





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.



MOLDOVA IS A 'CANDIDATE COUNTRY' FOR JOINING THE EUROPEAN UNION – WHAT'S NEXT?

On 23 June 2022, the European Council of the European Union recommended granting the status of candidate countries for EU accession to Ukraine and the Republic of Moldova. The decision comes at the beginning of March, after the countries, together with Georgia, submitted their application for EU membership. Following the submission of the application, Moldova also sent the two parts of the accession questionnaire, a document containing comprehensive information about the legislation, economy, and architecture of the public system in the Republic of Moldova.

In the case of the Republic of Moldova, the European Commission has already sent a list of nine recommendations that our country must undertake to start accession negotiations. Four of the nine conditions relate to justice reform. Mainly, the Commission asked the Republic of Moldova to (i) ensure the successful implementation of the justice sector reform, in order to guarantee the independence, integrity, efficiency, accountability and transparency of the system; (ii) meet the commitment to fight corruption at all levels by taking decisive action for proactive and effective investigations and a credible record of prosecutions and convictions (iii); to ensure 'de-oligarchising', by eliminating the influence of private interests in economic, political and public life; as well as (iv) carry out reforms that provide quality public services for citizens. Last but not least, the Commission recommended that Moldova ensures the involvement of civil society in the decision-making process.

Once a country obtains the status of 'candidate for accession', the country must undergo further evaluation, so EU institutions check how compatible the political, economic, and legislative system is for EU accession. The multitude of accession criteria and rules are known as the 'Copenhagen criteria', which include 33 areas of interest. These rules mainly include three criteria: (i) political – against which the stability of the institutions that guarantee democracy, the rule of law, human rights, respect and protection of minorities is evaluated; (ii) economic – the extent to which a country has a functioning market economy and the ability to cope with EU competition and market forces; and (iii) the implementation criterion, i.e., the administrative and institutional capacity of the state to effectively

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Fighting corruption, justice reform and 'de-oligarchising' – Moldova's homework before accession negotiations to the EU can begin. take and implement commitments, legislation and standards of the acquis communautaire.

The pre-accession process assumes that after meeting these requirements, negotiations will be initiated regarding the connection of the legislation and the public system to the rigours of the EU to meet the Copenhagen criteria. The EU institutions will monitor the progress made by the Republic of Moldova and will report periodically to the European Union. To facilitate the process of reform implementation, the Republic of Moldova will gain access to new financing instruments and programmes.

The pre-accession process can take years or even decades, depending on the track record of each state. Currently, other than Moldova and Ukraine, Albania, North Macedonia, Montenegro, Serbia, and Turkey are accession candidates, while Georgia, Kosovo and Bosnia and Herzegovina are potential candidate countries.

THE VENICE COMMISSION ISSUED TWO MORE OPINIONS REGARDING THE REPUBLIC OF MOLDOVA

On 20 June 2022, the Venice Commission issued two opinions regarding the Republic of Moldova. The first refers to the draft law to amend the legislation on the judicial system, and the second concerns the Law on the Prosecutor's Office. The opinions of the Venice Commission are mostly favourable, but they also contain recommendations to improve the projects.

The draft law on the judicial system aims to align the legislation on the judicial system with the constitutional amendments that entered into force on 1 April 2022. The draft amends five laws: the Law on the organisation of the judiciary; Law on the status of the judge; Law on the Superior Council of Magistracy; Law on the Supreme Court of Justice; and the Law on the disciplinary liability of judges. In its opinion published on 20 June 2022, the Venice Commission welcomed the removal of the five-year probationary period for judges. The Venice Commission stated that establishing probationary periods can undermine the independence of judges. The unification of the procedure for the appointment of judges, which excludes the involvement of the Parliament, is in line with the previous opinions of the Commission, according to which the involvement of the Parliament could lead to the politicisation of the appointment of judges. Another change approved by the Commission is the transfer of the power to appoint the presidents and vicepresidents of the courts to the Superior Council of Magistracy (CSM). Following the draft article 16 para. (3) of the Law on the organization of the judiciary, the presidents and vice-presidents of the courts will be appointed by the CSM, without the decree of the President of the Republic.

The draft law stipulates that, in the process of drafting, approving, and amending the court budget, the advisory opinion of the CSM is requested. The Venice Commission welcomed this change, reiterating that the SCM's involvement in the judicial budget process (in the form of an advisory opinion) enhances the financial independence of the judiciary and is in line with the Commission's wellestablished position.

