

NEWSLETTER

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About LRCM

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

The Parliament appointed the vice-presidents of the SCJ while rejecting the appointment of three judges to the SCJ

There should be a total of 33 judges at the Supreme Court of Justice (SCJ). They are appointed at the plenary session of the Parliament, upon the proposal of the Superior Council of Magistracy (SCM). Currently, there are [11 vacant judge positions at the SCJ](#). For more than a year, the plenum of the SCJ was not convened due to lack of a quorum, which, in its turn, was caused by the fact that there were less than 22 judges working at the SCJ. The position of the President of the SCJ, as two positions of the vice-presidents, remained vacant.

From June to September 2020, the SCM proposed to the Parliament to appoint six judges and two vice-Presidents of the SCJ. Pursuant to the [Law on the SCJ](#), the appointment of judges of the SCJ should take place within 30 days from the date registration of the SCM proposal in the Parliament. The Parliament is entitled to refuse the appointment of judges to the SCJ only if indisputable evidence of incompatibility of the candidates, infringement of the legislation, or the violation of the legal procedures of their selection and promotion is established (Art. 9 para. 2). Since the legally set deadlines were overstepped (more than four months elapsed since the SCM submitted its last proposal), on 15 February 2021, a number of civil society organizations have launched a [public appeal](#) asking the Parliament to resume discussion of the SCM's proposals as soon as possible.

On 3 March 2021, the Parliamentary Legal Committee discussed the appointment of two vice-presidents and four judges to the SCJ, as proposed by the SCM back in September 2020. The meeting took place behind closed doors and, unlike other meetings, it was not videotaped and/or streamed on social media. The Committee approved the appointment of Ms. [Tamara CHIȘCA-DONEVA](#) and Ms. [Nadejda TOMA](#) as vice-presidents of the SCJ, and Mr. [Ghenadie PLĂMĂDEALĂ](#) and Ms. [Oxana ROBU](#) as judges of the SCJ. With regards to judges [Anatolie MINCIUNĂ](#) and [Nicolae ȘOVA](#), no decision was taken as some of the members of the committee have abstained from voting. It was proposed to debate the appointment of the two candidates in the plenary session of the Parliament. As regards Ms. [Aliona MIRON](#), the fifth candidate proposed by the SCM, the Legal Committee received a letter signed by three members of the SCM,

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The Parliament refused without advancing any reason to nominate an honest judge to the SCJ and nominated as the vice-president of the SCJ a judge known for adopting arbitrary judgments

stipulating that, during the contest conducted by the SCJ, the vote for her was counted wrongfully. The commission asked the SCM to make it clear whether the vote for this judge was counted correctly so that the Committee could subsequently discuss this nomination.

In addition to the above judges, on 9 June 2020, the [SCM proposed the appointment](#) of Ms. [Viorica PUICA](#), the judge of the Chisinau Court, to the SCJ. Ms. Puica has a reputation of a professional and honest judge. Earlier, the SCM awarded Ms. Puica with a distinction as the country's best judge. The Legal Committee discussed her nomination in the summer of 2020. The outcome was negative while the actual reasons for rejecting the SCM's proposal remained unexplained. Supposedly, her judgeship nomination should have been discussed during one of the plenary sessions of the Parliament scheduled for 16 and 20 July 2020, but the issue was removed from the agenda. On 22 July 2020, 15 civil society organizations came up with a [public appeal](#) asking the Parliament to abstain from infringing the law and to vote as soon as possible on the appointment of Ms. Puica as the SCJ judge. Subsequently, the [judges of the Chisinau Court](#) (Central headquarter), the [Association of Judges of the Republic of Moldova](#), and the [Association of Judges "Voice of Justice"](#) joined the appeal.

