

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 LAW ON VETTING HAS ENTERED INTO FORCE AND THE EVALUATORS AND MAJORITY OF THOSE WHO WILL BE EVALUATED ARE ALREADY KNOWN

On 10 March 2022, Parliament adopted in its final reading [the draft law on vetting](#), which refers to the external evaluation of candidates in the Superior Council of Magistracy (SCM), the Superior Council of Prosecutors (SCP) and their boards (see details in [LRCM Newsletter no. 42](#)). On 16 March 2022, the draft law [was published](#) in the Official Gazette and entered into force on the same day.

On 22 March 2022, a member of the Communist and Socialist Bloc (CSB) [asked the Constitutional Court \(CCM\)](#) to rule the law on vetting unconstitutional. On 7 April 2022, the CCM [partially admitted](#) the complaint. The CCM ruled unconstitutional the appointment by the President of the country, at the proposal of the SCM, of the panel of judges of the Supreme Court of Justice (SCJ), which will examine the appeals against the decisions of the Evaluation Board. The court ruled that this provision violated the independence of judges. The CCM also found that the current composition of the SCM, whose mandate has expired, cannot exercise the powers regarding the appointment, transfer, secondment, promotion, or disciplinary sanction of judges, as well as the appointment of judges to the Constitutional Court.

However, the SCM may administer day-to-day matters, including authorising to prosecute judges. The SCM may also propose that the President of the country endorsed, until the age limit, those judges whose initial term of office of five years has expired on 1 April 2022.

The candidates for the SCM and the SCP had the opportunity to apply to the competition by 27 April 2022. [Twenty-eight judges](#) applied for the vacancies at the SCM, of which 22 are judges from the district courts, three – from the courts of appeal and three – from the SCJ. [Six judges](#) applied for the vacancies for the Board for the Selection and Career of Judges, [five judges](#) applied for the Judicial Performance Evaluation Board, and [five judges](#) applied for the Disciplinary Board of Judges. [Nineteen prosecutors](#) are running for the SCP, and [38 prosecutors](#) for the SCP boards. A total of 101 candidates (44 judges and 57 prosecutors) will be evaluated in the vetting procedure. On 24 March 2022, the Parliament [announced](#) a competition for the appointment of six lay

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Over 100 candidates, of which 44 are judges and 57 are prosecutors, will be vetted

members of the SCM. Candidates must submit their full applications by 20 April 2022.

On 4 April 2022, as part of the vetting procedure, Parliament [appointed](#) the Vetting Board. The Vetting Board consists of two members nominated by the Action and Solidarity Party faction ([Nadejda HRIPTIEVSCHI](#) and [Tatiana RĂDUCANU](#)), one member nominated by the SCB faction ([Vitalie MIRON](#)) and three members nominated by the development partners ([Victoria HENLEY](#), [Nona TSOTORIA](#) and [H VON HEBEL](#)).

THE GOVERNMENT LAUNCHED SEVERAL INITIATIVES TO AMEND LEGISLATION ON THE JUDICIARY

On 10 March 2022, the Parliament of the Republic of Moldova adopted, in two readings, [a draft amendment to the Law](#) on the selection, evaluation of performance and career of judges. It says that judges whose five-year term has expired or will have expired by 1 April 2022, will be endorsed for office until they reach the age of 65, without undergoing an extraordinary performance evaluation. The law is intended to remove the backlog caused by the Board's lack of quorum when assessing judges' performance. As a result, [some 40 judges](#) whose initial five-year terms have expired could not be reconfirmed. They were paid but did not examine any cases. Some of them have not been working for over 12 months. After several postponements, the Superior Council of Magistracy (SCM) proposed that President Maia SANDU reconfirms those 40 judges herself. The President has not yet decided. She may reject the SCM's proposal only on well-founded grounds, while the SCM's repeated proposal becomes binding for the President. Following the [Constitutional amendments](#) adopted in September 2021 and which entered into force on 1 April 2022, it is no longer necessary to reconfirm the office of judges whose term expires after 1 April 2022. Read more about the constitutional amendments in the [LRCM Newsletter no. 37](#).

