanctions and many other unknowns	7
The ECtHR: In 2014, the Patria Party was arbitrarily excluded from the election race	8
Moldova at the ECtHR: over 600 violations in 23 years	9

IN BRIEF	9
----------------	---

2016 and 2017, similar draft laws have been filed in Parliament and failed to pass within one year, thus becoming null. Amending the Constitution to increase the independence and accountability of the judiciary was and remains one of the prerequisites for the

FOLLOWING THE
CONSTITUTIONAL COURT'S
NEGATIVE OPINION, THE
PROCESS OF AMENDING
THE CONSTITUTION MUST
START ANEW.

European Union's assistance to the Republic of Moldova. On 30 September 2020, Justice Minister Fadei NAGACEVSCHI [requested](#) that the Government approved the amended draft law in order to resubmit it to the Constitutional Court for review.

THE LAW ON NATURALIZATION THROUGH INVESTMENT HAS BEEN REPEALED

On 16 December 2016, on the initiative of a group of MPs from the Democratic Party of Moldova (PDM), the [Parliament passed a law](#) that enabled naturalization as a Moldovan citizen through investment. Under that law, Moldova offered rich foreign nationals the possibility to obtain Moldovan citizenship if they agreed to loan the state EUR 250,000 for five years. Moreover, the Security and Intelligence Service (SIS) was not empowered to screen citizenship seekers in advance.

The European Union (EU) criticized this law for the risk that Moldovan citizenship would be awarded to individuals with shady past, which would endanger national security. Nevertheless, the law was signed by President Igor DODON and published in the Official Gazette in no more than ten days after adoption.

On 4 October 2017, the [Government approved](#) the Regulation on Naturalization through Investment. Under that regulation, the task of screening for good economic and financial standing and assessing risks was assigned to a private company selected by the Government. The winning company was [a consortium of companies from the United Arab Emirates](#). [The process of naturalization through](#)

[investment started](#) on 5 November 2018.

On 18 June 2019, after a change of Government, MPs from the ACUM Block and PSRM [voted to repeal this law in its first reading](#). On 26 July 2019, the Sandu Government [imposed a moratorium](#) on the programme of nationalization through investment, and in December 2019, the Chicu Government [extended the moratorium](#) for another two months. On 28 February 2020, Parliament [imposed another moratorium](#) on the acceptance of new applications until 1 September 2020. However, the applications for citizenship filed earlier remained on the docket list. On 18 June 2020, the Parliament approved in the final reading the repeal of the law starting with 1 September 2020.

According to the Public Services Agency, [97 persons](#) had applied for citizenship under this program. At least seven of them were denied citizenship because they did not meet statutory requirements. On 2 November 2020, in the full swing of the election campaign, Igor DODON [signed the last decrees](#) awarding citizenship through investment to 12 persons. The names of the persons naturalized through investment are classified.

JUSTICE

THE SCM IS SLOW TO ELECT A NEW CHAIRPERSON EVEN AFTER THE INTERIM CHAIRPERSON STEPPED DOWN

On 22 September 2020, Judge Anatol PAHOPOL [stepped down](#) as interim chairperson and member of the SCM. Judge Pahopol cited multiple statements that censured his work circulating in the media as the reason for the resignation. Judge Pahopol referred to MP Dinu PLÂNGĂU's application to the Constitutional Court, which challenged the legality of his election to this office. The MP challenged the way. Judge Pahopol had become a member of the SCM, [arguing that he had been appointed contrary to the law](#), as a result of legal amendments passed in Parliament to allow him to become a member and interim chairperson of the SCM. According to MP

Dinu PLÎNGĂU, this way the Parliament intervened in the work of the SCM despite not having such power. On the same day, after the announcement of the resignation, the Constitutional Court [suspended the case](#) because the vote of its judges on whether to admit it or not resulted in a tie.

The chairmanship of the SCM has remained vacant for over a year after the former Chairperson Victor MICU was dismissed. The election of a new chairperson was discussed at the SCM on [28 July 2020](#), on the initiative of the SCM members elected from law professors, who became eligible for this office in [July 2020](#).

After a prolonged argument, eight of the 14 SCM members voted to remove the election of a chairperson from the agenda of the meeting. After Judge Pahopol's dismissal, the office of

the SCM's interim chairperson passed to Supreme Court Justice Luiza GAFTON. Previously, Justice Gafton had already served as interim chairperson before Anatol PAHOPOL had taken over.

