

NEWSLETTER

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In Brief

THE CONSTITUTIONAL COURT DISSOLVES THE “ŞOR” PARTY – FOR WHAT REASON AND WHAT ARE THE CONSEQUENCES OF THIS DECISION?

On 19 June 2023, the Constitutional Court ruled the “Şor” Party unconstitutional. A first of its kind, the Court’s decision comes as a result of a request from the Government, submitted in November 2022. The request was based on Article 41 para. (4) of the Constitution, which allows political parties to be declared unconstitutional if they engage in activities that undermine political pluralism, the principles of the rule of law, independence, or territorial integrity. Two of the Court’s five judges, Sergiu Țurcan and Vladimir Țurcan, issued dissenting opinions in which they argued that the Government’s request should have been rejected.

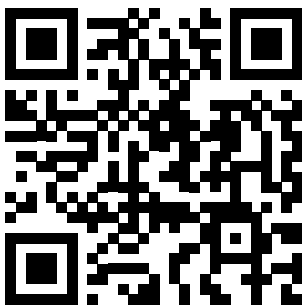
The Court listed numerous episodes of violations of the law by party members and concluded that the party’s activities were financed by illegal or unclear means, while also establishing several cases of voter corruption. The Court emphasized, among other things, that the participation of such a party in the state matters is not allowed in a democracy. According to the Court’s judges, such systematic, continuous, and significant actions of the party “*substantially impede the electoral democratic process and discourage both political contenders and voters who sincerely believe in democratic values.*”

The Court’s decision expressly mentions the immediate dissolution of the party, as well as the fact that any actions taken by the party after the Court’s decision have no legal validity. The Ministry of Justice was tasked with overseeing the liquidation process and appointing a committee in this regard. Following the Court’s decision, during the plenary session of 22-23 June 2023, the Parliament approved a set of decisions. In particular, the party’s representatives were excluded from the composition of the Standing Bureau of the Parliament and from the international and bilateral parliamentary groups.

Five “Şor” faction MPs and party representatives from administrative-territorial units, including Gagauzia, will continue to exercise their mandates as independent representatives, without the right to join other parliamentary groups. The lists of alternate candidates for Parliament and local councils are no longer valid, which means that



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Constitutional Court:
“The activities of the “Șor” Party substantially hinder the democratic electoral process and discourage both political contenders and voters who sincerely believe in democratic values.”

vacant party seats will not be filled by other people until the next election. Based on this decision, on 30 June 2023, the Constitutional Court [refused](#) the request of 12 May 2023 of the Central Electoral Commission to validate Vladimir Vitiuc's MP mandate in the Parliament of the Republic of Moldova. Vitiuc is an alternate candidate on the list of the “Șor” Political Party.

Meanwhile, the disbanded party announced the formation of a new political block called “Opportunities, Obligations, Achievements” (reading as the acronym in Romanian, Ș.O.R.), thus evoking the name of the party declared unconstitutional. According to the [Law on state registration of legal entities](#) and the [Civil Code](#), legal entities cannot have a name similar to other legal entities.

THE VENICE COMMISSION ISSUED A NEW OPINION ON THE DRAFT LAW ON JUDICIAL VETTING

During the summer session of 9-10 June 2023, the Venice Commission approved [the last opinion](#) on the [draft Law](#) on the external evaluation of judges and prosecutors (vetting).

The Commission concluded that the authorities implemented most of the recommendations (six out of eight) from [the previous opinion](#). In particular, the Commission welcomed that the revised draft law clarifies the mandate of the Vetting Commission tasked with verifying the integrity. The Venice Commission also appreciated that the draft law specifies the functional immunity enjoyed by the members of the Commission. The Commission suggested that the draft law ensures that the parliamentary opposition can get their candidate elected and that the possibility of removing a candidate from nomination is strictly limited. The Commission also recommended that candidates with judicial or prosecutorial experience are eligible for membership in the Vetting Commission. As explained by the authorities, this ban was necessary to avoid potential conflicts of interest and risks of lack of impartiality.

On the recommendations still being insisted on, the Commission suggested that the votes of foreign members should be given greater weight, while candidates should be allowed to challenge the Vetting Commission's presumption about unjustified wealth. The Commission also requested to consider alternatives to dismissal from public office for subjects who fail the evaluation.

