

## 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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## THE CRIME OF ILLICIT ENRICHMENT IN MOLDOVA, IN SIGHT OF EUROPEAN EXPERTS

On 24 October 2022, the European Commission for Democracy through Law of the Council of Europe (Venice Commission) and the Office for Democratic Institutions and Human Rights (ODIHR), issued [an opinion](#) on the crime of illicit enrichment. The opinion comes as the Constitutional Court (CCM) was notified by former state officials who are currently under investigation for committing this crime (see [LRCM Newsletter no. 44](#)). The former head of the Security and Intelligence Service, [Vasile BOTNARI](#), the former Deputy General Prosecutor, [Ruslan POPOV](#), but also the former director of the Protection and State Guard Service, [Anatolie GOLEA](#), claim that the crime of illicit enrichment would go against the Constitution. They argue that the way the law is currently worded violates the principle of the presumption of innocence, the principle of legality, but also the principle of *ne bis in idem*, a legal principle that states that once a person has been definitively convicted or acquitted of a crime, it cannot be tried again for committing the same crime.

The Venice Commission and the ODIHR analysed CCM claims through the lens of international standards and those of the European Convention on Human Rights. With regards to the presumption of innocence, the international organisations concluded that it is not a problem if the public official can disprove that the suspected wealth was obtained illegally, or that the assets attributed to them by the prosecutors do not belong to them, or that the value of these assets is lower than that indicated by the prosecutors, or that they could have obtained the property from their legal income. Regarding the legality aspect of the claim, they concluded that the way the crime is currently regulated satisfies the elements of accessibility and predictability, as long as the interpretation of this crime is consistent and following the provisions of the Criminal Procedure Code of the Republic of Moldova. Thus, a person investigated for this crime, alone or legally assisted, understands which acts and omissions would make him criminally liable and understands the limits of such liability. However, as the crime of illicit enrichment was introduced in 2014, no investigations can target wealth acquired before 2014.

Regarding the principle of *ne bis in idem*, the Venice Commission and the ODIHR established that if the authorities had previously issued a decision regarding a similar crime or misconduct, a repeated conviction for illicit enrichment could constitute a new sanction for the same act,

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The Venice Commission – the criminalization of illicit enrichment does not violate the presumption of innocence

which is unacceptable. However, to punish an official for illicit enrichment it is not necessary to convict or suspect them of corruption or other crimes. In this context, the national authorities should clarify, for example, the distinction between the effect of a finding of the National Integrity Authority on unjustified wealth and the crime of illicit enrichment investigated by prosecutors.

Finally, according to the Venice Commission and the ODIHR experts, it is up to the CCM to decide on the interpretation of the Constitution and national legislation. Concerning the crime of illicit enrichment, the CCM should adopt a systemic interpretation.

## WHAT DOES THE VENICE COMMISSION THINK ABOUT THE SCJ REFORM?

One of the main justice reforms announced by the authorities is the reform of the [Supreme Court of Justice \(SCJ\)](#). The authorities propose reducing the number of SCJ judges from 33 to 20, narrowing the powers of the SCJ and vetting the current SCJ judges and possibly new SCJ judges. This reform involves the adoption of a new Law on the SCJ, the modification of procedural codes and the [Pre-vetting Law](#). The external evaluation is to be done by a special commission composed of three national and three international experts. After the reform, the SCJ must become the court to examine appeals regarding the vetting of judges and prosecutors (see details on the [LRCM Blog](#)).

The draft of the new Law on the SCJ and the legislation on the vetting of the SCJ were submitted to the European Commission for Democracy by Law of the Council of Europe (Venice Commission). In its [opinion](#) issued on 21 October 2022, the Venice Commission adopted that it does not oppose the reform but presented a few recommendations. It reiterated that the vetting of judges is an extraordinary procedure and safeguards are to be introduced so it is applied only once.

The Venice Commission recommended that the final decision on the vetting is made by the Superior Council of the Magistracy (SCM) and that the committee that evaluates the candidates' issues to emit reports, which are then examined by the SCM. The SCM, with a simple majority vote, will adopt the decisions. If it does not accept the proposal from the report, the SCM will recommend that the committee re-evaluates the candidate, but only once.

To ensure the impartiality of the appeal, the Venice Commission recommended that the decisions of the SCM regarding the vetting of the SCJ judges be examined by a panel of judges that does not include current SCJ judges. The appeals will be examined by three judges of the SCJ who will be appointed after they have been vetted themselves. They will be selected quickly after the laws are entered into force.

