

NEWSLETTER

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21 CANDIDATES FOR THE SCM AND SCP, WHOM THE PRE-VETTING COMMISSION FAILED, TO UNDERGO REEVALUATION

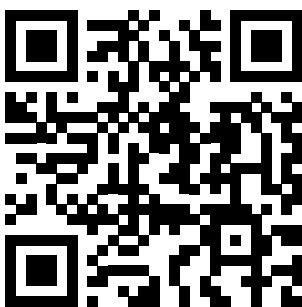
On 1 August 2023, the Supreme Court of Justice (SCJ) [ruled](#) on the 21 candidates for membership in the Superior Council of Magistracy (SCM) and the Superior Council of Prosecutors (SCP), who had failed the evaluation by the Pre-Vetting Commission. These candidates were Angela Popil, Vladislav Holban, Alexei Panis, Anatolie Gîrbu, Veronica Cupcea, Alexandru Rotari, Stanislav Sorbalu, Valentin Caisin, Ion Chirtoacă, Vitalie Codreanu, Vitalie Stratan, Angela Bostan, Aureliu Postică, Victor Sandu, Nicolae Şova, Aliona Miron, Cristina Gladcov, Tatiana Chiriac, Ecaterina Buzu, Mihail Buşuleac, and Sergiu Osoianu. The judicial panel of the SCJ irrevocably decided that the Pre-Vetting Commission must reevaluate their candidacies.

The main arguments the SCJ used to annul the decisions of the Pre-Vetting Commission cited a series of important legal peculiarities. The SCJ reasoned that, functionally and organizationally, the Vetting Commission was a “public authority” in accordance with the [provisions of the Administrative Code](#), as it had been established by law and performed public-law duties for public benefit. Consequently, the SCJ concluded that the decisions of the Vetting Commission were administrative acts that could be challenged in administrative courts. This reasoning contradicts the provisions [of the law adopted on 7 July 2023](#), which expressly state that the Vetting Commission is not a public authority and the formalities established by the Administrative Code do not apply to the acts issued by it.

As another argument, the SCJ cited the inadmissibility of reversing the burden of proof in administrative cases and requesting the evaluated judge or prosecutor to explain the origin of their assets. The SCJ held that the burden of proof rested with the Vetting Commission, which presumably had the competence, tools, and leverage to investigate the state of facts *ex officio* by enquiring and collecting any information necessary to fulfill its mandate. The SCJ reasoned that the Vetting Commission had failed to fulfill this obligation, thus adopting a fallacious solution and, accordingly, infringing the right to defense of the evaluatee. This reasoning contradicts [the position of the Constitutional Court](#), which had validated this procedure earlier, and the practice established by the ECtHR caselaw.



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Two justices from the panel that had ordered the annulment of the 21 decisions of the Pre-Vetting Commission – judge Tamara Chișca-Doneva, interim chief justice of the SCJ, and judge Ion Guzun – submitted their resignations to the SCM. The SCM accepted the resignations partially, dismissing them on 25 August 2023.

In addition, the SCJ criticized the Vetting Commission for having presumably ignored the social realities of the Republic of Moldova during the evaluation. The SCJ reasoned that prohibiting candidates from running for the SCM or SCP because of the issues found by the Vetting Commission – which are intrinsic to the social realities of the Republic of Moldova – was excessive for regulatory purposes and unduly forfeited the right to be elected to these positions. The SCJ held that such a solution was unacceptable in a rule of law state, as being incompatible with both human dignity and the dignity of judge and prosecutor. Additionally, the SCJ found that, during the evaluation, the Vetting Commission had adopted an unjustifiably differential approach to candidates in similar situations. The SCJ did not, however, specify the candidates who presumably had benefited from the differential treatment.