THE CHIȘINĂU COURT OF APPEALS HAS A NEW CHIEF JUDGE

On 28 July 2020, the SCM [nominated](#) Judge Vladislav CLIMA as chief judge of the Chișinău Court of Appeals for a four-year term. Judge Clima had only one contender—a colleague of his, Iurie IORDAN, deputy chief judge of the Chișinău Court of Appeals. Both candidates received identical scores by Judges' Selection Board and rated "[excellent](#)" by the Judicial Performance Evaluation Board. The SCM members chose Judge Clima by a vote of nine to three.

Three SCM members, Anatolie GALBEN, Dorel MUSTEAȚĂ, and Nina CERNAT voted against the nomination of Judge Vladislav CLIMA and filed [a dissenting opinion](#). According to this opinion, the integrity of the new chief judge of the Court of Appeal was questionable. Allegedly, Judge Clima was one of the organizers of

the abusive procedures to revoke SCM members in the autumn of 2019. Also, according to the three SCM members, he issued illegal judgments in high-profile cases, especially in the case concerning the annulment of the outcome of the 2018 election for mayor of Chișinău, which was won by the opposition's candidate Andrei NĂSTASE. After [the communication of the case](#) by the ECtHR, Vladislav CLIMA sat on the judicial panel that annulled [the judgment concerning the invalidation of the election, previously maintained by a panel from which he was part of](#).

The nomination of Judge Clima by the SCM stirred up criticism in the press. Nevertheless, on 2 September 2020, President Igor DODON decreed to appoint Vladislav CLIMA as chief judge of the Chișinău Court of Appeals.

"CRAVED" POSITIONS IN THE JUDICIARY REMAIN VACANT. WHY DOES THE SCM NOT FILL THE VACANCIES?

On 28 July 2020, the SCM held a series of contests to fill up several vacancies in the judiciary. Although two candidates or more applied for every vacancy, the SCM proposed the appointment only for a handful of positions. The SCM hesitated to nominate a [chief justice of the SCJ](#) and a [deputy chief judge of the Chișinău Court](#). None of the candidates gained the required number of votes. Some even received nine or ten no votes, despite being rated as "[very good](#)" or "[excellent](#)". The same scenario was followed in the competition for the [chief judge of the Comrat Court of Appeals](#). The competition for the [chief judge of the Bălți Court of Appeals](#) was extended due to procedural reasons.

In the contest for [deputy chief justice of the SCJ](#) and chief justice of the Chamber for Civil, Commercial and Administrative Cases, the SCM voted for the SCJ's Justice Tamara CHIȘCA-DONEVA. She was ahead of her contender Iurie BEJENARU (also a justice at the SCJ) by approximately six points and had the support of eight members of the SCM. Four SCM members voted against her. The SCM member Carolina CIUGUREANU-MIHAILUȚĂ filed a [dissenting opinion](#), mentioning that she did not support the candidacy of Justice CHIȘCA-DONEVA because of her professional reputation, which allegedly was dented by her decisions in a series of cases that had been lost at the ECtHR,

including [the Gemenii Case](#). In a similar competition for [deputy chief justice of the SCJ](#) and chief justice of the Chamber for Criminal Cases, the SCM selected Justice Nadejda TOMA by nine votes to three. Her contender, Anatolie ȚURCAN, had only two yes votes against ten no votes.

The mere invocation of the number of votes is not sufficient to serve as rational reasoning for the SCM's decision. The LRCM [has often contested this practice](#). The decisions should lay out the majority's arguments supporting the SCM decision on judges' career. The large number of competitions that failed due to the lack of required votes at the SCM raises the question of why those votes were withheld. Although according to Article 19 (2) of the Law on the SCM, the SCM must issue reasoned decisions on the candidates that participate in the contests for appointment, promotion or transfer within judiciary, its decisions effectively lack any reasoning, and the final choice of a candidate is based solely on the vote in the SCM. Supporting or not supporting a candidate without clear arguments gives the impression of arbitrariness, to say the least, and personal and subjective preference. This perception is reinforced when some candidates who participated in contests that failed were shortly afterwards proposed by the SCM for appointment to other positions.

DESPITE LEGAL AMENDMENTS, THE SCM DECISIONS ON JUDGES' CAREER ARE NOT WELL REASONED, AND APPOINTMENTS & PROMOTIONS IN THE JUDICIARY DEPEND TO A LARGE EXTENT ON THE PREFERENCES OF SCM MEMBERS.