The Venice Commission considered it more appropriate that there should be seven SCJ judges who come from outside the judicial system (law professors,

The draft law was modified following the recommendations of the Venice Commission, and the national authorities want its adoption by the end of this year.

prosecutors, or lawyers) and that 13 judges of the SCJ should be career judges, promoted from hierarchically lower courts. The adjusted version of the project stipulates that neither of these two categories can have less than 9 and more than 11 representatives. The Ministry of Justice did not accept the proposal given the experience of Albania, where very few judges of the SCJ passed the vetting and very few career judges accepted the risk of being vetted to run for the SCJ. As a result, the SCJ in Albania was blocked for several years. The authorities hope that the greater number of new judges of the SCJ coming from academia, the prosecutor's office or the legal profession will reduce the risk of the SCJ being blocked.

The project initially stipulated that if more than 11 current judges of the SCJ pass the vetting, the extra judges should be randomly transferred to other courts. The Venice Commission mentioned that, if many current judges of the SCJ pass the vetting, and after hiring new judges from prosecutors, academia and lawyers, there will be more than 20 SCJ judges, the current judges of the SCJ should not be transferred to other courts except with their consent. The Ministry of Justice accepted this proposal.

According to the project, SCJ judges who did not pass the evaluation will lose the severance allowance from the system (half of the official salary for each year worked as a judge), the special pension and will be banned for 10 years from working in the legal field and public service, including as a lawyer, notary, or bailiff. The Venice Commission found the 10-year ban too harsh, even though in Albania's case the lifetime ban [was not considered excessive](#) by the European Court of Human Rights. As a result of that recommendation, the ban was reduced to seven years. Also, the draft law was completed with the provision that the ban also applies to candidates from outside the judicial system applying to become judges of the SCJ but who will not pass the vetting.

The Venice Commission does not agree with maintaining in the legislation the appeal in the interest of the law – a remedy currently used by the SCJ to standardise the judicial practices in criminal offences. In the case of divergent judicial practice, the SCJ can adopt binding decisions explaining how to interpret the law. However, this explanation does not have a retroactive effect. The draft law proposes to extend the appeal given to all types of court proceedings. The Venice Commission considers that this provision violates the independence of judges. The Ministry of Justice did not exclude the provision from the draft law, considering that in all its existence it has not been abused by the SCJ and because they wish to give the SCJ leverage to standardise the judicial practice in the types of cases that do not reach the SCJ.

The national authorities will still request an opinion from the Venice Commission on the adjusted draft law. This opinion will be adopted at the next meeting of the Venice Commission, which will take place on 15-16 December 2022, as it is planned to adopt the package of laws by the end of this year.

## VENICE COMMISSION AND ODIHR 'GREENLIT' THE NEW ELECTORAL CODE

On 28 July 2022, the Parliament, through a PAS MPs vote, adopted in the first reading the [draft of the new Electoral Code](#). The draft laws were developed by the Central Electoral Commission (CEC) with the support of civil society organisations. The document largely preserves the structure of the [current Electoral Code](#) but aims to improve the procedures, the mandate and composition of electoral bodies, how the electoral campaign is organised, the regulation and supervision of the financing of electoral campaigns, the right to vote, including voting abroad and excluded a few clashes with other laws (see [LRCM Newsletter no. 48](#)).

At the same time, the Parliament requested the approval of the draft laws by the Office for Democratic Institutions and Human Rights (ODIHR) and the European Commission for Democracy through Law of the Council of Europe (Venice Commission). On 24 October 2022, the international institutions published [their opinion](#), which is mostly positive but includes suggestions to improve the project.

The Venice Commission and the ODIHR welcomed the introduction of the ban on changing the electoral system and the way constituencies are formed less than a year before the national elections; offering voters the right to sign in support of several independent candidates and/or initiative groups, which would ensure greater plurality in the electoral process; the inclusion of the judicial system in the process of appointing CEC members, by giving the Superior Council of Magistracy the right to appoint two members; establishing that all CEC members are to be permanently employed. Likewise, the ban on the organisation of voter transport on election day was welcomed, to prevent voting in an influenced way, and the removal of the restriction on the use of national symbols and historical figures of the Republic of Moldova, as well as the participation of foreign citizens in the campaign electoral.

The provisions aimed to significantly increase the number of women in office were not changed. Candidate lists for parliamentary and local elections must include at least 40% candidates of each gender, i.e., a minimum of four candidates of each gender for every ten seats. Other high-ranking government officials, deputy heads of central public authorities and secretaries of local councils must now also suspend their activity while they are running for office. These restrictions aim to avoid potential conflicts of interest and undue advantages in the electoral campaign.