Amending the Constitution involves also amending the legislation on the judiciary. On 16 March 2022, a [draft law](#) in this regard was registered in Parliament. It refers to the initial term and the procedure for appointing judges, presidents and vice-presidents of courts, the immunity of judges, and the composition and responsibilities of the SCM. The draft excludes from the organic laws the initial term of five years of appointment of judges and limits the criminal immunity of judges to acts committed in the exercise of office. The draft law also changes the composition of the SCM. Six of the 12 members of the council will be judges and six will be lay members. Likewise, the term of office of an SCM member is extended from four to six years, but without the possibility of holding two terms. The draft law has been submitted for approval to the Venice Commission, which will issue its opinion on it by June 2022. The draft law could be adopted by the end of July 2022.

Over 40 judges whose initial term of the appointment expired continue to be paid but do not examine cases as the Performance Evaluation Board is not functioning.

Most of the judges who left the judiciary ruled in high-profile cases, which were later contested

WHO ARE THE JUDGES WHO LEFT THE JUDICIARY BEFORE ITS REFORM WAS ANNOUNCED?

Since January 2022, the Superior Council of Magistracy (SCM) resumed its activity and adopted several interesting decisions, including the approval of several resignations of judges.

At the meetings of [18](#), [22](#) and [25](#) March 2022, the plenum of the SCM approved the resignation requests of the following judges: Vladislav CLIMA, former President of the Chisinau Court of Appeal (CA); Tudor BERDILĂ, former President of Cahul Court of Appeal; Sergiu BULARU, former judge at the Chisinau Court, Buiucani headquarters; Ion CAZACU, former judge at the Drochia District Court, Glodeni headquarters; Ghenadie PAVLIUC, former Vice-president of the Chisinau District Court and Alexandru GHEORGHIÈȘ, former President of the Băl i Court of Appeal.

Judge Vladislav CLIMA is known for taking several controversial decisions. He was part of the panel of judges who [upheld](#) the decision of the district court to invalidate the 2018 local elections in Chisinau, won by the former leader of the Dignity and Truth Platform, Andrei NĂSTASE. He is also the judge who upheld the decision of the Chisinau District Court, Buiucani headquarters, regarding the allocation of a 1,1703 ha plot of land on Moldexpo grounds where the former leader of the Democratic Party of Moldova (PDM), Vladimir PLAHOTNIUC built his media holding headquarters, – a decision that was later [overturned](#) by the Supreme Court of Justice (SCJ). The said judge also annulled several decisions of the SCM, including the decision with regards to the suspension from office of the former SCJ judge, Oleg STERNIOALĂ, who was under criminal investigation at the time. The submission of the resignation request came unexpectedly, considering that, at the beginning of 2022, the former judge returned to the leadership of the Chisinau Court of Appeal, after President Maia SANDU annulled the decree of the former head of state, Igor DODON, who appointed Clima to be the President of the Chisinau Court of Appeal. The judge challenged the President's decree and won the case at the end of last year (look up the details in [LRCM Newsletter no. 41](#)).

Ghenadie PAVLIUC is the judge who has been accused many times of lack of integrity. In May 2015, Pavliuc transferred Ilan ȘOR from detention under house arrest in a bank fraud case. The judge later released Ilan ȘOR from house arrest to run in Orhei local elections. He was also the judge who warranted the arrest of Vlad FILAT back in October 2015, who was then an MP and the leader of the Liberal Democratic Party of Moldova. Subsequently, Pavliuc extended several times the arrest warrants in the name of Vlad FILAT. In 2015, Pavliuc saved from prison the former PDM MP, Valeriu GUMA, who was sentenced in Romania to serve four years for influence peddling and bribery. Pavliuc acknowledged Guma's sentence but commuted his sentence to four years in prison with suspension. In 2017, despite these controversial decisions, the former President of the country, Igor DODON, signed the decree appointing Pavliuc as Vice-president of the Chisinau District Court, Ciocana headquarters, a court that authorized numerous interceptions of correspondence and abusive arrests.

