

NEWSLETTER

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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.

INTEGRITY COUNCIL – 5 YEARS OF INSUFFICIENT PERFORMANCE OF LEGAL DUTIES

On 22 February 2022, the LRCM released a [report on the activity of the Integrity Council](#) (Council) for the period between 1 August 2016 and 31 December 2021. The analysis delves into the history of the organisation and functioning of the Council and proposes to clarify the transparency and efficiency aspects they failed to make fully operational.

Neither in 2016 nor 2021 did the authorities responsible for appointing the members of the Council complied with the legal deadlines for their appointment. The Council was founded 4-5 months later than [the Law on the National Integrity Authority \(NIA\)](#) provides. Even though the members of the Council are appointed for a term of five years, with six resignations, the composition of the Council changed frequently. Reasons include political instability and a lack of interest in working at the Council. Moreover, since the end of September 2021, the Council has had no quorum, and its activity has been suspended.

During the monitoring period, the Council initiated and promoted several documents necessary for the institutionalisation of NIA. However, the process of selecting the NIA leadership was delayed and took almost a year, and the selection of integrity inspectors is even more difficult – only 26 of the 46 inspectors were recruited from the date the Council was established until 31 December 2021. The first five years of their activity were confrontational and lacked cooperation between the members of the Council and the NIA leadership.

The Council's work was less than predictable. More than 380 topics were included on the agenda of Council meetings, but many of them were included repetitively, being postponed from one meeting to another. It has been reported that postponements occurred due to a lack of preparation on the topics and related materials on the rapporteurs' part.

The Council has not been effective in promoting improvements in the area of integrity, in responding to legislative initiatives that are dangerous to the functioning of NIA, nor in promoting the image of NIA. At the same time, the Council did not order any real verification of the assets of the NIA leadership or the integrity inspectors, as in

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reality, the Council does not have access to the state registers. Simultaneously, the members of the Council were not proactive in exercising this essential power. NIA's administrative support to the Council has also been limited.

The Report comes with several recommendations aimed at improving the Council's activity, such as prioritising the adoption of NIA's Institutional Development Strategy, which will truly improve the institution, and allocating a secretariat to the Council, which will only serve it. The leadership of NIA and the [new Council members](#) should avoid confrontations. It is recommended that a conciliation/mediation commission is established, as it is counterproductive to allow the NIA leadership to not comply with the Council's decisions.

| THE VETTING WILL BEGIN IN APRIL 2022

On 10 February 2022, the Parliament adopted, in its second reading, the draft law on vetting, which deals with the external evaluation of candidates in the Superior Council of Magistracy (SCM) and in the Superior Council of Prosecutors (SCP) ([see Newsletter LCRM No. 41](#)). The draft was adopted by 63 votes of the Members of the Action and Solidarity Party (PAS) MPs, while the opposition left the Chamber of Parliament because the bill was not discussed with them, and it did not consider all the [recommendations](#) of the Venice Commission ([see LRCM Newsletter No. 40](#)).

One week later, on 17 February 2022, the Parliament examined and adopted the bill in its third reading. On 24 February 2022, President Maia SANDU [returned](#) the bill to the Parliament, requesting to revise some of the provisions regarding the terms of application of the law. The President's Office noted that the final and transitional provisions set unrealistic deadlines, such as the deadline of 1 March 2022 for submitting nominations to the SCM and SCP and other deadlines, given that the process is consecutive.

On 10 March 2022, the Parliament re-examined the bill on vetting and [approved](#) the proposed amendments by the President's Office with [56 votes](#) of PAS MPs. The following changes were made: the time limit for appealing the decision of the Vetting Board was increased from five to ten days; a term of 15 days from the entry into force of the law was provided for the Government to identify the premises where the Vetting Board will operate; the deadline for submitting the files of candidates to the SCM and SCP was extended to 27 March 2022 (initially it was 1 March 2022). Also, within 15 days from the date the law enters into force, the Parliament is to initiate a public competition for the appointment of six members in the SCM. They are to be elected among persons who are highly reputable and show personal integrity, have experience in the field of law or another relevant field, who are not working in the Parliament, Government or judicial bodies and are not politically affiliated. Between 26 and 29 April 2022, the Parliament will check the eligibility of registered candidates and will provide the Vetting Board with information on the candidates who will be considered eligible.