UNPRECEDENTED REACTION TO PARLIAMENT'S REFUSAL TO VOTE ON THE PROMOTION OF JUDGE VIORICA PUICA TO THE SCJ

On [9 June 2020](#), the SCM nominated judge Viorica PUICA for promotion to the Supreme Court of Justice(SCJ). Judge Puica won this promotion in a competition where she had five contenders. The SCM took this decision based on the candidates' professional performance, previous judicial experience, and her performance at the interview. Viorica PUICA was backed by the majority of the SCM.

On [15 July 2020](#), the Parliamentary Committee for Legal Matters, Appointments, and Immunities refused to support the nomination of Judge Puica. [The committee's report](#) does not offer concrete reasons and only mentions the lack of required votes from the committee. The committee did not hold a hearing of the judge, despite it being a customary practice until then, and neither did it discuss the judge's professional qualities. In [an interview for Ziarul de Gardă](#), committee member Grigore NOVAC said "he can't support someone he doesn't know well from a professional point of

THE PARLIAMENT'S
LEGAL COMMITTEE'S
REFUSAL TO PROPOSE
JUDGE VIORICA PUICA
FOR PROMOTION
TO THE SUPREME
COURT OF JUSTICE
IS NOT REASONED
AND HAS SPURRED
AN UNPRECEDENTED
CRITIQUE FROM CIVIL
SOCIETY AND JUDICIARY

view." This approach is contrary to the law because the law allows the rejection of the SCM's nominees only if they are incompatible with the office of SCJ or if they were promoted in violation of the procedure. The committee's refusal is not based on any of these reasons. Over the past ten years, the Parliament has ignored the SCM's nominations for Supreme Court justices [only once](#).

On 22 July 2020, 15 civil society organizations published a [public call](#) requesting the Parliament to abide by the law and to vote on the appointment of Viorica PUICA as Supreme Court justice as soon as possible. Two days later, [the judges of the Chişinău Court](#) (the Centru Office), [the Moldovan Association of Judges](#), and [the Judges Association "The Voice of Justice"](#) joined the public call and urged the Parliament to approve the candidacy of Viorica PUICA. Such support for a judge from civil society and professional organizations of the judiciary is unprecedented in Moldova.

THE NIA: MEMBERSHIP IN THE SCM AND MEMBERSHIP IN THE NIJ'S BOARD ARE INCOMPATIBLE

On 19 August 2020, the National Integrity Authority (NIA) [issued a factfinding act](#) concerning the violation of the legal regime of incompatibilities by Dorel MUSTEAȚĂ, a member of the Superior Council of the Magistracy (SCM). According to the document, [on 26 February 2019](#), the SCM held a competition for a member of the Board of the National Institute of Justice (NIJ), which was won by Judge Musteață.

On 8 May 2020, Ghenadie PAVLIUC, member of the NIJ's Board and deputy chief judge of the Chişinău Court, referred a possible case of incompatibility to the NIA. On 29 May 2020 (more than 15 months after the appointment), the [NIJ's Board decided](#) by nine yes votes and one abstention to request the SCM to revoke Musteață from the NIJ's Board. On 25 May 2020, the NIA started the inspection procedure, which ended on 19 August 2020. Taking note of the NIA's procedure, on 2 June 2020, [the SCM accepted the resignation of Judge Musteață](#) as a member of the NIJ's Board and announced a new competition for this position.

Dorel MUSTEAȚĂ considers that he was a member of the NIJ's Board as a judge rather than a member of the SCM.

THE NIA FOUND
AN INCOMPATIBILITY
REGARDING A JUDGE
BEING SIMULTANEOUSLY
A MEMBER OF THE
SCM OF THE NIJ'S
BOARD, BUT THE LAW
DOES NOT MENTION IT.
ACCORDING TO ANI'S
INTERPRETATION, THE
JUDGE SHOULD BE
DISMISSED.

He participated in the competition for this position. The NIA noted that Dorel MUSTEAȚĂ was appointed to the NIJ's Board while being a member of the SCM, and according to the NIA, [the Law on the NIJ](#) allows only sitting judges to be appointed to the NIJ's Board. Dorel MUSTEAȚĂ is a judge, but he is suspended from office during his term as a SCM member. According to the NIA, he should have relinquished his membership in the SCM if he sought an appointment to the NIJ's Board. Instead, he had held offices simultaneously in the SCM and the NIJ's Board and participated in the decision-making in both collegial bodies, which constitutes an incompatibility. Because of the NIA's decision, Dorel MUSTEAȚĂ risks dismissal as judge and a three-year ban on holding public offices and will be put on [the NIA's Register of Banned Individuals](#). On 2 September 2020, Judge Musteață challenged the NIA's act in court.