TV8 claims that both Ghenadie PAVLIUC and Vladislav CLIMA decided to leave the judiciary at the time when they were about to be investigated for illicit enrichment.

Sergiu BULARU is the judge who admitted the request to release Veaceslav PLATON from detention. Judge Tudor BERDILĂ was the judge-rapporteur in Ilan ȘOR's case, being suspected by the press of [close ties](#) with his lawyers. Ion CAZACU is the judge who was caught with bribe in 2014 and [acquitted](#) by the SCJ, who in the end returned to the judiciary in 2019, and judge Alexandru GHEORGHIȘ is under criminal investigation for illicit enrichment.

In the case of other judges, Maria TERTEA (Chisinau District Court) and Ion COTEA (Cahul District Court), the SCM upheld the disciplinary sanctions of dismissal from office, issued by the Disciplinary Board of Judges. Maria TERTEA is the judge who [was arrested](#) in March 2021, because she allegedly demanded USD 15,000 from the manager of an enterprise in exchange for her influencing her colleagues to adopt a favourable ruling in a civil dispute. Moreover, at the beginning of 2021, she rejected the request of the Prosecutor's Office for Combating Organized Crime and Special Cases to arrest Viorel MORARI, the former head of the Anticorruption Prosecutor's Office. Ion COTEA is the judge who in December 2020, in [an interview](#) for Ziarul de Gardă, spoke about the problems within the judiciary. Subsequently, the SCM was notified by the suspended General Prosecutor, Alexandr STOIANOGLO, in connection with the detection of several deficiencies in this judge's activity, the latter being finally [disciplinary sanctioned](#) and dismissed from office.

Another judge who submitted a resignation request, but has changed his mind in the meantime, is Igor MÂNĂSCURTĂ, judge at the Chisinau Court of Appeal. He is the judge who sentenced Veaceslav PLATON to serve 18 years in prison. On 30 November 2021, the SCM [accepted](#) the judge's resignation, and on 22 March 2022 [accepted](#) the withdrawal of the resignation request.

CONSTITUTIONAL COURT – UNJUSTIFIED PROPERTY CAN BE SEIZED, EVEN IF NOT CRIMINALLY CONVICTED

On 15 March 2022, the Constitutional Court issued [an opinion](#) on the [draft amendment to art. 46](#) of the [Constitution of the Republic of Moldova](#) (property rights and their protection). The draft initiated by 56 PAS MPs introduces an exception to the lawful presumption of ownership for persons holding public office. According to the authors of the project, the [previous law](#) enacted by the Constitutional Court regarding the presumption of legality of property makes it unjustifiably difficult to seize the property acquired through acts of corruption. Specifically, in 2014, the Constitutional Court explained that the presumption of the lawfulness of the property is synonymous with the presumption of innocence of the person. When the illicit nature of the acquisition of property owned by civil servants

Amending the Constitutional Court's law removed the need to amend the Constitution requested by PAS MPs

is questioned, the property may be seized only in criminal proceedings and only if proven that the civil servant committed an offence or a misdemeanour. In both cases, the burden of proof on the unlawfulness of the property rests solely with the authorities.

The court ruled in favour of the draft law. Although the Court's opinion is 'negative' – meaning that the MPs cannot adopt it, the Court issued a new interpretation of art. 46. Before that, on 10 March 2022, the Court's previous law of 2014 was [reviewed](#). According to the new argument, which is based on the ECtHR case against Georgia ([Gogitidze and Others v. Georgia](#)), property may be seized separately from being convicted or found to be guilty of a misdemeanour, and even without having to be investigated in a criminal or misdemeanour case, and does not need proof 'beyond reasonable doubt' of the unlawful origin of the goods. The high probability of illicit origin is acceptable, combined with the owner's inability to prove otherwise. The new interpretation solves the problem that was to be remedied by amending the Constitution and could extend the applicability of property confiscation.