The special judicial panel also held that the Pre-Vetting Commission had infringed the guarantees of the administrative evaluation procedure, such as the right to a comprehensive examination of the facts, the right to a reasoned and unbiased decision, the right to an effective hearing, the right to be effectively involved in the evaluation procedure, the right to effective cooperation in clarifying the state of facts, and the right to a decision free of discretionary errors in the appraisal of evidence. The SCJ reasoned that these serious procedural violations had affected the fairness of the evaluation procedure, thus leading to the failure of the candidates in question.

The SCJ's decisions of 1 August 2023 were met with [mixed reaction](#) from government representatives and legal professionals. The prevailing opinion was that the SCJ's judgments undermined justice reform efforts and set a dangerous precedent for the fight against corruption. This was also because of the radical change of the SCJ's position from the one expressed in two earlier [judgments](#) passed by a panel of different justices, which rejected challenges to the decisions of the Pre-Vetting Commission.

The next phase is the reevaluation of the 21 candidates whom the Pre-Vetting Commission failed. This reevaluation will be crucial in determining whether they are suitable for the position of member of the SCM and SCP.

VETTING LAW REVISED AT THE PRESIDENT'S REQUEST

On 17 August 2023, Parliament [re-examined the bill](#) on the vetting of judges and prosecutors (the Vetting Law), passed in the final reading on 31 July 2023. This happened after President of the Republic of Moldova Maia Sandu [requested](#) that the provisions of the bill be harmonized with the [Law on the Evaluation of Supreme Court Judges and Candidates](#). The President stressed the need for adjusting the criterion of "ethical integrity" to ensure its consistent regulation in both legal acts so that the same evaluation criteria would apply to judges and prosecutors under evaluation, regardless of the court and hierarchy.

Judges and prosecutors who will undergo vetting will be evaluated against the same ethical integrity criteria.

Some provisions that required the vetting commissions of judges and prosecutors to take into account irrevocable judgments, except for those considered arbitrary or clearly unreasonable, were also revised. Moving forward, the Vetting Commission will be able to decide only on violations of the rules of ethics and professional conduct, without examining the legality of judgments.

A judgment may be qualified as arbitrary or clearly unreasonable if all of the following is true: (1) the judgment violates the imperative norms of the law – that is, where the law expressly provides for a specific solution, the judgment provides for something else entirely; (2) the judgment does not provide adequate reasoning, and (3) the European Court of Human Rights has already examined a case that is analogous to the situation from the judgment in question and issued a solution to it. These amendments [were criticized](#) by some jurists and legal professionals because they violated the provisions of the Constitution and the basic principles of law, such as the principle of *res judicata*.

Another innovation of the final version of the bill is that, just like evaluatees, the Vetting Commission can now challenge the decisions of the Superior Council of Magistracy and the Superior Council of Prosecutors. Challenges will be submitted to the Supreme Court of Justice (SCJ) and will be examined within 30 days by a panel formed of the first three judges who passed the evaluation and have not worked at the SCJ before 31 December 2022.

On 22 August 2023, the Vetting Law [took effect](#), and within 40 business days, Parliament must approve the members of the Commission for the Vetting of Prosecutors. The duties of the Commission for the Vetting of Judges will rest with the Commission for the Vetting of Judges and Candidates for the SCJ (see [Newsletter no. 59](#)).

PARLIAMENT HAS APPROVED THE REFORM OF THE ANTICORRUPTION PROSECUTOR'S OFFICE – WHAT DOES IT ENTAIL?

On 31 July, Parliament passed a large package of amendments to the Criminal Procedure Code. These included the change of the powers of the Anticorruption Prosecutor's Office (APO) and the National Anticorruption Centre (NAC). The legislation started producing effects on 22 August 2023, but it will become fully effective on 1 January 2024.

The main change consists in the complete separation of the APO from the NAC. Anticorruption prosecutors no longer lead the criminal investigations conducted by the NAC – the so-called “petty corruption” cases. These accounted for roughly 80% of all cases anticorruption prosecutors used to send to court annually. In fact, anticorruption prosecutors will no longer lead criminal investigations at all. They will only handle the cases they start.