The NIA's opinion raises legitimate questions. The NIJ Law does not expressly state that suspended judges (such as judge members of the SCM) may not be members of the NIJ's Board. It only mentions that seven Board members must be judges appointed by the SCM. The NIA has interpreted the

provisions of this law extensively. The NIA's decision came after [the SCM refused](#) to appoint NIJ-nominated judges to the commission that gives graduation exams at the NIJ and

[dismissed some judges, including Ghenadie PAVLIUC, from administrative duties](#) (see the LRCM's Newsletters [22](#) and [23](#) for more details).

THE JUSTICE REFORM AND ANTICORRUPTION FORUM TOOK PLACE IN CHIȘINĂU

On [24](#) and [25](#) September 2020, [the Legal Resources Centre from Moldova \(LRCM\)](#) partnering with [the Institute for European Policies and Reforms \(IPRE\)](#) hosted [the Justice Reform and Anticorruption Forum](#). The forum served as a platform for transparent and professional debates between key players of the justice sector, politicians, civil society, and development partners to identify effective directions for justice reform and the fight against corruption in Moldova.

The forum addressed the most important issues that the justice reform and anti-corruption efforts in the Republic of Moldova must take into account. These included authorities' views on how to fight corruption; the investigation and sanctioning of corruption; the verification of civil servants' assets; the vision of the justice reform; judges' and prosecutors' independence; and accessibility, efficiency, and quality of justice.

Forum participants discussed and identified a series of problems in the process of fighting corruption and achieving a genuine reform in the justice sector. The most discussed problems were the low degree of public trust and confidence in the judiciary and anticorruption agencies, the low degree of independence and integrity of judges and prosecutors, lack of real political will for reforms, etc. The invited experts mentioned several possible solutions, including the need to abolish the initial five-year term for judges, which poses the risk of inappropriate pressure and influence on judges, the large-scale implementation of digital solutions in courts, the ensuring of the interoperability of implemented solutions, the imposition of sanctions that are severe enough to deter corruption, etc. [The full synopsis of the forum discussions](#) is available at the LRCM's website and has been sent to the ministry of justice and other agencies responsible for public policies in the field of justice and the fight against corruption.

HIGH-PROFILE CASES

PROSECUTORS HAVE DROPPED A CRIMINAL CASE CONCERNING THE PRIVATIZATION OF A PART OF CASA PRESEI AND THE GOVERNMENT'S CAFETERIA

In July 2019, shortly after the departure of the Democratic Party of Moldova (PDM) from the Government, [the Prosecutor General's Office \(PGO\) announced](#) that it had started a criminal investigation for abuse of office following the [privatization](#) of a part of Casa Presei and the former cafeteria of the Moldovan Government. The PGO said it had reasonable suspicions that both properties, including buildings and outbuildings, had been leased to businesses and subsequently privatized with violations. In January 2019, the Public Property Agency (PPA) approved the privatization of a part of Casa Presei by selling it to three businesses at the price of MDL 16,250,000 and the former cafeteria of the Government by selling it to a business at the price of MDL 9,000,000. [The media](#) wrote that this scheme involved Iulian FILIP, the son of the then Prime Minister Pavel FILIP and that he benefited from the privatization.

After the start of the criminal investigation, the Anticorruption Prosecutor's Office (APO) seized the privatized buildings of

Casa Presei and the former cafeteria of the Government. According to [a journalist investigation](#), in the meantime, the ownership of the buildings passed to Romanian companies. A year later, in July 2020, President Igor DODON said that the state had regained the ownership of the former cafeteria of the Government and Casa Presei when the buyer ceded them to the state. On 1 August 2020, the PGO [announced](#) that the privatization contracts had been rescinded and the transaction amount had been returned to the buyer companies. The PGO mentioned that the parties had reverted to the initial situation and the properties had been returned to the state.

The APO decided to drop the criminal investigation because it had not found any crime in the privatization of these buildings. However, prosecutors found that several civil servants involved in various phases of the privatization process had exceeded their powers, which constituted a contravention (Article 313 of the Contravention Code—excess of power

or excess of job duties) rather than a crime. Those civil servants included six members of the committee for direct talks concerning the leasing of the unused assets of the State-owned enterprise Casa Presei, six members of the board of directors of Casa Presei, and nine members of the PPA's privatization committee.

