

NEWSLETTER

Contents

The NIA, in May 2021: Among small fish, there are some big ones. The lavish life of some judges, MPs with unaccounted wealth and integrity inspectors whose statements verge on the illegal

Judges put up candidates for acting chief judge. What did the SCM decide?

The Law on the Bar has been amended. What are the main changes?

The Republic of Moldova condemned by the UN for racial discrimination in employment

From 1 August 2021, the ECtHR will examine cases by a new procedure. The time limit for referral to the Court will decrease from six to four months.

In Brief

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 NIA, in May 2021: Among small fish, there are some big ones. The lavish life of some judges, MPs with unaccounted wealth and integrity inspectors whose statements verge on the illegal

On 12 May 2021, the LRCM published [an infographic about the 2018-2020 activity of the National Integrity Authority \(NIA\)](#). According to statistics, until 31 December 2020, the NIA had issued 532 acts. However, only 354 appeared on the agency's [official website](#). In 227 (64%) of these acts, the NIA found a violation of integrity legislation. Only 15 of the 227 violations concerned the failure to declare assets, and most (121) concerned conflicts of interest. Almost half of the inspections took more than six months.

Until 2021, the NIA used to verify integrity primarily at the local level—45% of violations involved mayors and councilors and only 3% involved MPs, judges and prosecutors. Lately, however, the agency has been publishing more acts about well-known figures.

On 13 May 2021, the NIA found that MP Alexandru JIZDAN owned [over MDL 770,000 of unaccounted assets](#). He could not justify for the origin of the cash added to the bank account of his son, who studies in the Netherlands. Jizdan also failed to declare income from some salaries, an ancillary construction in the village of Molovata, Dubăsari and three buildings owned in the Netherlands and used by his son. The NIA requested the confiscation of the unaccounted property and referred the case of misrepresentation to prosecution office.

On 17 May 2021, the NIA found that Denis GUZUN, a judge at the Chişinău Court, possessed [approximately MDL 3,000,000 of unaccounted assets](#). From 2013 to 2018, Guzun had worked as a judicial assistant. In 2019, on his appointment as judge, he submitted the declaration late, which prompted the NIA to inspect his assets. It found substantial discrepancies in his purchase of real estate in Chişinău (a house with its site and an ancillary construction and another site for construction) and a BMW car. The judge misrepresented the worth of MDL 2,200,000 cash gifts received at his wedding and other family events, as well as of EUR 113,000 as family savings. Denis GUZUN's parents also work as judges—his father, at the Supreme Court of Justice (SCJ) and his mother at the Chişinău Court of Appeals. [The Guzuns' lavish lifestyle](#) has already made the

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The NIA found that a judge could not explain the origin of his MDL 3,000,000 wealth and requests its confiscation

headlines earlier. The NIA reported the case of misrepresentation to prosecution authorities and is going to start the inspection of the parents' assets. The NIA also asked the courts to confiscate the unaccounted assets.

On 19 May 2021, [the NIA announced](#) that the Chişinău Court had ordered prosecution office to resume the investigation into the illicit enrichment of the former MP Nae-Simion PLEŞCA. On 4 December 2020, the NIA [found a substantial unaccounted difference](#) of over MDL 830,000 between the obtained and the declared wealth of the former MP Pleşca. The NIA requested its confiscation and the initiation of a criminal investigation. The Chişinău Prosecution Office refused to start the investigation, stating that the deed did not contain the elements of a crime.

On 25 May 2021, the NIA published [the act that did not find](#) unaccounted assets in Vladimir PLAHOTNIUC's property. The inspection covered only the period of March through June 2019, when Plahotniuc served his last term in Parliament, and did not cover the years 2014 and 2015 (his previous term in Parliament) because of the expiry of [the statutory three-year limitation period](#) since that term in office. The inspection also covered Plahotniuc's [double identity](#) following [a journalistic investigation](#) into rigged tenders and money laundering through offshore companies managed by him. As a result of the investigation carried out both in the country and abroad, the NIA found that some asset divestment transactions in favor of the former MP were dubious. The NIA referred its findings to the State Tax Service and the Anticorruption Prosecutor's Office.