The draft law changes the composition of the SCM and introduces a different procedure for electing its members. According to the amendments to article 122 para. (1) of the Constitution, effective from 1 April 2022, the SCM is made up of twelve members, six judges elected by the General Assembly of Judges and six politically unaffiliated persons who do not work within the bodies of the legislative, executive, or judicial institutions. The Commission stated that this provision complies with international standards. Regarding the election of the lay members of the SCM, the draft stipulates that the six members of the SCM will be selected 'openly and transparently' by the Parliament's Committee on Legal Affairs, based on a 'public competition'. They will be appointed by the vote of 3/5 of the elected MPs. The Commission mentioned the need to regulate how the Parliament selects lay members of the CSM and that another mechanism is needed to overcome the situation where the candidates do not get 3/5 of the MPs' votes.

The Commission also recommended excluding the President of the Republic of Moldova from the process of transferring judges between the same level or lower level courts. Article 20 of the Law on the Status of Judges is to be amended to stipulate, in particular, that the transfer of a judge to a court of the same level or a lower court is done by the SCM without the involvement of the President of the country. The Commission noted that the added value of the President's involvement in this process is unclear and may cause undue delays. The Commission also agreed with the competence of the CSM to reject, through a reasoned decision, the proposal of the Board for the Selection and Career of Judges (BSCJ) regarding the appointment of the presidents and vice-presidents of the courts. Currently, if selected, based on a contest, that a candidate is to be president or vice president of a court, that candidate can only be rejected by the CSM based on a limited list of reasons. The Commission also recommended limiting the possibility of recalling SCM members, by stating in the law that they can only be revoked based on serious disciplinary sanctions, definitive criminal convictions, or the objective impossibility of exercising their duties. The Commission insisted that the procedures and criteria for impeachment be laid down in the Constitution.

In the opinion that refers to the Law on the Prosecutor's Office, the Venice Commission pointed out that these amendments satisfy most of the key recommendations from the Commission's 2021 opinion. Thus, the Commission welcomed the inclusion of the Prosecutor General in the composition of the Superior Council of the Prosecutors (CSP), despite his/her limited rights. As a result of this change, the CSP will be made up of 13 members, of which four ex officio, five elected prosecutors and four civil society representatives appointed by the President of the Republic, the Parliament, the Government and the Academy of Sciences of the Republic of Moldova. The Venice Commission found that the composition of the CSP is consistent with previous recommendations. It is sufficiently pluralistic, and prosecutors elected by their peers are an 'important part' of the CSP. Another change that corresponds to the recommendations of The Venice Commission recommends that the appointment of court presidents and the transfer of judges between courts of the same level should be done without the involvement of the country's President. the Venice Commission is the need for the Evaluation Board of the Prosecutor General to draw members from prosecutors, and the conclusions of the Evaluation Board will have an advisory character, while the decision to revoke the Prosecutor General from office for insufficient performance will belong to CSP.

The Venice Commission also welcomed the changes regarding the elimination of the automatic suspension of the Deputy Prosecutor General in case of suspension of the Prosecutor General. Article 18 of the Law on the Prosecutor's Office provides that the suspension of the mandate of the Deputy Prosecutor General is decided on a case-by-case basis. If a deputy remains in office, he cannot intervene in criminal cases that would concern the suspended Prosecutor General.

The Venice Commission made several recommendations to improve the draft law. The first recommendation refers to specifying in the law the fact that the General Prosecutor can refuse to provide information to the Evaluation Board if its disclosure may jeopardize the success of the investigation. The amendments made in August 2021 introduced a new mechanism for ad hoc evaluation of the Prosecutor General's professional performance. The Venice Commission noted that this new procedure is guite unusual. It recognized that it is not excluded that, in addition to the dismissal of the Prosecutor General for crimes or disciplinary offences, his/her mandate could be terminated in cases of obvious poor performance. The Commission recommended that the main performance indicators should be specified in the law and the difference between them and disciplinary violations should be explained. In addition, the Commission also recommended that the suspension of the Prosecutor General by a decision of the CSP president is possible only when the CSP cannot meet for objective reasons and only until the next meeting of the CSP. As for the deputy Prosecutor Generals, selected by the CSP, the Commission recommended that they temporarily fulfil the duties of the suspended Prosecutor General, without the need to appoint an interim Prosecutor General.

PRESIDENT MAIA SANDU REFUSED TO APPOINT 13 JUDGES

On 1 April 2022, several amendments to the Constitution entered into force, including the exclusion of the initial five-year term of appointment as a judge, a requirement that, according to the Venice Commission, undermined the independence of judges. However, this change does not apply to judges whose initial five-year term has expired by 1 April 2022.

