

NEWSLETTER

NO. 26 | APRIL – JUNE 2020

GOOD GOVERNANCE

THE PANDEMIC CRISIS MANAGEMENT MEASURES ONCE AGAIN UNDER EXAMINATION AT THE CONSTITUTIONAL COURT

On 17 March 2020, the Parliament amended the [Law on the Regime of the State of Emergency](#). The amendments significantly broadened the powers of the bodies in charge of the state of emergency and established rather harsh punishment for breaching of the imposed emergency measures. On the same day, the [Parliament adopted the decision](#) to establish the state of emergency for sixty days.

On 23 June 2020, the Constitutional Court ruled on the applications filed by MPs [Andrian CANDU](#), [Sergiu SÎRBU](#), and [Chiril MOTPAN](#). The applications referred to the legal provisions enacted on 17 March 2020. [The Constitutional Court admitted the applications](#). It declared Article 225 (3) of the Administrative Code unconstitutional because the minimal and maximal punishment for breaching of the rules imposed because of the pandemic unreasonably limited the courts' power to establish appropriate punishment. The Court ruled that the provisions that broadened the powers of the bodies in charge of the state of emergency were also unconstitutional. Although the law established that the powers granted by the Parliament to these bodies were limited in scope and would last only a limited time, it did not provide for sufficient parliamentary oversight of how these powers would be exercised, and judicial oversight was too limited.

On 23 April 2020, the Parliament voted on [a draft law](#) concerning the establishment of support measures for entrepreneurs during the pandemic. The draft law contained the same set of measures the CHICU Government had previously assumed accountability for and which [was declared unconstitutional](#) on 13 April 2020. During the same session, the Parliament passed a [draft law](#) to amend the [Law on the Budget for 2020](#). It introduced salary increases for healthcare workers without cutting expenses on investments or procurement and without clarifying the sources that would cover the new expenses. Only the PSRM-PD coalition backed the draft law. Many opposition MPs pointed out the procedure was violated because the Government did not issue its consent, which is mandatory for legal amendments that concern budget expenses.

TWO LAWS REGULATING BEHAVIOR
DURING THE PANDEMIC WERE
DECLARED UNCONSTITUTIONAL.

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On the same day, at Mr. Dumitru DIACOV's request, the Parliament passed a special regulation that would be applied during the pandemic. It referred to the procedure of passing laws in Parliament. The new rules limited the number of questions to two per parliamentary group, excluded mandatory debates on amendments proposed by MPs to draft laws, excluded mandatory requests for the Government's opinions, etc. The Parliament's Rules of Procedure, which describe the legislative procedure, were not amended.

On 27 April 2020, MPs Andrian CANDU and Sergiu SÎRBU filed an [application](#) to the Constitutional Court, asking its opinion whether it was constitutional to amend the

legislative procedure without amending the Parliament's Rules of Procedure accordingly. On 19 November 2020, [the Constitutional Court explained](#) that it was not possible to establish temporary rules concerning the examination of draft laws without amending the Parliament's Rules of Procedure. Additionally, according to Article 73 of the Constitution, MPs may propose amendments to draft laws put out for examination. Their automatic dismissal is unconstitutional. The Constitutional Court also reiterated that, according to Article 131 (4) of the Constitution, the Parliament must request the Government's opinion if amendments proposed by MPs referred to increases or decreases in the budget revenues or expenses.

AN AUDIO RECORDING SHOWS MR. IGOR DODON DISCUSSING HOW TO INVALIDATE ELECTION IN CHIȘINĂU

On 16 June 2020, Newsmaker published [an audio recording](#) of a conversation between Mr. Igor DODON and Mr. Ion CEBAN. The two were discussing ways to annul the results of the local election held in the Municipality of Chișinău in 2018, which was won by Mr. Andrei NĂSTASE. Mr. Dodon proposed that Mr. Ceban considered invalidating the election results, and Mr. Ceban was somewhat reluctant to this. At the end of the discussion, Mr. Igor DODON said: "Think of it, they won't make any decisions without us. "Misters Ion CEBAN and Igor DODON denied that the recording was authentic.

Mr. [Andrei NĂSTASE](#) declared that at the end of July 2020 he [had reported the attempt to annul the election to the Prosecutor General's Office](#) for investigation. Mr. Năstase

also requested the investigation of the personnel in charge of the random distribution of cases as he suspected that it had been rigged. It is not clear if the Prosecution launched an investigation into this matter.

Previously, on 3 June 2018, the leader of the Dignity and Truth Platform, Mr. Andrei NĂSTASE, won the local elections with 52.6% of votes. His rival, Mr. Ion CEBAN, supported by the Socialist Party, gained 47.4% of votes. Initially, Mr. [Ion CEBAN acknowledged his defeat](#). However, later, a judge on her own initiative refused to validate the outcome of the elections arguing that, on the day of the election, Mr. NĂSTASE had urged voters to turn up at the polls (see the [LRCM's Newsletter 18](#) for more details).