In the meantime, along with the initiative to amend the Constitution, the President recently submitted to Parliament [a legislative proposal](#) that simplifies the application of extended confiscation in criminal proceedings, i.e., the unjustified wealth of the person convicted of a crime committed for enrichment. The initiative is due to be discussed by Parliament soon.

CHISINAU DISTRICT COURT – NIA DECISION ON DUMITRU DIACOV'S FORTUNE IS ILLEGAL

On 29 November 2021, Chisinau District Court [published](#) its first decision regarding the contestation of the National Integrity Authority (NIA)'s act regarding the former MP and democratic leader, Dumitru DIACOV. NIA found that Diacov cannot justify his assets valued beyond MDL 600,000, but the Chisinau District Court annulled NIA's act. The case was examined by Judge Tatiana AVASILOAIE who, according to NIA, [did not disclose that she owns a luxury apartment](#) worth MDL 1,330,000 (look up the details in [LRCM Newsletter no. 34](#)).

The judge found that the case files lacked evidence of the random distribution of the complaint. NIA could not explain how the complaint was distributed and did not rule out the possibility that the distribution of the complaints was manipulated. In 2021, members of the Integrity Council also suspected NIA of [failing to randomly distribute the complaints](#). At the time, NIA's management did not allow the World Bank to conduct an external audit.

The judge also invoked article 46 para. (3) of the Constitution, which establishes the presumption of legality of the property. The inspector only considered the income transferred to Diacov's accounts since 2015, without checking the

"Tatiana AVASILOAIE
– The lack of
random distribution
of complaints within
NIA is a sufficiently
serious deficiency to
annul the NIA's act"

amounts held in cash. According to a certificate issued by the Parliament's secretariat, Diacov received his wages for 2012-2014 in cash. Moreover, the old legislation did not provide for the disclosure of amounts held in cash. This provision was introduced only in 2016.

The judge's reasoning seems to be deficient, given that during the years 2017-2020 Diacov [did not disclose that he has cash](#).

The judge also found that the NIA's methodology for performing the control was not published. The methodology [was only published](#) in February 2022. It provided that the person's only net income was checked, although the [Law on the Declaration of Wealth and Personal Interests](#) does not provide for this. The judge considered that the integrity inspector cannot verify the declarant's expenses. It also considered that the procedure, which lasted 603 days, exceeded the 30 days (or 90 days in complex cases) provided by the [Contravention Code](#).

According to a [previous assessment](#) carried out by the LRCM, several NIA findings were annulled by the courts on procedural grounds, especially in the case of high-level officials. At the end of March 2022, [NIA reported](#) that more than 30 officials had unjustified assets. All these decisions have been challenged in court.

SHORTLY AFTER SHE WAS SUSPENDED, NIA PRESIDENT RESIGNED

On 18 March 2022, the Integrity Council (IC) [proposed](#) to temporarily suspend Rodica ANTOCI from the position of President of the National Integrity Authority (NIA). The request for suspension came from Anticorruption prosecutors. They motivated the request by the fact that she was investigated in a criminal case launched in January 2022. Together with a colleague, the President of NIA is being investigated for committing crimes of abuse of office and forgery in public acts. Anticorruption prosecutors also suspect that the NIA President violated the conflict-of-interest policy, requesting IC members to carry out a verification procedure.

