

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.

Government Priorities on the Issues Relating to Anti-Corruption and Justice

In late August-early September 2021, the Government launched a public consultation on the [draft Government Action Plan for 2021-2022](#). It sets out several important priorities meant to promote sustainable changes in the justice sector and in fighting corruption, including a major part of the proposals put forward by the [National Platform of the Eastern Partnership Civil Society Forum](#) at the end of July 2021.

Among the paramount priorities included in the plan are the legislative changes meant to enhance the legal framework concerning the proper functioning of the judicial system and that of the Prosecutor's Office. Certain actions pursue the promotion of the constitutional changes in the judicial system, which can be traced back to the Parliament's agenda of 2015. Likewise, it is envisaged to change the role of the Supreme Court of Justice (SCJ) along with modernization of the appellate system. These initiatives stand for major priorities underlying the proper functioning of the justice system.

Several amendments apply to the procedure of judges selection and promotion, including certain mechanisms allowing to test the integrity of candidates for the positions of a judge and prosecutor as early as attending the the National Institute of Justice (NIJ) and enhance the framework of the functioning of the Judicial Performance Evaluation Board. Yet another plan is to improve the legal framework on the disciplinary liability of judges and prosecutors – a rather important issue calling for immediate action.

The plan also envisages an action bound to enter changes and amendments to the legal framework, thus allowing for evaluation of performances and imposing disciplinary liability of the Prosecutor General (action already implemented in early September 2021). Such provisions, setting a rather dangerous precedent, will not produce any positive practical effect on the functioning of the Prosecutor's Office and therefore, should not have been included in the Government's plan.

The action plan proposes to exclude the institute of compulsory judicial mediation, which was [criticized by several NGOs since the proposal of instituting such was advanced back in 2015](#). It also proposes a set of actions meant to improve the penitentiary system, thus furthering earlier commitments undertaken by the Republic of Moldova with regards to the

Legal Resources Centre from Moldova



The Government Action Plan for 2021-2022 in the field of justice and anti-corruption, highlights several important priorities meant to promote rather sustainable changes. Most of these were made public at the end of July 2021 by the National Platform of the Eastern Partnership Civil Society Forum

building of a penitentiary facility in Chisinau municipality. Insofar, the plan does not include any action to ensure practical application of non-custodial preventive measures, such as bail, which would substantially reduce the population and the pressure on the penitentiary system, accordingly.

However, it would be an asset for the draft Action Plan to enter provisions furthering the implementation of the optimization of the judicial map. Insofar, the plan does not include any provision on the applicability or at least a review of the applicability of reorganization of the judicial map as well as the structure of the Prosecutor's Office. The draft plan must provide for further development of the Judicial Information System, including the extension of piloting of the judicial e-File application and the analysis of the functionality of the Integrated Case Management System (ICMS) in order to identify any vulnerabilities and be able to clear them if found. Providing for smooth functioning of the ICMS is essential for maintaining the transparency of the judicial system.

Another priority included in the plan is "the creation of a mechanism for ordinary and extraordinary evaluation of judges and prosecutors, including through the perspective of their interests, in order to cleanse the judicial bodies of corrupt and vulnerable individuals". Although this priority also includes ordinary and extraordinary evaluation, there is only one action provided for in the list of actions to that end. Given that the plan includes actions on the evaluation of performances of judges and prosecutors, this priority needs clarification. In any circumstance, it is not advisable to establish two or more parallel mechanisms for judges' evaluation. On the contrary, the evaluation procedure requires simplification and a focusing on substantive rather than formal aspects. Regarding the extraordinary evaluation, the plan contains some wording that requires clarification of the purpose of the proposed evaluation. Precisely, it is envisaged to "develop[ment] of a regulatory framework for the extraordinary evaluation of judges and prosecutors concerning the issuance of illegal acts and compliance of the statement of assets with the official income according to the recommendations of the Venice Commission and the jurisprudence of the Constitutional Court." The wording "concerning the issuance of illegal acts" raises big question marks on the purpose and methods of the evaluation as the illegal qualification of the judicial acts is also a matter for the judicial system. A more general wording, such as "integrity" could be used instead of "compliance with the statement of assets/wealth" to allow for the inclusion of other integrity-related aspects besides the statement of assets. In addition to clarifying the purpose of the extraordinary evaluation, it is necessary to change the deadline for adopting the regulatory framework. The plan provides for the implementation timeframe until December 2021, a period far too short for the initiative that contains many risks concerning the need to ensure the independence of judges. Any draft law on the extraordinary evaluation has to go through a scrupulous consultation with the stakeholders as well as with the Venice Commission. Bearing in mind a rather ambitious draft plan, the December 2021 timeframe is far too short and should be extended until the summer of 2022, in the least.