Although the state regained the ownership of the buildings, it is not clear why the APO re-classified the charge from criminal to

**THE ANTICORRUPTION
PROSECUTOR'S
OFFICE CONSIDERED
THAT THE COMMITTED
ABUSES WERE NOT
SERIOUS ENOUGH
TO BE CONSIDERED
CRIMES AND RE-
CLASSIFIED THEM AS
CONTRAVENTIONS.**

contraventional. Under the law, excess of power constitutes a contravention only if the damage it caused does not exceed MDL 140,000. Obviously, the damage caused to the state by this abuse exceeded MDL 140,000. The re-classification of the charge looks like an attempt to cover up the case. On 1 August 2020, when it was announced that the criminal case had been dropped, Pavel FILIP was the leader of PDM, and PDM was a member of the governing coalition.

PROSECUTOR GENERAL: VLADIMIR PLAHOTNIUC WAS THE MAIN BENEFICIARY OF METALFEROS

On 3 August 2020, the Prosecutor General's Office (PGO) [conducted 31 searches](#) in a case concerning the State-owned Enterprise Metalferos, the main collector and exporter of ferrous and non-ferrous metals in Moldova. 16 people were arrested, including four police officers from the Directorate for the Investigation of Economic Frauds of the [National Investigation Inspectorate](#) (NII). The arrestees were accused of fraud and money laundering on a grand scale for the benefit of a criminal organization. Earlier, in December 2019, the Anticorruption Prosecutor's Office (APO) [conducted another 48 searches](#) that resulted in seven arrests.

At [a press conference](#) on 20 August 2020, Prosecutor General Alexandr STOIANOGLO [stated](#) that anticorruption prosecutors' investigations carried out during the lockdown revealed that Metalferos had been monopolizing the ferrous metals market for many years, signing metal supply agreements only with certain companies. The declared average price for purchasing metals from these companies was valued at USD 280 per tonne. In reality, however, the accused would purchase metals for approximately USD 150 per tonne and pocketed the difference. The Prosecutor General stated that this scheme had cost the state approximately MDL 1.2 billion.

According to the Prosecutor General, from 2012 until 2019, the former leader of PDM Vladimir PLAHOTNIUC, who was on the list of wanted fugitives, allegedly used non-resident companies, whose effective beneficiary was himself, to organize the export of metals. Under fictitious agreements between Metalferos and the representatives of the companies controlled by PLAHOTNIUC, metals were purchased from Metalferos at a lower price and sold further to companies in Turkey, Austria, the Netherlands, and Germany at a price that was 27% higher.

**THE COMPANIES
CONTROLLED
BY VLADIMIR
PLAHOTNIUC
MEDIATED THE SALE
OF METALS FROM
METALFEROS, CAUSING
THE STATE TO LOSE
MDL 1.2 BILLION.**

Alexandr STOIANOGLO said that investigating judges had dragged out the examination of prosecutors' motions for search for three days and that, because of leaks to the press, the information about the searches became known before courts warranted them. He said that judges had dismissed the prosecutors' motions for pre-trial detention for all accused, and thus they are being investigated out of prison.

Before the press conference, Ziarul de Gardă published [an investigation](#) where it mentioned that Vladimir PLAHOTNIUC had had the signing authority in, or had been the beneficiary of, at least three companies that, directly or indirectly, had gained tens of millions of dollars from agreements with Metalferos in recent years.

Metalferos [expressed concerns](#) about the accusations launched against it in the media and said that the Prosecutor General was misled by individuals interested in destroying the company. The company denied allegedly causing damage to the state and said that this claim was based on assumptions and gossip.

After the prosecutor general's statements, the Moldovan Association of Judges [published a statement on Facebook](#), urging all those involved to refrain from any comments that could be classified as indirect influence on criminal proceedings and advised all stakeholders to keep cautious, fair, and balanced in their statements.

In August 2020, the Government put up the state-owned 78.28% stake in Metalferos for sale. The first attempt to sell the company failed for lack of bids. In September 2020, the second round for the privatization of the company started and also failed.

THE ŞOR CASE IN 2020—THE CASE DELAYING TACTICS KEEP ON

As of February 2018, the case of Ilan ŞOR is being examined at the Cahul Court of Appeals (Cahul CA, see the [LRCM's Newsletter 22](#) for more information). On 30 July 2019, authorities announced that he had fled the country illegally and had been put on the international wanted list, and on 15 August 2019, at the request of the prosecution office, MPs revoked Ilan ŞOR's parliamentary immunity.