The President of NIA denied the accusations brought during [a press conference](#) and said she will go to court to prove her innocence. Shortly afterwards, on 31 March 2022, the President of NIA requested the President of the Republic of Moldova, Maia SANDU, to accept her resignation. The request was redirected to the IC, which [accepted](#) it on 4 April 2022. On 5 May 2022, President Sandu issued the decree to release Rodica ANTOCI from office. The term of office of the President of NIA was to expire at the end of 2022. While the position is vacant, the Vice-president of NIA, Lilian CHIȘCA was meant to cover the duties of the President of NIA. Previously, the Vice-president and the President of NIA accused each other of committing several [unlawful acts](#) and [disciplinary offences](#).

The contest for the office of the next President of NIA will be announced this summer

IC is to hold a competition for the NIA leadership. According to the [Law on NIA](#), the date and place of the competition for the position of President of the Authority are to be published on the official website of the Authority at least 45 days before the date of the date of the public contest . Most likely, the contest will be announced in June-July 2022.

| IN BRIEF

Due to the war started by the Russian Federation against Ukraine, on 24 February 2022, the Parliament of the Republic of Moldova [declared](#) on the same day a state of emergency for the entire territory of the Republic of Moldova, for the next 60 days. Several measures have been taken during the state of emergency, including in the justice sector. On 2 March 2022, the Committee for Exceptional Situations (CES) issued a decision suspending the examination of [most civil, administrative and contravention cases](#), the suspension of enforcement proceedings and statutes of limitations. Subsequently, on 10 March 2022, this decision [was supplemented](#) by several other categories of court cases, the examination of which was not suspended earlier. However, before the state of emergency ended, scheduled for 24 April 2022, on 31 March 2022, the CES [cancelled](#) all special measures authorised in the justice sector, starting on 4 April 2022.

On 4 March 2022, the Superior Council of Prosecutors (SCP) accepted the request of Mariana GORNEA, Chief Prosecutor of the Juvenile Justice Department of the General Prosecutor's Office, to end her term as a member of the Integrity Council (IC). According to the advisory opinion of the National Integrity Authority (NIA), Gornea [cannot hold a position](#) within IC because she is currently serving as a prosecutor. On 24 March 2022, the SCP appointed Svetlana BALMUŞ [as a member of the IC](#), who was at that moment a member of the SCP nominated from civil society by President Maia SANDU. On 4 April 2022, NIA initiated the verification with regards to Mariana GORNEA's potential violation of the incompatibility policy.

On 18 March 2022, the Superior Council of Magistracy (SCM) [accepted Vladislav CLIMA's resignation](#) from the position of judge and President of the Chisinau Court of Appeal (Chisinau CA). On 25 March 2022, the SCM [approved the provisions of the SCM President](#) regarding the appointment of Anatolie MINCIUNĂ as acting President of the Chisinau CA and Ghenadie MÎRA as acting Vice-president of the Chisinau CA. Directors.

On 23 March 2022, the Government [accepted the resignation](#) of Oleg ROTARI, the representative of the Republic of Moldova before the European Court of Human Rights (ECtHR). He was also responsible for the enforcement of ECtHR judgments. Rotari [held that position](#) since 27 September 2017. [According to the Law on the Governmental Agent](#), he is appointed by the Government, at the proposal of the Minister of Justice, for a single term of seven years. The law does not impose the obligation to select the Government Agent by public competition.

On 28 March 2022, former Deputy Prosecutor General Ruslan POPOV, [criminally investigated](#) for illicit enrichment, was fired. An order in this regard was signed by the acting Prosecutor General Dumitru ROBU after Popov did not request to be appointed for a different office after his term as Deputy Prosecutor General ended. [Ruslan POPOV's lawyers have said](#) they will challenge the dismissal.

On 29 March 2022, [the Anticorruption prosecutors searched](#) the office, home, and car of the judge of the Supreme Court of Justice (SCJ) Tamara CHIȘCA-DONEVA. The judge is suspected of illicit enrichment committed by a person with a position of public dignity ([art. 330/2 para. \(2\)](#) of the Criminal Code). The judge was summoned to the Anticorruption Prosecutor's Office the next day to be informed of her status.

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