Certain important actions meant to improve the legal framework and functioning of the assets and interests control mechanism as well as the functioning of

the National Integrity Authority (NIA) are provided in the field of anticorruption. Likewise, are provided several amendments to the criminal and contravention laws meant to standardize certain provisions concerning sanctioning of different forms of political and electoral corruption. These amendments are highly necessary for the Republic of Moldova. Yet another important action concerns the limitation of powers of Anti-Corruption Prosecutor's Office to investigate high-level corruption cases and restructuring of the National Anti-Corruption Center (NACC) – a [priority also promoted by the LRCM](#) for some time now.

Last, but not least, it is worth mentioning a new priority set by the Republic of Moldova, namely, the “instituting of an external mechanism for diagnosis, monitoring and support of the rule of law in the Republic of Moldova (launching negotiations with the European Union on setting a mechanism for Cooperation and Verification Mechanism (CVM) in order to ensure regular objective evaluation of the results of reforms in the domain of justice, prevention and fight against corruption, security and public order.” The inclusion of this priority pursues establishing of a mechanism with an overall positive impact on the lasting reforms in the country, applicable regardless of the composition of the Government and Parliamentary parties.

The Parliament proceeded to amend the laws on the Prosecutor's Office, the National Anti-Corruption Centre and the Superior Council of Magistracy in a big haste

On 10 August 2021, the MPs of the Action and Solidarity Party (PAS) registered in the Parliament three draft laws on fighting against corruption and justice reform. One of these drafts excluded the need of holding a contest for the [selection of the Director of the National Anti-Corruption Centre \(NAC\)](#). The authors justified this initiative by the fact that the previous contests for the election of the Director of the NAC were manipulated with the view of nominating a candidate appointed by the majority. Moreover, the draft introduces a procedure for revocation of the appointment of the Director of NAC following the evaluation carried out by the MPs. On 13 August 2021, the draft was voted in the first reading, just three days after it was presented to the Parliament. On 24 August 2021, the draft was voted in its final reading and became effective as of 7 September 2021. Both, [anti-corruption expertise](#) of this draft, as well as the opinions of experts, stated during [public consultations of 19 August 2021](#), signaled the risk of enhancing the political control over this institution and impeding access to this position by professional and bona fide, politically non-affiliated individuals. The need for this draft seems dubious, since, at least in the case of coalition governments, identification of the Director of NAC through public competition reduces the risk posed by the political nominations.

The second draft pursues the mission of changing the composition of the Superior Council of Prosecutors (SCP) and introducing the procedure for [evaluation of the Prosecutor General's performances](#). On 13 August 2021, this draft was also voted in the first reading followed by the second reading on 24 August 2021, thus becoming effective as of 3 September 2021. [The adopted law](#) reduced the number of SCP members from

The laws were adopted to force the Attorney General to resign and to set up more transparent and fair elections to the SCM and SCP

15 to 12. The Prosecutor General, the Prosecutor of UTA Gagauzia and the Chairperson of the Moldovan Bar Association were excluded from the composition of the SCP. The law also provides that the mandate of the SCP member expires upon reaching the age of 65. This amendment led to the termination of the mandate of Dumitru PULBERE, appointed to the SCP by President Igor DODON, offering to President Maia SANDU a chance to appoint another member.