The Parliament extended the SCM and SCP application deadline to 27 March 2022

The bill also included a special procedure for short-listing the candidates for the position of Chief Prosecutor of Specialised Prosecutor's Offices. To this end, the SCP will create a special board composed of five people, one of whom will be appointed by the President, another one – by the Ministry of Justice, and three – by the SCP. The members of this board must have a law degree, at least 10 years of professional experience and a good reputation. At least three members of the board are to be recognised experts with extensive experience in the field of specialised prosecution, prevention and combating corruption and organised crime, including abroad. At least one member of the board will be a representative of civil society with experience in fighting against corruption.

The draft law was [published](#) in the Official Gazette on 16 March 2022.

LEGAL TRICKS: HOW WAS IT POSSIBLE TO SELL THE 1.4 HA OF PUBLIC LAND IN THE CENTRE OF CHISINAU AT A DISCOUNTED PRICE?

On 17 February 2022, the Chisinau Municipal Council (CMC), with the vote of 27 councillors of The Socialist and Justice & Truth Political Parties (PPDA & PSRM), [decided to sell](#) the 1.29-hectare land around the UNIC department store. The councillors of the PAS, the Liberal Party and the Şor Party did not participate in the vote, and those from PUN, the Democratic Party and the PCRM abstained. The land was sold to UNIC department store's owners for MDL 2.7 million (EUR 132,000). The [cadastral value](#) of this land is MDL 28 million, and the market value is even higher.

According to city councillors, the sale was based on a court decision. Thus, in April 2016, Rogob bought 85% of the shares of the UNIC department store. Just days after Rogob took control of the UNIC department store, the latter demanded that the CMC let them privatize the land around the store. CMC did not issue a decision and UNIC sued. On 26 June 2017, the Chisinau District Court admitted the action and obliged CMC to transfer the ownership of the land in question, with an area of 1.38 hectares, to the UNIC department store's owners. However, the judge did not indicate the price at which the land was to be sold. [The decision was upheld by the Chisinau Court of Appeal.](#)

On 17 October 2018, [the Supreme Court of Justice \(SCJ\) referred the case for retrial](#), indicating that the previous decisions were incorrect, because the land in question was used by two owners, and its alienation from one of them violates the rights of the other. The SCJ also mentioned that the judges cannot force CMC to sell the land, but only examine the UNIC complaint from 2016. In just two months, on 29 January 2019, the Chisinau Court of Appeal upheld the decision of the Chisinau Court, without ruling on the decision of the SCJ of 17 October 2018. [On 31 July 2020, the SCJ maintains the latest decision of the Chisinau Court of Appeal](#) and, thus, the decision of the Chisinau Court

In this case, the judges gave contradictory decisions, the surface of the sold land differs from the one mentioned in the court decisions, and the evaluation of the land, which is mandatory according to the law, has not happened.

by which CMC is obliged to sell the land becomes irrevocable. In its judgment of 21 July 2020, the SCJ did not explain why its objections from 17 October 2018 were no longer valid. [According to Ziarul de Garda](#), two of the five judges who participated in the adoption of the final decision of the SCJ had separate opinions.

According to the court decisions, the land was to be sold according to the legislation on the sale of public property. On 16 December 2021, [the Law no. 1308/97](#), which refers to the sale of public property, has been amended. According to the amendments to art. 4 para. (9), publicly owned land is to be sold at the market price set by an appraiser.

