

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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SHADOW REPORT ON THE IMPLEMENTATION OF
EU ACCESSION COMMITMENTS

On 13 April 2023, the LRCM, IPRE and Expert-Grup, in cooperation with the “Friedrich Ebert” Foundation, published the first shadow report assessing the degree of achievement by the national authorities of the nine commitments for the accession of the Republic of Moldova to the European Union (EU). These were proposed after the Republic of Moldova was nominated, on 23 June 2022, as a candidate country for joining the EU (see details in the [LRCM Newsletter no. 46](#)).

To implement the commitments proposed by the EU, the National Commission for European Integration approved on 4 August 2022 a [Plan outlining 60 actions](#). The shadow report reflects the progress, and backlogs, as well as recommended priorities for each activity observed between 1 July 2022 and 31 March 2023. The findings of the organisations were [preliminarily consulted](#) with the public authorities and civil society.

According to the report, the overall average degree of implementation of commitments is 3.8 points out of 5 possible points. Out of the total of 60 actions, 14 (23.33%) were implemented without deficiencies, 21 (35%) were implemented with certain shortcomings, 23 (38.33%) were initiated and have been in the process of implementation, and 2 (3.33%) were not initiated yet.

Public authorities were the most effective in reforming the management of public finances, evaluated at 4.66 points. Justice reform, the implementation of the recommendations of the Venice Commission, the reform of public administration and the protection of human rights were evaluated at 4 points each, which suggests that the majority of the actions were implemented, but with certain shortcomings. The fight against organized crime was evaluated at 3.85 points, and the fight against corruption – at 3.55 points, that is, the actions were initiated, but not completed. Larger backlogs were recorded in the area of de-oligarchisation, rated at 3.3 points, and cooperation with civil society, rated at 2.8 points.

In the field of justice reform, the said organisations recommended speeding up the extraordinary evaluation of judges and prosecutors, introducing a mechanism for verifying the assets of candidates at the National Institute of Justice, but also for internal verification of the integrity of judges and prosecutors. In the electoral field, it was proposed to effectively implement the new Electoral Code, strengthen the capacities of the Central

LEGAL RESOURCES CENTRE FROM MOLDOVA



The national authorities were more effective in reforming the management of public finances, justice, public administration, and the electoral field, but are delaying the process of de-oligarchisation, cooperation with civil society and eradicating corruption.

Electoral Commission in the matter of controlling the financing of political parties, reduce electoral thresholds, and implement electronic voting. In the field of public administration reform, it was recommended to improve the salary mechanism in the public sector, digitize public services and implement the state program for the delimitation of land in public property, etc.

In July 2023, the findings of the first alternative report will be reviewed and updated to reflect all actions taken, given that the deadline for meeting the nine commitments is June 2023.

CURIOSITIES ABOUT THE GENERAL ASSEMBLY OF JUDGES ON 28 APRIL 2023 (CONTINUED)

On 28 April 2023, the [General Assembly of Judges \(GAJ\)](#) took place, after it was decided to adjourn it earlier on 17 March 2023. The GAJ was deliberative, since over 340 judges of the 401 sitting judges [attended](#) it. The judges discussed electing new members of the Superior Council of Magistracy (SCM) from the judiciary and the [judges' statement](#) regarding the systemic problems in the judiciary, put together by a group of judges elected at the GAJ meeting on 17 March 2023 (see details in the [LRCM Newsletter no. 55](#)).

The Minister of Justice, Veronica Mihailov-Moraru, members of the SCM, international observers and representatives of the Office for Democratic Institutions and Human Rights, the Courts Administration Agency, civil society, and the media were also present. The Minister of Justice delivered welcoming remarks, as did the SCM member from civil society, Ion Guzun, who was however rudely interrupted by the judge of the Supreme Court of Justice (SCJ), [Anatolie Țurcan](#). Later, during the SCM meeting on 2 May 2023, Ion Guzun presented a statement regarding the offensive statements made by Anatolie Țurcan in his address, supported unanimously by the members of the SCM, which was also reported to the Judicial Inspection.

