

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 Ministry of Justice is preparing the vetting of the candidates for the SCM and SCP

The Ministry of Justice has launched a legislative initiative to evaluate candidates who want to become members of the Superior Council of Magistracy (SCM) and the Superior Council of Prosecutors (SCP). This is the first stage of the vetting of judges and prosecutors announced by the authorities (see details in the [LRCM Bulletin no. 39](#)). The terms of office of the SCM and SCP members have expired and the new members of the judges and prosecutors were to be elected to these councils in the autumn of 2021. To allow the evaluation of the candidates, the General Assembly of Judges scheduled for 3 December 2021 and the General Assembly of Prosecutors scheduled for 19 November 2021 were postponed with an opened date.

On 2 December 2021, the Ministry of Justice published the [draft law](#) on the vetting of candidates to the SCM and SCP and their subordinate colleges. The draft law stipulates that all candidates, both judges and prosecutors, as well as those appointed by Parliament and other institutions, will have to undergo vetting. The vetting will be carried out by a board made up of six members, three members proposed by the development partners and three others appointed by the Ministry of Justice on the proposal of the parliamentary groups. The board will have 30 days to carry out the evaluation, with a public hearing. The candidates who will not pass the vetting will not be able to run for the SCM and SCP, but will have the right to challenge the Board's decision.

On 13 December 2021, the Venice Commission and the Directorate General of Human Rights and Rule of Law of the Council of Europe (Directorate General) adopted a [joint opinion](#) on this project. They have noted that the vetting of judges and prosecutors can be justified if there is a high level of judicial corruption in a specific state and that it is up to the authorities of each state to decide whether the conditions for such an assessment are met.

The opinion contains several recommendations for improving the draft law. These include clarifying who "development partners" that will nominate three members of the evaluation board are and introducing the possibility for recently resigned judges and prosecutors to be members of this board (the draft law stipulates that only judges and prosecutors who resigned more than three years ago are eligible). The

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Ministry of Justice –
in June 2022 we will
have the new SCM
and SCP

opinion also recommends that the law provides a solution for parity of votes in the Evaluation Board and clarifies the criteria on the basis of which candidates in the SCM and SCP will be vetted. The Venice Commission and the Directorate General also recommended that the hearing of candidates is mandatory and that it is not public. The decision to reject the candidate should not be made public either. It is also recommended that failing the vetting does not have a negative impact on the candidate's career, but he or she should have the right to challenge the decision. However, the appeal shall not suspend the appointment or election process. The opinion also recommends broad consultation of the draft law with the SCM, the SCP and the opposition, in order to ensure broad support for the evaluation.

In December 2021, the Legal Resources Centre from Moldova (LRCM) [submitted recommendations to the Ministry of Justice to improve the draft law](#). We recommended limiting the vetting to candidates in the SCM and SCP only, because in the short time available the vetting of the members of the SCM and SCP colleges cannot be effectively conducted. The LRCM also recommended reducing the political influence on the Evaluation Board by appointing a national member of the board by the President of the country, and two others – by parliamentary factions, one by the majority and another by the opposition. We also recommended that the members of the Evaluation Board be increased to seven in order to reduce the risk of having a tie. We also recommended expressly mentioning in the law the right of the board to collect on its own any information relevant to the fulfilment of its mandate and to access without restrictions the databases of state institutions. Finally, in view of the major risks identified in the experience of Albania and Ukraine, we recommended that the candidate's right to challenge the decisions of the evaluation board to a body composed of judges whose integrity has not yet been assessed be excluded.

The Ministry of Justice is to finalize the draft law and submit it to the Government for approval by mid-January 2022. Subsequently, the draft law is to be adopted by Parliament. According to the Ministry of Justice, this vetting [will take place](#) by April 2022, and the new SCM and SCP should become operational by the beginning of June 2022. The Ministry expects that about 50-60 candidates will be vetted.

Treadmill resignations – who are the judges and prosecutors leaving the system?