The appointment of judges and vice-presidents to the SCJ was discussed at the Parliament's Parliamentary sitting on 12 March 2021. Despite the protest voiced by PMs of PAS and PPDA groups, Ms. Tamara CHIȘCA-DONEVA and Ms. Nadejda TOMA were appointed for a four-year term as the vice-presidents of the Civil and, the Criminal collegium of the SCJ accordingly. The Parliament has also rejected the SCM's proposal of appointing Mr. Anatolie MINCIUNĂ and Mr. Nicolae ȘOVA as judges to the SCJ on the grounds that the MPs received compromising information about them. The Parliament also rejected the SCM's proposal to appoint Ms. Viorica PUICĂ to the SCJ without stating any reasoning. The judgeship nomination of Mr. Ghenadie PLĂMĂDEALĂ and Ms. Oxana ROBU was not yet discussed but, most likely, it will be discussed at the forthcoming sittings of the Parliament.

Ms. Tamara CHIȘCA-DONEVA was criticized by [PAS MPs](#) for her participation in the "[Gemenii case](#)". The European Court of Human Rights stated that the decision on the "[Gemenii case](#)" was arbitrary, obliging Moldova to compensate in over EUR 3,600,000 (for details see [LRCM Newsletter No. 26](#)).

Maia Sandu returned the new justice sector reform strategy to the Parliament

On 28 October 2020, the Government of the Republic of Moldova [approved the Strategy and the Action Plan](#) for ensuring the independence and the integrity of the justice sector for 2021-2024. The document was drafted by the Ministry of Justice with the support of development partners, civil society, and other justice sector actors. Throughout 2020, the LRCM, together with the Institute for European Policies and Reforms, issued a large spectrum of [opinions](#) aimed

Maia SANDU refused to promulgate the new justice sector reform strategy and insisted on additional measures to fight corruption

at improving the Strategy. The proposals suggested by the two organizations referred to the strengthening of the self-administration of the prosecutor's office and of the judicial system, as well as enhancing the integrity and the observance of human rights across the justice system.

The strategy pursues three strategic objectives: independence, accountability, and integrity of the justice sector actors; access to justice and quality of justice; efficient and modern administration of justice. On 26 November 2020, the Parliament of the Republic of Moldova [adopted the document](#) with the vote of 49 MPs from the Socialists Party and "For Moldova" Platform. The PAS and PPDA MPs refused to support the draft since the parliamentary majority did not accept the amendments proposed by the latter, especially those concerning the introduction in the strategy of a mechanism for external evaluation of judges and prosecutors. The strategy was due to become effective as of 1 January 2021. However, President Igor DODON failed to promulgate the law before president-elect Maia SANDU took the oath on 24 December 2020.

On 17 February 2021, President Maia SANDU returned the Strategy to the Parliament for further review. The President believes it is necessary to include into the strategy several additional measures: such as the implementation of the mechanism of the external evaluation of judges; carrying out effective control of the statements of assets and interests pursued by the judges and prosecutors, and amend the Constitution to allow for the confiscation of assets/wealth owned by the public servants when it cannot be justified. The Parliament will have to discuss the objections stated by the President and then proceed to accepting or rejecting them. Once repeatedly voted by the Parliament, the President can no longer object and is bound to promulgate the law.

The mechanism for external evaluation of judges and prosecutors from Albania has been validated by the ECtHR

ECtHR – obliging the assessed official to justify his/her wealth acquired many years ago should not be regarded as an excessive burden

On 9 February 2021, the European Court of Human Rights (ECtHR) issued a judgment: [Xhoxhaj v. Albania](#). In this case, the ECtHR assessed the mechanism of the external evaluation of judges and prosecutors (vetting) from Albania. This mechanism allows for dismissal from the office of judges and prosecutors who cannot justify their wealth. Since 2016, the independent extra-judicial commission carries out the assessment of judges and prosecutors across the country. The decisions taken by this commission are subject to judicial review before a panel of judges appointed for the purpose. The judges or the prosecutors failing the assessment are dismissed from office and will not be able to reenter the justice system ever again.

The applicant in this case is a former judge of the Constitutional Court and member of the Superior Council of Magistracy of Albania. The commission found some discrepancies between the applicant's income and her actual wealth, as well as certain inconsistencies between her own and her partner's statement with regards to their assets. She was unable to justify properly the origin of these, failed the assessment and was dismissed.