The recommendations also provide for the clear establishment of the criteria that would justify holding the elections during two voting days; eliminating vague reasons for dismissing CEC members; removing the CEC's attributions to examine complaints about alleged false information in the print and online media, including defining the notion of false information and the mechanism for examining it; the need to establish exhaustive circumstances for the

The draft of the new Electoral Code was positively approved by the Venice Commission and the ODIHR, but the Parliament still has room to improve it.

elimination of a political party and the review of the reasons for cancelling the registration of electoral candidates, because these represent extremely serious measures and must be applied as a last resort.

The Parliament informed that before the final reading it will organize wide public debates with the participation of all interested parties. The Venice Commission and the ODIHR reiterated the need for the final adoption of the draft law by broad consensus, including the involvement of the parliamentary opposition.

## THE SANCTIONS ANNOUNCED BY THE USA AGAINST VLADIMIR PLAHOTNIUC AND ILAN ŞOR AND THEIR IMPACT

On 26 October 2022, the Office of Foreign Assets Control (OFAC) of the Treasury Department of the United States of America (USA) **imposed** sanctions against nine individuals and 12 entities involved in acts of corruption, which caused serious damage to the Republic of Moldova. Among the persons sanctioned are the former leader of the Democratic Party of Moldova, Vladimir PLAHOTNIUC, and the MP and president of the 'ŞOR' Party, Ilan ŞOR. The 'ŞOR' Party, Ilan ŞOR's wife and other Russian citizens were also included in the list of sanctions.

In 2012, the US Congress passed the **Magnitsky Act**, which allows US authorities to globally sanction individuals or entities responsible for acts of corruption and human rights violations that have reached a scale and gravity that endangers the stability of international political and economic systems. Thus, by order of the OFAC, Vladimir PLAHOTNIUC was sanctioned for capturing and corrupting the judicial, political, and economic institutions of the Republic of Moldova.

Ilan ŞOR, the 'ŞOR' Party and other Russian citizens were sanctioned for the creation of a pro-Russian political alliance whose aim was to control the Parliament, to adopt legislative acts in the interest of the Russian Federation, but also to create political disturbances in the Republic of Moldova. He is also the beneficiary of a large-scale money laundering scheme, generically called the 'Billion Theft case' (see [LRCM Newsletter no. 47](#)).

The sanctions imposed on Vladimir PLAHOTNIUC, Ilan ŞOR and other persons and entities identified by the OFAC presuppose that any assets and interests owned by them or controlled through interlocutors in the US are frozen and must be reported to the OFAC. Banks, including those in the Republic of Moldova, that deal in US dollars or with the US, will close their accounts and report them to the US Treasury Department. Entities owned directly or indirectly, individually, or jointly, in a proportion of at least 50%, by one or more sanctioned persons are also blocked. Likewise, any natural or legal person who engages in certain transactions or activities with sanctioned persons and entities immediately falls under US sanctions. The individuals included in the OFAC sanctions list are subject to being

US sanctions are another step further in the fight against impunity for corruption

Lately, the protests are getting longer and more intense, while the expenses related to the organised transport of the protesters remain undeclared.

wanted worldwide. Additionally, the individuals concerned are no longer eligible to enter the US. Vladimir PLAHOTNIUC [has already endured](#) similar travel restrictions in 2020.

On 31 October 2022, the Commission for Exceptional Situations of the Republic of Moldova (CES) [decided](#) to mirror OFAC sanctions and applied increased precautionary measures regarding the transactions and activities of Vladimir PLAHOTNIUC, Ilan ŞOR and other persons and entities sanctioned by OFAC, as well as persons suspected of being associated with them. Additionally, the CES provided for the Security and Intelligence Service, The Office for Prevention and Fight against Money Laundering, the National Bank of Moldova, and other public authorities to draw up and update the list of targeted persons and entities. The CES motivated this decision as necessary to ensure the security and financial stability of the Republic of Moldova.

## PAID PROTESTS AND ATTEMPTED RIOTS IN THE CENTRE OF THE CAPITAL

A series of [organised protests by the 'ŞOR' Party](#) are taking place in Chisinau since 18 September 2022, with tents set up in front of the Parliament. Participants are brought in an organised manner from several regions of the country. The political formation led by the [criminally investigated MP](#), in the bank fraud case, Ilan ŞOR (see [LRCM Newsletter no. 40](#)), requests the resignation of the country's president and the current government.

Two criminal cases were initiated concerning these protests. The first one refers to the alleged acts of illegal financing of the 'ŞOR' Party. According to the prosecutor's office, by [20 October 2022](#), 55 searches were carried out, 24 people were detained, and approximately 3.5 million MDL were seized. Similar amounts have been found previously, which, according to the Prosecutor's Office, would represent the weekly expenses for the financing of the party, in particular, to cover the expenses of transportation and [organised participation](#) of people in protests. [On 24 October 2022](#), a preventive arrest was applied to five people accused in the case, with 17 people being placed under house arrest. Later, on [2 November 2022](#), the searches continued at the party headquarters, where a total amount of 321,700 MDL was found and seized.

