

## NEWSLETTER

### Contents

The Constitutional Court clarified on the grounds for the dissolution of the Parliament

The new law on the functioning of languages spoken on the territory of Moldova ruled unconstitutional

Former head of the Anti-Corruption Prosecutor's Office, detained by the prosecutors and released by the judges on the next day

In 2020, Moldova remained in the top of the countries with highest number of applications and convictions at the ECtHR

The three candidates to compete for the position of the Moldovan judge to the ECtHR were selected

### 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.

### The Constitutional Court clarified on the grounds for the dissolution of the Parliament

On 18 January 2021, the Constitutional Court ruled inadmissible the application lodged by a group of PAS MPs with regard to the voluntary dissolution of the Parliament subject to the affirmative vote of 2/3 (67) of the members of the Parliament.

Pursuant to the [decision of inadmissibility](#), the Constitution and the prior [case law of the Court](#), provide a clear-cut answer to the conditions under which the dissolution of Parliament would have been possible. The court reiterated that the dissolution of the Parliament only for the conditions set forth in [Art. 85 of the Constitution](#). The latter provides for just two options making the Parliament dissolution possible: (1) impossibility to form the Government or failure to pass the laws for three months, and; (2) repeated Parliament's refusal to give the Government the vote of confidence. The court explained that the dissolution of the Parliament is a sanction applied to the Parliament for the conduct imputable to the latter. The dissolution of the Parliament for the conduct of other authorities (e.g. failure to propose a candidate for the prime minister's position by the President for three months) cannot serve as ground for dissolution.

The voluntary dissolution of the Parliament, although provided by the legislation of other countries, does not appear in the Constitution of the Republic of Moldova. Hypothetically, the voluntary dissolution of the Parliament would only be possible if more than 50 MPs and all of their substitute members on the list of parties that have participated in the elections resign. This would actually result in lack of a quorum necessary for passing the laws and, in three months' time, non-adoption of laws would give a reason for the dissolution of the Parliament.

### The new law on the functioning of languages spoken on the territory of Moldova ruled unconstitutional

On 3 December 2020, the PSRM and the Platform for Moldova (Shor Party) MPs passed in the first reading the [draft law on the functioning of languages on the territory of the Republic of Moldova](#). The Parliament passed the draft law in the first reading without being subject to discussion

#### Legal Resources Centre from Moldova



Constitutional Court  
– The state language (Romanian) is the language of interethnic communication. By offering this status to Russian language, integrating force of the state language is undermined. This is unconstitutional.

in all of the standing parliamentary committees, which is a mandatory procedure according to the law. Four MPs of the Socialist Party came up with this legislative initiative. On [16 December 2020](#), during a nocturnal session of the Parliament, the [draft law was passed in its final reading](#), without due consent of the Government. President Dodon promulgated the law on the same day.

The law recognized Russian language as the language of interethnic communication. The law stipulated that the heads of the public institutions were obliged to know the Russian language. The official documents prepared by the public authorities should be translated into Russian and the nameplates on the public institutions had to be duplicated in Russian. In response to any information request, the staff of the state institutions was obliged to discuss, provide information and translate any document into Russian.

To that end, MPs [Octavian TÎCU](#), [Dinu PLÎNGĂU](#) and [Maria CIOBANU](#) lodged the application with the Constitutional Court. On 21 January 2021, the Constitutional Court [declared the aforementioned](#) law unconstitutional. The Court stated that the law fails to provide for an adequate balance between the protection of the Romanian language as the state language and the protection of the languages of ethnic minorities in the country. The court noted that the law gives the Russian language a privileged status in relation to other languages of ethnic minorities in the country, i.e. a status that does not result from the [Constitution](#).

The court proceeded to scrutinize in detail the ethnic structure of the population of Moldova according to the 2014 census. According to the latter, the natural language for at least 78% of the citizens of the Republic of Moldova is Romanian, while Russian is a mother tongue for about 9.4% of the population. The use of the Russian language is imposed across the country, even though in some regions of the country it is hardly used. The law gave the Russian language a privileged status in relation to other languages of ethnic minorities in the Republic of Moldova, thus acquiring, de facto, alongside with the Romanian language, a quasi-official status. The state language is actually the language of interethnic communication. Granting such status to the Russian language was actually undermining the integrating force of the state language, thereby violating the Art. 13 of the Constitution.