JUSTICE

NEW CHANGES IN THE SCM'S COMPOSITION AND MANAGEMENT

On 22 June 2020, the Venice Commission published two opinions on the judiciary of the Republic of Moldova. The opinions referred to the [legislative initiative](#) launched to change the composition of the SCM (a law that had already taken effect in January 2020) and [a draft law to amend the Constitution](#), which had been improved following [another opinion of the Commission](#) released on 20 March 2020. The new amendments remodeled the composition of the SCM by increasing the number of members among law professors (from three to five), increasing the number of trial court judges (from two to three), and decreasing the number of Supreme Court judges (from two to one). Thus, the new

SCM's membership will have seven career judges, five law professors, and three *ex officio* members—15 instead of the previous membership of 12. The amendments also referred to the selection procedure of SCM members among professors and the possibility of getting the SCM's chairperson appointed from all SCM members rather than only from judges.

The Venice Commission welcomed the change of the SCM's membership, noting that these changes should lead to a fairer representativeness in the SCM. The Commission stated that there should be an independent commission that would shortlist law professors candidates for SCM to

strengthen the SCM's independence. In that regard, the Commission recommended terminating the mandates of the recently appointed professors by the Parliament in the context of the Constitutional amendments (as an exception and without setting a precedent), taken into consideration its previous [opinion of 20 March 2020](#), where the Commission had categorized this process as politically controlled. The Commission considered it unjustified that only judges could take the chairmanship of the SCM. On the contrary, the law could require the appointment of the SCM's chairperson by rotation, including among law professors.

FOLLOWING LEGAL AMENDMENTS, THE CHAIRMANSHIP OF THE SCM PASSED TO A JUDGE WHO HAD NOT WORKED AT THE SCM BEFORE.

The Venice Commission's opinions came in shortly after several other initiatives had become law in the meantime. On 21 May 2020, [the Law on the SCM was amended once again](#) to allow alternate SCM members to exercise their mandates until the new election for the SCM takes place (expected in autumn 2021). These amendments enabled Judge Anatolie PAHOPOLO of the Chişinău Court of Appeal,

elected as an alternate member at the General Assembly of Judges in 2017, to become a SCM member on 26 May 2020. Mr. PAHOPOLO also assumed the office of acting chairperson of the SCM as the senior dean among judge SCM members. The chairmanship of the SCM had been vacant since June 2019, when the ex-chairperson Victor MICU was dismissed. After Mr. MICU's dismissal, Judge Dorel MUSTEATA and Judge Luiza GAFTON took on an acting chairmanship. On 22 September 2020, [Mr. Pahopol resigned](#) both as the chairperson and a member of the SCM. He cited the application challenging the provision that enabled his appointment as the SCM's chairperson at the Constitutional Court.

The SCM members decided that Luiza GAFTON should resume the acting chairmanship.

Despite all amendments, the composition of the SCM still does not fairly represent the judiciary. Currently, judge members of the SCM include three Supreme Court judges, three appellate court judges, and only one district court judge.

THE SHORTLISTING OF THE CANDIDATES FOR THE PROSECUTOR GENERAL POST BY THE MINISTRY OF JUSTICE IS UNCONSTITUTIONAL

On 21 May 2020, [the Constitutional Court declared several provisions of the Law on the Prosecution Authority unconstitutional](#). These referred to the shortlisting of candidates for the Prosecutor General post by the Ministry of Justice (MoJ) and the appointment procedure for acting Prosecutor General.

The Constitutional Court noted that the distribution of the powers related to the selection of Prosecutor General between the MoJ and the Superior Council of Prosecutors (SCP) was inconsistent with the Article 125 of the Constitution. The Article 125 states that the President of the Republic of Moldova appoints the Prosecutor General at the proposal of the SCP. The Constitution does not mention the shortlisting of candidates for the Prosecutor General post by the Ministry of Justice. [The committee set up by the MoJ to shortlist](#) candidates for the Prosecutor General post did not have a consultative role. The SCP had to select a candidate from the list proposed by the committee, which decreased its role. The Constitutional Court referred to [Opinion 972/2019](#) of the Venice Commission, which states that the Parliament should not exceed its legislative powers to prevent the SCP from exercising its constitutional mandate. The Constitutional Court also stated that its decision produced effects only moving

forward and did not apply to procedures that had already been conducted in 2019 to appoint the Prosecutor General.

ON THE PRETEXT OF ENFORCING A DECISION OF THE CONSTITUTIONAL COURT, THE LAW ON THE PROSECUTION AUTHORITY HAS BEEN AMENDED TO INCREASE THE INFLUENCE OF THE PROSECUTOR GENERAL.

The Constitutional Court declared that the provisions of the Law on the Prosecution Authority concerning the appointment of the acting Prosecutor General were also unconstitutional. According to them, the SCP must propose the acting Prosecutor General to the President of the Country within three days of its vacancy. If this does not happen, the Parliament will propose the acting Prosecutor General to the President. The court found that the three-day term offered to the SCP was too short and the proposal of the acting office holder by Parliament undermined the SCP's constitutional role.