The Court reiterated the conclusions drawn by the Venice Commission in its report on the external evaluation system, establishing that the extraordinary evaluation of judges in Albania was not only justified but also necessary to protect Albania from the scourge of corruption, which, if not addressed, could destroy the judicial system. The ECtHR rejected the applicant's claim as unfounded, stating, *inter alia*, that the obligation to justify their wealth should not be considered an excessive burden for judges and prosecutors, even if the property was acquired long time ago. The Court further established that, in order to ensure the independence of the Special Assessment Commission, it is not mandatory to include judges or prosecutors in its composition. With regards to applying a lifetime prohibition to rejoin the justice system imposed on the judges and prosecutors who failed to pass the assessment, the Court noted that the severity of this measure has to be determined on a case-by-case basis, depending on the gravity of the established misconduct and with due account for the specific circumstances described by the dismissed person.

It seems that the ECtHR position with regards to the mechanism of external evaluation of judges is **less rigorous than the position of the Venice Commission**. However, the ECtHR approach does not exclude other conditions that the Venice Commission insists on for the adequate application of the external evaluation. These are (i) the existence of a broad political consensus on this reform; (ii) the existence of a very serious problem with corruption within the system that cannot be solved through the existing mechanisms; and (iii) one-off application of this mechanism.

The application of the mechanism of external evaluation in the Republic of Moldova was suggested by the **PSRM-PAS coalition in 2019**. However, this initiative was abandoned after the resignation of Sandu's Government. On 17 February 2021, the President of the Republic of Moldova, Maia SANDU **refused to promulgate** the new **Justice Sector Reform Strategy for 2021-2024** for several reasons, including that the document does not envisage a mechanism of external evaluation of judges and prosecutors.

The ECtHR judgment is not yet final and can be appealed to the Grand Chamber of the ECtHR within three months.

Two judges involved in the “Russian Laundromat” found guilty but exempted from punishment and one was acquitted

More than four years after opening the case on the “**Russian Laundromat**”, two out of fourteen judges appearing in the case file were convicted. Yet another judge was acquitted. The “**Russian Laundromat**” is a scheme that was designed for laundering of at least USD 20 billion through the courts of the Republic of Moldova. Moldovan judges, in the absence of parties, obliged Russian businesses to transfer hundreds of millions of US dollars to offshore companies under dummy contracts.

Mr. Igor VORNICESCU, a former judge from Chisinau (Rîșcani district) was the first convicted in the “**Russian Laundromat**” case. **On 24 February 2021, he was found guilty by the Chisinau district Court** of knowingly delivering an illegal judgment (Art. 307 para. 1 of the Criminal Code). Mr. VORNICESCU,

Decisions taken with regards to the three judges are contradictory, although issued by the same court just a few days apart

however, was exempted from criminal liability due to the expiry of the five-year statute of limitation. The Court stated that all of the documents annexed to the case file examined by judge VORNICESCU were copies. The copies were neither authenticated nor translated into Romanian. Yet another curious fact was the lack of a court entry stamp on the documents annexed to the case file. Moreover, in judge VORNICESCU 's personal computer a draft judgment was found. It was drawn up by an unknown person nine months before the application was filed with the court. Likewise, the haste in which the debtors from the Bahamas, Russian Federation and Chisinau, whose contact details do not appear in the case file, declared no objections against the court judgment was remarkable. The letters were returned on the same day judge Vornicescu issued the judgment, while there is no confirmation in the case file that the judgement was handed over to them. The court which convicted the aforementioned judge has also highlighted that the three letters returned by the debtors were identical.