The Court has also drawn attention to the haste in which this law was passed. Just 15 days passed from the date of draft law registration and its adoption. Since the topic of the law was highly sensitive, it suggested a common procedure of public debate, consulting with the opposition, seeking for Government opinion, assessing the impact of the law, etc. The authors of the law argued that its implementation does not entail additional expenditures from the state budget, although it is obvious that the translation of official documents, training the officials to communicate in Russian, hiring translators, imposed by law, involve significant expenditures. The court reiterated that, pursuant to Art. 131 para 4 of the Constitution, the draft legislative acts with budgetary impact must be accepted by the Government prior to their adoption in the final reading. The Government has not given its consent for this law, which implicitly entails its unconstitutionality.

## Former head of the Anti-Corruption Prosecutor's Office, detained by the prosecutors and released by the judges on the next day

The prosecutors requested the pre-trial arrest of Viorel MORARI in a criminal case, arguing that he can abscond through Transnistrian region. The judges dismissed the request, because Morari was previously accused in another case and did not abscond.

On 19 January 2021, Viorel MORARI, the suspended head of the Anti-Corruption Prosecutor's office, [was detained](#) by the Prosecution for Combating Organized Crime and Special Cases (PCCOCS). Mr. Morari was summoned by the PCCOCS as a suspect for "abuse of power", "forgery of public documents", "unlawful detention or arrest" and "knowingly charging an innocent person with criminal responsibility". In the morning of 19 January, he was brought before the prosecutors. Later on, the [PCCOCS filed charges against him](#).

According to PCCOCS, Mr. Morari allegedly was the one who "plotted cases of misleading the judges that have then issued arrest warrants" with regard to "VENTO" fueling stations network co-owners. Morari pleaded not guilty and claimed that the case files would be a political order, following his decision to resume the criminal case investigation regarding the alleged external financing of the Socialist Party (see details in the [LRCM Newsletter No. 25](#)).

PCCOCS asked Mr. Morari to be placed into custody. Prosecutor Renata ANICI argued in favor of the arrest as Mr. Morari could abscond by leaving the country through the Transnistrian region. According to Mr. Morari's lawyers, he has already been indicted in yet another criminal case filed about a year ago (see details in [LRCM Newsletter No. 24](#)). He attended every court hearing and was responding to each subpoena. Therefore, the pre-trial detention was not necessary. On 20 January 2021, the Chisinau District Court of Ciocana rejected the arrest request filed by the PCCOCS. The appeal filed by the prosecutors was rejected by the Chisinau Court of Appeal on 27 January 2021.

On 26 January 2021, the former anti-corruption prosecutor Roman STATNÎI [was detained](#) by the PCCOCS prosecutors for 72 hours in a criminal case in which Mr. Morari is also accused. Mr. Statnîi was in charge of the investigation of the "Vento" case. The Chisinau District Court of Ciocana placed Mr. Statnîi under house arrest for 30 days. In January 2020, Mr. Statnîi resigned at the suggestion made by the General Prosecutor, Alexandr STOIANOGLO.

## In 2020, Moldova remained in the top of the countries with highest number of applications and convictions at the ECtHR

On 31 January 2021, the CRJM issued [an analytical note](#) with regard to the Republic of Moldova at the European Court of Human Rights (ECtHR) in 2020. The CRJM based its analysis on the [ECtHR Annual Activity Report](#) for 2020 and on the ECtHR's case law concerning Moldova.

Although in 2020 the ECtHR received the lowest number of applications against Moldova in the last 12 years (523 applications), Moldovans still complained

In 2020 the ECtHR has registered the lowest number of Moldovan applications in a decade. However, Moldovans are still complaining to the ECtHR three times more often than the European average.

to the ECtHR three times more often than the European average. Per capita, Moldova is ranked ninth out of the 47 member states of the Council of Europe. As confidence in justice has not increased significantly in 2020, this drop seems to be explained by the decline of the popularity of the ECtHR among the population, as well as by the effects of the pandemic.

By 31 December 2020, ECtHR has issued 473 judgments in Moldovan cases, of which 32 were delivered in 2020. In this regard, in 2020, Moldova ranked seventh out of 47 member states. In its 32 judgments, the ECtHR found 50 violations of the European Convention on Human Rights, most of which refer to the activity of judges. The most frequent types of violations found by the ECtHR were failure to enforce court judgments (older violations), ill-treatment, improper investigation of ill-treatment and deaths, detention in poor conditions, arbitrary detention and irregular annulment of final judgements.

Under all judgments and decisions issued by 31 December 2020, the Republic of Moldova was obliged to pay over than EUR 19.2 million (EUR 2,102,675 in 2020 only).

At 31 December 2020, 1,054 Moldovan applications were still pending before the ECtHR. 95% of these were preliminary considered by the ECtHR as having high chances of success. This is more than the total number of applications based on which Moldova has been convicted in the 473 judgments issued in Moldovan cases between 1997 and 2020.