On 25 May 2021, the NIA found that Străşeni District Governor Pavel TAMACIUC [was in conflict of interest](#) from June to October 2020, when he granted himself annual vacation leaves and bonus payments. The NIA started the inspection after the media reported that [Tamaciuc and other officials of the Străşeni District Council received approximately MDL 100,000 in bonus payments](#).

On 28 May 2021, the Chişinău district Court [rejected](#) the NIA's petition for the confiscation of MP Dumitru DIACOV's unaccounted assets. On 16 February 2021, the NIA [had found a substantial discrepancy](#) of over MDL 600,000 between the obtained and the declared wealth and petitioned the court to confiscate it. The reasoning part of the 28 May 2021 decision is not available yet, but the NIA considers it unfounded and is planning to challenge it.

On 17 May 2021, Ziarul de Gardă [published an investigation](#) concerning the NIA's integrity inspectors who declared cars at ridiculous prices (MDL 5,000 – 10,000) and homes at the value of zero Moldovan lei. The inspectors excuse themselves by the legal provisions that allow declaring assets at the contractual price. The legal framework needs to be amended so that assets be declared at their real value (see the [LRCM's Newsletter 31](#) for more information).

Judges put up candidates for acting chief judge. What did the SCM decide?

Judges want other acting chief judges than those appointed by the SCM

The Superior Council of the Magistracy (SCM) has been unable to nominate judges to leadership positions at the courts for a long time ([see the LRCM's Newsletter 32 for more information](#)). Since most leadership positions in the judiciary remained vacant, [judges started to propose the SCM candidates who would serve as acting chiefs](#). On 24 May 2021, over 60 judges from the Chişinău district Court proposed the SCM's plenum to appoint the current deputy chief Judge Aliona MIRON as acting chief judge of the Chişinău district Court. According to the signatory judges, Judge Miron proved to be responsible and very competent at work. On the same day, other 18 judges from the Ciocana Office of the Chişinău district Court put up another candidate for the same position – Judge Viorica PUICA. The latter nomination was made [without the consent](#) of Judge Puica. Shortly afterward, she announced that she refused her nomination for this position and would support the candidacy of Judge Aliona MIRON.

On 25 May 2021, the SCM appointed other judges as acting chiefs. Deputy chief Judge Vitalie STRATAN of the central office of the Chişinău district Court was appointed as acting chief judge of the Chişinău district Court, and Judges Constantin DAMASCHIN and Angela CATANĂ, as acting deputy chief judges of the Chişinău district Court, offices of Ciocana and Buiucani, respectively.

By the end of May 2021, the better half of all leadership positions in the judiciary were filled by persons in the acting role (at least 12 positions of chief judge at district courts, two positions of chief judge at appellate courts, and even the position of chief justice at the SCJ). Apparently, this list is also going to include the position of chief judge of the Chişinău Court of Appeals (CA), as President of the Republic of Moldova Maia SANDU has revoked the appointment of Vladislav CLIMA as chief judge of the Chişinău CA on 28 May 2021, citing the violation of the regime of conflicts of interest in the appointment process. Shortly after that, Clima [declared](#) he would challenge his revocation.

The Law on the Bar has been amended. What are the main changes?

On 22 April 2021, Parliament passed amendments to the [Law on the Bar](#). The amendments excluded many incompatibilities for lawyers, shortened and facilitated the period of professional internship, broadened the powers of the Bar Council, changed the manner of election of the Lawyers Licensing Committee, introduced a more detailed regulation of the procedure for holding examinations in the bar, scoring examinees, challenging examination results, etc.

Unlike the previous law, which imposed civil servants' incompatibilities on lawyers, the amendments widen the range of activities that are compatible with the work of a lawyer. Thus, lawyers will be allowed to work in the private sector and even to practice entrepreneurship. The work of a lawyer will be incompatible

The new law broadens the powers of the Bar Council, changes the way of electing the Licensing Committee and holding examinations, and gives legal interns additional rights

only with the office of civil servant, the work of a notary or a bailiff, or the work that the Bar Council considers as affecting the dignity or independence of the lawyer profession or good morals. The new law also stipulates that a lawyer may not sit on two self-governing bodies of the Bar at the same time.