The question of selling the land was put on the agenda of the CMC meeting of 17 February 2022 by a socialist councillor. Chisinau City Hall has requested that the subject be excluded from the agenda, as its subdivisions have disapproved of the draft project and because it was not ready for adoption. Socialist and PPDA councillors insisted on keeping the issue on the agenda. According to the decision adopted, the land sold is 1.29 hectares, and not 1.38 hectares, as it results from the court decisions. It is also unclear how the price at which the land was sold was determined, which is 10 times lower than the cadastral value. Apparently, an assessment of the land, which was mandatory under Law 1308/97, was not carried out.

The CMC vote sparked heated discussions in society. On 18 February 2022, [the acting President of the PPDA demanded that his colleagues from the party who voted for the sale of land to resign](#). Subsequently, [two city councillors announced](#) that they were leaving the PPDA faction and withdrawing their vote in the CMC vote. [The Mayor of Chisinau also criticised the CMC's decision](#), saying that the City Hall will challenge it in court because it harms the public budget. In the meantime, the General Prosecutor's Office has announced that it will investigate how the CMC decision was adopted.

THE EXTRAORDINARY PERFORMANCE EVALUATION OF SUSPENDED GENERAL PROSECUTOR HAS BEEN BLOCKED FOR A WHILE

On 22 November 2021, the Superior Council of Prosecutors (SCP) approved [the Regulation on the performance evaluation of the suspended General Prosecutor](#), Alexandr STOIANOGLO, and on 23 November 2021 set up the Evaluation Board (Board), for details see [LRCM Newsletter no. 39](#). By 23 December 2021, the Board was to draw up the General Prosecutor's Performance Assessment Report (see more in [LRCM Newsletter No. 39](#)). This report has not been prepared for the reasons described below.

On 25 November 2021, Alexandr STOIANOGLO challenged at the Chisinau Court of Appeal (CA) the decision of the SCP to initiate its evaluation, based on the notification of Viorel MORARI regarding the alleged illegal actions committed

by the former and requested the suspension of the evaluation procedure for this reason. On 2 December 2021, the SCP [ruled that](#), in the absence of a court decision, the evaluation procedure can continue. This decision of the SCP was also challenged by Stoianoglo at the Chisinau Court of Appeal, the following court hearing [being set](#) for 17 March 2022.

Meanwhile, on 31 January 2022, the Chisinau Court of Appeal ruled on the annulment of the SCP's decision to initiate the suspended General Prosecutor's evaluation and [declared](#) the motion filed by Stoianoglo inadmissible, as there is another way to challenge the SCP's decision according to criminal procedure regulations. Judge Elena PALANCIUC had a separate opinion; she considered that the request should have been examined as a contentious-administrative matter.

Currently, the members of the Board [are unable](#) to initiate the evaluation process and are waiting for the Chisinau Court of Appeal to comment on Stoianoglo's motion to suspend the establishment of the Board. Meanwhile, in order to regulate certain aspects related to the activity of the Board, which are not provided in the [Law on the Prosecutor's Office](#), on 26 January 2022, the SCP [amended](#) several clauses of the Regulation on the evaluation of the performance of the suspended General Prosecutor. The changes cover the following issues:

- The activity of the Board is deliberative if the majority of the members indicated in the act of establishment participate in it;
- If a member cannot exercise their status in the Board, upon its notification, the SCP appoints another member. This deficiency was revealed after the former acting President of the Chisinau Court of Appeal, Lidia BULGAC, decided [to resign](#) from the position of President of the Board, and the Romanian anti-corruption expert, Mariana ALEXANDRU, [did not receive the approval](#) of the Bucharest Prosecutor's Office to join the Board;
- A deadline of 30 days was included only for the preparation of the Evaluation Report by the Board. This deadline was previously set for the entire evaluation process and had already expired by 23 December 2021.

[The request](#) submitted by the ex-deputy Inga GRIGORIU regarding the contestation of the refusal order in initiating the criminal investigation on Alexandr STOIANOGLO, issued by the SCP-appointed prosecutor, Andrei BALAN, was also examined at the SCP meeting of 26 January 2022.