On 3 July 2020, the MoJ put out [a draft law](#) concerning the enforcement of the decision of 21 May 2020 for consultation. On 13 July 2020, the LRCM and the Institute for European Policies and Reforms (IPRE) released [a joint legal opinion](#) where they found that the draft law exceeded the scope declared unconstitutional and unreasonably proposed a series of amendments that did not result from the decision of the Constitutional Court. The LRCM and IPRE recommended a broad analysis before pushing through the amendments

that referred to the appointment and transfer of prosecutors as well as the organization of the competition for the post of Prosecutor General. They also recommended keeping judges' and lawyers' right to run for the Prosecutor General post instead of limiting it to just career prosecutors.

On 15 July 2020, the MoJ submitted [the draft to the government for examination, without taking into account](#) most

of the proposals made by the LRCM and IPRE. The draft law offered the Prosecutor General the right to decide *de facto* on transfers of prosecutors, reintroduced career prosecutors' exclusive right to run for the Prosecutor General post (a provision that had been excluded in 2019), and excluded the right of the Ministry of Justice to shortlist candidates for the Prosecutor General post. Next day, the [Parliament passed the draft law](#) in two readings.

THE RESETTING OF THE JUDGES SELECTION SYSTEM. HOW DID THE FIRST CONTEST UNDER THE NEW RULES GO?

On 22 June 2020, the LRCM held an online event to present the conclusions of the public policy paper: [Resetting the System of Selection and Promotion of Judges—Lessons Learned and \(New\) Challenges](#). The policy paper presents the effect of changing the way competitions are held for the selection and promotion of judges in 2018. The changes included the organization of bulk recruitment contests/competitions twice a year, the mandatory condition that the candidates for a judge's vacancy apply for all announced vacancies, the evaluation of candidates by the members of the Superior Council of the Magistracy (SCM), etc.

Monitoring the first contest, the LRCM identified several issues that could negatively impact the nomination of candidates for office and limit the purpose of the legal amendments introduced in 2018. The SCM's assessment of the interview was problematic. The score offered by the SCM for a similar performance varied between four and 20 points (highest score). This had a significant influence on the final score for some of the candidates who's

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ranking went down by up to 17 positions in comparison with how they ranked before the interview. The SCM accepted that some graduates of the National Institute of Justice (NIJ) apply only for certain vacancies, although the new amendments required them to apply for all judge vacancies.

The LRCM recommended keeping the practice of biannual competitions for judge vacancies. This would allow candidates for a judge's position to plan their career opportunities with greater certainty and would save the SCM resources and time. This measure should also be kept to ensure that the candidates for a judge's position who had graduated the NIJ apply for all vacancies put out to the competition.

This change would solve the problem of filling "less attractive" judicial positions outside the Municipality of Chişinău. The most important element that could contribute to the meritocracy of the competitions was the application of a methodology for interviewing candidates for a judge's office. Such a methodology would help the SCM score candidates in a fairer way.

ANTICORRUPTION

SETTING UP ANTICORRUPTION COURTS IS NOT JUSTIFIED

The initiative to set up anti-corruption courts is not novel for the Republic of Moldova. The Ministry of Justice (MoJ) came up with it in 2015. Back then, the LRCM prepared a negative [opinion](#). In 2020, authorities revisited this initiative. Para. 1.9 of the [Government's Action Plan for 2020 – 2023](#) provided for a comparative study on the feasibility of establishing a specialized anticorruption court by September 2021. Although this implied the development of a study, on 10 June 2020, the MoJ [was already announcing](#) that it had started working on a draft law to set up an anti-corruption court and anticorruption

panels at the Chişinău Court of Appeal and the Supreme Court of Justice. On 3 July 2020, the MoJ [organized public a consultation](#) on this topic with the national authorities and the civil society.

On 19 June 2020, a group of MPs from the Pro-Moldova Platform filed [a draft law](#) concerning the Anticorruption Court of the Republic of Moldova. The draft law proposed that this court be the only specialized anticorruption court empowered to try criminal cases concerning corruption or cases related

to it. This draft law is still pending debate in parliamentary committees.

On 22 June 2020, the LRCM released [a negative legal opinion](#) on the initiative to set up anti-corruption courts. This initiative was not justified legally or economically; it was not based on any study; it stood at odds with the map for court optimization,

and it was statistically confirmed that there was no sufficient workload for a specialized anticorruption court. Moreover, it was not certain that this initiative would make the fight against corruption more efficient, while the trial of all corruption cases by only a handful of judges would make it easier for third parties to influence them and would prevent the random distribution of cases.

HIGH-PROFILE CASES

AFTER 17 YEARS OF LITIGATION, THE ECtHR PRONOUNCES THE FINAL JUDGMENT ON GEMENII CASE

In 2011, the European Court of Human Rights (ECtHR) condemned the Republic of Moldova in the case [Ojog and Others versus Moldova](#) (Gemenii Case). The court found the violation of the right to a fair trial and the right to ownership because of the unjustified quashing of an irrevocable judgment through revision. The fair satisfaction was reserved for a separate judgment issued on [18 February 2020](#).