The minimum period of professional internship was shortened from 18 to 12 months. The new law also introduced the maximum duration of the professional internship, which is 24 months. After 12 months of internship, interns are allowed to the Bar exam without losing their intern status. The new law also stipulates that legal interns must repeat professional internship if they fail the qualifying examination three times. Previously, the internship had to be repeated after two failures. The examinations will depend only on the obtained score, and not on the Licensing Committee's vote. The minimum score and the grading methodology will be established in the Charter of the Lawyer Profession. The law also introduced the right of the legal intern to provide state-guaranteed legal aid in civil cases and to participate, along with their mentor, in any phase of a criminal proceeding. The law also introduced disciplinary sanctions for legal interns for the first time.

The new law clarified how to organize and to participate in the Bar Union Congress and in the general assemblies of the four local bar associations. Participation in them is also possible via electronic means, where only practicing lawyers are entitled to vote. To be deliberative, these assemblies must gather one third of the lawyers entitled to vote.

The law introduced the Bar Council right to set any fees for lawyers or those wishing to enter the bar. The law, however, stipulates that lawyers with suspended practice will no longer pay membership fees to the Bar Union. The power to approve the Bar Union's budget and the size of its membership fee passed from the congress to the Bar Council. The Council will also approve the bar examination methodology.

The changes also affect the way of electing the Licensing Committee. Six committee members will be elected by the congress, and five, by local bars. The Licensing Committee's decisions concerning bar examinations will be appealable in a special committee of five lawyers appointed after the filing of appeals by the Bar Council. The score awarded by the appeals committee will be added to the score awarded by the Licensing Committee, thus giving the final score of the examination.

The law also changed the way of organizing elections for the Bar Union. Candidates must register at least 15 days in advance and the list of candidates may not be completed after that. The Bar Union must publish candidates' platforms online at least ten days before the election and candidates are offered equal time for presentation at the congress or general assemblies. The law also reduced the annual number of mandatory training hours for lawyers from 40 to 16.

President Maia SANDU promulgated the bill, and it will soon be published in the Official Gazette. It will become effective on the publication in the Official

Gazette. The Bar Council received the power to amend the Charter of the Lawyer Profession in accordance with the new law within three months.

The Republic of Moldova condemned by the UN for racial discrimination in employment

CERD condemned Moldova for failure to revert the burden of proof and for requesting the petitioner to prove his ethnicity

On 22 April 2021, the UN Committee on the Elimination of Racial Discrimination (CERD) published the judgment on [Zapescu v. Moldova](#) and condemned the Republic of Moldova for the first time for racial discrimination in employment. CERD found a violation of Article 6 of [the UN Convention on the Elimination of All Forms of Racial Discrimination](#). The LRCM, as a third party, provided comments to CERD on this case.

CERD found shortcomings in the examination of cases of discrimination in courts, especially in what concerns state remedies. The national courts have failed to reverse the burden of proof, which is expressly provided for in the [Law on Ensuring Equality](#), in international standards, and in the caselaw of the European Court of Human Rights. The reversal of the burden of proof means that the task of proving that the examined action does not constitute discrimination rests with the persons accused of the discriminatory, not vice versa.

The national courts also unreasonably required the petitioner to provide evidence of their ethnicity, which contravened the principle of self-identification. Furthermore, CERD noted that the choice of a particular remedy—in this case, compensation for damages caused by discrimination instead of employment or a legal action, either in court or in the Council for Preventing and Eliminating Discrimination and Ensuring Equality, as invoked by the national courts—should not negatively affect the examination of a discrimination claim and put the petitioner in an unfavorable position.

The case concerns a Roma student who, together with a fellow student, tried to get hired as a waiter at Andy's Pizza (a chain of restaurants). Both job seekers had the same sex, physical features, stature, age, language and professional experience. The only difference between them was their ethnicity. Eventually, the employer rejected the Roma applicant and hired the second applicant.

The Moldovan government must inform CERD about the measures taken following CERD's opinion by 22 July 2021. This is the second case of discrimination examined by CERD against the Republic of Moldova. [The first case](#) was examined in October 2008 and concerned an offense based on prejudice.

From 1 August 2021, the ECtHR will examine cases by a new procedure. The time limit for referral to the Court will decrease from six to four months.

As of 1 February 2021, the time limit for referral to the ECtHR will decrease from six to four months

On 21 April 2021, the last member state of the Council of Europe ratified [Protocol No. 15](#) to the European Convention on Human Rights (the Convention). The protocol will take effect on 1 August 2021. The LRCM has developed [an infographic](#) to explain the essence of this protocol.