## The three candidates to compete for the position of the Moldovan judge to the ECtHR were selected

After a contest marked by conflict of interest and exclusion of uncomfortable candidates, the Government identified the three candidates for the position of Moldovan judge at the ECtHR. These are Diana SCOBIOALA, Vladimir GROSU and Nicolae ESANU.

The mandate of the Moldovan judge to the ECtHR, Mr. Valeriu GRITCO, expires in December 2021. The Council of Europe asked the Republic of Moldova to nominate three candidates, from which the Parliamentary Assembly of the Council of Europe (PACE) should elect the Moldovan judge to the ECtHR. The elections are scheduled to take place at the PACE meeting in June 2021.

On 30 November 2020, the Government approved the [composition and regulation](#) of the commission responsible for selecting the three candidates. The selection was made on the grounds of an open public competition, while the commission was expected to finalize the competition and to propose the Government the three candidates by 29 January 2021. The 19 members of the commission were representing Presidency, Parliament, Ministry of Justice, Constitutional Court, courts of law, prosecutor's office, academics and civil society. Minister of Justice, Fadei NAGACEVSCHI, chaired the commission. Following the interview, the candidates had to be evaluated scored against nine criteria by each member of the commission.

The former President Igor DODON appointed [Pavel ABRAHAM](#), a former Romanian police officer, lawyer and professor, as a member of the commission. After the inauguration, the President Maia SANDU revoked Mr. Abraham, on the grounds that there were rather serious doubts concerning his integrity. She appointed instead Ms. Viorica PUICA, judge of the Chisinau Court. It looks

like minister Nagacevschi insisted that Mr. Abraham should stay with the committee, while Ms. Puica should leave. On 22 January 2021, following heated discussions in the commission's first meeting, Ms. Puica left the meeting, while Mr. Abraham remained.

13 candidates submitted their applications for competition, of which 11 were invited for the interview conducted on 27 January 2021. The video recording of the interviews was [placed on the Internet](#) by the Ministry of Justice. The [score obtained by each candidate](#) from each member of the commission was also made public.

The first three candidates who obtained the highest average score from the members of the commission are: Director of the National Institute of Justice, Ms. Diana SCOBIOALĂ, former Government Agent and Minister of Justice, Mr. Vladimir GROSU, and former Vice-minister of Justice and adviser to Prime Minister Ion CHICU on legal issues, Mr. Nicolae EȘANU. The fourth was the Executive Director of the LRCM, Mr. Vladislav GRIBINCEA. The analysis of the scores reveals that Mr. Gribincea was clearly downscored by at least four members of the Commission, including Pavel ABRAHAM, PSRM member Vladimir BOLEA, Government Agent and Chairperson of the Superior Council of Prosecutors Angela MOTUZOC. Despite lower scoring, he obtained an average of 92.85 points, i.e. less than one point under the third-place candidate, Mr. Nicolae EȘANU. After scrutinizing the details of interviews, the journalists traced out the conflict of interest with some members of the committee. However, neither they, nor the candidates (except for Mr. Gribincea) have declared it.

On 12 February 2021, [the Government approved the list of the first three candidates](#) proposed by the commission. The list should be submitted to a panel of independent experts, who will communicate to the Government their opinion on the candidates in a confidential letter. The panel may accept the list or recommend its amendment. Subsequently, the list should be submitted for further consideration to the PACE. The three candidates will be invited to an interview organized by the PACE Committee on the Election of Judges to the European Court of Human Rights. PACE may return the list if at least one candidate is not eligible to take the position of a Judge. If the list is accepted, then the Committee makes a recommendation to PACE with regard to the preferred candidate. However, the PACE members are free to cast their vote. A candidate, gaining more than half of the votes cast in the first round of voting, or get the largest number in the second round, is elected judge at the ECtHR. The mandate of the ECtHR judges is of nine years.



This Newsletter was developed within the framework of the project "Institutional Support for Organizational Development", funded by Sweden. The views expressed in it belong to the LRCM and do not necessarily reflect the position of Sweden.

### Legal Resources Centre from Moldova

 33, A. Șciusev st.,  
MD-2001, Chișinău,  
Republic of Moldova

 +373 22 84 36 01  
 +373 22 84 36 02

 [contact@crjm.org](mailto:contact@crjm.org)  
 [www.crjm.org](http://www.crjm.org)

 [crjm.org](https://www.facebook.com/crjm.org)  
 [crjmolдова](https://twitter.com/crjmolдова)