The Commission did not recommend constitutional changes for the exercise of full vetting and raised no issues in respect of the proposed procedure or remedies available to candidates. One of the suggestions made by the Venice Commission, which was considered by the Ministry of Justice, concerns the prohibition of online publication of hearing recordings in case the evaluated candidate objects to publication. This regulation appears to be problematic and may undermine the transparency of the evaluation process and the credibility of vetting. It also reduces the Vetting Commission's ability to defend itself against attacks.

The Venice Commission concluded that most of its recommendations for improving the vetting procedure (six out of eight) were accepted by the authorities. Legislation on vetting can be adopted.

Following the revised opinion and the public consultations, on 7 July 2023, the Parliament voted [the draft law](#) in its first reading. Apparently, the draft will be voted in its final reading by the end of July 2023.

Meanwhile, on 15 June 2023, the Parliament also [appointed](#) the members of the Vetting Commission. The Commission will be formed by six members: Lavly Perling from Estonia, Maria Giuliana Civinini from Italy, Scott Bales from the USA, and three Moldovan citizens proposed by the parliamentary majority and the opposition: Andrei Bivol, Iurie Ga can and Lilian Enciu. All members were appointed by a 3/5 majority vote in Parliament. American judge Scott Bales was elected chairman of the Vetting Commission by its members. The vetting, following the recently approved Law on the evaluation of judges and candidates for the position of judge of the Supreme Court of Justice, should begin within five days of the establishment of the Vetting Commission.

THE SPECIALISED ANTICORRUPTION COURT – HOW WILL IT BE ORGANISED AND WHAT WILL IT DO?

On 20 March 2023, at a press conference held after the meeting of the Supreme Security Council (SSC), President Maia Sandu announced the intention to create an Anticorruption Court. This announcement came in the context of the potential blockage in the judicial system, as a result of the failed meeting of the General Assembly of Judges (GAJ) on 17 March 2023, which was supposed to elect the judicial members of the Superior Council of Magistracy (SCM). LRCM wrote in its Newsletter [no. 55](#) about the GAJ of 17 March 2023. The head of state specified that the new Court is to examine high corruption cases, especially the corruption cases within the judiciary.

On 13 June 2023, the Presidency published the [Concept](#) on the creation of a specialised Anticorruption Court. The following day, the President held conversations with representatives of the diplomatic corps, development partners, civil society, and the media. At the meeting, the concept's objectives and basic elements were discussed, as well as the proposals for its improvement.

According to the concept, the purpose of the specialised Anticorruption Court is to contribute to eradication of corruption quickly, efficiently, and successfully. The authors of the document emphasized that establishing special criteria for the appointment of anticorruption judges and providing increased autonomy to the Anticorruption Court will speed up the examination of high-corruption cases.

The concept involves the creation of a separate first-level court, of the Anticorruption Court. It will have up to 15 judges selected through contest by the SCM and appointed by the country's President. The mandate of the judges will be of five years, after which they will return to their previous judge positions. In the case of the newly appointed magistrates, they will be transferred to the position of judge at the Chişinău District Court.

Anticorruption judges will be selected according to tougher criteria and appointed for a five-year term. They will be remunerated at the level of SCJ judges.

For the second level of jurisdiction, it is proposed to create a specialised anticorruption board at the Chişinău Court of Appeals, which will have up to six judges. Its composition will be proposed by the president of the Chişinău Court of Appeals and confirmed by the SCM. For the selection and evaluation of anticorruption judges, the SCM will establish tougher criteria, and can create a special Committee for the selection of candidates.

All cases from the Anticorruption Prosecutor's Office (APO) and all appeals filed against the acts of the National Integrity Authority (NIA), including requests for confiscation of unjustified assets, will be within the jurisdiction of the Anticorruption Court. A new element is that, by way of derogation from the legal provisions in force, appeals against NIA acts and its requests for confiscation of unjustified wealth in favour of the state will be examined in a single procedure.

The judges of the anticorruption courts will be remunerated similarly to the judges of the reformed Supreme Court of Justice (SCJ) – about 45,000 MDL per month. Similarly, clerks and assistants in these courts will have a significantly higher salary. Additionally, the judges will benefit from state security and service housing. The judges of the specialised anticorruption courts shall pass the vetting following the judges of the appeal courts.

On the other hand, some voices were critical of the initiative of creating the Anticorruption Court, since it is a difficult, expensive, and lengthy process. It is more effective to focus efforts on strengthening the capacities of the APO and on the specialisation of the judges who passed the vetting. The LRCM published [a study on this matter](#) in 2020, which listed in detail the risks and opportunities related to this issue.

