

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.



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WHAT DOES THE REFORM OF THE SUPREME COURT OF JUSTICE ANNOUNCED BY THE AUTHORITIES ENTAIL?


In mid-August 2022, the Ministry of Justice published the [draft of the new Law on the Supreme Court of Justice \(SCJ\)](#). The draft law was developed following the discussions held within a working group created by the Ministry. The group includes judges, prosecutors, lawyers, and civil society representatives.



According to the draft law, the main role of the SCJ will be to ensure that the law is applied evenly. Thus, the SCJ will only examine cases of great social and legal importance and those that reveal particularly serious violations of the law or human rights. The draft law also provides for the tools that the SCJ will use to guide judges to evenly apply the legislation. Among them are the appeal on points of law, advisory opinions at the request of judges or guidelines regarding the application of procedural legislation and the individualization of punishment. The draft law though fails to mention the decisions of the SCJ Plenary (the assembly of all SCJ judges), an instrument frequently used by the SCJ in the past. Instead, the draft law provides for the detailed regulation of the recourse on points of law, which will be able to be applied in all types of procedures, not only in criminal procedures as it is currently. The law will no longer require creating specialised boards at the SCJ, nor will it require specialization of judges – all of this being left to the discretion of the SCJ.



The Court will be headed by a president appointed for a four-year term, who will be assisted by a single vice-president. They will be selected by the Superior Council of the Magistracy (SCM) from a list of candidates endorsed by the SCJ judges. The duties of the president of the SCJ will be considerably reduced compared to what they are now, and the Plenary of the SCJ will take over these powers. The plenary will approve the Regulation and organizational chart of the SCJ. It will annually configure the judicial panels and decide on the specialisation of the judges, etc. The role of the president of the SCJ will mainly be to coordinate the activity of the SCJ judges and to represent the Court in relation to other institutions and organizations.



The draft law reduces the number of SCJ judges from 33 to 20. Moreover, not only career judges but also prosecutors, lawyers, and university professors in the field of law with over 10 years of experience will be able

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If they fail the integrity assessment, the SCJ judges will be dismissed from office and banned from working in the judiciary for 10 years.

to become judges of the SCJ. They will be selected through a public merit-based contest organized by the SCM. The law also establishes the main criteria based on which they will be selected. These criteria include the ability to understand and analyse complex legal situations, the ability to work in a team and respect the opinions of colleagues, and the ability to constructively debate complex issues. The future judges of the SCJ will be confirmed in office by the President of the country, upon the proposal of the SCM.

The draft law provides that all current judges of the SCJ will be evaluated by the 'Pre-vetting' Commission created by [Law nr. 26/2022](#), according to its procedure. If they fail their integrity assessment, the judge will be dismissed from office by the SCM and banned from working in the judiciary, including as an attorney, for 10 years. They will also lose their special judge pension and honourable discharge allowance. And the future candidates for the position of judge of the SCJ will also be assessed by the pre-vetting commission, according to the same procedure. The SCM will decide on the candidates without the involvement of the Board on the selection of judges, which is currently not functional as the mandates of its members expired. Candidates who will pass the assessment will be able to apply, within a competition organised by the SCM, to serve as a judge at the SCJ.

If candidates fail the assessment, they may appeal to the SCM. Subsequently, the decision of the SCM to reject the appeal may be challenged to the SCJ. A panel of the SCJ composed of three judges, who already passed the assessment, will decide on the appeal. If the appeal is accepted, the person will have to be re-assessed by the Evaluation Commission. The second decision of the Pre-vetting Commission will not be subject to any appeal. According to the draft law, all judges and the leadership of the Supreme Court of Justice will be appointed by 1 July 2023.

THE MINISTRY OF JUSTICE PROPOSES NEW AMENDMENTS TO THE CRIMINAL AND CONTRAVENTION CODE

On 29 August 2022, the Ministry of Justice completed a series of public consultations on a [new series of amendments](#) to the criminal and contravention legislation. The draft law developed by a mixed group of professionals in the field of justice aims to improve how punishments are applied and, more broadly, aims to improve how human rights are protected when it comes to people in conflict with the law.