The litigation started in 2003 when Center Court of Chisinau ordered to liquidate S.A. Gemenii and to divide the ownership of the Gemenii premises between two groups of shareholders. The judgment remained valid all the way through the Supreme Court of Justice, eventually becoming irrevocable. As a result of these judgments, the Ojog group of shareholders obtained over 6,000 sq. m of the rooms previously owned by S.A. Gemenii. In [July 2005, the Supreme Court of Justice](#) (SCJ) admitted the motion for revision filed by several shareholders of S.A. Gemenii and referred the case for a retrial. After that, the liquidation action concerning S.A. Gemenii was dismissed, and the ownership of the immovable property distributed among shareholders was canceled.

The case *Ojog and Others* is one of the costliest cases tried in Moldova. The Republic of Moldova was obliged to pay the Ojog group of shareholders EUR 1,500,000 on account of lost income. Additionally, the ECtHR ordered to return the Ojog group the immovable property taken from them due to the admission of the revision in July 2005. If there is no way to return the immovables, the Republic of Moldova will have to pay another EUR 2,120,000. The ECtHR judgment of 18 February 2020 should have been enforced until 18 May 2020.

[The Government announced that it would request](#)—and

[the government representative has already requested](#)—the Prosecutor General to initiate the prosecution of the judges who had issued the judgments that lead to conviction at the ECtHR. It is not clear whether this prosecution has started. The Government also reduced the budget allocated to the justice sector by MDL 70 million to enforce this judgment.

At the beginning of May 2020, the Government paid the Ojog group of shareholders EUR 1,500,000. On 18 March 2020, to avoid the payment of the EUR 2,120,000, the government representative requested the revision of the case, the annulment of the quashing judgment of 2005, and the returning of the immovables taken from the Ojog group of shareholders because of the admission of revision in 2005. In May 2020, the Governmental Agent requested the revision of the ECtHR's judgment of 18 February 2020, arguing that it was wrong. The ECtHR dismissed the request in September 2020. Because of the application for the revision of the ECtHR's judgment, the SCJ suspended the examination of the application for revision of 18 March 2020. Even after the application for revision was dismissed in September 2020, the SCJ was in no haste to examine the government representative's application for revision. By 15 November 2020, its examination was delayed more than ten times, even though the deadline for enforcing the ECtHR's judgment had expired on 18 May 2020.

As far as we know, *Ojog and Others* is the first case where the Government failed to offer the satisfaction ordered by the ECtHR on time. Because of the failure to enforce the judgment on time, the Republic of Moldova must pay a daily late payment penalty amounting to EUR 187 per day. As of 15 November 2020, this penalty exceeded EUR 33,000.

FOR THE FIRST TIME,
MOLDOVA FAILED TO
ENFORCE AN ECtHR
JUDGMENT AND MUST
PAY LATE PAYMENT
PENALTIES THAT EXCEED
EUR 30,000.

A SHARP TURN IN THE INVESTIGATION OF THE BILLION THEFT CASE

On 18 May 2020, the Prosecutor General's Office held a [press conference](#) on the investigation of the Billion Theft case. Almost six years after the bank fraud, the Prosecutor General Alexandr STOIANOGLO [declared](#) that the case against Veaceslav PLATON, one of the main suspects in the bank fraud, was rigged and that it would be revised.

Mr. STOIANOGLO added that Vladimir PLAHOTNIUC was one of the main beneficiaries of the stolen billion. Allegedly, he had obtained over USD 100,000,000 through credits taken from Banca de Economii a Moldovei (BEM) through the Șor Group. According to the Prosecutor General, the money was spent to purchase stocks in a bank, the building of the insurance company ASITO, the Casa Modei building, and the National Hotel building. The Prosecutor General added that Mr. Plahotniuc had also used the money obtained from the credits from BEM for personal purposes. His affiliated companies used this money to purchase an airplane and to

THE PROSECUTOR
GENERAL:
MR. VLADIMIR
PLAHOTNIUC
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THE STOLEN BILLION.

pay for the charter flights of Mr. Plahotniuc and his entourage. This was the first time that the Prosecutor's Office mentioned Mr. Plahotniuc as one of the beneficiaries of the stolen billion.

Previously, only the parliamentary committee for the investigation of the Billion Theft Case had asserted that Mr. Vlad PLAHOTNIUC was the main beneficiary of the stolen money (see the [LRCM's Newsletter 23](#) for more details).

The MPs from the Dignity and Truth Platform Party (PPDA) requested that Parliament include the hearing of Prosecutor General on high-profile cases, including the Billion Theft Case, on its agenda. In a communiqué of 30 June 2020, [the Prosecutor General refused](#) to appear before Parliament, arguing that the request "was not legal and could be interpreted as the legislature's interference in the work of the judiciary." The former Prosecutor General, Mr. Eduard HARUNJEN, [had also refused](#) to appear before Parliament for a hearing about the investigation of the Billion Theft Case.