GAJ continued with the dismissal of the President of the GAJ, Anatolie Țurcan, with the vote of 188 judges. [Gheorghe Balan](#) voluntarily retired from the position of GAJ Secretary. [Viorica Puica](#) was elected as President of the GAJ with 208 votes, and [Nelea Budăi](#) as Secretary of the GAJ, with 280 votes respectively. The new President of the General Assembly proposed several subjects, which were voted for by the simple majority of the judges present: excluding the subject of the new Regulation of the SCM and the election of members according to the old regulation, but also establishing the Special Commission for counting of the votes in the following composition: [Lilia Țurcan](#), [Victoria Sanduța](#), [Adrian Cerbu](#), [Ana Panov](#), [Galina Vavrin](#), [Dumitru Racoviță](#). Lilia Țurcan was elected as President of the Special Commission, Ana Panov – as Secretary, and [Svetlana Bucur](#) – as an observer of the vote-counting process.

Victoria Sanduța's proposal to include all the candidates who appealed at the SCJ the Pre-Vetting Commission's non-promotion decisions was not supported by the judges. Judge Sanduța is one of the over 20 judges [rejected](#) by the country's President to re-confirm for office until the age limit. The proposal of SCM member Nina Cernat to

At the General Assembly, four members of the SCM were elected from the judiciary. The SCM can already take decisions regarding the career of judges.

postpone the subject of the judges' statement, that will be sent to them and signed at their choice, was accepted with the majority of votes.

Later, it was decided that each candidate for the position of SCM member would give a speech of maximum 3-5 minutes, after which the judges will proceed with the voting. As a result, 340 judges voted, of which 47 ballots were declared invalid. [Vasile Şchiopu](#) – with 220 votes, [Ioana Chironeţ](#) – 215 votes, [Sergiu Caraman](#) – 185 votes, [Maria Frunze](#) – 158 votes were elected as members of the SCM, and [Livia Mitrofan](#) with 146 votes – was elected as alternate member of the SCM.

On 2 May 2023, the new composition of the SCM met in a plenary session where they [decided](#) upon several issues, including resignation requests, and interviewing the candidates for the temporary transfer of judges to SCJ, a competition announced at [the SCM meeting on 10 April 2023](#). This measure was necessary to unblock the activity of the SCJ, considering the large number of vacated positions in this court.

At the moment, eight of the 12 members – five judges and three civil society representatives – [are sitting](#) in the SCM. The vacant positions are to be filled based on a public competition conducted by the Parliament and the SCM for the election of three other representatives of civil society and two judges from the courts of appeal and the Supreme Court.

PRE-VETTING COMMISSION HEARINGS DIGEST (PART IV) – SCP CANDIDATES

On 21 April 2023, the [Pre-Vetting Commission](#) started evaluating candidates running for a membership position at the Superior Council of Prosecutors (SCP). Prosecutor Vitalie Codreanu was [the first evaluated candidate](#). At the beginning of his interview, prosecutor Codreanu requested that part of it take place behind closed doors. This request was refused by the Commission as it was submitted after the deadline. He was asked about the acquisition and privatisation of a 49 m² apartment in the Chişinău municipality. The prosecutor's family privatised it in 2016 for about 1,000 MDL. Previously, this apartment was declared a vacant inheritance, and the local public authorities were obliged, through a legal action initiated by Vitalie Codreanu, to give him this apartment. According to the Law on the Prosecutor's Office at that time, Vitalie Codreanu was to benefit from a service apartment. Prosecutor Codreanu was also asked about how he obtained another apartment at a preferential price, as well as about the family's cars and income.

On the same day, Dumitru Obadă [was also interviewed](#), who received only one question from the Commission regarding the expenses incurred for the rent of his wife's notary office. Following the hearing, the Pre-Vetting Commission [announced](#) that prosecutor Obadă passed the evaluation.

Prosecutor Mariana Cherpec [was asked](#) about three disciplinary procedures initiated against her in 2014, 2015 and 2016. These concerned her poor handling of criminal cases. Two of the three disciplinary procedures were initiated by the top superior prosecutor of the prosecutor's office where she worked. In all three cases, the

The Pre-Vetting Commission announced that one candidate SCP membership was successfully vetted.

prosecutor Cherpec was sanctioned with a warning and a reprimand. She told the Commission that she did not challenge the decisions of the disciplinary board on the grounds that she would not have trusted the objectivity and impartiality of the SCP at that time.