About 40 judges had their terms of office expire on 31 March 2022. They received a salary but did not have the right to examine cases, as their terms of office had expired. Such a large number was because the evaluation of their performances, mandatory for reconfirmation in office, was not carried out because the Judicial Performance Evaluation Board was not functional. The mandate of its members

The President's decisions regarding the refusal to appoint or promote the judge must be thoroughly motivated and based on evidence that confirms the person's incompatibility with the position of judge. The presidency did not operate publicly with such evidence.

had also expired. On 10 March 2022, the Parliament of the Republic of Moldova resolved the situation through Law no. 47, by which the Superior Council of the Magistracy (CSM) submits to the President of the Republic of Moldova proposals for the reconfirmation of judges in office without performance evaluation. At the meeting of 29 March 2022, the SCM Plenary postponed the examination of the 40 requests for reconfirmation in office, so it could clarify some aspects provided for in Art. II of Law no. 47.

Meanwhile, on 10 March 2022, the Parliament adopted Law no. 26, by which the mandates of the members of the CSM, which had expired at the beginning of 2022 were extended. On 30 March 2022, the Constitutional Court (CC), having been notified by the socialist MP Vasile BOLEA, suspended art. 15 para. (12) from Law no. 26, and on 7 April 2022, he explained that the SCM with an expired mandate cannot adopt decisions that refer to the appointment, transfer, secondment, promotion, and application of disciplinary measures to judges, as well as regarding the appointment of CC judges. At the same time, the CC noted that this does not exclude the competence of the SCM to submit to the President of the country proposals for the reconfirmation in office of judges that had not reached the age limit yet if the initial term for their appointment to office has expired by 1 April 2022.

On 15 April 2022, the CSM presented to the President of the Republic of Moldova the list of 40 judges to be reconfirmed in office. At the beginning of June 2022, the President's Office, sent to the SCM a rejection for 13 judges to be reconfirmed, on the grounds that they 'do not meet the requirements of integrity and impeccable reputation, their image being affected by ethical and deontological deficiencies'. The President's reasoning was quite general, without referring to specific cases or specific judges. According to the President's Office, the list of rejected candidacies could include other judges from the list of those 40 judges submitted by the CSM. The President's Office reasoned that the decision-making regarding the others from the list is taking longer because the judges were not subjected to the extraordinary evaluation (requirement excluded by Law no. 47 of 10 March 2022), and the SCM was deprived of the opportunity to examine the candidates. In the list of the 13 dismissed judges, there are names of judges who made controversial decisions, but also judges who were not featured in journalistic investigations for lack of integrity and professionalism. As a result of this decision, President Sandu was accused of lack of transparency and of continuing the old vicious practice of rejecting CSM proposals without convincing evidence.

According to the new amendments to the Constitution, which entered into force on 1 April 2022, court judges are appointed by the President of the Republic of Moldova, at the proposal of the SCM, to serve until they reach the age limit. The President can only reject a candidate proposed by the CSM once, and the repeated proposal of the CSM is binding for the President. Therefore, the new CSM is to examine the reasons invoked by the head of state and decide which of the rejected candidates are to be proposed repeatedly for reconfirmation in office. Otherwise, the judges will be dismissed. Out of 508 violations found by NIA, only 31 refer to MPs, ministers, prosecutors, or judges.

NIA FILES AND COURT RULINGS BASED ON THEM – EVEN, AND NOT SO MUCH

On 23 June 2022, LRCM launched a study in which it analysed how uniform the findings of the National Integrity Authority (NIA) were and the judicial practice based on them.

LRCM analysed 873 NIA files published between 1 July 2018 and 1 March 2022. More than half of them (508) – 58% found violations of integrity. Most often, there were conflicts of interest – 308 and incompatibility for public office – 152 files. Most often mayors and local councillors were blamed for these violations – 50%, while MPs, ministers, prosecutors, and judges were investigated in only 6% of the published files.

According to the report, 26% of the investigations carried out (230 files) refer to personal assets and interests. Of these, only 3% of cases (25 files) substantial difference between the income and assets owned was found, and 2% of cases (15 files) refer to the non-compliant declaration of wealth. From the NIA files, it is difficult to determine whether integrity inspectors have a uniform practice in conducting wealth checks. Some files include tables showing cash flowing from the bank accounts of the subject, while other files have no such data. Many other files are generally excessively anonymised, which does not allow an observer to fully understand the arguments of integrity inspectors.

About 30% of the published files were issued by three of the 20 integrity inspectors. This discrepancy could suggest that, despite the automated e-Integrity system, there are problems with the random distribution of cases within NIA. These problems were later confirmed by the current management of NIA.