The biggest innovation of the draft law concerns the expansion of cases where alternatives to imprisonment can be applied. Conditional release, replacing time unserved with a milder sentence or release from criminal liability will be applicable, especially, if the accused do not present a great danger to society.

Another set of measures are aimed at decriminalising the Criminal Code by classifying more offences under the Contravention Code, which provides for milder liability and sanctions. Drunk driving, illegal border crossing, refusal or

Legislative amendments are set to decriminalise several crimes and humanise application of sanctions in the Republic of Moldova.

witness dodging to testify will also be decriminalised. Decriminalization measures will, instead, be coupled with other correctional measures, such as requiring people to follow probationary programs, for example, unpaid community service or volunteering in medical or correctional institutions.

The draft law also reduces the penalties applied in the case of human trafficking crimes, given that former victims of human trafficking are often convicted of human trafficking crimes. Instead, the draft law provides for the removal of the previous limitation whereby women could not be sentenced to life imprisonment, a measure intended to eliminate gender equality discrepancies between women and men.

The draft law also provides for the harshening of some sanctions, especially in the case of crimes in the sanitary-epidemiological field. Criminal liability is to be introduced in cases that concern forging COVID-19 vaccination certificates. At the same time, crimes related to state security, environmental protection, and the protection of personal identity, such as identity fraud, will be added to the Criminal Code. Last but not least, the statute of limitation for criminal cases is to be increased from two to three years. This change comes to tackle undue delays of case examination, with the two-year term often insufficient to prosecute perpetrators.

The proposed amendments were endorsed by several authorities and will soon be sent to the Government for approval. The draft law approval is a priority mentioned in the [Strategy on ensuring the independence and integrity of the justice sector for the years 2022-2025](#) scheduled to enter into force by the end of 2022.

RECENT PRACTICES OF THE SCJ MAY OVERTURN THE STATE'S ABILITY TO CONFISCATE UNJUSTIFIED ASSETS IN THE NEAR FUTURE

In July 2022, the Supreme Court of Justice (SCJ) issued three very similar decisions rejecting the requests of the National Integrity Authority (NIA) regarding the confiscation of assets. The procedures target notorious subjects, such as the former MP, [Serghei SÎRBU](#), but also, the former state secretaries of the Ministry of Internal Affairs, [Ion ȚURCAN](#) and [Mariana GRAMA](#). In all three cases, integrity inspectors found substantial differences between the acquired wealth and the declared income of the former officials: [of about MDL 400,000](#) in the case of Ion ȚURCAN, [of over MDL 1,000,000](#) in Mariana GRAMA's name, and [of over MDL 1 900,000](#) in Serghei SÎRBU's name.

The SCJ rejected the confiscation requests on the grounds that the wrong procedure was used. More precisely, according to the judges of the SCJ, the examination of the confiscation motion submitted by NIA in the procedures initiated by the officials who contested the actions of the integrity inspectors, should have been examined in separate procedures. On the other hand, [NIA claims](#) that it is allowed to request assets to be seized, in basic procedures,

Although the NIA Law provides for the possibility to request that unjustified assets are confiscated, when such requests have been challenged, the SCJ requires separate procedures that take time.

since the amendments to the legislation of 2021 allow this. The provisions of [art. 34 para. \(6\) of the NIA Law](#) expressly provide for the possibility of requesting the confiscation of unjustified assets even if the documents are contested by the subjects concerned. As a special provision, it entered into force in October 2021. At the same time, the procedure for the confiscation of unjustified wealth for the benefit of the state is regulated by the [Civil Procedure Code](#), art. 278¹ and cannot be assimilated to an action in administrative litigation.

The reasoning of the SCJ does not mean that the unjustified wealth could not be confiscated, only that it will involve a repeated and longer examination, since NIA will have to file a new request to the court. This request will most likely go through all levels of courts, up to the SCJ. NIA [has already declared](#) that it will use this mechanism as soon as the findings issued regarding Sîrbu, Țurcan and other subjects will be final and irrevocable.