Prosecutor Aliona Nesterov [was asked](#) about a 49 m² apartment purchased in 2017 at about 280,000 MDL. She mentioned that the real price of the apartment was higher, but she was conditioned by the seller of the apartment to indicate the cadastral value of the building in the contract. Prosecutor Nesterov was also asked about the purchase of two automobiles at a value lower than the market value, purchased, owned, and used by her family members and close relatives.

Prosecutor Gheorghe Borș [was asked](#) about where he got the money to buy an apartment in 2012 and whether he declared these income streams in the declaration of assets and personal interests for that year. At the same time, Gheorghe Borș explained how he acquired a plot of land with a property title in Hâncești municipality in 2007. He was also asked to explain where his wife got her income between 2007-2010, which exceeded the officially declared income of the Borș family.

Prosecutor Iuri Lealin [was asked](#) about purchasing a 31 m² apartment in Chișinău at a price of approximately 165,000 MDL, and its subsequent sale for almost triple the amount. He mentioned that the actual purchase price of the apartment was approximately 500,000 MDL, but he indicated the cadastral value of the building in the contract price. Lealin also explained that the subsequent purchases of the family after the alienation of the apartment, including the purchase of an 83 m² house in the Stăuceni commune, were possible from donations, gifts from family members and their savings, including from the attendance scholarship of the National Institute of Justice. Prosecutor Lealin was also asked about where he got the money to purchase a 2008 Lexus car, purchased at a total price of approximately 150,000 MDL.

The evaluations in April culminated [with interviewing](#) prosecutor Cristina Gladcov. She was asked about failing to declare her income from leasing goods from her husband's business, failing to declare her husband's share in a company, as well as paying only in 2023 the taxes for land alienated in 2021, which previously was received free of charge from local public authorities, according to the land law. Prosecutor Gladcov mentioned, among other things, that she did not know about the fact that the husband was the founder and shareholder of the said company, nor about a contract being drawn by the notary that would have made her pay taxes. Cristina Gladcov also provided details regarding her purchasing several cars for approximately 10,000 MDL and 11,000 MDL, cheaper than the real market value. The Commission was also suspicious about her husband buying a truck for an extremely favourable price of about 10,000 MDL.

More prosecutors will be evaluated in May 2023. According to the Pre-Vetting Law, the candidates who did not pass the evaluation may appeal against the decisions of the Pre-Vetting Commission at the Supreme Court of Justice. These appeals must be examined within 10 days, but in practice, this deadline was never respected.

THE PARLIAMENT HASTILY LIMITED THE COMPETENCE OF THE ANTICORRUPTION PROSECUTOR'S OFFICE

On 14 April 2023, the Parliament adopted in its final reading [the draft law no. 83](#). This was drafted by the Government and originally referred to the plea agreement. In its second reading, the draft law was merged with draft law no. 71, which referred to several important aspects of the criminal process, including the competence of the Anticorruption Prosecutor's Office (APO) and the National Anticorruption Centre (NAC). The projects were put together in a hurry, apparently at the insistence of the International Monetary Fund. The law was promulgated and appeared in the Official Gazette on 2 May 2023. It will enter into force on 2 August 2023.

According to [the amendments](#), the investigation of petty corruption is now the responsibility of the police. Most of the cases that now belong to the jurisdiction of the APO were given to the jurisdiction of the NAC. Only corruption cases against the President of the country, MPs, ministers, judges, prosecutors, and the leadership of the Security and Intelligence Service remained APO's responsibility. Corruption cases against other subjects, regardless of the size of the bribe or the damage caused, will be NAC's responsibility. The APO will continue to represent in the trial the allegations in the cases started by the NAC. The amendment also provides that prosecutors will not be able to withdraw cases from either the NAC or the police to investigate them. In essence, these amendments strengthen the role of NAC at the expense of APO. On 7 April 2023, the APO [published a statement](#), expressing its disagreement with the draft law no. 71, adopted in its first reading on 30 March 2023.