Recently, several judges and prosecutors have resigned. On 29 November 2021, the members of the Superior Council of Magistracy (SCM) [approved](#) the resignation requests of five magistrates: Eduard RAȚOI from the Balti Court of Appeal (CA Bălți), Boris BÎRCĂ from the Chisinau Court of Appeal (Chisinau CA), Galina MOSCALCIUC from the Chisinau District Court, Andrei NICULCEA from the Chisinau District Court and Dumitru GHERSASIM from the Balti District Court. The next day, the SCM approved the resignation of the Chisinau CA judge Igor MÎNĂSCURTĂ. The judges did not provide details about the reasons that led them to resign.

The resignation of judges and prosecutors takes place as the Government in Chisinau changed and the Prosecutor General Stoianoglo was suspended from office

Judge Galina MOSCALCIUC was involved in examining several sensitive cases. She judged the case of former Prime Minister Vlad FILAT, who was sentenced to nine years of jail. She also acquitted the policeman Ion PERJU, accused of killing Valeriu BOBOC on 7 April 2009, a decision annulled later by the Chisinau Court CA. In another case, the magistrate ordered the Public Property Agency to sell to Vladimir PLAHOTNIUC at a reduced price the Moldexpo land where his television stations were located. She also examined another case in which Vladimir PLAHOTNIUC demanded moral damages of almost one million MDL from businessmen Victor and Viorel ȚOPA. The judge was accused by prosecutors of passive corruption in the “bribery for judges” case, but she [was acquitted](#) on both counts.

Andrei NICULCEA was also part of the panel of judges who convicted former Prime Minister Vladimir FILAT. A year later, the judge convicted the former mayor of Orhei, Ilan ȘOR, requalifying the deed as a more lenient crime and sealing the court decision. Andrei NICULCEA is also the judge who fined Vasile BOTNARI, the former Head of the Intelligence and Security Services (SIS), the only person convicted of extraditing Turkish teachers in 2018. The judge was featured in a [journalistic investigation](#), in which he was accused of concealing his assets and that, after examining the Șor case, his concubine allegedly obtained a boutique at Chisinau International Airport, as well as that he travelled several times to Israel, where Ilan ȘOR resides.

Judge Igor MÎNĂSCURTĂ is known for issuing several arrest warrants for 7 April 2009 protesters. He was part of the Chisinau CA panel which upheld the conviction of Veaceslav PLATON. Platon was later [acquitted](#) after the case was re-examined. The judge also examined the case of the attempted assassination of Vladimir PLAHOTNIUC, sentencing the six defendants to many years of jail. They were also [acquitted](#) after retrial. Other high-profile cases examined by the judge are the case of Sergiu COSOVAN, who was detained although he was seriously ill, and the case of the “Petrenco Group”. In 2021, in the “Petrenco group” case, the Republic of Moldova was [convicted](#) by the European Court of Human Rights, because there was no evidence to support the arrest. After the Government changed in Chisinau in 2019, Prosecutor General Stoianoglo called the case as politically motivated and [prosecutors dropped the charges](#).

Judge Dumitru GHERASIM was the only candidate in the competition for the position of President of the Bălți District Court, held at the beginning of 2021. He was appointed President of the court for the next four years. Gherasim has been leading the Balti District Court since 2011 and resigned even though he had three more years to serve as court president. In 2020, [he also participated in the promotion contest at the Supreme Court of Justice](#), but was not supported by the SCM.

At the same time, after the suspension of Prosecutor General Stoianoglo, a series of resignations from the prosecutor's office followed. Among them are Mircea ROȘIORU and Iurie PEREVOZNIC, Stoianoglo's deputies, Ion CARACUIAN, head of the Prosecutor's Office for Combating Organized Crime and Special Cases, Sergiu GAVAJUC, interim head of the Anti-Corruption

Prosecutor's Office, Adrian MIRCOS, head of Criminal Prosecution Department of the Prosecutor General's Office, Adrian POPENCO, Deputy Chief of the Chisinau Prosecutor's Office, Carolina VIDRAȘCU-BRÂNZĂ, former prosecutor of the General Prosecutor's Office, and others. According to the president of the Superior Council of Prosecutors (SCP), Angela MOTUZOC, during this period, 11 resignation requests were [registered at the SCP](#).