A similar decision was taken by the Chisinau Court in the case of the second judge, Mr. Sergiu LEBEDENIUC. [On 26 February 2021, he was found guilty](#) of committing the crime provided for in Art. 307 para. 1 of the Criminal Code. Mr. LEBEDENIUC was also exempted from criminal liability due to the expiration of the statute of limitation. The reasons for convicting judge LEBEDENIUC are similar to those of his colleague, Mr. VORNICESCU. The court also noted that the debtor's home address in the Republic of Moldova was indicated in such a way that the hearing of the case was referred to the Comrat district Court, where Mr. LEBEDENIUC was acting as the vice-president of the court and thus assigned the case to himself. In this case, again, the debtors were incredibly swift sending the documents expressing no objections with the judgment, i.e., the next day after the issuance of judgment and on the day when, by a simple letter, a copy of the judgment was posted to their address in the United Kingdom, Russian Federation, and the Congaz village. All the documents produced by them were practically identical. The judicial experts have found that the debtor from the Republic of Moldova has never signed the document confirming no objections to the judgment issued by judge LEBEDENIUC or any other documents from the case-file.

Mr. Sergiu LEBEDENIUC is also one of the five judges appearing in the "Laundromat" case who requested the SCM, last fall, to reinstate him as a judge and settle his wages for the duration of suspension from office in connection with the criminal case. The other four judges were Mr. Gari BIVOL, Mr. Serghei GUBENCO, Mr. Serghei POPOVICI, and Mr. Iurie HÂRBU. The five judges were suspended from office in September 2016, as a criminal prosecution was launched against them. [On 27 October 2020, the SCM accepted the request of the five judges](#), on the grounds that the prosecutors stripped them charges for money laundering. The SCM ordered their reinstatement in the office and paying the full amount of wages for the period of suspension. The SCM's decision looks strange given that, on the day of its adoption, the five judges were still charged under Art. 307 of the Criminal Code. Pursuant to the Law on the status of the judge [\(a\) Art. 24 para. 1](#)) the existence of criminal investigation against judges serves as the grounds for suspending them from office. Moreover, the obligation to repay their outstanding wages while the judges were still charged with criminal responsibility, cannot be logically explained.

On 2 March 2021, Mr. Ghenadie BÎRNAZ, yet another judge appearing in the “Laundromat” case, was acquitted by the Chisinau district Court. The charges against judge Bîrnaz were much like the ones brought against judges Vornicescu and Lebedeniuc. According to the court, the actions of judge Bîrnaz do not comprise the elements of a crime provided for in Art. 307 of the Criminal Code. According to the judgment, pursuant to Art. 307 of the Criminal Code only the issuance of the judgments, sentences, and decisions can be incriminated, but not the ordinances (ordonanță) since the ordinances are not expressly mentioned in the Art. 307.

The court decision concerning Mr. Bîrnaz clearly contradicts the decisions concerning Mr. Vornicescu and Lebedeniuc. The latter also issued ordinances, while in their cases the judges have stated that the elements of the offense provided for by Art. 307 of the Criminal Code were met. The Chisinau district Court’s decisions are not final and can still be challenged.

The growing uncertainty with regard to the dissolution of the Parliament

Constitutional Court – Dissolution of the Parliament for the conduct attributable to other authorities (e.g., failure to nominate a PM by the President in three months) cannot take place

On 23 December 2020, just one day before the inauguration of the new President and a few hours before the motion lodged by the opposition against the Government was scheduled to be scrutinized by the Parliament, at a press conference, Ion CHICU announced the Government resignation. The press conference was held at the President’s building. Next to him were the President of the Republic of Moldova, Igor DODON and the Speaker of the Parliament, Zinaida GRECEANII. Prime Minister Ion CHICU and three ministers (Ms. Viorica DUMBRĂVEANU, Minister of Health, Labor and Social Protection; Mr. Sergiu PUȘCUȚA, Minister of Finance; and Mr. Anatol USATÎI, Minister of Economy) refused to exercise their duties in the interim Government after 31 December 2020.

On 27 January 2021, President Maia SANDU nominated Natalia GAVRILIȚĂ for the position of Prime Minister. In 2019, Ms. Gavrilică was the Minister of Finance in Maia SANDU’s Government. She previously worked abroad. President Maia SANDU stressed that snap parliamentary election is the only way to solve the political crisis. On 8 February 2021, the candidate for the Prime minister’s office presented to the Parliament the Government Activity Program and a list of ministers. The former ministers acting in Sandu’s Government and the PAS MPs were included in the team.