On 18 November 2021, the former MP filed a complaint with the SCP regarding the alleged cover-up and acquittal of persons involved in the extradition of the seven Turkish teachers in September 2018 (see details in the [LRCM Newsletter no. 27](#)), and the SCP appointed prosecutor Andrei BALAN to carry out the criminal investigation.

Following the meeting of 26 January 2022, the SCP decided to pass Grigoriu's complaint to the competence of the Anticorruption Prosecutor's Office. On 4

The performance evaluation of the suspended General Prosecutor Alexandr STOIANOGLO is suspended until the Court of Appeal rules regarding the establishment of the Evaluation Board, challenged by Stoianoglo.

February 2022, the acting Chief Prosecutor of the Anticorruption Prosecutor's Office ordered the cancellation of the refusal order to start the criminal investigation and resumed the criminal investigation of Alexandr STOIANOGLO. Prosecutor Vasile PLEVAN, appointed by the SCP to carry out the criminal investigation, [decided to abstain](#), which was again submitted by the SCP for examination to the Anticorruption Prosecutor's Office.

Also, on 22 February 2022, the SCP, with the vote of four members, decided at the request of the acting General Prosecutor, Dumitru ROBU, that Alexandr STOIANOGLO be [disciplinarily investigated](#) because the [comment](#) he wrote on Facebook on the detention of five defected former MPs who are investigated for illicit enrichment. Stoianoglo's lawyer, Victor MUNTEANU, [invokes](#) freedom of speech and mentions that his client cannot be investigated criminally, administratively, or disciplinary because he merely expressed his opinion.

GRECO REPORT: FIGHTING CORRUPTION IN MOLDOVA IS UNSATISFACTORY – 2/3 OF RECOMMENDATIONS REMAIN UNFULFILLED

The [latest report](#) of the Group of States against Corruption of the Council of Europe (GRECO) on the Republic of Moldova was published on 9 February 2022. The report documents the progress of national authorities in preventing corruption. In 2016, GRECO issued 18 specific recommendations to be implemented by the Republic of Moldova. According to GRECO, as of 31 December 2021, only four of these recommendations have been implemented.

The unfulfilled recommendations, according to the GRECO report, can be conventionally categorised into three blocks: (i) **preventing corruption among MPs** – this set of recommendations addresses the need to improve the transparency of the decision-making in Parliament so that new draft laws are as widely consulted as possible before adoption; simplification of the mechanism for lifting the immunity of MPs so as not to complicate possible criminal proceedings; (iii) the adoption of a parliamentary code of conduct as well as the introduction of regulations on the interaction between MPs and people who could influence the legislative process (lobbying). The last three recommendations are extremely important, but according to the report, the authorities have not made any progress on them between 2016 and 2021.

Another set of recommendations documented by GRECO concerns (ii) **the integrity and prevention of corruption among judges**. In this regard, GRECO has previously recommended changing the composition of the SCM by excluding *ex officio* members; ensuring the transparent process of selecting judicial members (who are not judges), better judicial reasoning, which is still lacking; improving the selection procedure and career of judges, limiting risks to exclude the possibility for appointment of candidates with integrity issues as judges and excluding the five-year probation period for judges.

Moldova was rated as 'unsatisfactory' by GRECO on conducting anti-corruption actions among MPs, judges and prosecutors.

In addition, GRECO issued recommendations on transparency, reasonable examination timelines and access to publicly available information on the court's activity, as well as on improving the disciplinary liability mechanism of judges. Although measures have been taken in these areas, the most substantial being the approval of a set of constitutional amendments regarding the judiciary in the autumn of 2021 (for details, [see LCRM Newsletter no. 37](#)), most of the recommendations have been only partially implemented, concludes the GRECO report.