Ion CARACUIAN is featured [in a criminal case](#) for illicit enrichment. Carolina VIDRAȘCU-BRÂNZĂ investigated the criminal case against Domnica MANOLE and was one of the three prosecutors investigating the case against Viorel MORARI. In December 2019, ex-prosecutor Sergiu GAVAJUC was appointed by Stoianoglo as interim head of the Anti-corruption Prosecution Office, after Viorel MORARI was suspended from the same position. Since June 2021, he held the position of Acting Deputy Chief of the Northern Service of the Anti-Corruption Prosecutor's Office.

Marina TAUBER dismissed from the electoral race for use of the undeclared funds in her campaign

On 22 November 2021, the candidate of the ȘOR Party Marina TAUBER decidedly won the first round of the elections for Balti Mayoralty, with just under 50% of the vote. She was followed by the then interim mayor, independent candidate (former member of Our Party) Nicolai GRIGORIȘIN and by the PAS party candidate, Boris MARCOCI. The second round of elections, in which Tauber and Grigorișin were to participate, was set for 5 December 2021.

Before the second round, the Central Electoral Commission (CEC) found that Marina TAUBER had used undeclared funds in the amount of at least MDL 34,260 and exceeded the maximum ceiling set by the CEC for these elections. According to the CEC, the campaign team's meal costs for a few weeks were not reported, which were paid in cash by a member of hers team. On 2 December 2021, the CEC [asked](#) the court to exclude Marina TAUBER from the race.

On 4 December 2021, Marina TAUBER was eliminated from the electoral race. The decision was delivered by the judge of the Bălți District Court Natalia COSTAȘ. The decision of the Bălți District Court was contested by Marina TAUBER, but the appeal [was rejected](#) by the Bălți Court of Appeals on the morning of 5 December 2021, before the polling stations opened. The decision was issued so late due to the numerous requests of Tauber's lawyers, which prolonged the judicial procedure. On the same day, [the Supreme Court of Justice upheld the ruling](#) of the Balti Court of Appeal.

Following the court's decision, on the morning of 5 December 2021, the CEC decided to [suspend](#) the second round of elections. The Commission motivated its decision by the fact that [art. 145 Electoral Code](#) does not allow to hold the second round of elections with only one candidate. The second round of elections took place on December 19. The PAS and PSRM candidates voluntarily withdrew from

Marina TAUBER is the third candidate of the Șor Party excluded from the electoral race for using undeclared money

the race, and in the elections participated the candidate that was second in the first election round, Grigorişin and the candidate that came fifth, Nicolae CHIRILCIUC. [Grigorişin won](#) with 85% of the votes in the second round, which was attended by less than 10% of voters.

Marina TAUBER is the third candidate of the Şor Party excluded from elections. In 2018, [Reghina APOSTOLOVA was excluded from the race for Chisinau Mayoralty](#), and in 2020, [Vitalie BALINSCHI was excluded from the race for Hincesti City Hall](#). The three candidates were excluded from the race for the same violations – the use of undeclared funds in their campaigns.

Negative or not really – how does the Venice Commission assesses the amendments to the Law on the Prosecutor's Office?

On 11 December 2021, the Venice Commission issued an [opinion](#) on the amendments to the Law on the Prosecutor's Office adopted in August 2021. The amendments mainly concern the introduction of the mechanism for evaluating the performance of the Prosecutor General by an ad hoc commission. The draft also envisages reforming the composition of the Superior Council of Prosecutors, reducing the number of its members (from 15 to 12), as well as exclusion of the Prosecutor General from the Council (more information is available in the [LRCM Newsletter no. 36](#)). The changes were adopted by the MPs of the PAS majority and were criticized by the parliamentary opposition, Prosecutor General Alexandr STOIANOGLO, but also by the President of the SCP Angela MOTUZOC. The last two requested the opinion of the Venice Commission on 23 September 2021.

