

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 PRE-VETTING COMMISSION FINISHED INTERVIEWING THE CANDIDATES. WHAT'S NEXT?

The Pre-vetting Commission recently [announced](#) that they finished evaluating all judges running for the Superior Council of Magistracy (SCM). More details can be found in [LRCM Newsletter no. 52](#). Ultimately, only five judges out of the 28 running passed the vetting. All the candidates who were positively vetted, [Livia MITROFAN](#), [Maria FRUNZE](#), [Ioana CHIRONET](#), [Sergiu CARAMAN](#) and [Vasile ŞCHIOPU](#) are judges at district courts.

According to the most recent amendments to the [Law on the SCM](#), the new Council is to be comprised of six career judges, who proportionally represent the judiciary: four judges from the district courts, one judge from the Courts of Appeal and one from the Supreme Court of Justice (SCJ). This would mean that the SCM must initiate a new competition for SCM membership among the Courts of Appeal and the SCJ since no candidate from these courts passed the evaluation.

Most of the judges who did not pass the evaluation complained to the SCJ, and at least five judges [Ecaterina BUZU](#), [Sergiu OSOIANU](#), [Stratan VITALIE](#), [Vladislav HOLBAN](#), [Iurie BEJENARU](#) also filed complaints with the Constitutional Court (CC), citing the alleged unconstitutionality of some of the provisions of the Pre-vetting law. On 14 February 2023, the CC partially admitted the judges' complaints, establishing as unconstitutional a provision of the Pre-vetting law, which says that it is the competence of the SCJ to annul the decisions of the Evaluation Board. [According to the CC](#), the SCJ will be able to annul the decisions of not passing the pre-vetting, if (a) essential procedural errors were admitted, and (b) if it finds circumstances that can lead to the passing of the evaluation.

In only one case, that of the SCJ judge, Anatolie ȚURCAN, the appeal to the SCJ has already been rejected. According to the [SCJ decision](#), no legal grounds were found in Țurcan's appeal that would lead to the annulment of the decision of the Pre-vetting Commission. The appeals submitted to the SCJ and CC do not, however, prevent the General Assembly of Judges from convening, to which the judges who passed the evaluation would be elected. According to the [Pre-vetting Law](#), within seven days of issuing the decision regarding the last candidate running

LEGAL RESOURCES CENTRE FROM MOLDOVA



33, A. Şciusev st.,
MD-2001, Chişinău,
Republic of Moldova



+373 22 84 36 01



+373 22 84 36 02



contact@crjm.org



www.crjm.org



crjm.org



crjmoldiva



Only five judges of the 28 running passed the vetting. The failure rate is very high (about 82%).

for SCM, the SCM is to convene the General Assembly and elect its members. On 14 February 2023, the SCM convened and decided to go hold the General Assembly of Judges on 17 March 2023.

The candidates who failed the evaluation will be able to carry on working in the judiciary, but they cannot run for the SCM.

SCANDALOUS RUNNING FOR KEY POSITIONS WITHIN THE PROSECUTOR'S OFFICE

In January 2023, the Superior Council of Prosecutors (SCP) made several decisions regarding some of its key positions. The prosecutors were planning to adopt several decisions, but SCP meetings did not take place due to several non-prosecutor members not showing up, therefore SCP meetings not having a quorum.

On January 15, the SCP refused to extend Sergiu RUSSU's interim appointment as head of the Prosecutor's Office for Combating Organized Crime and Special Cases (PCCOCS). SCP did not publish the reasons why the interim was not extended. However, on 16 December 2022, [Russu won the competition](#) for the head of the Department for preventing and combating human trafficking within the Prosecutor's General Office. In his stead, Victor FURTUNĂ was appointed acting head Prosecutor of PCCOCS. Furtună was Sergiu RUSSU's deputy, a position also held in an interim capacity. Earlier, [Victor FURTUNĂ](#) started the criminal investigation against Prosecutor General Alexandr STOIANOGLO.

Sergiu RUSSU is running for the head of PCCOCS, together with former prosecutors Eugen RURAC and Andrei MAȚCO. The competition was announced on 10 November 2022. According to the law, candidates running for head of PCCOCS must be pre-selected by a special committee composed of five members. Afterwards, they are interviewed by the SCP, which can propose that the Prosecutor General appoints the PCCOCS head or rejects all candidates.