Also, the adopted law stipulates that evaluation of the Prosecutor General's performances shall be initiated at the referral of the President of the country or at least by 1/3 of the members of the SCP and bearing on the criteria approved by the SCP. The evaluation shall be carried out by a special commission composed of five members, provided the President of the Republic, the Ministry of Justice, the Superior Council of Magistracy, the CSP and the Prosecutor General nominate one member each. Within 30 days, the aforementioned commission shall submit a well-grounded report to the SCP. Should the SCP provide insufficient scoring, it proposes to the President of the country to discharge the Prosecutor General.

Inter alia, the law describes the procedure for bringing the Prosecutor General to disciplinary liability. The disciplinary procedure could be initiated by at least three members of the SCP and by the President of the country, including ex officio. The investigation should be conducted by an ad hoc commission of five members, appointed similarly to the commission in charge of evaluating the performances of the Prosecutor General. The commission may terminate the proceedings should it consider them unfounded or propose that the SCP sanctions the Prosecutor General. In case it has been found that the Prosecutor General has committed any disciplinary violation, the SCP shall proceed with sanctioning the Prosecutor General by issuing a warning, reprimand or dismissal from the office. In the latter case, the SCP shall file a request with the President of the country asking for PG's dismissal from office. The draft further provides that, in the event of the discharge of the Prosecutor General from the office, the interim function will be exercised by a prosecutor selected by the SCP and appointed by the President. Just 14 days have passed between the draft law was registered in the Parliament and its final vote.

The draft received a [negative opinion](#) of the NAC, given the non-compliance with the legislative process, but also the possible factors and risks of corruption. We do believe that this draft was adopted with the view of determining a discharge from the office of the acting Prosecutor General. On 19 August 2021, [at a press conference](#), Alexandr STOIANOGLO accused President Maia SANDU of asking him to launch a criminal prosecution against Igor DODON, Zinaida GRECEANII and Vladimir VORONIN.

The haste accompanying voting of these two draft laws in the first reading bewildered the civil society. On 13 August 2021, several civil society organizations published a [public call](#) asking the authorities to abstain from reviewing draft laws as a matter of urgency without a plausible justification and strictly comply with the provisions of the law on transparency of the decision-making process.

[The third draft](#) presented to the Parliament proposes to change the procedure through which the judges and prosecutors elect their representatives to the Superior Council of Magistracy (SCM) and the SCP, respectively. This draft was also voted in the first

reading on 13 August 2021 and in the second reading on 24 August 2021. However, these were not published in the Official Gazette by the end of August 2021. Unlike the current situation, in which the district courts, the Courts of Appeal and the Supreme Court of Justice (SCJ), each, delegate two judges to the SCM, the new law provides that four members of the SCM will be district courts judges, one will be from the Courts of Appeal and one from the SCJ. The law also provides for the registration of candidates in advance and their right to engage in the campaign, while the chairs of the district courts will facilitate meetings with the candidates.

Similar rules were introduced for the election of the prosecutors-members of the SCP. This draft delivers more transparency in the election of the SCM and SCP members. The haste of adopting of this draft was determined by the expiry of the mandates of the majority of the members of the SCM and the SCP at the end of this year. General Assembly of the judges and prosecutors have already been convened, with the view of holding the respective elections. [General Assembly of the prosecutors](#) was convened for 19 November 2021, and the General Assembly of the judges for 1 October 2021. However, the latter could be postponed on the grounds that the law adopted on 24 August 2021 is not yet effective while the compliance with its rigors regarding organization of the campaign can no longer take place if the General Assembly of the judges is to be held on 1 October.

“Attaining the accountability” to the Prosecutor General: will the amendment of the law on the Prosecutor’s Office hit the expected effect?

On 24 August 2021, at the initiative advanced by the MPs of the Party for Action and Solidarity (PAS), the Parliament of the Republic of Moldova voted in its final reading a [draft amendment](#) of the law on the Prosecutor’s Office. The draft introduces a disciplinary mechanism allowing for evaluation of the performances of the Prosecutor General by an ad hoc Evaluation Commission, which may come up with suggestions to the SCP, including the dismissal of the Prosecutor General (for more details read the previous topic). The draft law on the Prosecutor’s Office was voted in a record time.