From [August 2019 through November 2020](#), the Cahul CA scheduled 28 hearings on this case, 27 of which either were adjourned or did not take place, mainly for lack of a financial accounting expert opinion from the National Forensic Investigation Center.

On 1 September 2020, Ilan ŞOR's lawyers moved that the case be transferred from the Cahul CA to some other court of the same level. They cited public pressure on the judges of the Cahul CA from the Government of the country and the Justice Minister following their public statements on social media and TV shows. Şor's lawyers also [challenged the constitutionality](#) of Article 46 (1) of the Criminal Procedure Code (CrPC).

FROM AUGUST 2019 THROUGH NOVEMBER 2020, THE CAHUL CA SCHEDULED 28 HEARINGS ON THE ŞOR CASE, 27 OF WHICH WERE ADJOURNED.

On 17 September 2020, the case was referred to the SCJ. The latter suspended the examination of the motion for transfer because of the application filed in the Constitutional Court (CCM). On 20 October 2020, the CCM [dismissed the constitutionality challenge as inadmissible](#). The CCM examined the challenge considering the rule-of-law and

quality-of-the-law principles. It noted that the author of the challenge to constitutionality must prove interferences with the rights guaranteed by the Constitution. The guarantees of the rule of law and the quality of the law cannot apply when a fundamental right is not affected. The CCM also noted that the CrPC cannot abound in explanations. No matter how clearly a legal rule is laid out, there will always be an inevitable element of judicial interpretation in any legal system.

On 30 September 2020, [the Prosecutor General requested the SCM](#) to set up judicial panels specialized in cases concerning “the theft of the billion” and other related cases. The initiative proposed setting up judicial panels at the Chişinău Court (the offices of Ciocana and Buiucani) and at the Chamber for Criminal Cases of the Chişinău Court of Appeals and

appointing judges specialized in such cases. [According to the Prosecutor General](#), many corruption cases concerning “the theft of the billion” that were referred to courts do not get a competent examination and end up being dragged out by judges. On 13 October 2020, [the SCM decided to recommend](#) that the chief judges of these courts specialize their judges in economic and corruption crimes and apply

the statutory rules concerning the randomized assignment to such cases.

At the end of October 2020, SCJ justices are still examining the motion regarding the transfer of the case of Ilan ŞOR to some other court.

HUMAN RIGHTS

THE CASE OF TURKISH TEACHERS—FROM LEGAL LOOPHOLES TO RIDICULOUS SANCTIONS AND MANY OTHER UNKNOWNNS

On 11 June 2019, the European Court of Human Rights (ECtHR) ruled on the case of [Ozdil and others v. Moldova](#). The ECtHR found that the arrest and “removal” of Turkish citizens from the territory of Moldova to Turkey in 2018 were contrary to Articles 5 and 8 of the European Convention on Human Rights (ECHR). The Republic of Moldova violated all legal guarantees provided for by the international and national law when it “removed” the teachers from its territory (see the [LRCM's Newsletter 22](#) for more information).

On 24 July 2020, the LRCM and Promo-LEX Association

[submitted to the Committee of Ministers of the Council of Europe \(CM\)](#) a report on the measures taken by authorities to prevent such violations in the future. The organizations found that the current legal framework [did not provide for effective safeguards and remedies](#) against the abusive deportation of foreigners declared undesirable persons. National security authorities do not motivate their decisions to declare some persons undesirable, including during trials, and neither do they inform those persons about such decisions. The examination of potential appeals post-deportation means that any decision in favor of a foreigner

is useless because it does not have a suspensive effect. Moreover, when deportation is ordered for reasons of national security or public order, the deportee may be transported to a state where their life will be endangered or where they will be subjected to torture or inhuman or degrading treatment in violation of the ECHR.

On 16 September 2020, the Chişinău Court published [an excerpt from the judgment](#) of the former chief of the Security and Intelligence Service (SIS) Vasile BOTNARI—the [only defendant](#) in the case. According to the sentence, on 15 July 2020, he was fined MDL 88,000 and banned from holding public offices for five years. Vasile BOTNARI pleaded guilty and the case was tried by summary procedure. The prosecutor in the case requested three years' imprisonment (the penalty provided by law ranges from two to six years), but the judge refused to impose imprisonment and imposed the maximum fine. It is not clear why the excerpt from the sentence was published two months later, why the victims' relatives were not involved in the trial, and why the prosecutor did not challenge the trial court's judgment.