The effect of recent SCJ decisions can directly influence the course of other similar cases. On 9 August 2022, NIA found the secretary of the Socialist Party of the Republic of Moldova and the vice-president of the Parliament, Vlad BĂTRÎNCEA to hold unjustified assets of MDL 713,924. [According to NIA](#), the unjustified wealth was identified after Bătrîncea purchased an apartment in 2019. The amount paid by Vlad BĂTRÎNCEA would not constitute the real amount, being agreed upon by the parties to the contract to conceal the real price of the property. The price was diminished to MDL 890,000 when it was actually double – about MDL 1,750,000. Vlad BĂTRÎNCEA claims that he will challenge the NIA's motion in court. Thus, the eventual request for asset confiscation will be able to be introduced only after the SCJ will irrevocably decide upon the MP's action challenging the NIA decision.

Recently, LRCM [launched a study](#) in which it noted that between 1 July 2018 and 1 March 2022, the SCJ annulled NIA's fact-finding acts, especially in the case of high-ranking officials, often citing procedural reasons.

CITIZENS OF THE REPUBLIC OF MOLDOVA COULD BE ABLE TO VOTE VIA THE INTERNET. CEC APPROVED THE CONCEPT OF THE 'E-VOTING' SYSTEM

The Central Electoral Commission (CEC) recently approved [the concept of the Internet voting system 'e-Voting'](#). The concept presents an alternative solution to traditional voting, aimed at allowing the citizens of the Republic of Moldova to vote via the Internet, wherever they are. Internet voting will especially ensure participation in the electoral process for citizens who have difficulty travelling to the polling station and can contribute to making the electoral process more

representative, accessible, inclusive, secure, and innovative.

The benefits of electronic voting, [according to a research paper published by CPR Moldova](#), mean speed, cost reduction, and including citizens from abroad, or those unable to come to the polling station, in the electoral process, but also reducing public health risks in the context of the Covid-19 pandemic. Electronic voting also presents real risks for the Republic of Moldova. [During a debate organised by IPRE](#), several experts mentioned that the confidentiality principle may be violated, that the voter may be nudged into voting for a certain candidate or that there is the possibility of cyber-attacks on the system, including election fraud.

To mitigate and prevent some of the risks of electronic voting, the CEC concept proposes the possibility for the voter to vote several times or to vote over several days, with the last vote being the one recognised. Another solution for cyber-attacks or system crashes would be to apply techniques to repel cyber-attacks, strengthen the cyber-security of government infrastructure, cancel the results of Internet voting, and invite voters to the polling station. The additional solutions proposed by the CEC can also be remedied by issuing the electronic signature for all citizens together with the issuance of identity papers, the development of easy-to-use digital authentication options as well as the implementation of civic education campaigns.

The revolutionary proposal of the CEC is conditional on the amendment of several legislative acts. First of all, it is necessary to amend the [Electoral Code](#) by introducing several provisions that will allow the use of the Internet voting system in elections and referenda. In addition to the changes to the Electoral Code, the provisions of the [Criminal Code](#) are to be changed in the part that concerns the liability of the person who forces another person to vote in a certain way, but also in cases when a foreign electronic signature is used to vote. At the same time, within the concept, the CEC points out that, in partnership with other state institutions that are mandated with the organisation of the Internet voting process, they will develop and approve a set of regulations to make Internet voting possible.

The concept was submitted to the Government and the Parliament of the Republic of Moldova for examination. Meanwhile, on 13 July 2022, the Parliament [approved](#) in its first reading the initiative to amend the Electoral Code. The document supported by [54 MPs](#) aims to improve electoral procedures, remove ambiguities and contradictions between the Electoral Code and other laws, but also implement the recommendations presented in the reports of national and international election monitoring missions. The amendments in this draft law, however, do not concern the internet voting procedure proposed by the CEC.

The CEC concept regarding the Internet voting system was submitted to the Government and Parliament of the Republic of Moldova for examination.