Sergiu LITVINENCO, Minister of Justice, reasoned the need for the draft law by the fact that the current law on the Prosecutor’s Office does not provide for any procedure for evaluating the performances of the Prosecutor General or for the application of sanctions. In the case of a [public intervention](#), Litvinenco admitted, however, that the draft law seeks to evaluate the lack of performance activity of the current Prosecutor General Alexandr STOIANOGLO and his dismissal. Requests for dismissal of the Prosecutor General also came from other MPs representing PAS, their supporters, as well as from some of the opinion-makers. President Sandu [stated](#) that the work of the Prosecutor’s Office is anemic and that there are suspicions that some prosecutors are involved in protecting certain criminal groups.

On a TV show, Prosecutor General Stoianoglo [mentioned](#) that he has no intention to resignate. On 10 August 2021, the Prosecutor General failed to attend the sitting

The Prosecutor General addressed the Constitutional Court and the Venice Commission to check on the lawfulness of the legislative amendments that allow for the dismissal of the Prosecutor General

of the Supreme Security Council convened by President Sandu, due to being on leave. On 20 August 2021, the Prosecutor General refused to show up in the Parliament for the hearing on the recovery of the amounts generated by the “bank theft”, [presenting](#) an explanatory note instead. On 25 August 2021, the Parliament [adopted a decision](#) through which the lack of measurable actions or progress in the process of recovering the amounts lost to fraud in the banking system was corroborated and considered the work of the General Prosecutor's office and the National Anticorruption Center (NAC) in this regard unsatisfactory.

The Prosecutor General's office and the Prosecutor General did not find the amendments to the law on the Prosecutor's Office feasible, deeming such as a political rip-off. In response to the adoption of the draft in the final reading, the Prosecutor General's Office forwarded to the Government [10 legislative initiatives](#) through which, was proposed to take to court those who voted on the Government decisions that allowed for fraud within the national banking system, an allusion to the activity of the Government in 2014, which included representatives of the PAS and the acting President Maia SANDU.

What is left is to see whether the changes and amendments to the law on the Prosecutor's Office will be able to produce the expected effect, or the eventual evaluation of the Prosecutor General's activity involves SCP's intervention. This institution [has stated its](#) disagreement with the draft law, qualifying the legislative initiative as an attack on the institute of the Prosecutor's Office. However, several SCP members [have stated](#) that they did not know about the position made public by the SCP. The composition of the SCP could be reset following the General Assembly of Prosecutors [scheduled](#) for 19 November 2021, during which the new SCP members will be elected. On 6 September 2021, President Maia SANDU [excluded](#) Dumitru PULBERE from the composition of the SCP on the grounds of the amendments to the law on the Prosecutor's Office, which provide for the termination of the term of office of the SCP member upon reaching the age of 65 years. The Presidency [announced](#) a competition for the selection of a SCP member representing civil society.

The dispute between the Prosecutor's Office and the Parliament will continue at the Constitutional Court. On 3 September 2021, Stoianoglo [filed a complaint](#) calling for stating unconstitutional the provisions voted by the Parliament and suspension of their application. The Prosecutor General complained that the autonomy of the Prosecutor's Office was undermined and that the principle of separation of powers in the state was violated as a result of the establishment of the mechanism for evaluating the performances of the Prosecutor General by an ad hoc Evaluation Commission. On 6 September 2021, the Constitutional Court [rejected](#) the request for suspension of the legislative provisions, because it did not contain sufficient proof on the existence of imminent negative consequences for the independence of the Prosecutor General's Office, the Prosecutor General and the SCP. The Prosecutor General [stated](#) that he asked for an opinion to be expressed on the recent amendments, including from the Venice Commission.

