

NEWSLETTER

Contents

The Republic of Moldova has a new (old) Government – what priorities did it set for the near future?

Resignations at the Supreme Court of Justice – sabotage, protest, or mere coincidence?

The Republic of Moldova was found guilty by the ECtHR after a disciplinary sanction against a judge

The Criminal Procedure Code will undergo substantial changes. What are those?

In BRIEF

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 REPUBLIC OF MOLDOVA HAS A NEW (OLD) GOVERNMENT – WHAT PRIORITIES DID IT SET FOR THE NEAR FUTURE?

On 10 February 2023, after 18 months in power, the Government led by Natalia Gavrilița resigned. The real reasons behind the resignation have not been announced. [In her resignation speech](#), the Prime Minister briefly mentioned “the lack of support and trust at the national level, a high as the one from the development partners”. On the same day, President Maia Sandu nominated [Dorin Recean](#) as Prime Minister, who served as a presidential advisor in the field of national defence and security and secretary of the Supreme Security Council.

On 16 February 2023, Dorin Recean’s Government [sworn in](#) with the vote of 62 MPs. Its program ‘[Prosperous, safe, and European Moldova](#)’ includes three major priorities: opening accession negotiations to the European Union, ensuring order in public institutions, economic development, and ensuring peace and stability in the Republic of Moldova.

The new cabinet will have [15 ministries](#). Most of the ministers [remained the same](#), except for the Minister of Justice, the Minister of Finance, and the Minister of Infrastructure and Regional Development. The changes also included introducing digitalization as a new component of the Ministry of Economy and establishing the Ministry of Energy.

On 21 February 2023, the National Platform of the Eastern Partnership Civil Society Forum submitted a [series of priorities](#) to the new Government. Concerning justice and anti-corruption, the platform recommended creating an internal legal mechanism to verify the integrity of candidates for the positions of judge and prosecutor at all career stages – starting with being admitted to the National Institute of Justice, entering the profession, career advancement and transferring to another position, and ending with applying for management positions. Additionally, it is necessary to speed up the adoption of the new National Integrity and Anticorruption Strategy and its Action Plan, etc. Concerning human rights protection, it is necessary to amend the criminal investigation procedures to effectively investigate torture cases and hold the perpetrators accountable; to introduce a system of identification of masked persons in case of forceful interventions; to introduce a public statistical record of criminal investigation measures, including arrests, interceptions, etc.; and to develop a strategy to prevent and combat hate speech.

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Opening accession negotiations to the European Union, ensuring order in state institutions, economic development and ensuring peace in the Republic of Moldova – these are some of the priorities of the new Government.

On 28 February 2023, the new Government approved the [National Development Plan for the years 2023-2025](#) which proposes to improve living conditions, create a solid and inclusive social protection system, ensure inclusive and transparent governance, as well as building a fair, incorruptible, and efficient judicial system. Likewise, the [Government's Action Plan for 2023](#) was approved. A wide range of conceptual priorities submitted by civil society were included in the approved policy papers. In total, the plan foresees 656 actions, structured in 16 chapters that correspond to the sectoral directions of development. The State Chancellery will monitor the execution of the plan on a monthly basis.

RESIGNATIONS AT THE SUPREME COURT OF JUSTICE – SABOTAGE, PROTEST, OR MERE COINCIDENCE?

On 14 February 2023, the Superior Council of Magistracy (SCM) accepted the honourable [resignation requests](#) of 16 judges from the Supreme Court of Justice (SCJ). Ala Cobăneanu, Svetlana Filincova, Iurie Diaconu, Victor Boico and Victor Burduh are to resign on 1 March 2023; Elena Cobzac is to resign on 13 March 2023; Nadejda Toma, Liliana Catan, Maria Ghervas, Galina Stratulat, Iurie Bejenaru and Ghenadie Plămădeala to resign on 31 March 2023, as well as Victor Micu, Petru Moraru and Luiza Gafton, seconded members of the SCM, to resign on 17 March 2023 and 3 April 2023, respectively. Only judge Nina Vascan is to resign on 17 March 2023 as she reaches the age limit of 65 years. Later, on 23 February 2023, the SCM approved the honourable [resignation requests](#) of four other judges from the SCJ, namely: Dorel Mustață – the interim president of the SCM, Vladimir Timofti – the interim president of the CSJ, and judges Nicolae Craiu and Dumitru Mardari.