On January 16, [SCP approved the composition of the pre-selection committee](#), which also included Iulian GROZA, the Executive Director of the Institute for European Policies and Reforms. The commission had 10 working days to evaluate the three candidates. The first meeting of the committee took place on January 23. On January 26, [Iulian GROZA publicly announced](#) about him being pressured to influence the outcome of the competition. He requested to cancel the competition and expressed his willingness to be interviewed by the SCP. On January 27, Eduard RURAC [allegedly filed a criminal complaint](#) against Iulian GROZA because, in the summer of 2022, the organization led by Groza would have illegally accessed the data on the real estate owned by Rurac.

On January 16, at the proposal of the acting Prosecutor General, Ion MUNTEANU, the SCP approved the appointment of the Anticorruption Prosecutor, [Aliona Nesterov](#), and the PCCOCS head prosecutor, [Igor DEMCIUCIN](#), as his deputies. Consequently, Eduard BULAT, the former deputy of the Prosecutor General, was left without a position.

The president of the SCM is accused of exerting pressure to influence the competition for the leadership of the PCCOCS

On January 23, Eduard BULAT also requested the competition for the head of the PCCOCS be cancelled and him appointed for the position without organising a competition. According to him, the former deputies of the General Prosecutor can be appointed to any vacant position in the prosecutor's office, including the chief prosecutor. On January 31, the Minister of Justice also requested that the competition be cancelled, due to Groza's statements. [Both requests were rejected by the SCP](#). Eugen RURAC requested that the SCP annulled the decision regarding the establishment of the pre-selection committee because Iulian GROZA would not meet the legal conditions to be part of it. Rurac's request was rejected by the SCP.

At the SCP meeting on January 31, Iulian Groza communicated that he knows of a criminal case launched against him, and Dorel MUSTEA Ț, the acting president of the Superior Council of the Magistracy, and Eugen RURAC are allegedly involved in this. When Iulian GROZA entered the room, Dorel MUSTEA Ț left the meeting. SCP decided to report to the Prosecutor's Office Iulian GROZA's allegations.

[On February 1](#), the next meeting of the preselection committee took place. Eugen RURAC announced his withdrawal from the competition, [and the members of the committee](#) announced that they were resigning too. Now, a new committee must be created to continue with the competition.

In January, at least four SCP meetings did not take place since there was no quorum, as the majority of non-prosecutor members did not show up. It was planned [to appoint](#) about 10 chief prosecutors, as well as deputies of the chief prosecutor of the Chisinau municipality. Their reason for the absence was not announced, but an SCP member from civil society requested that the candidates are evaluated additionally. On January 27, the five prosecutor members of the SCP published [a response](#), in which they criticized SCP members for missing the meetings and the unlawful intention to evaluate the candidates.

THE NEW STATE TAX LAW – OBJECT OF CRITICISM AND DEBATE

On 29 December 2022, the Parliament voted in its first reading on the [state tax draft law](#), two days after its registration. According to its authors, the purpose of the draft law is 'to update state taxes to the current level of the economy, but also to cover the minimum that public institutions offer'. The draft law comes to discourage abusive actions and aims to improve the quality of justice that the judiciary brings by reducing the workload of the courts.

The draft law was developed by [a working group](#), created by the Parliament, with the involvement of representatives of the Ministry of Finance, the Ministry of Justice, the Bar Association, the Superior Council of Magistracy, and the judiciary. The main new proposals are: introducing stamp duty of MDL 200 for all types of motions and appeals, not subject to exemption, postponement or phasing; eliminating ceilings on the size of the state tax in patrimony cases; increasing the current amounts of the state tax; introducing new fees for submitting motion to call witnesses, specialists or experts, to adjourn a meeting,

Jurists' opinion: stamp duty and fees for the exercise of procedural rights significantly restrict free access to justice and affect vulnerable groups especially.

to recuse a judge, to transfer cases to a different court/to change venue, to extend a deadline, to forfeit the rights when a party fails to fulfil a procedural act; to compel, to speed up a trial or to request the reasoning of a judgment or decision.

The legal community met the draft law with hostility and criticised it. On 6 January 2023, the Office of the Ombudsman (OAP) published [his opinion](#) expressing his concerns from the perspective of human rights protection. The OAP noted that the imposition of stamp duty and fees for the exercise of procedural rights will increase the litigants' financial burden and limit free access to justice. The changes will essentially hit vulnerable people, who by default have limited access to protection mechanisms against abuse.

The President of the Bar Association [criticized the inclusion](#) of stamp duty and fees for the exercise of procedural rights, particularly the adjournment fee. According to him, these taxes would be contrary to the rule of law. At the same time, he criticized the unjustifiably fast voting procedure of the draft law, without public consultation. He requested the establishment of a moratorium on the final adoption of the draft law and its public discussion.