The third set of recommendations concerns (iii) **the integrity and prevention of corruption among prosecutors**. In particular, GRECO previously recommended documenting any interventions to the prosecutors, coming from superior ranks, in order to avoid any undue influence; changing the composition of the SCP to exclude judicial members and ensuring the impartiality and transparency of the SCP.

In addition, GRECO recommended ensuring that prosecutors are well aware of the Code of Ethics and its principles are put into practice, as well as improving the disciplinary liability system at the regulatory and practical levels. As in the previous case, most of these recommendations were only partially implemented by the authorities, concluded the report.

In general, the GRECO report also recommended strengthening the capacity and efficiency of the National Integrity Authority (NIA) to be able to effectively combat the lack of integrity among all civil servants, especially MPs, judges and prosecutors.

In conclusion, GRECO notes that out of the 18 recommendations issued previously, the Republic of Moldova has satisfactorily honoured only six, which is a low level of compliance, thus being rated 'overall unsatisfactory'. This means that our authorities must deal and resolve the remaining recommendations and submit a new report by 31 December 2022, at the latest.

PROSECUTOR'S OFFICE CONTINUES TO OPEN CRIMINAL CASES ON ILLICIT ENRICHMENT

Although there is not a single irrevocable sanctioning case for illicit enrichment (see [LCRM Newsletter No. 39 | November 2021](#)), lately Moldovan prosecutors increasingly use this allegation in their investigations, especially concerning former civil servants.

On 2 February 2022, the Anti-Corruption Prosecutor's Office [announced](#) the arrest and home searches for 13 former MPs. According to prosecutors, in December 2015 they left the parliamentary faction of the Communist Party in exchange for monetary rewards. At the same time, according to the communiqué, the prosecutors established substantial differences between the expenses of the ex-deputies and their official income. In some cases, this

Substantial differences of millions of MDL found between official income and expenses of former civil servants

difference is about MDL 4.6 million. As a result of the searches, computers, mobile phones, documents, draft documents, as well as over USD 200,000 were seized. While five former MPs have been officially charged, the other eight are currently only witnesses in this case.

Similar actions [were announced](#) on 22 February 2022, when the Anti-Corruption Prosecutor's Office ordered the searches of a former Secretary of State of the Ministry of Internal Affairs (MIA), Mariana GRAMA. Previously, the integrity inspectors within NIA allegedly found a substantial difference of over MDL 1,000,000 between the acquired assets and the former Secretary's income, between 2016 and 2021, when she held several public positions.

[The former director of Termoelectrica](#), Veaceslav ENI, as well as the current Chief Prosecutor of the Hincesti Prosecutor's Office, Maxim GROPA, are also accused of illicit enrichment. According to the prosecutors, although the accused declared modest assets, their *de facto* property is substantially different. In the case of the Chief Prosecutor of the Hincesti Prosecutor's Office, he officially owns only a quarter of an apartment and a car bought for MDL 3,000. In fact, his *de facto* [property would include at least two apartments and a two-story house](#), registered in his parents' name. In the case of the former director of Termoelectrica, his expenses would have exceeded the revenues recorded by over MDL 3.8 million.

As in previously launched cases, these investigations were initiated based on the information already collected by the Intelligence and Security Service (ISS), the Internal Protection and Anti-Corruption Service of the Ministry of Interior or NIA. However, several cases of illicit enrichment are based on journalist investigations, published several years ago. It remains unclear why this information was not used earlier by prosecutors.

IN BRIEF

On 4 February 2022, Alexandru POSTICA [was selected](#) as a member of the Disciplinary Board, representing civil society. According to [the Law on Disciplinary Liability of Judges](#), the term of office of a member of the Disciplinary Board is six years. Postica is a strategic development advisor at the Promo-LEX Association. He has represented clients in national and international courts, and at the European Court of Human Rights (ECtHR), planning, coordinating, monitoring and evaluating human rights activities, as well as managerial experience.