One of the first things noted by the Commission was the speed with which the draft law was promoted. It was voted in both readings within 14 days of registration in parliament. According to the Venice Commission, while the citizens strongly demand to eradicate corruption and want effective justice, and while it is natural for a new parliamentary majority to try to launch promised reforms without delay, urgency should not be confused with haste. The Venice Commission also criticized that the project was promoted at an inappropriate time – in August, the peak holiday season. Although the Commission noted that the minimum procedural requirements for transparency in the decision-making process were met, when the restructuring key state institutions is involved, which is essential for maintaining the rule of law and a credible judiciary, consultations and debates must be more thorough.

The main aspect of the opinion refers to the evaluation of the Prosecutor General's performance. The mechanism of ad-hoc evaluation has been criticized for several reasons, including the lack of legal criteria on which it will be based. The Commission found the solution of the national authorities to develop these criteria through a regulation subsequently adopted by the SCP to be problematic. According to the Commission, any performance appraisal carried out by the retroactive application of non-existent indicators at the time of taking office is questionable.

Venice Commission:
"Urgency should not
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haste"

The Venice Commission welcomed that the evaluation committee will have a diverse composition, including the fact that several of its members will be from outside the prosecution system. However, it is a problem that the commission can start its work and make decisions without any member of the prosecution system taking part in the evaluation. The Commission was also concerned that the President of the Republic of Moldova seems to have a great influence on the evaluation process. The President may initiate the evaluation, delegate the members to the Commission, but also appoint one of the members of the SCP. The Venice Commission also noted that the law does not contain minimum requirements for triggering the performance appraisal, which means that the President of the country or three members of the SCP can initiate the procedure even for formal reasons. The Venice Commission was also concerned with the frequency of evaluations, which could be initiated each year. Although it accepted the need for regular external evaluation of the prosecutor's office's work, the authorities could consider other alternatives, such as the prosecutor's office's annual reporting to the Parliament.

With regard to the reform of the SCP composition, the Committee noted that such changes already took place once recently, in 2019. According to the Commission, frequent changes may give the impression that each parliamentary majority is trying to change the power ratio in the SCP in its favour. In this context, the Commission stressed that it may be appropriate to regulate these provisions in the Constitution.

The Commission did not find the participation of the President of the Superior Council of Magistracy in the SCP to be problematic. However, it is a problem in the case of the Minister of Justice. The Commission has previously challenged the presence of the minister in the Judicial Councils, at least in the context of the disciplinary liability of judges. The issue of the presence of the minister in the SCP can also be decided depending on the place of the prosecutor's office in the national legal order. When closely associated with the judiciary, as in the case of the Republic of Moldova, the minister may participate in the SCP, but without the right to vote on certain issues, such as disciplinary proceedings.

The Commission described the presence of the Ombudsman as a member of the SCP as unusual. It is doubtful whether the functions of a member of the SCP are compatible with the ombudsman's mandate, given his role as a human rights defender. However, in certain contexts, the participation of the Ombudsman may be appropriate as a politically neutral figure who may be an arbiter or facilitator between prosecutor-members and those affiliated with the government. On the other hand, the exclusion of the Prosecutor General from the SCP is an unacceptable solution for the Venice Commission, if this means the complete exclusion of the Prosecutor from making important decisions in the Prosecutor's Office (such as selection and career of prosecutors, prosecutor's budget, etc.) and if the balance of power in the council remains unchanged, the prosecutor-members not having a majority.

As concerns the termination of the term of office of an SCP member (Dumitru PULBERE), following the introduction of the maximum age for SCP members, the Venice Commission noted that the introduction of the retirement age for a civil servant is not contrary to any international standards or principles. However, such limits are problematic if they have the effect of terminating the terms of office of specific persons that took the office in accordance with previously existing rules.