[According to the Prosecution Office](#), before the court handed down the judgment, BOTNARI had voluntarily paid the Ministry of Finance EUR 125,000 as compensation for the damages caused to the state due to his conviction at the ECtHR. He had also paid the Security and Intelligence Service MDL 348,432 for the charter of the plane that had taken teachers to Turkey. It is not known [where Vasile BOTNARI got these financial resources](#) because from 2008 until 2019 he had worked as a public servant and his income during this period was much lower than the amount paid in damages. Not all of Vasile BOTNARI's tax returns were published on [the website of the National Integrity Authority](#) (NIA). The NIA claims that this is because of a technical problem.

From 29 September through 1 October 2020, the CM [verified the measures](#) taken by the Republic of Moldova to enforce the judgment. The CM recommended that the Moldovan authorities clarify the access restrictions for judges and lawyers in cases related to national security and provide information on the outcome of the investigations against the persons involved in this case.

THE ECtHR: IN 2014, THE PATRIA PARTY WAS ARBITRARILY EXCLUDED FROM THE ELECTION RACE

On 4 August 2020, the European Court of Human Rights (ECtHR) [found](#) a violation of the European Convention on Human Rights in the exclusion of the Patria Party from the 2014 parliamentary elections. On 30 November 2014, the Republic of Moldova had parliamentary elections. On 26 November 2014, at the request of the General Police Inspectorate (GPI) filed on the same day, the Central Election Commission (CEC) petitioned in court the exclusion of the Patria Party from the election race because the latter had used approximately MDL 8 million from forbidden sources. The GPI alleged that the money had not been declared and had come from personal income gained in Russia by Renato USATÎI, the leader of the Patria Party. The GPI did not provide any evidence to support its allegations. On 27 November 2014, the Chişinău Court of Appeals accepted the CEC's motion, and on 29 November 2014, the day before the elections, the Supreme Court of Justice upheld this decision. According to opinion polls, the party ranked fourth in voter preferences, enjoying the support of 9% of respondents.

The ECtHR found a violation of Article 3 of Protocol 1 to the ECHR (the right to free elections). The court noted that the GPI had not provided any evidence that Renato USATÎI had used the money for the needs of the party and neither the

CEC nor the national courts had requested such evidence. The ECtHR found that the Patria Party had not received sufficient procedural guarantees against arbitrariness. The CEC informed the Party of its hearing on 26 November 2014, just fifteen minutes before the hearing, instead of the minimum 12 hours required by the CEC's rules, thus catching it unprepared for the hearing at the CEC. The Court also noted that the national courts had not reacted whatsoever and had not responded to the party's pertinent arguments, such as the fact that the case had lacked any evidence concerning the use of MDL 8 million owned by USATÎI. The courts made no effort to verify the expenses incurred from the Party's bank account and whether they coincided with the expenses mentioned in the GPI's letter of 26 November 2014. The courts ignored all relevant arguments put forward by the party and accepted without hesitation what appeared to be unfounded allegations.

The Court ruled that the disqualification of the Patria Party from the elections was not based on sufficient and relevant evidence, the CEC's and the national courts' proceedings had failed to offer the Patria Party sufficient safeguards against arbitrariness, and the national courts' decisions were unreasoned and arbitrary.

MOLDOVA AT THE ECtHR: OVER 600 VIOLATIONS IN 23 YEARS

As of 12 September 2020, it has been 23 years since the Republic of Moldova joined the European Convention on Human Rights (ECHR). By acceding to the ECHR, the Republic of Moldova has committed itself to respect the rights guaranteed by it and has acknowledged the jurisdiction of the European Court of Human Rights (ECtHR).

The LRCM has prepared [a summary of the violations the ECtHR found](#) in cases against the Republic of Moldova from 12 September 1997 until 30 June 2020. During this period, the ECtHR issued 461 judgments on Moldovan cases, finding 616 violations of the ECHR.

The most frequently violated rights include the right to a fair trial (Article 6)—200 violations (32.5%), the prohibition of

torture (Article 3)—142 violations (23%), the right to liberty and security (Article 5)—92 violations (15%), the right to an effective remedy (Article 13)—60 violations (9.7%), the right to respect for private and family life (Article 8)—30 violations (4.9%), and the right to freedom of expression (Article 10)—19 violations (3.1%).

The most common types of violations include failure to enforce court judgments—68 violations (11%), the illegal quashing of irrevocable court judgments—52 violations (8.4%), poor detention conditions—46 violations (7.5%), the improper investigation of ill-treatment, and deaths—45 violations (7.3%), ill-treatment—31 violations (5%), confinement contrary to the national law—28 violations (4.5%), and unreasoned arrests—27 violations (4.4%).