IN BRIEF

On 3 August 2022, the Ministry of Justice [announced the decision](#) of the Arbitration Tribunal of the Stockholm Chamber of Commerce rejecting the claim of Komaksavia Airport Invest Ltd. (the beneficiary of the Chisinau International Airport concession contract) against the Republic of Moldova. Through the request to the Arbitral Tribunal, Komaksavia wanted to oblige the Government to continue the execution of the concession contract after the Public Property Agency, on 8 July 2020, terminated the contract, which was meant to last for 49 years. Komaksavia requested compensation of over EUR 883,700,000 for the expropriation of the chosen investment in connection with the concession contract. The court rejected the request, ruling that Komaksavia Airport Invest Ltd. did not make any investment qualified as such within international law in the assets of the Chisinau International Airport, and awarded the Republic of Moldova approximately EUR 216,000 as compensation for the expenses incurred in connection with the arbitration proceedings.

On 9 August 2022, the prosecutors [completed](#) the criminal investigation regarding ex-president Igor DODON in the case generically named 'Energocom'. At the same time, some of the relatives of the former head of state are being investigated for complicity in illicit enrichment. Thus, Galina DODON, the former leader's mother, [was summoned](#) to the Anticorruption Prosecutor's Office (APO), on August 10, to inform her of the 'result of the expertise ordered on the munitions found at her home', during the searches carried out within the 'Kuliok' case. Previously, [she was summoned](#) to the Anticorruption Prosecutor's Office for 'being charged with the crime of complicity in illicit enrichment. Meanwhile, on 18 August 2022, the Chisinau District Court [fully admitted](#) the prosecutors' [motion](#) and ordered that former President Igor DODON remain under house arrest for another 30 days. According to the judges, the measure is to be applied until 22 September 2022. On August 29, the judges of the Chisinau Court of Appeal [rejected](#) the appeal of Dodon's lawyers.

On 15 August 2022, the lawyers of former President Igor DODON sent [an open letter](#) to the Chief Prosecutor of the (APO), Veronica DRAGALIN, President Maia SANDU, the Delegation of the European Union to the Republic of Moldova and the Council of Europe Office in Chisinau in which they accuse the officers of the National Anticorruption Centre (NAC) and those of the Security and Intelligence Service (SIS) to allegedly admitting leaking confidential information in the criminal case in which the former President is accused of passive corruption, organising, directing and knowingly accepting the financing of the political party by an organised criminal group, treason and illicit enrichment. The letter also refers to 'acts of hooliganism', committed regarding the former President's mother, who was booed at the premises of the NAC audience room. Following the incident, on 11 September 2022, the Prosecutor's Office [stated](#) that it 'expresses its disagreement with the occurrence of the above described incident' and argued that the persons summoned by the Prosecutors should not be subjected to such treatment. The Prosecutor's Office responded that the institution does not have the necessary skills and tools to manage such incidents.

On 15 August 2022, NAC officers detained the former Director of the Civil Aviation Authority (CAA), Eugeniu COȘTEI. [According to the NAC](#), together with two former employees of the CAA and the former Mayor of Chisinau Silvia RADU, they are suspected of money laundering of around EUR 2,000,000. The former officials are

accused of having signed several contracts with similar entities abroad while working for an aeronautical consulting company. The money received would have entered the accounts of the Moldovan company, but also the accounts of offshore companies, which in turn would have distributed the money to the accounts of shell companies to legalise their origin. Laundered funds later ended up on personal cards and were not reported to the State Tax Service, and others were hidden by using offshore banking systems. Some companies involved in the fraudulent transactions would also have been connected to the money laundering investigated in the 'Bank Fraud' and 'Laundromat' cases. In [a statement published](#) on a social network, Silvia RADU pleads 'not guilty'.

On 18 August 2022, the Prosecutor's Office for the Combating of Organised Crime and Special Cases (PCCOCS), [communicated](#) that the High Court of Thonon-les-Bains, France, ordered to seize of a real estate asset in the French city of Sciez, worth more than EUR 4,200,000, which would belong to Vladimir PLAHOTNIUC, the former MP and President of the Democratic Party. The purpose of the applied measure is to guarantee that the immovable property can be further confiscated within the criminal case. Vladimir PLAHOTNIUC is charged in several cases, including the generically named 'Bank Fraud' and '[Metalferos](#)' cases on three counts: creation and management of a criminal organisation, fraud committed on a particularly large scale and money laundering by a criminal organisation.

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This newsletter was funded by a grant from the United States Department of State. The opinions, findings and conclusions stated herein are those of the LRCM and do not necessarily reflect those of the United States Department of State.

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