On 4 February 2022, the Superior Council of Prosecutors (SCP) [announced a competition](#) for the position of Chief Prosecutor of the Anticorruption Prosecutor's Office. The deadline for submitting the files was 4 March 2022. The competition will take place according to the [Regulation on the selection](#) of the candidate for the position of Chief Prosecutor of the specialised prosecutor's office. The pre-selection stage (competition of the candidate's files and an interview) will be carried out by the Board specially set up by the

SCP. The Board consists of five members, three persons appointed by the SCP, one by the President of the Republic of Moldova and one by the Ministry of Justice. Shortlisted candidates will be admitted to the final phase organised by the SCP (examination of the shortlisted candidate's files and an interview).

Starting on 7 February 2022, Dorin COMPAN, former Anti-corruption Prosecutor and former acting Chief of the Prosecutor's Office for Combating Organised Crime and Special Cases (PCCOCS), returned to the position of Anti-corruption Prosecutor. Compan returned to the position of prosecutor after, on 18 January, the Chisinau Court, Riscani seat [annulled](#) Alexandr STOIANOGLO's order by which the former was dismissed. Dorin COMPAN has been working for the Anti-Corruption Prosecutor's Office since 2007. In February 2021, he sued the General Prosecutor's Office in court, citing that the institution's management violated the law when his employment was ended.

On 11 February, the new [Head of the National Anticorruption Centre \(NAC\)](#), Iulian RUSU, ordered the inspection of his office. According to the [NAC statement](#), several devices for alleged monitoring purposes were detected. The probes gathered on this control were sent to the prosecutors for examination and a possible subsequent decision. Iulian RUSU was introduced to the NAC staff as Head of the organisation on 7 February 2022. According to the new amendments to [art. 8 of the Law on the NAC](#), he took office for a term of five years, after being voted by 57 MPs.

On 18 February 2022, the Superior Council of Prosecutors (SCP) [announced](#) 30 senior vacancies in most territorial Prosecutor's Offices, including Chisinau. Incumbent prosecutors may apply for these vacancies, once included on the [List of prosecutors](#) requesting an appointment to a management position. The deadline for submitting applications is 4 March 2022.

On 22 February 2022, the Constitutional Court (CC) [ruled](#) inadmissible the complaint concerning the exception of unconstitutionality of [Article 19 of the Law on the status of judges](#), which regulates the guarantees of the inviolability of judges and the conditions for initiating criminal proceedings against them. The complaint was sent by a panel of judges from the Chisinau Court of Appeal. The exception of unconstitutionality was raised in the case of Liubov BRÎNZĂ, a judge at the Chisinau Court of Appeal, who requested the annulment of the [decision of the Superior Council of Magistracy \(SCM\)](#) that allowed to initiate criminal proceedings against her. It was suspected that she had committed the offences provided for in [Articles 303 para. \(3\) and 307 para. \(1\) of the Criminal Code](#).

According to the Court, the contested article sets out that the General Prosecutor must seek the consent of the SCM in order to initiate criminal proceedings against judges. This article cannot be declared unconstitutional, because such a decision would annihilate the subject matter of the case. The Court also added that the criminal prosecution of judges under Article 307 of the Criminal Code is not in itself contrary to constitutional principles, as long as the independence of judges is inherently respected, any doubt being

interpreted in favour of the accused judge. However, the SCM and the courts are responsible to guarantee this.

On 23 February 2022, the Ministry of Justice **organised** a working meeting on amending and supplementing the Criminal Code (CP) and the Code of Criminal Procedure (CPP), which was attended by representatives of Parliament, the General Prosecutor's Office, the National Anticorruption Centre, the State Tax Service, judges, lawyers, and civil society representatives. The amendments will cover the general part and the special part of the CP, and in the case of the CPP – the general part, the criminal investigation part and the trial part. Weekly working meetings will be organised with all the representatives of the interested institutions. Representatives of the LRCM are part of the working group, and on 7 March 2022, they **submitted** to the Ministry of Justice proposals to amend the legislation.

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