The resigning judges did not explain their decisions; however, it might have to do with the Ministry of Justice publishing the [draft of the new law on the SCJ](#), greenlighted by the [Venice Commission](#). The draft law in question is to be adopted this March and involves the evaluation of the ethical, financial integrity, and professionalism of the SCJ judges. According to the draft law, failing the evaluation can cause current judges of the SCJ to lose their right to the single severance allowance (about 12,000 EUR for judges with 15 years in service or more) and the special judge's pension (about 17,000 MDL per month) that they are entitled to, but also to lose the possibility to transition into other legal professions, such as attorney-at-law, notary, bailiff, authorized administrator, etc.

This massive resignation leaves the SCJ with only five active judges out of the 25 [appointed for service](#), which will considerably affect SCJ's activity. For example, two out of three judges from the board examining the criminal case against the country's former President Igor Dodon were among the resigned. As such, it is unclear how will the case be examined further. Moreover, all judges from the special panel created to examine the appeals submitted against the decisions of the Pre-Vetting Commission, including the substitute

In February 2023, 20 out of 25 judges of the SCJ resigned. Four of the resigned judges are also members of the SCM. The judicial system risks being deadlocked. The bone of contention seems to be the draft of the new law on the SCJ, which involves assessing the integrity of the country's highest court judges.

judge, announced their resignations. Blocking the examination of the appeals could mean blocking the pre-vetting reform for an indefinite period.

On 20 February 2023, the Minister of Justice Veronica Mihailov-Moraru [met](#) with several judges from the SCJ. The minister emphasized, among other things, that the evaluation of judges is a unique exercise that prioritizes incorrupt and honest judges, and the judges who will successfully pass this exercise will benefit from a substantial salary increase. Later, on 21 February 2023, the minister met with members of the SCM, where she [similarly](#) emphasized that it's important to prioritise the supreme public interest.

After the pre-vetting is finalised, about which LRCM wrote in more detail in Newsletters no. [51](#), [52](#) and [53](#), the SCM will [convene](#) on 17 March 2023 the judges' General Assembly, where they are expected to choose some of the future members of the new SCM.

THE REPUBLIC OF MOLDOVA WAS FOUND GUILTY BY THE ECtHR AFTER A DISCIPLINARY SANCTION AGAINST A JUDGE

On 21 February 2023, the European Court of Human Rights (ECtHR) issued its judgment in the [Catană v. Republic of Moldova case](#). The case concerns the disciplinary sanctioning of judge [Angela Catană](#), the current vice-president of the Chisinau District Court, Buiucani headquarters. In 2011 and 2012, following the disciplinary complaints filed by the Prosecutor General, the judge was [severely reprimanded](#) (sanctioned) for allegedly [amnestying](#) a person convicted of aggravated rape and for cancelling criminal prosecution in a case of embezzlement, thus abusing her office as an investigative judge.

Before the European Court, Angela Catană invoked that her right to a fair trial regarding the applied disciplinary sanctions was violated. In particular, the judge decried the lack of guarantees of independence and impartiality of the body empowered to sanction judges, that is, the SCM.

The ECtHR confirmed the fact that the applicant's right to a fair trial was violated when she was disciplinarily sanctioned, emphasizing that the presence of a member of Government within a body empowered to disciplinary sanction judges, even a passive one, is problematic in relation to the requirements of [Art. 6 of the ECtHR](#), especially the disciplinary body is required to be independent and impartial. Equally problematic was the Prosecutor General's presence within this body, especially when disciplinary procedures were initiated by him. The lack of transparency regarding the decision-making process and the role of the Prosecutor General within the SCM, but also the lack of a fair and transparent selection procedure for the lay members of the SCM, demonstrates that the SCM did not meet the requirements of independence and impartiality.

The ECtHR drew attention to the fact that after [amending the Constitution in 2021](#), the composition of the SCM was also changed. Thus, the three ex-officio

ECtHR: the SCM disciplinary board was not independent and impartial when sanctioning judge Catană

members, including the Minister of Justice and the Prosecutor General, are no longer part of the SCM, and its lay members must be selected based on merit, by the vote of the qualified majority of the Parliament and in a transparent manner. The sanctioning of the Republic of Moldova at the ECtHR once again confirms how relevant the amendments to the Constitution were, which excluded ex-officio members from the SCM.

Through this decision, the ECtHR obliged the Republic of Moldova to pay the applicant Angela Catană 3,600 EUR in moral damages and 1,355 EUR to cover representation fees.

THE CRIMINAL PROCEDURE CODE WILL UNDERGO SUBSTANTIAL CHANGES. WHAT ARE THOSE?