VIDEO RECORDINGS—NEGOTIATIONS FOR THE PSRM-PD ALLIANCE, A SPECIAL STATUS FOR THE TRANSNISTRIA REGION, AND LARGE SUMS OF MONEY FOR PSRM

From February to June 2020, the press published a few [video recordings](#) of Misters Igor DODON, Vladimir PLAHOTNIUC, and Serghei IARALOV. Apparently, the videos had been recorded at the headquarters of PDM in June 2019, when Mr. Igor DODON was negotiating with Mr. PLAHOTNIUC the terms of the PSRM-PD alliance.

In [one of the videos](#), Mr. Dodon says to Mr. Plahotniuc that the creation of an alliance will involve the signing of an agreement—a confidential version and an altered version for the public—in the presence of the Russian ambassador. The agreement would include the terms dictated by "Mr. Kozak" for the reintegration of the Republic of Moldova with a special status for the Transnistria Region. Mr. Igor DODON dictates the text of the agreement to Mr. Serghei IARALOV. Further, Igor DODON [tells Mr. Plahotniuc](#) what amount PSRM is to receive from the latter—between EUR 800,000 and EUR 1,000,000 monthly. [In another video](#), Mr. Dodon mentions that he used to receive money from "Mr. Miller" (Gazprom) and "Mr. Kozak" to keep his party. He also says that Mr. Kozak said to him that "if he comes to power, the money for the party must come from

THE PROSECUTOR'S
OFFICE REFUSED
TO INVESTIGATE THE
PASSING OF "KULIOK",
CITING THAT THEY
COULD NOT IDENTIFY ITS
CONTENTS!

Mr. Plahotniuc" and that he did not receive money from Russia since April because the party was in debt. In another [video](#), released in June 2009, Mr. Plahotniuc passed a black bag (aka "kuliok") to Mr. Dodon, but Mr. Dodon refused to take it, telling Mr. Plahotniuc to "give it to Cornel," because Mr. Dodon was meant to fly the next morning and "he [Cornel] must pay the salaries" on Monday.

Mr. Igor DODON admitted that the recordings were authentic, posting on Facebook that the discussions had taken place in summer 2019, during the negotiation to create an alliance between PSRM and PDM. The chief of the state compared those discussions with a chess game that ended with Mr. Plahotniuc stepping down from the Government.

After the videos were released, MP Iurie Reniță alerted the [Anticorruption Prosecutor's Office](#) of a potential corruption case. [The Prosecutor's Office dismissed his application](#) as unfounded because "the subject of the discussions is vague, ... it is impossible to identify the contents of the bag, and the information on the recordings cannot be confirmed."

MR. VLADIMIR PLAHOTNIUC WAS ARRESTED, BUT THERE ARE PROBLEMS WITH THE SEIZURE OF HIS PROPERTY

On 20 May 2020, the prosecutors of the Prosecution Office for Fighting against Organized Crime and Special Cases (PCCOCS), requested an arrest warrant for Mr. Vladimir PLAHOTNIUC. Mr. Plahotniuc was charged with the establishment of a criminal organization, crookery, and money laundering on a large scale. The Chişinău Court admitted the request on [22 May 2020](#) and issued a 30-day arrest warrant for the former leader of PDM. Since Mr. Plahotniuc fled the Republic of Moldova in June 2019, the counting of this period will start on the day of his arrest. After five postponements, on 12 June 2020, [the appellate court dismissed Mr. Plahotniuc's cassation appeal and upheld the decision concerning the arrest.](#)

In March 2020, the US Embassy in Chişinău confirmed that Mr. Plahotniuc was in the US. On 16 June 2020, the [Prosecutor General's Office requested that the US extradite Mr. Plahotniuc.](#) According to the US Ambassador to Chişinău Dereck J. HOGAN, the request of the Moldovan authorities is already under examination, but it is not certain

MOLDOVAN JUDGES
REJECTED THE
PROSECUTION'S
REQUEST FOR
THE SEIZURE OF
MR. VLADIMIR
PLAHOTNIUC'S
PROPERTY LOCATED
ABROAD!

how long the examination will take. After that, Mr. Plahotniuc left the USA and stayed in Turkey for some time. Currently, his whereabouts are unknown.

Mr. Vladimir PLAHOTNIUC is also charged in another criminal case. On [18 May 2020](#), the Prosecutor General Alexandr STOIANOGLO stated that the prosecution had irrefutable evidence that Mr. Vladimir PLAHOTNIUC was one of the main beneficiaries of the bank fraud. The Anticorruption Prosecutor's Office requested the seizure of Mr. Plahotniuc's property. Only one of the six motions was admitted by the [Chişinău Court](#). The court issued a writ of seizure for ten buildings located in the country. The five rejected motions referred to the seizure of houses owned by Mr. Plahotniuc in

Switzerland, France, and Romania, as well as five cars and a boat registered in Switzerland, and four cars registered in the Republic of Moldova. The prosecution challenged the five refusals to issue a writ of seizure, but their [challenges were dismissed.](#)

MR. VEACESLAV PLATON WAS RELEASED FROM PRISON

On 7 May 2020, the Supreme Court of Justice (SCJ) [dismissed](#) the action for annulment filed by Mr. Veaceslav PLATON in the Banda de Economii a Moldovei (BEM) Case as inadmissible. The SCJ stated that it had not found any fundamental irregularities or legal errors in the conviction of Mr. Platon. The SCJ also noted that courts had appraised the produced evidence correctly and had established that it was Mr. Platon who was the *de facto* manager and beneficiary of the resident and non-resident companies mentioned in the indictment. The SCJ's reasoned decision of 7 May 2020 was published on 5 June 2020.