With regard to reducing the number of SCP members from 15 to 12, the Venice Commission noted that this was not a violation. The Commission emphasized that there was an important difference between standards for judges and those for prosecutors. There is no requirement for such a council (SCP) to be dominated by prosecutors, if prosecutors elected by their colleagues represent an “important part”, but not necessarily a majority in the prosecutors’ council. According to the Commission, the new composition of the SCP remains sufficiently pluralistic, as long as the members of the prosecutor represent the largest group, while the other members represent different state institutions.

| Ilan ŞOR was stripped (again) of parliamentary immunity

Ilan ŞOR was wanted in an international search since 30 July 2019, after fleeing the country due to the change of political power in Chisinau. He is accused of involvement in the bank fraud. Although he did not return to the country, his party entered the Parliament following the elections of 11 July 2021. His criminal case has been under examination since August 2021 at the Chisinau Court of Appeal (for details, see [LRCM Newsletter no. 36](#)).

On 16 December 2021, the interim General Prosecutor Dumitru ROBU submitted to the Parliament nine requests to lift the parliamentary immunity of Ilan ŞOR. According to the Constitution of the Republic of Moldova, a Member of Parliament cannot be detained, arrested, or searched, except when caught red-handed or sent to trial without the consent of Parliament.

In his requests, the Acting Prosecutor General accused Ilan ŞOR of large-scale fraud, large-scale money laundering, embezzlement, abuse of power, and of creation and leadership of an organized criminal group. All these crimes are parts of the robbery of the banking system (generically called “Billion Theft” case) from 2010-2014 and of fraudulent takeover and concession of Chisinau International Airport. According to Dumitru ROBU, in addition to the organized criminal group led by Ilan ŞOR, three other criminal groups led by Veaceslav PLATON, Vladimir PLAHOTNIUC and Vladimir ANDRONACHE were involved in stealing money from the banking system. Likewise, Şor was accused of false statements, because between 2016 and 2019 he did not declare the real estate owned by his wife and the transactions carried out by them on the territory of the Russian Federation.

From 17 to 21 December 2021, the Legal Committee of the parliament [examined all requests](#) to waive the fugitive MP’s immunity. Given the confidentiality of the criminal investigation, at the request of the interim Prosecutor General, [the committee meetings](#) were held behind closed doors. On 23 December 2021, all requests were approved in the plenary, [with the votes of over 80 MPs](#). During the Parliamentary hearing, the acting Prosecutor General stated that, after lifting the immunity, the prosecutors will be able to advance with criminal investigation procedures – to seize assets, but also to ask for the extradition of Ilan ŞOR.

In August 2019, at the request of Dumitru ROBU, the Parliament [once again waived](#) Ilan ŞOR’s immunity. A group of prosecutors was set up to investigate the bank fraud. Since

Parliament
approves arrest and
prosecution of Ilan
ŞOR for nine other
charges

Alexandr STOIANOGLO was appointed as Prosecutor General, no tangible progress has been recorded in this case.

| In Brief

The suspended Prosecutor General Alexandr STOIANOGLO is under criminal investigation on two new charges – violation of personal inviolability and disclosure of criminal investigation data. The accusations refer to the statements he made on 4 October 2021 at a press conference (for more details, see the LRCM Newsletters [no. 37](#), [no. 38](#) and [no. 39](#)). The criminal investigation was launched at the complaint of Viorel MORARI, the former Head of the Anticorruption Prosecutor's Office.

On 4 December 2021, the Executive Council of the Association of Judges of the Republic of Moldova appointed Ion CHIRTOACĂ, judge at the Chisinau District Court, as interim president of the Association. This comes after the president of the association, Judge Vladislav CLIMA, [announced his resignation](#). In May 2019, Vladislav CLIMA was elected to lead the Association of Judges for a four-year term.

On 10 December 2021, the head of the General Directorate of Criminal Investigation of the National Anticorruption Centre, Ghenadie TANAS, was placed in pre-trial detention in Penitentiary no. 13 from Chişinău. [He is under criminal investigation for illicit enrichment, false statements, and illegal financial activity](#). His family members are also charged in the same criminal case, which was started on 6 December 2021.

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