The president of the Legal Committee for appointments and immunities, one of the authors of the draft law, [mentioned that establishing](#) the fee for requesting the postponement of the court session is aimed at avoiding unjustified procrastination of the court process, and the parties are exempted from paying this fee in case of illness. At the same time, she maintains, the stamp duty is not excessive, and it will put an end to the abusive summonses.

On 30 January 2023, this subject was [debated in several public hearings](#), with the participation of judges, justice professionals, and representatives of the private sector and civil society. The authors of the draft law stated that they will ensure to adjust it, following the submitted proposals. LRCM developed [a legal opinion](#) and submitted conceptual proposals to improve the draft law.

THE REPUBLIC OF MOLDOVA, ONE OF THE TOP COUNTRIES WITH THE MOST APPLICATIONS AND CONVICTIONS AT THE ECtHR

On 27 January 2023, the ECtHR presented the [analytical note](#) on the Republic of Moldova to the European Court of Human Rights (ECtHR) for 2022. The ECtHR's analysis was carried out based [on the activity report of the ECtHR](#) for that year and [ECtHR jurisprudence](#) in Moldovan cases.

In 2022, the ECtHR received 642 applications directed against the Republic of Moldova, which is slightly higher than the number of applications submitted in 2021 (630 applications). In this regard, the Republic of Moldova is the top 4th country of the 46 member countries of the Council of Europe. Relative to the country's population, the number of requests submitted against Moldova is very

In 2022, Moldovans addressed the ECtHR five times more often than the European average. Most frequently, Moldova was condemned by the ECtHR for the defective investigation of ill-treatment and the lack of a fair trial.

high. In 2022, Moldovans applied to the ECtHR five times more often than the European average.

As of 31 December 2022, 1,020 Moldovan applications were waiting to be examined. About 97% of these have a high chance of success. This number is almost equal to the total number of requests based on which Moldova was convicted in the 25 years since it could be sued at the ECtHR. Regarding the total number of pending applications, Moldova is the top 12th country within the Council of Europe.

Before 31 December 2022, the ECtHR issued 575 judgments in Moldovan cases, of which 34 were in 2022. In most of the judgments issued (86%), the ECtHR found at least one violation of the European Convention on Human Rights. In this sense, Moldova is the top 11th country of the 46 member countries of the Council of Europe, ahead of Great Britain, Germany, Portugal, Spain, and the Netherlands.

From 1997 to 31 December 2022, the most frequent types of violations found by the ECtHR are failure to enforce judgments, ill-treatment, improper investigation of ill-treatment and deaths, detention in poor conditions, illegal detention, and irregular annulment of final court decisions.

Based on all judgments and decisions issued before 31 December 2022, the Government of the Republic of Moldova was obliged to pay EUR 22,448,198, of which EUR 544,448 in 2022.

CAN THE PROPERTY OF FORMER MP VLADIMIR VITIUC BE CONFISCATED?

On 6 January 2022, the National Integrity Authority (NIA) [issued its findings](#) regarding the defecting former Vladimir VITIUC because he failed to justify the origin of MDL 2,947,659 (MDL 2,268,248 between 2014 and 2016; and MDL 679,411 between 2016 and 2020).

On 7 February 2022, the former MP requested the Chisinau Court of Appeal (CA Chisinau) to annul NIA's act. Later, on 22 February 2022, in the same action submitted by Vitiuc, NIA filed a request to confiscate the unjustifiably held MDL 679,411. Art. 34 para. (6) of the NIA Law, [expressly provides](#) for the possibility of the NIA to request the confiscation of unjustified assets even if the acts are contested by the subjects concerned.

On 26 September 2022, the CA Chisinau declared NIA's request inadmissible, and on 28 December 2022, the Supreme Court of Justice (SCJ) [rejected](#) NIA's appeal and upheld the decision of the Chisinau CA. According to the decision of the SCJ, the Administrative Code does not allow the specialised panel for the examination of actions in administrative litigation within the CA Chisinau to examine the confiscation of unjustified wealth for the benefit of the state, which must be examined in a separate civil procedure. The SCJ's reasoning does not mean that unjustified wealth cannot be confiscated, only that it will require a

The different interpretation of the courts and NIA of the provisions regarding the procedure for the confiscation of unjustified wealth for the benefit of the state continues today, which delays this process.

repeated and longer examination. This practice of the SCJ delays the possibility of NIA confiscating unjustified assets (see [LRCM Newsletter no. 48](#)).