The second criminal case concerns [the preparation](#) of mass disorder. [On 4 November 2022](#), eight people from several localities in the country were named as suspects in this case. According to the Prosecutor's Office, their role within the organised criminal group was to recruit people to destabilise the protests. Following the searches, 380,000 MDL were seized from them.

On 25 October 2022, non-governmental media organizations issued a [public appeal](#) condemning the illegal behaviour of several participants in the 23 October 2022 protest, where at least three journalists were physically and verbally assaulted. The vice-president of the 'ŞOR' Party, Marina TAUBER,

also participated in this demonstration, placed earlier on 18 October 2022 under judicial control (see [LRCM Newsletter no. 47](#)). On 25 October 2022, the Chisinau Court of Appeal cancelled the preventive measure of judicial control and placed her under a 30-day house arrest.

On 9 November 2022, the Government approved the referral to the Constitutional Court to verify the constitutionality of the 'ŞOR' Party, submitted by the Minister of Justice, Sergiu LITVINENCO. He motivated this decision by the fact that the formation acts against the sovereignty and independence of the country and continues to violate national legislation.

## | IN BRIEF

**On 22 September 2022**, the former interim president of the Supreme Court of Justice, Tamara CHIŞCA-DONEVA, suspected of illicit enrichment was cleared as the term of keeping her as a suspect expired. However, the criminal investigation continues as other procedural actions are being ordered that have not been yet completed. Tamara CHIŞCA-DONEVA is suspected to have obtained a substantial increase in her and her family members' assets, which could not be reasonably justified compared to earned income while working as a judge and holding managerial positions between 2014 and 2021.

**On 7 October 2022**, anti-corruption prosecutors searched the former head of the National Anti-Corruption Centre, Ilie BOTNARI, featured in a case of illicit enrichment ([art. 330/2 para. \(1\) of the Criminal Code](#)). The searches were carried out at his residence, at the homes of other third parties and at the premises of an affiliated company. According to the Prosecutor's Office, starting with April 2022 several criminal prosecution actions and special investigative measures were carried out featuring him. The court banned him from leaving town for the next 60 days.

**On 10 October 2022**, LRCM submitted to the Ministry of Justice a legal opinion on the draft law to amend the Criminal Code and Criminal Procedure Code. LRCM's opinion was presented in the context of the initiative to establish dissuasive and effective sanctions in corruption cases, as well as the simplification of the procedures provided by the CPP. LRCM proposed, among other previously suggested measures, to tighten sanctions for the disclosure of the secret of the criminal investigation, to make the accused, the defendant and the convicted criminally liable for false statements, and to clarify the definition of contravention insult and the repeal of contravention defamation.

**On 17 October 2022**, President Maia SANDU reconfirmed the position of 14 judges, whose initial five-year mandate had expired by 1 April 2022. Another 11 judges were rejected, citing unprofessionalism or lack of integrity. In June 2022, the President refused to reconfirm another 13 judges (see [LRCM Newsletter no. 46](#)). Through the constitutional amendments that entered into force on 1 April 2022, the reconfirmation of judges after the first five years of

their mandate was excluded, and judges with a mandate valid on 1 April 2022 are considered appointed until retirement.

**On 20 October 2022**, LRCM organized a public lecture for students and young professionals on '[Applying arrest in the Republic of Moldova](#)'. Arrests are applied excessively in the Republic of Moldova, which is a risk for the effective observance of human rights in a criminal justice system. The lecture was designed to provide participants with a better understanding of the theory and conditions of arrest by presenting practical examples. Eugeniu BEȘELEA, judge at the Chisinau District Court and Vladislav GRIBINCEA, President of LRCM and lawyer specialising in representation at the European Court of Human Rights were invited to speak.

**On 24 October 2022**, the European Commission for Democracy through Law of the Council of Europe (Venice Commission) published [the amicus curiae opinion](#) for the Constitutional Court of the Republic of Moldova regarding the clarity of the provisions related to countering extremist activities. According to the Venice Commission, [the introduced amendments](#) in the national legislation are in line with the legal standards in the matter of freedom of expression, considering that many cases of the use of the symbols used in the war in Ukraine that support the aggression, justify it, and glorify it have been discovered in the Republic of Moldova. At the same time, the Venice Commission considers that additional legal clarifications are necessary, such as specifying the category of symbols 'created by stylising' other prohibited symbols, clarifying the terms 'propaganda' or 'glorification' and the double system of sanctioning of the use of prohibited symbols, described on the one hand in the Criminal Code and, on the other hand, in the Contravention Code and [the special law](#).



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