On 18 May 2020, despite the SCJ's decision of 7 May 2020, the Prosecutor General Alexandr STOIANOGLO [declared](#) at a [press conference](#) that the case concerning Mr. Platon's involvement in the Billion Theft was fabricated, that Mr. Platon was condemned illegally, and that the prosecution would request the revision of his case (for details, see the LRCM's Newsletters [25](#), [21](#), [20](#), [16](#), [14](#), and [11](#)).

On 10 June 2020, the Prosecutor General sent the Chişinău Court a motion to put the enforcement of the judgment concerning Mr. Platon in the BEM Case on hold. The Prosecutor

General indicated that, on 24 April 2020, the Prosecutor's Office for Fighting against Organized Crime and Special Cases (PCCOCS) revising was revising this case because, allegedly, Mr. Platon's culpability had not corresponded to the charges against him.

On 15 June 2020, just five days after the receipt of the Prosecutor General's motion, the Chişinău Court, Ciocana Office, [admitted it](#) on account of the start of the revision of the sentence and the identification of new circumstances that had not been known to court when it issued its judgment. The judge did not specify what the cited circumstances were. The court suspended the enforcement of the court judgments concerning Mr. Veaceslav PLATON in the BEM Case that sentenced him to 18 years in prison and prohibited him from taking on jobs in the banking system for five years. The same day, Mr. Veaceslav PLATON [was released](#) from Penitentiary No. 13 of Chişinău. The release of Mr. Platon from prison was possible including due to [the quashing of the sentence in the Moldasig Case in January 2020](#) and the referral of the case for retrial to the districtcourt (see [the LRCM's Newsletter 25 for details](#)). The revision of the criminal case concerning Mr. Platon's involvement in the

Billion Theft could result in the payment of [over one billion Moldovan](#) lei (MDL) in damages.

Until 2019, the case against Mr. Veaceslav PLATON was led by the Anti-corruption Prosecutor Andrei BAEȘU. He resigned from the Anticorruption Prosecutor's Office in February 2020, after an inspection conducted by the new management of the Prosecutor General's Office (see [the LRCM's Newsletter 24 for details](#)). After that, Mr. Baeșu applied to the Superior Council of the Magistracy (SCM) to initiate proceedings for becoming a judge. On 16 April 2020, the SCM [decided](#) (para. 7) to postpone the examination of Mr. Baeșu's application for an undefined period. Almost one month later, on 12 May 2020, the SCM changed their minds and [admitted](#) the application (paras. 7 and 8). The SCM sent his case to the National Institute of Justice and the Board for the Selection and Career of Judges for assessment with the view to admit him to the judgeship. The SCM indicated that Mr. Baeșu would be able

THE PROSECUTOR
GENERAL: THE CASE
CONCERNING MR.
VEACESLAV PLATON'S
INVOLVEMENT IN THE
BILLION THEFT WAS
FABRICATED.

to partake in the examination of candidates for judgeship only in the next examination session and based on seniority in service (February – April 2021). Since July 2020, the Board for the Selection and Career of Judges had not adopted any decision concerning Mr. Baeșu yet.

On 28 May 2020, the media released [footage](#) of the hearing of Mr. Veaceslav PLATON at the Prosecutor General's Office. The videos showed Prosecutor General STOIANOGLO shake hands with Mr. Veaceslav PLATON. On the same day, the Prosecutor General's Office [announced](#) that the videos were taken during the hearing of Mr. Platon in the criminal case received from DIICOT Romania, which concerned Mr. Vladimir PLAHOTNIUC. The Prosecution informed that it was checking the source of the footage leaked to the press. After the release of another [video](#) the next day, the Prosecutor General's Office [announced](#) that it had started a criminal case on the disclosure of criminal investigation data.

HUMAN RIGHTS

ARRESTS ARE STILL APPLIED FREQUENTLY AND UNREASONABLY IN THE REPUBLIC OF MOLDOVA

On 2-4 June 2020, the Committee of Ministers of the Council of Europe verified the measures taken by the Republic of Moldova to enforce the judgments of [the Șarban group of cases](#). The Șarban group comprises 14 judgments of the European Court of Human Rights (ECtHR) where the court found various violations of Article 5 of the European Convention on Human Rights (ECHR), especially including unjustified or illegal arrests.