On 11 February 2021, the Parliament held a sitting during which the nominated candidate, members of the cabinet and the Government Activity Program of Gavrilică’s cabinet were put to a vote. None of the MPs voted in support of Gavrilică’s Government. While Ms. Gavrilică was delivering her speech, the PSRM faction and its leader Mr. Igor DODON, at a press conference announced that the Socialist Party nominates Mariana DURLEȘTEANU for Prime minister’s office. She would lead the transitional government until the snap elections. Mr. Igor DODON appealed to the other parties to support their candidate under the conditions of “situational majority”. Three hours later, the “For Moldova” Platform (Shor Party and the nonaffiliated MPs who recently left the “Pro

Moldova" faction) [made their statement](#) in support of the candidate proposed by the PSRM. 54 MPs from the PSRM faction, the "For Moldova" Platform and the three independent MPs have signed in support of Ms. Durleșteanu. Earlier, the PSRM [has stated](#) that they do not intend to agree with the Shor Party on a joint candidate for Prime Minister's office. Ms. Durleșteanu [stated](#) that she was not aware that the MPs of the Shor faction have signed for her nomination.

On the evening of 11 February 2021, President Maia SANDU [held](#) repeated consultations with the parliamentary factions. President Maia SANDU also [informed](#) that, on the same day, she did receive a list signed by 54 MPs nominating Ms. Durleșteanu for Prime Minister's office. Maia SANDU mentioned that on that list she found signatures of persons that were hardly given a chance to express their consent, signatures of persons involved in the theft of a billion and signatures of the "traveling" MPs with regards to whom there were reasonable suspicions of corruption and external pressure. Ms. Sandu mentioned that, for these very reasons, she would repeatedly nominate Ms. Natalia GAVRILIȚĂ for Prime Minister's office.

On 12 February 2021, three MPs of PSRM [lodged a complaint](#) with the Constitutional Court (CCM) challenging the repeated nomination of Ms. Gavrițița for the Prime Minister's office. The authors of the appeal believe that the president ignored the will of 54 MPs, who proposed to nominate Ms. Durleșteanu. They referred to the [CCM's jurisprudence](#), according to which, if the absolute formalized parliamentary majority is set up, the President is obliged to accept the candidate for the Prime Minister's office proposed by that majority.

On 23 February 2021, the CCM [reviewed](#) the complaint lodged by the PSRM. The President's administration argued before the CCM that the previous jurisprudence of the CCM needs to be further detailed, since it was created when Mr. Vladimir PLAHOTNIUC wanted to become Prime Minister and when the President of the country was nominated by the Parliament. The President's administration also argued that the President of the country should have the right to turn down the proposal of a formalized majority if it does not pursue the intention to govern or cannot ensure governance in the interests of the people of the Republic of Moldova. The CCM considered that the statement on the creation of the parliamentary majority to support Ms. Durleșteanu as a candidate for Prime Minister's office, signed on 11 February 2021 by 54 deputies, represents a formalized absolute majority. For this reason and invoking its previous jurisprudence, the CCM stated that President SANDU has violated provisions of Art. 98 para. (1) of the Constitution by repeatedly nominating Ms. Gavrițița for the Prime Minister's office and rejected the candidate proposed by the formalized absolute majority created by 54 MPs. The Constitutional Court did not respond in any way to the arguments brought up by the President's administration that the previous constitutional jurisprudence needs to be further detailed. At the same time, the CCM highlighted the lack of cooperation between the President and the Parliament during the second round of consultations on the nomination of a candidate for the Prime Minister's office. The CCM acknowledged that the country's President and the Parliamentary factions should continue consultations.

In the evening of 23 February 2021, President Maia SANDU held a press conference whereby she [stated](#) that the CCM's decision is valid under ordinary situations, rather than in the case of Moldova, which is a captured state. In her statements, Ms. Sandu made it clear that she does not intend to accept Ms. Durleșteanu as Prime Minister and that she is pleading for snap elections.