The reduction of the time limit for referral to the European Court of Human Rights (ECtHR) from six to four months is the biggest change introduced by Protocol No. 15. As a result, all the decisions issued from 1 February 2022 will be appealable in the ECtHR within four months. The prerequisites that allowed reducing this time limit include easier access to information due to the digitalization of justice, a faster examination of cases, and the reduction of the ECtHR's workload.

Protocol No. 15 also stipulates that, to become an ECtHR judge, the candidate must be under 65 years of age. Currently, the Convention does not set a maximum age for becoming an ECtHR judge, but stipulates that the mandate of a judge expires at the age of 70 years. The protocol also abolishes parties' right to oppose the referral of their case to the Grand Chamber and introduces the ECtHR's right to dismiss an application as inadmissible if [no significant damages were caused](#), even if the case has not been properly examined at the national level.

In Brief

On 13 April 2021, the European Court of Human Rights (ECtHR) dismissed the application in [Terheş v. Romania](#) as inadmissible. The applicant, a member of the European Parliament for the Social Democratic Party of Romania, complained that the self-isolation imposed by the Romanian government in the spring of 2020 to stop the COVID-19 pandemic had violated his right to freedom. The ECtHR concluded that the level of restrictions on freedom of movement was not so high as to consider that the lockdown imposed by authorities amounted to a deprivation of liberty.

On 27 April 2021, the Constitutional Court [declared unconstitutional the law](#) voted by the MPs of the Party of Socialists of the Republic of Moldova (PSRM), the ŞOR Political Party, and the Pentru Moldova Platform on 3 December 2020. The draft law provided for the transfer of the control over the Security and Intelligence Service (SIS) from the President of the country to the of Parliament. The Constitutional Court noted the violation of the legislative procedure as the parliamentary opposition had been prevented from participating in the examination and debate on the draft law. The debate on the draft law in Parliament's plenum lasted only one minute. According to the Court, this constituted a violation of the provisions that entitle MPs to propose

amendments to draft laws and a violation of the principle of fair and appropriate treatment of the parliamentary minority.

On 7 May 2021, the General Prosecutor's Office [announced](#) that it [dropped](#) the criminal investigation concerning the double identities of some individuals, including Vladimir PLAHOTNIUC. The case was filed on 29 October 2019 by the Anticorruption Prosecutor's Office. The case concerned the issue of Moldovan passports for Vladislav NOVAK (Vladimir PLAHOTNIUC) and Alexandr REZNIC (Vaja JHASHI). The General Prosecutor's Office announced that the passports had been issued by the Public Services Agency in accordance with the provisions of the Law on Special Investigations. The prosecution office mentioned that the passports were never handed to the holders, being destroyed instead. At the end of May, however, [TV8 found](#) that the false identities issued for Vladimir PLAHOTNIUC and Vaja JHASHI were still valid.

On 13 May 2021, Socialist MPs Vasile BOLEA, Alla DAROVANNAIA, and Vladimir ODNOSTALCO, at [a press conference](#), presented a draft law to amend Article 48 of the Constitution. The draft law proposed a ban on same-sex marriages. The Constitution of the Republic of Moldova, in Article 48 (2), already contains a clear prohibition in this regard. Same-sex marriages are also banned by Article 15 of the Family Code. PSRM MPs added that the draft law would include a provision on sanctioning gay propaganda. This way, PSRM advocates against sex education in schools to avoid teaching students about homosexuality. The Socialist MPs claim that this initiative is necessary to protect the values of the traditional family. The draft law refers to an invented legal problem, and the press conference was nothing but part of the election campaign.

On 18 May 2021, [the SCM suspended](#) all pending competitions for the promotion of judges to higher courts or positions of chief and deputy chief judge. This happened after the Chisinau CA ["forced" the SCM](#) to propose the Parliament to appoint to the SCJ several candidates previously rejected by the SCM. The judges consider that the SCM's decisions in this case were not motivated since they only mentioned that the candidates had failed to gain enough votes. The suspension will be valid until the SCJ issues a final decision in these disputes. Why the SCM suspended the competitions that did not concern promotion to the SCJ is hard to understand.

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