The adopted law also modifies the competence of the Prosecutor's Office for Combating Organised Crime and Special Cases (POCOCSC). Allegations of money laundering will be mainly investigated by POCOCSC (previously NAC's remit). Also, cybercrimes will no longer be the exclusive purview of POCOCSC. The draft law also provides that particularly serious charges against minors will no longer be the exclusive competence of prosecutors but return to the competence of the police.

The draft law also conceptually changes the institution of the plea agreement. The prosecutor and the accused will negotiate not only the plea but also the sentence. Currently, the sentence is not negotiated between parties and is determined by the judge. If the judge finds that the legal conditions for concluding the agreement have not been met, or if the sanction in the agreement is too mild, he/she will return the case file to the prosecutor for further prosecution. Refusing to approve the agreement can be appealed. The new law also stipulates that the claims of the injured party must be settled in the agreement procedure, which is currently missing.

The draft law also comes with a novelty – the judicial agreement in the public interest. This represents reconciliation between the prosecutor and the legal entity, without however formally condemning the legal entity. This institution exists in many advanced democracies and aims to avoid the liquidation of companies with major economic impact and is also meant to allow for a rapid recovery of the damage caused. In this case, the only possible penalty will be a large fine, larger than provided for in the Criminal Code. Also, the reaching of such an agreement does not absolve the managers of the legal entity of any criminal liability.

The competence of POCOCSC and NAC was changed, as well as the procedure for negotiating and reaching plea agreements.

The arrest acceptance rate – 91% – remains high in the Republic of Moldova. Out of 1,643 requests submitted by prosecutors in 2022, 1,502 (91.4%) were accepted by investigative judges.

ARREST KEEPS ON BEING APPLIED FREQUENTLY AND UNJUSTIFIABLY IN THE REPUBLIC OF MOLDOVA

On 21 April 2023, the LRCM sent the Committee of Ministers of the Council of Europe [an updated communication](#) regarding the measures taken by the Republic of Moldova in the context of the execution of [the Şarban group of cases](#). The Şarban Group is made of 14 decisions of the European Court of Human Rights (ECtHR) in which various violations of art. 5 of the European Convention on Human Rights (ECHR), especially regarding unjustified or illegal arrest.

According to LRCM's findings, the high rate of arrest and the insufficient reasoning of arrest decisions are still serious problems in the Republic of Moldova. Although in 2021-2022, the number of remanded people decreased (2021 – 1,424 people, 2022 – 1,502) compared to 2019 (1,864 people), no substantial changes in terms of the applicability of the arrest were made in Moldova. The low number of people remanded is most likely due to the impact of the COVID-19 pandemic when fewer criminal cases were initiated. This is confirmed by the increased number of people in pretrial detention in 2022. Another concern relates to the judges' superficial examination of arrest requests. The rate of arrest requests accepted over the past two years has remained around 92%, one of the highest rates recorded since 2006. At the same time, alternative preventive measures to detention are not used enough.

The given problems do not reside in the legislation, but in the deficient judicial practice, influenced by the lack of independence and the prosecutorial bias of some investigative judges. Also, their high workload makes qualitative examination of detention procedures barely possible. In the communication sent, the LRCM urged the Committee of Ministers to request that the Moldovan authorities ensure that Moldovan judges and prosecutors will respect the guarantees of art. 5 ECHR and that they will grant full independence and balance the workload of investigative judges. The LRCM also requested that the authorities ensure that any person detained or held in custody in violation of art. 5 of the ECHR be able to request compensation, regardless of the decision on the merits of the accusations brought against them.

On 5-7 June 2023, the Committee of Ministers [will verify](#) the measures taken by the Republic of Moldova, so far, in terms of preventing and combating the phenomenon of unjustified arrests. In [2017](#), [2019](#) and [2021](#), the LRCM sent the Committee of Ministers other communications about pre-trial arrest in the Republic of Moldova.

I BRIEF NEWS

On 7 April 2023, the Vice-President of the Supreme Court of Justice (SCJ), [Tamara Chişca-Doneva](#) was appointed by the President of the Superior Council of Magistracy (SCM) to exercise the interim position of President of the SCJ, a position that is vacant. On 27 March 2023, [SCJ judge Aliona Miron](#) was appointed to this position.