As part of the research carried out by LRCM, all 31 decisions of the Supreme Court of Justice (SCJ) adopted between 1 July 2018 and 1 March 2022 were analysed, as well as the decisions given by the district and appeal courts in cases concerning the NIA files. LRCM did not find serious discrepancies in cases featuring conflicts of interest and incompatibilities.

Between 1 July 2018 and 1 March 2022, no file regarding the non-declaration of assets reached the SCJ. The 31 files examined by the SCJ refer to conflicts of interest and incompatibilities. This fact suggests that the examination of files on the wealth of public officials takes a long time, or even is dragged out in some cases.

LCRM found that NIA files were cancelled especially in the case of highranking officials. In their case, four out of five NIA files were annulled, and in the case of other officials, only nine out of 26 NIA files were annulled. This suggests that either high-ranking officials had better lawyers, NIA failed to prove wrongdoing, or judges are more lenient toward high-ranking officials. Similarly, four NIA files were cancelled for missing the deadline for issuing them, established by the Administrative Code. Surprisingly, two acts of the NIA were annulled because they were not 'countersigned' by the management of the NIA, even though such a procedure is not provided for by law. Such a practice of invalidation creates premises for the annulment of most of the files issued by NIA.

EFFECTIVE INVESTIGATION OF MALTREATMENT IS STILL A SERIOUS PROBLEM IN THE REPUBLIC OF MOLDOVA

On 7 June 2022, the European Court of Human Rights (ECtHR) issued its judgment in the case of Boboc and others. The case concerns the death of Valeriu BOBOC as a result of police intervening against the protesters in April 2009 and how the investigation into Boboc's death was carried out. The ECtHR found that art. 2 of the European Convention on Human Rights (ECHR) (right to life) was violated given the inexplicable delays in examining the video footage of the police intervention that showed the mistreatment of Boboc, the failure to establish a post-factum identification system for masked policemen, as well as the total ban of lawyers' access to file materials.

The ECtHR frequently convicts the Republic of Moldova for violating art. 3 of the ECHR (prohibition of torture). LRCM developed a synthesis of all ECHR violations admitted by the Republic of Moldova in this article. Until 1 June 2022, the ECtHR issued 119 decisions in which it found 169 violations committed by our state. Most relate to the enforcement of ill-treatment (38), its flawed investigation (42) and poor conditions of detention (48).

LRCM also produced an infographic showing that the documentation of torture and ill-treatment is not always done effectively, making it difficult to hold perpetrators accountable. Even though the number of complaints of ill-treatment has decreased by 50% in the last decade (from about 1,000 in 2009 to 500 in 2021), their number remains quite high. In 2021, prosecutors started investigating only 9% of the complaints received, while the actual conviction rate of torturers is even lower, a fact that generates impunity. Persons suspected of applying ill-treatment are very rarely suspended from their position, and the authorities do not have information regarding the application of this measure.

On June 26, on UN International Day in Support of Victims of Torture, LRCM together with other civil society organizations, called on national authorities to fulfil all international commitments assumed to prevent ill-treatment and to support victims of abuse. Among other things, the organisations recommend the transfer of medical services from detention centres under the Ministry of Internal Affairs and the National Administration of Penitentiaries under the Ministry of Health, as well as the urgent construction of a new penitentiary in the municipality of Chisinau, to avoid inhumane conditions and overcrowding in Penitentiary no. 13.

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IN BRIEF

On **25 May 2022**, the so-called 'Supreme Council' of the Transnistrian region voted in the second reading amendments to the local Criminal Code. According to the new amendments, people who will address foreign national institutions, including those of the Republic of Moldova or international ones, regarding the abuses committed by the representatives of public structures on the left of the Dniester River, risk up to 10 years in prison. The Political Bureau of Reintegration reacted with a statement condemning this decision and urging the decision-makers in Transnistria to abandon the criminalisation of such actions, otherwise, they will be legally responsible.

An investigation published by Ziarul de Gardă on 2 June 2022 identifies substantial differences between the information presented by the Criminal Assets Recovery Agency (CARA) and the State Fiscal Service regarding the money that reaches the state budget following the non-disposal of assets by CARA. According to the investigation, between 2019 and 2021, only MDL 11.9 million reached the state budget as a result of the seizures applied by CARA, or three times less than the figures announced by the Ministry of Finance – MDL 30.7 million. The amounts that reached the state budget represent less than 1% of the total amounts sequestered by CARA – over MDL 5 billion. The 'low' efficiency return of CARA would be due to the courts and prosecutors, who end up cancelling the seizures applied.