The draft law will be submitted to public consultations on the Parliament's platform and will be sent to the Venice Commission for analysis and opinion. Until mid-July 2023, the draft law in question was not published yet, which leads us to believe that it will rather be discussed in the autumn session of the Parliament.

THE NEW LAW ON ACCESS TO INFORMATION OF PUBLIC INTEREST WAS ADOPTED – WHAT'S NEXT?

On 9 June 2023, the Parliament [adopted](#) the new Law on access to information of public interest. The draft law was developed by the Ministry of Justice. It is aimed to replace the [current law](#), which contains several deficiencies and loopholes, as well as to bring national legislation into full compliance with the provisions of the [Tromsø Convention](#). [The Law on access to information of public interest was published](#) in the Official Gazette on 8 July 2023 and will enter into force on 8 January 2024, six months after its publication.

The new law includes several novelties, which aim to ensure transparency, good governance, participatory democracy, and observance for the right to information guaranteed by [art. 34 of the Constitution of the Republic of Moldova](#). The main

The Law on access to information of public interest will enter into force on 8 January 2024. It obliges public authorities to publish on their web pages a wide range of information, including information about public procurements.

changes provided for by the new law are aimed at expanding the list of entities obliged to provide information of public interest with professional associations and self-administration bodies of professions in the justice sector, energy companies, but also political parties and private legal entities that provide public services. Also, the new law reduced the deadline for providing information of public interest from 15 working days to 10 calendar days, but with the possibility of extending this deadline by seven calendar days in exceptional cases. Despite the insistence of the representatives of civil society and the mass media on the faster handling of requests for information submitted by journalists, as their professional activity is closely connected with this procedure, a shorter deadline was not provided for them.

An innovative concept that the Law provides for is proactive transparency. It obligates authorities to proactively publish information of public interest on their official web pages. The information to be published must include data on the organisational structure, management, members, activity, and decision-making process of the public authority, the budget of the public authority, planned and performed public procurements, official visits, business trips of the public officials, including their cost and source of financing. The new law also expressly establishes the ban on limiting the access to certain information related to professional activity of public officials, namely their name and surname, position, studies, professional experience, remuneration, conflicts of interest, and valid disciplinary sanctions.

Failure to publish information of public interest, requesting illegal payments for providing information, deficient communication of information, as well as unfounded refusal to provide information of public interest are sanctioned with a fine between 250 MDL and 10,000 MDL, depending on the complexity and consequences of the violation. The fine is applied ex officio by the judge dealing with the case regarding access to information, is imposed on the individual responsible for the violation and is transferred to the state budget.

Previously, on 10 May 2023, the LRCM sent to Parliament [its legal opinion](#) on the draft Law. Most of the proposals and recommendations received from civil society organisations and the media were accepted.

THE PACKAGE OF LAWS AIMED AT REGULATING SIS ACTIVITY WAS ADOPTED

On 8 June 2023, the Parliament adopted the [Law on the Security and Intelligence Service \(SIS\)](#). The introduced changes aim to review the mandate of the institution's management, specify its powers and ensure that SIS acts independently. On 7 July 2023, the [Law on counter-intelligence activity and external intelligence activity](#) was also voted in the final reading. The new law establishes the legal framework, procedure and conditions for ordering and carrying out counter-intelligence measures and external intelligence measures by the SIS, as well as the verification of the legality of these measures.

The legislative changes to the security package were adopted accounting for the risks and threats to which the national security of the Republic of Moldova is subjected. However, many provisions of the law remain general and do not exclude abuse.

Previously, in the national legislation there was no special legislative act governing the conduct of external counter-intelligence and intelligence activities carried out by the SIS. It was authorised according to the legislation regarding the special investigative activity. The Parliament requested the opinion of the Venice Commission on both draft laws, an opinion [published](#) on 13 March 2023. The risk of the head of the SIS being politically subordinated and the fact that the institution is granted very extensive and vaguely defined powers were among the main remarks of the Commission. On 1 May 2023, the LRCM presented several [proposals to improve](#) the draft Law regarding counter-intelligence activity and external intelligence activity.

After about 20 meetings of the expert group created by the Parliament, the draft laws were substantially revised. In the draft law on the SIS, the powers of the SIS were considerably narrowed and the powers of the head of the institution were adjusted. The list of counter-intelligence measures that can be carried out by the SIS has been reduced; the authorization of counter-intelligence measures by a judge in most cases was introduced; SIS activities aimed at preventing threats to state security were delineated, though in general terms, from criminal investigations carried out by prosecutors ; an ex-post control mechanism and a more rigorous information security mechanism were introduced; Parliamentary control of SIS activity was detailed and special guarantees were established for lawyers and journalists. The counter-intelligence measures will be authorised by a judge from the Chişinău Court of Appeals and the appeals against these decisions will be examined by a panel of three judges from the Supreme Court of Justice.