On 18 April 2020, the LRCM sent the Committee of Ministers a [communication](#) where it stated that the high rate of arrests and the insufficient reasoning of arrest warrants of was still a serious issue in the Republic of Moldova. Although in 2019, the number of arrested people was the lowest (1,864) compared to the past years, judges still did not examine motions for arrest in detail. On the contrary, the rate of accepted motions reached the highest level for the past years: 93.5% (in 2018, it was 88.4%). Additionally, pretrial measures that were alternative to the arrest were used insufficiently. These issues were caused not by the legal framework, but by the deficient judicial practice influenced by judges' lack of independence

and the pro-accusation attitude of many investigating judges. Additionally, the capacity to conduct good-quality examination of motions for arrest was compromised by judges' large workload. The LRCM urged the Committee of Ministers to request that Moldovan authorities ensure that judges and prosecutors observe the guarantees of Article 5 of the ECHR and apply pretrial measures that are alternative to the arrest efficiently and grant full independence to investigative judges in practice and balance their workload.

In its decision, the Committee of Ministers [expressed concern](#) about the inadequate reasoning of arrest warrants and the insufficient use of measures that were alternative to the arrest even 14 years after the judgment in *Șarban case*. The Committee requested the authorities to intensify efforts to align the national practice to the ECHR requirements and invited them to offer information about measures taken until 31 March 2021.

In [2017](#) and [2019](#), the LRCM had sent the Committee of Ministers other communications about the pretrial arrest in Moldova.

ROMANIA CONDEMNED BY THE ECtHR FOR HAVING RECALLED KOVESI FROM THE OFFICE OF CHIEF PROSECUTOR OF DNA

On 5 May 2020, the [European Court of Human Rights \(ECtHR\) issued a judgment](#) where it found that Romania had violated the right to a fair trial (Article 6, ECHR) and the right to freedom of expression (Article 10, ECHR) by dismissing Ms. Laura Codruța KOVESI from the office of Chief Prosecutor of the National Anticorruption Directorate (DNA).

Ms. Kovesi was revoked from the office of Chief Prosecutor of DNA on 9 July 2018 by a Presidential decree. Initially, both the Superior Council of the Magistracy and the President of Romania Klaus IOHANNIS had rejected the application of the Justice Minister Tudorel TOADER to dismiss Ms. Kovesi. At the request of the minister, the Constitutional Court decided that the President was obliged to sign the dismissal decree presented by the Justice Minister. The then Justice Minister reproached the ex-Chief Prosecutor of DNA for having publicly criticized the justice reform he had initiated. He also mentioned that Ms. KOVESI's actions had led to a crisis in the country and was criticized abroad.

Examining the claim concerning the freedom of expression, the ECtHR reiterated that the magistrates should be loyal and speak publicly with caution, without endangering the independence of justice. However, magistrates could take a public stance on certain matters that affected the functioning of the judiciary. The court also noted that the Government's severe omissions and other matters that affected the separation of state powers should be brought to the

knowledge of the public even by the magistrates. The court concluded that the dismissal of Ms. Kovesi had not pursued a legitimate purpose because, contrary to the Justice Minister's allegations, the Government could not justify the dismissal by the fact that the applicant's actions caused the crisis or critique mentioned by the Minister. On the contrary, foreign partners supported Ms. Kovesi's actions. On the other hand, Ms. Kovesi had overseen the main anti-corruption agency in Romania, and the reforms she had criticized were obstructing the investigation of corruption, and her critique had never exceeded acceptable limits. Moreover, her statements had concerned matters of public interest, which must have greater protection in a democratic society. Therefore, the revocation was not proportional. Moreover, the way Ms. Kovesi's mandate had been terminated, a few months before it reached its end, could also discourage other magistrates who wanted to express their opinions freely.

The court also found that Ms. Kovesi had not had a legal remedy to challenge the concrete reasons of her dismissal from the office of Chief Prosecutor of DNA in court, which was contrary to the right of access to justice. The Constitutional Court's judgment ordered the President of the country to revoke the Chief Prosecutor of DNA at the request of the Justice Minister. Consequently, as the Justice Minister's proposal could not be challenged, the judicial oversight excluded any examination of the appropriateness of the reasons and of the relevance of allegations underlying the revocation.

THE ECtHR COMMUNICATED THE CASE OF DOMNICA MANOLE TO THE GOVERNMENT

On 19 June 2020, the European Court of Human Rights (ECtHR) [communicated to the government](#) the case of Domnica MANOLE. She had been dismissed from the office of judge in 2017 by the Superior Council of the Magistracy (SCM) (see [the LRCM's Newsletter 20](#) for details). The SCM found that Ms. Manole had been negatively appraised by the Intelligence and Security Service and that she had violated the legal prohibition on communication with third parties by explaining to the press the essence of a dissenting opinion issued by her. The Supreme Court of Justice (SCJ) dismissed Ms. Manole's appeal from the decision of the SCM. In 2019, she complained to the ECtHR.