On **8 June 2022**, the Government seconded Dumitru OBADĂ to the position of Government Agent, representative of the Republic of Moldova before the European Court of Human Rights, for the next four years. Obădă is a career prosecutor, having worked as a prosecutor for 11 years. He is a university lecturer and trainer at the National Institute of Justice in the field of criminal and criminal procedure. The appointment of Obada was possible after the Superior Council of Prosecutors authorised his secondment on13 June 2022. The position of Government Agent became vacant on 28 March 2022 after Oleg ROTARI, the former Government Agent, resigned.

On **8 June 2022**, the Supreme Court of Justice issued a decision by which it rejected the appeal of the General Mayor of the Municipality of Chisinau, Ion CEBAN, and upheld the decision of 4 May 2022 of the Chisinau Court of Appeal, which provided for the mayor of the capital city to pay a fine of MDL 7,500 for failing to comply with the ruling of the Chisinau District Court, Rîşcani headquarters, of 24 November 2020 and the decision of the Chisinau Court of Appeal of 13 October 2021. The latter concerned the restoration of Valentin VDOVICENCO in the position of vice-praetor of the Rîşcani borough. On 10 June 2022, the Chisinau Court of Appeal asked the mayor of the capital to respect the 'binding nature of court decisions'. The court's reaction came after the mayor of Chisinau Court of Appeal.

On 19 June 2022, the Courts Administration Agency (CAA) published a report

on the random distribution of court cases for the first four months (January – April) of 2022. According to the report, over 91% of the total cases received were randomly assigned once, while 9% of the cases were assigned at least twice. Although data on random distribution is generally positive compared to previous periods, data from the Integrated File Management (IFM) show a high rate of repeat assignment. Most cases of repeated distribution were registered at the Chisinau Court of Appeal, the Supreme Court of Justice, the Balti Court of Appeal, and the Cahul Court of Appeal.

On 21 June 2022, the judges of the Chisinau District Court, Ciocana headquarters, extended the house arrest mandate of former President Igor DODON for another 30 days. He is suspected of passive corruption, accepting the financing of the political party by a criminal organisation, treason, and illicit enrichment. On 29 June 2022, the judges of the Chisinau Court of Appeal rejected Dodon's appeal against the June 21 decision. On 27 June 2022, the General Prosecutor's Office announced that the former President Igor DODON was indicted on a new charge, regarding abusing his duties, in the criminal case called 'Energocom'. According to the prosecutors, in 2008, holding the position of Minister of Economy, Dodon signed the opinion based on which SA 'Energocom' concluded the contract regarding the procurement of electricity for the Republic of Moldova with an intermediary company, even though SA 'Energocom' had already concluded two contracts of supplying electricity at a 29% lower price. The state was harmed in this way with approximately USD 12,000,000, funds that were transferred to the accounts of some off-shore companies. These actions led to an increase in electricity tariffs, affecting the citizens of the Republic of Moldova.

On **24 June 2022**, the Chisinau District Court, Buiucani headquarters, which is examining the criminal case against Igor POPA, the former chief prosecutor of the Ciocana Office, decided at Popa's request, to further examine his case in closed session. The reasons for this decision are not yet known, as the court decision has not yet been reasoned. The given conclusion cannot be contested. The Anticorruption Prosecutor's Office pleaded against the examination of the criminal case in closed session. The trial with regards to the criminal case of Igor POPA started in January 2022 and contains five counts of illicit enrichment.

On **27 June 2022**, the National Integrity Authority (NIA) finalised the verification of the assets and personal interests of Vladislav CLIMA, ex-judge and expresident of the Chisinau Court of Appeal. The integrity inspector did not establish 'omissions, incomplete or erroneous data' admitted by Vladislav CLIMA in his wealth declarations for 2014-2021. At the same time, the integrity inspector checked the wealth and expenses declared by the former president of the Chisinau Court of Appeal and found that they were fully justified.

On **28 June 2022**, NIA finalised the verification of the assets and personal interests of the socialist MP Bogdan ŢÎRDEA. The integrity inspector did not find a substantial difference between the wealth and expenses declared by

TIRDEA between 9 December 2014 and 26 June 2020. Surprisingly, although the inspector tried to establish the value of the house bought by TÎRDEA, because the declared value seemed diminished, the assessment was not carried out on the grounds that Tîrdea refused to give the expert access to the building.

On 30 June 2022, the Prosecutors of the Prosecutor's Office for Combating Organized Crime and Special Cases (PCCOCS) announced the search of the home of the former Minister of Internal Affairs, Alexandru JIZDAN. The former minister is targeted in a criminal case based on the suspicion of illicit enrichment and abuse of office. Alexandru JIZDAN maintained his innocence and announced his willingness to cooperate with the investigation.

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