On 3 February 2022, the Ministry of Justice, in partnership with LRCM and the Soros Foundation Moldova, [organized](#) a round table to discuss the draft law on the amendment of the Criminal Procedure Code (CrPP). LRCM, together with national experts, proposed several [innovative recommendations](#) to improve the [draft law](#) developed by the Ministry of Justice. The proposals mainly refer to making the criminal investigation more transparent and simplify procedures, strengthening procedural guarantees against possible abuse, as well as restoring rigours that require better reasoning of court decisions.

To make the criminal investigation more transparent and to extend the rights of the defence at the criminal investigation stage, it was proposed that criminal investigation materials should no longer be confidential by default. LRCM experts also proposed that the victim and the defence have access to the criminal prosecution materials and participate in the criminal prosecution measures, thus reducing the risk of abuse.

To eliminate some of the current faulty practices, the draft law presented by the Ministry regulates situations that lead to evidence being stricken and procedural violations that do not entail such effects. LRCM experts also proposed strengthening the guarantees for a fair trial. LRCM recommends that the judge examining the case on merits also examines the admissibility of the evidence. This change will make it easier to resolve complex cases.

The Ministry proposed to simplify the procedure for documenting and examining criminal cases. As digitalization was named a priority of the justice reform and in addition to the draft law provision to allow detainees to testify by teleconference, LRCM experts also proposed that witnesses and other persons also testify by teleconference. Another recommendation was to stop submitting the full case files to court. This will ensure that judges do not form their opinion based on inadmissible evidence not yet excluded from the case file.

The amendments aim to strengthen the procedural guarantees against

The purpose of the discussions on the amendment of the CPP was to identify the best solutions for the protection of human rights in the criminal process.

prosecution abuse by streamlining the appeal and cassation procedure and by introducing the rule according to which the investigating judge must examine all the complaints received until the case file is submitted to the court. LRCM experts also recommended that courts abandon the practice of issuing court dispositions. Court decisions must be issued in full, so it is easier to calculate the appeal period and to increase the quality of the reasoning of court decisions.

Following the discussions between the experts and the representatives of the Ministry of Justice, a consolidated draft law will be drawn up to be publicly consulted and approved by the competent institutions.

I IN BRIEF

On 2 February 2023, the Parliament of the Republic of Moldova voted in its final reading on [the amendments](#) related to the disciplinary liability of judges and regarding the activity of the judicial inspection. The draft law aims to reform judicial inspection, clarify and increase the predictability of disciplinary violations, to simplify the procedure for their examination and contestation of the applied disciplinary sanctions. The draft law also provides for the establishment of a subdivision within the secretariat of the Superior Council of the Magistracy (SCM), which will provide support to inspectors-judges and the Disciplinary Board. However, the draft law does not solve the problem of the lack of functional independence of the judicial inspection from the SCM. The latter can further maintain strong control over the entire mechanism of holding judges liable for their actions.

On 8 February 2023, the Chisinau District Court partially admitted the complaint against the Ministry of Justice and [decided](#) to collect 800,000 MDL for the benefit of the current president of the Constitutional Court, Domnica Manole. In 2016, [a criminal investigation](#) was launched against her for allegedly having adopted [an illegal](#) decision. In 2019, the prosecutor dropped the charges, and the court [acquitted](#) her. The representatives of the Ministry of Justice and the Prosecutor General's Office [stated](#) that the compensation [is rather excessive](#) and that they will appeal the decision at the Chisinau Court of Appeal.

On 16 February 2023, the judges of the Chisinau Court of Appeal [accepted](#) Galina Tufeci's motion, the wife of one of [the seven Turkish teachers](#) illegally alienated from the Republic of Moldova in September 2018. The court thus cancelled the Prosecutor's order on the case issued on 16 January 2020, which withdrew her status as an injured party (for more details, see [LRCM Newsletter no. 19](#) and [LRCM's Public Appeal](#)). The case will be sent to the Chisinau Prosecutor's Office to remedy violations found with regard to Galina Tufeci.

On 23-24 February 2023, the LRCM organised a [workshop](#) on international standards related to Human Rights Defender (HRD) concept. Mainly,

employees of the Office of the [People's advocate \(ombudsman\)](#) and civil society representatives of the [Children's Rights Information and Documentation Centre](#) attended the workshop. The workshop was facilitated by international experts from the [International Commission of Jurists \(ICJ\)](#). The participants actively engaged in practical exercises for identifying, monitoring, reporting, and protecting HRD cases.

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