Following a delay of 3 years and 4 months at the Cahul Court of Appeals, the Chisinau Court of Appeals will resume examining the Sor case file from the scratch

The trial of the ŞOR case – “Return to the origin” transfer from the Cahul Court of appeals to the Chisinau Court of appeals

Judge Andrei NICULCEA who examined the case of Ilan ŞOR in the Chisinau Court, Buiucani sector, is subjected to a disciplinary procedure. According to a [report of the Judicial Inspection](#) produced by the Superior Council of Magistracy (SCM), published in August 2021 by one of the MPs, on 26 May 2021, a disciplinary procedure was launched concerning judge Niculcea. The judicial inspection found proof of disciplinary misconduct committed by the latter (for more details, [see LRCM Newsletter No. 32](#)). The report confirms the reasonable suspicion that the Şor case file [was deliberately assigned](#) to judge Niculcea. In [the description of the Integrated Case Management System \(ICMS\)](#) it says that in about 30 minutes, the case file was miraculously assigned to seven judges and only on the eighth attempt it was assigned to judge Niculcea. Also, no important data were entered in the ICMS on this case file, including the reasons why it was examined in a closed court hearing. The Disciplinary Board and the SCM are expected to make a statement on these abatements from the disciplinary procedure admitted by Judge Niculcea.

On 20 August 2021, after three years and four months of examination at the Cahul Court of Appeals (CA Cahul), the Supreme Court of Justice (SCJ) [issued an irrevocable judgement](#), by which the Şor case file was returned to the Chisinau Court of Appeals (CA Chisinau). Initially, the Şor case file reached the CA Chisinau on 15 January 2018, from where on 9 February 2018, it was moved to CA Cahul. By the same judgement of 20 August 2021, the SCJ maintained the arrest of Ilan SOR and put him on the wanted list. Before that, the SCJ rejected nine inquiries to withdraw the case file from Şor's lawyers. This time, the SCJ reasoned the decision to relocate “through a collective suspicion of impartiality of Cahul court of appeals by the virtue of the occurrence of circumstances that are not related to the actual trial of the criminal case”. These circumstances relate to [video images](#) in which one of Şor's lawyers has allegedly handed over a “parcel” to a judge in CA Cahul.

On 21 August 2021, [the Prosecutor's Office disapproved](#) the SCJ decision on relocation of the case file on the grounds that from the standpoint of analyzing evidence of the prosecution, the defence and the hearing of witnesses, the Şor case was in its final phase of examination at the CA Cahul. Now the CA Chisinau has to examine the appeal from scratch.

The Minister of Justice [accused](#) CA Cahul of delaying the examination of the Şor case. On 23 August 2021, CA Cahul reacted to the Minister's accusations and [qualified](#) them as an attack on the institutional integrity of the court. According to the court, delaying the examination of the case file was due to [lengthy procedures](#) within the National Centre for Judicial Expertise (NCJE). CA Cahul noted that it ordered to carry out the financial-accounting expertise

on 19 September 2018, but the NCJE replied as late as 10 March 2020, noting that they can not carry it out due to missing primary accounting documents. According to CA Cahul, the delay was also due to multiple requests to move the case file, to lift the exception of unconstitutionality and recusal of the judges, all of which were brought by the defence side. CA Cahul also mentioned that by the qualification of “collective suspicion of impartiality” used by the SCJ, a reference was made to a mass labelling of the eight judges of the Court of Appeals of Cahul, without specifying the reasons for each of the judges separately.

At CA Chisinau, the Şor case file was assigned to a panel of judges including [Ion BULHAC](#) (judge rapporteur), [Stelian TELEUCĂ](#) and [Oxana ROBU](#). In January 2018, Judge Teleucă was expected to examine the Şor case at the CA Chisinau before moving it to CA Cahul, while Judge Robu filed a request for abstaining on the grounds that she had to proceed with the pending Platon's case. Some media sources mention that Judge Robu has [repeatedly filed her request for abstaining](#). In 2018, moving of the case to CA Cahul was substantiated by the very fact that most of the 21 judges of the Criminal Board of the CA Chisinau were unable to participate in the examination of the given case because they participated in the arrest procedures of Şor, or in examining the criminal cases concerning Vladimir FILAT or Veaceslav PLATON, which relate to the Şor case file (for more details, [see LRCM Newsletter No. 18](#)).

The first court hearing in CA Chisinau [was scheduled](#) for 13 September 2021. The hearing is public and accessible for any of the interested persons.