The last one was revoked after [the new Law on the SCJ](#) entered into force on 6 April 2023, which stipulates that the interim position of President of the SCJ is exercised by the Vice-President of the SCJ. Judge Chișca-Doneva made questionable rulings and [was the subject of criminal prosecution](#) for illicit enrichment, charges that prosecutors later dropped. It seems that the politicians do not want Tamara Chișca-Doneva to continue leading the SCJ. On 27 April 2023, the [Parliament adopted a law](#), in force from 2 May 2023, which establishes that the provisions of the new Law on the SCJ regarding the exercise of the interim presidency are applied only to the new composition of the SCJ.

On 13 April 2023, the Chișinău Court of Appeals (Chișinău CA) [pronounced the operative part](#) of the decision in the Ilan Șor case, which is part of the generic 'Bank fraud' case. He was sentenced to 15 years in prison, in a closed penitentiary, for committing fraud and money laundering in particularly large proportions. Additionally, he was deprived of the right to hold positions in the banking system for five years and forced to pay over 5.2 billion MDL to Banca de Economii. The decision is enforced from the moment of adoption but can be appealed at the Supreme Court of Justice. The Anticorruption Prosecutor's Office also [announced](#) that Ilan Șor's assets worth more than 1 billion MDL were seized. As a reaction to the decision of Chișinău CA, Ilan Șor [threatened with imprisonment](#) the judge in question. On April 18, 2023, the Superior Council of Magistracy (SCM) [adopted](#) a statement condemning any intimidation of judges and encouraging them to inform the SCM and the prosecutor's office of any direct or indirect threats or pressure.

On 23 April 2023, the mandate of the President of the Constitutional Court (CC), held by [Domnica Manole, expired](#). Thus, Nicolae Roșca was elected as the CC President at the plenary meeting of the CC on 25 April 2023. Judge Manole will continue working as a CC judge. According to the law, the President of the CC has the leading role of presiding over the sessions of the CC, but when examining the cases, their vote weighs the same as that of the other judges. The CC President is elected by secret ballot for a three-year term.

On 27 April 2023, the draft law on the ratification of Protocol no. 16 to the European Convention on Human Rights (ECHR) [was voted](#) in its final reading by the Parliament of the Republic of Moldova. With its entry into force, the Constitutional Court and the Supreme Court of Justice will be able to ask the European Court of Human Rights (ECtHR) for advisory opinions on matters of principle regarding the interpretation or application of fundamental rights and freedoms. The law will improve the cooperation and interaction between national courts and the ECtHR and should standardise the national jurisprudence with that of the ECtHR. Currently, 18 member states of the Council of Europe have ratified [Protocol no. 16](#).

On 27 April 2023, the National Integrity Authority (NIA) issued [a fact-finding act](#) on the infringement of the assets regime by the mayor of the capital, Ion Ceban. According to the act, NIA identified unjustified funds that amount to 621,000 MDL, between the years 2017-2019. NIA verified Ceban's assets for the time when he was a councillor in the Chișinău Municipal Council and MP in Parliament. Unjustified wealth was identified through bank top-ups, cash service payments, donations to a political party, purchasing foreign currency and paying for his car in instalments. NIA will request

the court to order the confiscation of unjustified assets and if NIA's act remains definitive, Ion Ceban will have to forfeit the right to hold public office for three years.

On 2 May 2023, the Superior Council of Magistracy held the [competition](#) to fill, by temporary transfer, 12 vacant judge positions at the Supreme Court of Justice (SCJ). [Fourteen candidates](#) from the Chişinău, Bălţi, Orhei, Străşeni, and Criuleni courts, as well as from the Chişinău and Comrat Courts of Appeal, competed for the positions. Following the interviews, the members of the Superior Council of Magistracy decided that 7 candidates – Aliona Donos, Sergiu Daguţa, Ion Malanciuc, Viorica Puica, Oxana Parfeni, Boris Talpă and Ghenadie Eremciuc – are eligible to be transferred to the SCJ. They will start at the SCJ on May 10 and will hold these positions for six months.

| 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 MEREUŢĂ
Legal Officer

Natalia ROTARU
Communication Specialist

Andrei NASU
Legal Officer



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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