In addition to the above-mentioned two laws, on 25 May 2023, the Parliament approved in the final reading the amendments to the [Law on the status of the security and intelligence officer](#) to facilitate recruitment and work of SIS employees.

I IN BRIEF

In **June 2023**, the Pre-Vetting Commission announced the results of the evaluation of the ethical and financial integrity of several candidates for the Superior Council of Prosecutors (SCP). In addition to the candidate previously vetted in May – Dumitru Obada, more candidates passed the evaluation – Rodica Ciobanu, the candidate designated by the Academy of Sciences, and prosecutors Mariana Cherpec, Iuri Lealin, Olesea Virlan, and Elena Roşior. Candidates Vitalie Codreanu, Cristina Gladcov, Gheorghe Borş, and Anatolie Gîrbu failed the evaluation. Thus, out of the total of 18 SCP candidates, six candidates passed the evaluation, eight candidates failed, and four candidates are still waiting for the decision of the Pre-Vetting Commission. The LRCM published a digest of all the interviews of the candidates for the SCP in its Newsletters [no. 56](#) and [no. 57](#).

On **9 June 2023**, the Parliament adopted the [Decision](#) on the approval of the

Platform for dialogue and civic participation in the decision-making process of the Parliament. The creation of this platform derives from the recommendations of the European Commission to strengthen the cooperation between public authorities and civil society. Its purpose is to ensure that as many public associations as possible participate in the decision-making process at the parliamentary level, that the decision-making is increasingly transparent, and that there is a genuine participatory democracy. Two of the main novelties of the decision are the possibility of public associations to register as an interested party regarding the activity of parliamentary committees, the obligation to organize and hold the annual conference with involvement of CSOs, etc. The [first such conference](#) was held on 16 June 2023. The LRCM wrote in greater detail on [its blog](#) about the [benefits and constraints](#) of creating this platform.

On **22 June 2023**, the Superior Council of Magistracy (SCM) [extended](#) the deadline for applications to fill vacant judge positions at the Supreme Court of Justice (SCJ). These are to be submitted until 14 August 2023. The competition was extended to ensure a sufficient number of candidates could compete for the position of judge at the SCJ. On 23 May 2023, the Regulation on the selection of SCJ judges [was published](#) on the SCM website and on 13 June 2023, [the list](#) of people who applied for a judge position was published. Until now, 22 judges, lawyers, and prosecutors have applied for 20 vacant judge positions at the SCJ.

On **22 June 2023**, the Parliament [adopted](#) the Law on whistle-blowers. The new law partially transposes [the European Union \(EU\) Directive 2019/1937](#) on the protection of persons who report violations of Union legislation and aims to promote the climate of integrity and transparency within public and private institutions, improve the warning mechanism, as well as discourage illegal practices. The main changes provided by the new law refer to the broadening of the object of protected disclosures, the extension of the category of subjects that may fall under the law, the introduction of the prohibition of retaliatory measures against whistle-blowers and their family members, the exoneration of integrity whistle-blowers from liability in the cases expressly provided by law and ensuring their protection. On 27 April 2023, the LRCM [sent](#) its legal opinion on this draft law. According to the National Security, Defence and Public Order Commission Report, most of LRCM's recommendations were not accepted. The whistle-blower law has not yet been published in the Official Gazette.

On **22 June 2023**, [the Superior Council of Magistracy \(SCM\) completed the competition](#) for the appointment of a Constitutional Court judge. This competition was announced back in 2021 but was not completed due to the expiration of the powers of the former SCM. None of [the 11 candidates](#) accumulated more than half of the necessary votes of the SCM members and the competition was declared as failed. Apparently, the new contest will be announced after the SCM approves the regulation of the competition. In January 2021, a Constitutional Court judge position became vacant following the death of judge Ababii.

On **28 June 2023**, the Superior Council of Magistracy (SCM) **announced** several contests for filling the positions of members of the specialised boards. Within the Board for the selection and evaluation of judges, four vacant membership positions of representatives of civil society and five vacant positions of judges were put up for contest. For the Disciplinary Board, four vacant member positions of judges were opened for run. On 12 July 2023, **the deadlines** for both boards **were extended** to 10 August 2023 due to an insufficient number of candidates.

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