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On 4 August 2021, the Supreme Court of Justice (SCJ) [declared inadmissible](#) the appeal filed by former judge Mihai MURGULEŢ against the decision taken on 25 March 2021 by the Chisinau Court of Appeals. The Court of Appeals sided with the Superior Council of Magistracy (SCM), which rejected the request of Judge Murgulet on the proposal to appoint him as magistrate until he reaches the age cap. According to the SCJ, Mihai MURGULEŢ failed to set out the grounds for the appeal within the period provided for in [Art. 245 para. \(2\) of the Administrative Code](#) and also failed to apply for the reinstatement of the appeal according to provisions stipulated in [Art. 65 para. \(1\) and \(2\) of the Administrative Code](#), nor did he care to produce conclusive and pertinent evidence to argue for the omission of the legal term. The SCJ judgment is irrevocable.

On 4 August 2021, the National Integrity Authority (NIA) issued a [judicial finding](#) with regards to the former Director of the Board with the National Agency for Energy Regulation (ANRE), Ghenadie PĂRŢU. According to the NIA, the latter violated the legal regime of restrictions and limitations, being an employee of the LLC “Chisinau-Gaz” within less than one year after the expiry

of the term of office as Director of the Board at ANRE. LLC "Chisinau-Gaz" is the energy distribution company having its activity regulated by the ANRE. Exercising a public office function involves complying with restrictions referred to in several national laws. According to the regulation on the organization and functioning of the ANRE, within one year after the expiry of the term of office of the Director of the Board, the person concerned shall not be entitled to hold any positions with energy enterprises whose activity is regulated by the ANRE. In the case referred to, this condition was not met. The deed issued by the NIA is final, which implies that the subject in question will have to cease employment or service relations.

On 12 August 2021, through the [order](#) issued by the Prosecutor General, the Prosecutor-in-Chief within the Anti-Corruption Prosecutor's Office, Viorel MORARI, was suspended from the office and terminated his service relations. Earlier, on 23 January 2020, Viorel MORARI was suspended from taking the position of the Prosecutor-in-Chief with the Anticorruption Prosecutor's Office by the Superior Council of Prosecutors, at the request of the Prosecutor General, until adoption of a final judgment in a criminal case, in which the latter is concerned (see more on this issue [in our Newsletter No. 25](#)). Morari's mandate as the Prosecutor-in-Chief with Anti-Corruption Prosecutor's Office expired on 26 April 2021. The decision of the Prosecutor General to terminate service relations was made after Morari failed to take an option for another prosecutor's position. According to the legislation, Morari is to collect monetary compensation for unused annual leave, and in case of disagreement with the provisions of the order, he is free to challenge it according to the provisions set by the law.

On 13 August 2021, the Parliament [created](#) a Special Committee for the selection of candidates to take the position of People's Advocate (Ombudsperson). This Committee includes the members of the Committee on Human Rights and Interethnic Relations and the Committee on Legal Affairs, Appointments and Immunities. On 23 August 2021, the Special Committee published an [announcement](#) on carrying out the contest. Applications submission deadline is 15 September 2021. According to the [Regulation on the organization and conduct of the contest](#) approved by the Special Committee on 21 August 2021, the contest will be organized in two stages: submission of files and an interview. The first two candidates who will get the highest score from the members of the Committee, will be presented to the Parliament, and the candidate who will get the majority vote of the elected MPs will be appointed to take the position of the People's Advocate.

From 16 to 21 August 2021, the Legal Resource Center of Moldova (LRCM), in partnership with [Expert-Forum Romania](#) (EFOR) organized the **5th edition of the Summer School "Applied Democracy"** attended by 24 young people from all over the country. As part of the programme, the participants (both young men and women) had a chance to interact directly with local and international experts from different fields. The Summer School program

included topics touching on the principles of democracy and the rule of law, as well as current challenges for democratic governance, ensuring human rights and fighting against corruption, giving the participants an opportunity to merge the theoretical knowledge with practical cases and exercises. The event was hosted by the project "Institutional Support for the Development of the Organization" implemented by the LRCM with the financial support provided by Sweden.

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