IN BRIEF

On 16 July 2020, several veterans of the Nistru War gathered in front of the Parliament to express their disagreement with the fact that, in 2020, the Tiraspol authorities had installed 37 checkpoints in the buffer zone and restricted access to 11 localities under the jurisdiction of the Republic of Moldova. The protesters called for additional social protection measures for war veterans. At the time, the Parliament was considering [a draft law concerning such measures](#). The protest was peaceful. After the protesters tried to block Ștefan cel Mare Boulevard, the police intervened by force, using tear gas and physical force to evacuate them and unblock the street. Following the altercations, [several protesters were hospitalized with serious injuries](#). It is not clear why the authorities applied force to a peaceful protest. In fact, the application of force to the protesters only incited confrontation.

On 24 and 25 July 2020, the Legal Resources Centre from Moldova hosted an advanced training workshop for 18 lawyers in the field of the right to a fair trial guaranteed by Article 6 of the ECHR. The workshop was interactive—its first day was dedicated to strengthening theoretical knowledge, and on the second day, the participants conducted a series of mock trials at the European Court of Human Rights. The workshop was facilitated by Vladislav GRIBINCEA, President of the LRCM, and Dragoș CUCERANU, jurist at the ECtHR's Registry.

On 29 July 2020, President [Igor DODON signed a decree](#) setting up a commission for the constitutional reform.

Among the reasons for such a commission, the chief of state mentioned the constitutional deadlocks that had occurred from 2014 through 2020, issues with political parties switching, etc. It is not known what constitutional provisions will be proposed for amendment. Within a year, the commission is expected to identify and review the shortcomings of the constitutional system, draw up constitutional reform proposals, and submit the draft concerning the amendment of the Constitution.

Between **21-29 September 2020**, [the Chișinău Lawyers' Bar held the election of its delegates](#). 879 lawyers voted to elect eight delegates to the Lawyers' Union's Board, as well as the Dean and the Vice Dean of the the Chișinău Lawyers' Bar. The following delegates were elected to the Board: Angela POPIL, Alexandru ȚURCAN, Adrian TĂBÎRȚĂ, Nina LOZAN, Vladislav GRIBINCEA, Gheorghe VLAS, Iurie MĂRGINEANU, and Alexandru GROSU. Dorin POPESCU was elected as Dean, and Alexandru ȚURCAN as Vice Dean of the Chișinău Lawyers' Bar.

On 23 September 2020, the eleventh round of [the Republic of Moldova – European Union \(EU\) Human Rights Dialogue](#) was held via teleconference. Before the meeting, the EU consulted with representatives of Moldovan civil society organizations who participated as observers. The discussions focused on issues of democracy and the electoral process, human rights in the justice system, freedom of the press, children's rights and gender equality, and the anti-discrimination and multilateral

cooperation policy. The EU stressed that transparent, inclusive, and credible elections are the key to democracy and the rule of law and highlighted their expectations that authorities would ensure full compliance with these principles during the 1 November presidential election.

On **30 September 2020**, the Association for Participatory Democracy ADEPT released the report [Monitoring the COVID-19 Pandemic Crisis in the Republic of Moldova](#). The ADEPT's report shows that, until the declaration of the state of emergency on 17 March, authorities responsible for handling the crisis took appropriate measures, which complied with the law, to alleviate the pandemic effects. However, after the declaration of the state of emergency, the Committee for States of Emergency of the Republic of Moldova admitted disproportionate departures from the legal rules concerning access to justice, derogations from the Civil Procedure Code, the Administrative Code, the Labor Code, etc.

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.

LRCM TEAM

Vladislav GRIBINCEA
 Nadejda HRIPTIEVSCHI
 Sorina MACRINICI
 Oxana BRIGHIDIN
 Ilie CHIRTOACĂ
 Daniel GOINIC
 Victoria MEREUȚĂ
 Aurelia CELAC
 Olga CORTAC
 Alina FRIMU

CONTACTS

Legal Resources Centre from Moldova

-  33, A. Șciusev street, MD-2001
Chișinău, Republic of Moldova
-  +37322843601
-  +37322843602
-  contact@crjm.org
-  www.crjm.org
-  [CRJM.org](https://www.facebook.com/CRJM.org)
-  [CRJMoldova](https://twitter.com/CRJMoldova)
-  [CRJM](https://www.instagram.com/CRJM)



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.