Invoking Article 6 (1) of the European Convention on Human Rights (ECHR), Ms. Manole complained that the Chief Justice

of the Supreme Court, being a member of the SCM, had not been impartial and that one of the Supreme Court judges who had examined her case lacked a valid mandate when the SCJ issued its judgment. Invoking Article 10 of the ECHR in conjunction with Article 18 of the ECHR, the applicant claimed that the declaration of her incompatibility with the status of a judge was a violation of her right to freedom of expression. She considered that the legal action taken against her had had no legal grounds and was unnecessary in a democracy. She claimed that she was persecuted for her statements about the issues that exist in the judiciary. The applicant also alleged that her dismissal had disastrous consequences for her professional career, which was contrary to Article 8 of the ECHR.

CIVIL SOCIETY

A NEW LAW ON NONPROFITS TAKES EFFECT ON THE INDEPENDENCE DAY OF THE REPUBLIC OF MOLDOVA

On 11 June 2020, the Parliament of Moldova passed a [new law on nonprofits](#). The law was backed by 95 of the 98 attending MPs. The new law is intended to bring about considerable improvements to NGOs operation framework. The law simplifies the registration of nonprofits and eliminates the internal organizational structure imposed by the previous law. The new law limits the authorities' opportunities for abusive pressure on nonprofits and excludes unjustified restrictions on the establishment of nonprofits by certain categories of persons. It completely prohibits nonprofits from supporting candidates in elections and sets clear limits on the relationship between nonprofits and political parties. Additionally, the law sets the legal framework concerning the government funding for NGOs—a field that has been insufficiently regulated by previous laws. The new law does not require nonprofits to register repeatedly and does not limit their possibilities to get funding from abroad.

THE NEW LAW
CONSIDERABLY
IMPROVES THE LEGAL
FRAMEWORK OF
NONPROFITS.

of Moldova. The enactment of the law became more certain after the European Union [set it as a prerequisite](#) for the EUR 30-million macro-financial assistance offered to the Republic of Moldova. That said, it had often looked unlikely that the law would be enacted. In 2017, Justice Minister Vladimir CEBOTARI proposed several amendments that limited foreign financing for NGOs that promoted public policies. Protesting the amendments proposed by Mr. Cebotari, more than 160 NGOs released a [public statement](#) requesting that the Minister abandons them. In 2018, once the law had passed its first reading, the Speaker of Parliament Andrian CANDU [proposed](#) new amendments that would limit foreign financing for NGOs. In 2020, both [President Igor DODON](#) and [Prime Minister Ion CHICU](#) spoke against the adoption of the law, arguing that foreign powers should not be allowed to interfere in the home affairs of the Republic of Moldova.

The enactment of this law was the result of the joint efforts of many NGOs and development partners of the Republic

The Law on Nonprofits was published in the Official Gazette on 27 July 2020 and became effective on 27 August 2020—the Independence Day of the Republic of Moldova.

2019—THE TRACK RECORD OF THE TWO-PERCENT MECHANISM

In 2020, citizens were able to direct 2% of their income tax of 2019. On 17 March 2020, the Parliament of the Republic of Moldova [declared a state of emergency](#) due to the COVID-19 pandemic, which led to a lockdown, [the change of the working regime of the tax administration authorities](#), and the extension of the deadline for presenting tax returns.

To encourage citizens to decide what NGOs would benefit from their 2% and file the necessary paperwork, the Legal Resources Centre from Moldova (LRCM) conducted an advocacy campaign about the two-percent mechanism from March through May 2020. The LRCM informed the population about the two-percent mechanism and [what organizations could benefit from it](#). We launched the website [www.2procente.info](#), which contained information about this mechanism. One of the objectives of the campaign was [to encourage citizens to support non-governmental organizations](#). Additionally, and taking into consideration the pandemic, the LRCM promoted the [electronic filing](#) of tax returns.

Using [the information from the State Tax Service](#), the LRCM analyzed the results of the two-percent mechanism. They revealed a positive trend: the number of NGOs registered in the List of two-percent beneficiaries had increased by 23% from the previous year, and the number of citizens who redirected 2% had increased by 27%. The number of validated tax designations was up by 37% from 2018, reaching MDL 7.69 million. 85% of this amount went to NGOs, and 15%, to religious entities.

In 2020, the number of citizens who designated 2% reached 35,937, which represents 11% of all taxpayers who filed the tax return in due time. However, that was only 3% of all Moldovan taxpayers (approximately 1.22 million). This confirms that there is still much room for the two-percent mechanism to grow in the Republic of Moldova. However, the designated amount received from the income tax decreased. Apparently, this had to do with the decrease of the income tax rate for individuals from 18% to 12% in 2019.

IN BRIEF

On 9 June 2020, the Prosecutor General's Office presented the first report on the review of the 38 political cases. The [oversight group](#) set up for this task in February 2020 decided on [nine of them](#). It decided to drop the criminal cases against Ms. Ludmila KOZLOVSKA, Ms. Nina CERETEU, Mr. Valentin EȘANU, Mr. Andrian BORȘ, and Ms. Ana URSACHI. The prosecution also requested that the conviction of Ms. Olga PUNGA and Mr. Arslan SAFARMATOV be annulled.

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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