On 6 January 2023, NIA [specified](#) that after the act issued regarding Vladimir VITIUC will become definitive and irrevocable, they will submit a new request for confiscation of unjustified wealth.

IN BRIEF

On 4 January 2023, the court [acquitted](#) the former vice-governor of the National Bank of Moldova (BNM), Emma TĂBÎRȚĂ, and the former heads of departments of the BNM, Matei DOHOTARU, Ruslan GRATE and Vladimir ȚURCAN, on the grounds of lack of 'the existence of the crime of negligence in service'. The persons in question were accused of facilitating the laundering of USD 22 billion from the Russian Federation through BC Moldinconbank in the generically named 'Laundromat' case between 2010 and 2014. On 24 January 2023, the Anticorruption Prosecutor's Office [stated](#) that it will not appeal the court's decision, considering that it is not illegal or unfounded.

On 10 January 2023, the Paris Court of Appeal (France) [annulled the decision](#) of the ad hoc arbitral tribunal in Paris, issued in 2013, regarding the collection of approximately USD 30 million from the account of the Republic of Moldova for the benefit of LLC Energoalliance, rightful successor – SPC Stileks (Ukraine). The case refers to the alleged non-payment by Î.S. "Moldtranselectro" (Moldova) of the electricity supplied between 1999 and 2000. According to the decision of the court of appeal, in addition to the fact that our state will not pay the said amount, the losing company will pay more than EUR 250,000 in legal expenses.

On 12 January 2023, the Anticorruption Prosecutor [successfully blocked](#) over MDL 268 million (about EUR 13 million) from being transferred to the Criminal Assets Recovery Agency. The amount results from the sale-purchase transaction of 63.89% of BC "Moldindconbank" SA shares and would belong, including through intermediaries, to the controversial businessman Veaceslav PLATON. In [a response](#) shared on social media, Platon 'thanked the authorities' for taking care of his money and keeping it safe. If Platon's guilt in the generically named 'Laundromat' case is proven, the money would end up in the state budget.

On 17 January 2023, the lawyers of the fugitive MP Ilan ȘOR announced that their client had contracted a [UK law firm](#), BCL "Solicitors" LLP, to represent him in Moldovan courts. The foreign lawyers requested a short postponement of the proceedings to analyse the case files to prepare their line of defence. In the meantime, the national authorities [included](#) Ilan ȘOR's Moldovan lawyers in the list of persons suspected of being associated with natural and legal persons subject to the sanctions of the Office for the Control of Foreign Assets in the United States of America (see [LRCM Newsletter no. 50](#)). The Bar Association [condemned](#) the authorities' decision and demands that they stop interfering in the exercise of the legal profession and stop associating lawyers with their clients as a result of representing them.

On 25 January 2023, the Anticorruption Prosecutor's Office (PA) **concluded** the criminal investigation regarding the former democratic MP, Vladimir ANDRONACHI and his accomplice, in the criminal case, generically named 'Banking Fraud Case'. He **is charged** with fraud and money laundering on a particularly large scale for the benefit of a criminal organisation. As a result of these actions, the Republic of Moldova was damaged by over MDL 26 million. Vladimir ANDRONACHI is also targeted in the 'Metalferos' case. He **was expelled** in November 2022 by the Ukrainian authorities and **placed** in pre-trial detention. On 10 January 2023, the judges of the Chisinau Court of Appeal **rejected** the lawyers' appeal regarding his release, the pre-trial detention being extended to February 2023.

LRCM'S TEAM

Ilie CHIRTOACĂ
Executive Director

Aurelia CELAC
Accounting & Financial Manager

Daniel GOINIC
Program Director

Olga CORTAC
Director of Administrative Service

Vladislav GRIBINCEA
Program Director

Alina FRIMU
Assistant of Financial Administrative Service

Oxana BRIGHIDIN
Legal Officer

Dumitru JOMIR
Communication Coordinator

Victoria MEREUȚĂ
Legal Officer


Daniel STANCIU
Communication Specialist



Andrei NASU
Legal Officer







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LEGAL RESOURCES CENTRE FROM MOLDOVA

 33, A. Șciusev st.,
MD-2001, Chișinău,
Republic of Moldova

 +373 22 84 36 01
 +373 22 84 36 02

 contact@crjm.org
 www.crjm.org

 crjm.org
 [crjmolдова](https://twitter.com/crjmolдова)