The Parliament may be dissolved, thus triggering snap elections, only if it has not passed the vote of confidence for setting up of the new government within the term of 45 days from the first request and only after the dismissal of at least two requests of investiture (Art. 85 para. (2) of the Constitution). Likewise, the President can dissolve the Parliament if it turns out impossible to form a government in three months, following consultation with the parliamentary factions (Art. 85 para. (1) of the Constitution). The dissolution of the Parliament must be preceded by the consent of the Constitutional Court. In a [recent decision](#), the CCM explained that the dissolution of Parliament is a sanction imposed on it for the conduct attributable to Parliament. Dissolution of the Parliament for the conduct attributable to other authorities (e.g., failure to nominate a PM by the President in three months) cannot take place.

The courts found lawful the display of crucifix in public institutions

The judges found that the complaints concerning discrimination should be examined within 30 days, although the non-discrimination legislation provides for a three times longer period!

On 15 September 2019, a crucifix was installed in the lobby of the Ministry of Internal Affairs (MIA). At the inauguration ceremony, the then minister Andrei NĂSTASE mentioned: "Through the inauguration of this crucifix we would like to remind all who work in the MIA's subordinated structures that the army is Christian. Policemen, carabinieri and rescuers, all those who wear the military uniform of the Republic of Moldova, would not be able to move even a grain without the power of God and the Holy Cross". On 17 September 2019, a complaint was lodged with the [Council for the Prevention and Elimination of Discrimination](#) (the Equality Council) stating that the installation of the crucifix in a public institution, as well as the statements made by Minister NĂSTASE, are discriminatory based on religion.

On [16 December 2019](#), the Moldovan Equality Council stated that the installation of the crucifix and the minister's speech constitute an incitement to discrimination and asked Mr. Andrei NĂSTASE to issue public apologies, while the MIA staff should remove the crucifix from the lobby of the institution and ensure observance of neutrality of the public service as well as the principle of secularism.

Mr. Năstase challenged the Decision of the council. On [31 July 2020](#), the Chisinau district Court annulled the Council's decision with regards to Mr. Andrei NĂSTASE. The court did not annul the part of the decision with regards to obliging MIA staff to remove the crucifix, since the ministry did not challenge the Council's decision. The court stated that the decision taken by the Council became effective after the expiry of a deadline provided for by the law and that Mr. Andrei NĂSTASE was not properly summoned. The court also found that the

installation of the crucifix in a public institution does not violate any right. The Court invoked the findings of the European Court of Human Rights in the [Lautsi v. Italy case](#), with regards to having crucifixes displayed at schools. The court has also stated that the inauguration speech of the minister upon installation of the crucifix cannot be interpreted as an incitement to discrimination since he did not impose or propagate any religion, while the conclusion on a possible influence onto the MIA staff has not been proven. Likewise, the court considered unfounded the Council's statement that the display of religious symbols in public institutions may disturb part of ministry's employees who share other religious convictions or are atheists.

The judge's argument on the violation of the deadline set for examining the complaint by the Council triggers certain concerns. In this case, the provisions set forth by the [Administrative Code](#) (Art. 60) were applied, which provides for settlement of administrative proceedings within a 30-day timeframe. [The law on ensuring equality](#) provides for special deadlines of up to 90 days (Art. 15) for resolving complaints lodged with the Council. Moreover, the court interpreted the 15-days deadline for review of the complaint by the rapporteur member of the Council (p. 51 of the [Law on the Activity of the Equality Council](#)) as the period for resolution of the complaint by the Council. Such an interpretation does not seem to be based on any of the legal provisions. The role of the rapporteur member is to prepare a report on the complaint and present it to the other members of the council rather than to solve a complaint unilaterally.

The Council appealed the decision of the district court. However, on [18 November 2020](#), the appeal was rejected by the Chisinau Court of Appeals. On [17 February 2021](#), the Supreme Court of Justice (SCJ), through its irrevocable judgment, dismissed the appeal lodged by the Council. The SCJ had the opportunity to examine and elucidate such an important issue as the admissibility of installing religious symbols in public institutions and the difficulties of interpreting the provisions with regards to the term of examining the complaints on discrimination. However, the SCJ preferred to uphold a judgment of the district the reasoning of which raises great concerns with regards to both aspects.



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