Moving forward, the NAC will collaborate with prosecutors from the prosecutors'

Divorce! The Anticorruption Prosecutor's Office will no longer have any connection to the NAC, and cases of grand corruption will be examined only by three district courts.

offices where it has subdivisions (the Prosecutors' Office of Chişinău, the Prosecutors' Office of Cahul, and the Prosecutors' Office of Bălţi) and not with anticorruption prosecutors. Since it was impossible to transfer the leading of the criminal investigation of the cases that were active on the effective date of the law from the APO to other prosecutors' offices overnight, the law established that anticorruption prosecutors would continue leading these criminal investigations until the end of 2023. At the beginning of 2024, the Prosecutor General will transfer these cases to responsible prosecutors' offices in accordance with the adopted amendments. This rule, however, applies only to criminal cases that were under way at the NAC on 22 August 2023. The criminal investigations started after this date will be led by the territorial prosecutors' offices of Bălţi, Cahul, and Chişinău.

Another change was the narrowing of the exclusive powers of anticorruption prosecutors. They will have the power to investigate corruption crimes committed by the president of the country, judges, prosecutors, ministers, members of Parliament, and the employees of the NAC and the Security and Intelligence Service (SIS). They will no longer be responsible for investigating corruption crimes committed by lawyers, bailiffs, mayors, and local councilors. However, they will still be able to investigate anyone attempting to corrupt a judge, a prosecutor, an employee of the NAC or the SIS, a minister, or the president of the country. Under the new law, anticorruption prosecutors will also investigate the taking of bribes (passive corruption) greater than 6,000 conventional units (MDL 300,000), regardless of who the briber is. Anticorruption prosecutors will also investigate all corruption crimes where the damage exceeds 60,000 conventional units (MDL 3 million). Anticorruption prosecutors retained the exclusive powers of investigating the crimes described in Article 181²(5) (acceptance of the financing of a political party by a criminal group) and 181³ (illegal financing of political parties) of the Criminal Code. All other corruption crimes remained under the jurisdiction of the NAC.

The new law also changed the powers of the courts trying cases of grand corruption. Thus, if previously the trial of cases investigated by anticorruption prosecutors was carried out by the court whose territorial jurisdiction covered the place of the crime, after the amendment of Article 40 of the Criminal Procedure Code, the trial of such cases is carried out by the court whose territorial jurisdiction covers the place where the criminal investigation was completed. In other words, with the current setup, where the APO has only three territorial subdivisions, only the district courts of Bălţi, Cahul, and Chişinău will try these cases. This is to streamline the examination of these cases and to ensure the specialization of judges. Before 22 August 2023, all 15 district courts of the country used to try corruption cases. In addition, the newly adopted amendments complemented Article 20 of the Criminal Procedure Code with the provision that requires courts to examine corruption cases as first priority.

After a break of more than four years, prosecutors convened for the General Assembly of Prosecutors. The assembly was to elect their new representatives to the SCP from among the prosecutor candidates who had passed vetting. The assembly was adjourned, however, without solving any important topic from the agenda.

RADIOGRAPHY OF THE GENERAL ASSEMBLY OF PROSECUTORS

On 23 August 2023, after a break of approximately four years, prosecutors convened at the General Assembly of Prosecutors (GAP). The event was opened by Angela Motuzoc, President of the Superior Council of Prosecutors (SCP), who noted an impressive quorum of 467 out of 591 prosecutors. Interim Prosecutor General Ion Munteanu and Minister of Justice Veronica Mihailov-Moraru, SCP member by law, welcomed the large attendance and urged prosecutors to continue showing fairness and putting public interest first.

The agenda initially proposed by the SCP included such topics as the election of members to various commissions and the hearing of the SCP's activity report. Prosecutors Cristina Gladcov, Vitalie Codreanu, and Anatol Gîrbu, candidates for the SCP who had failed vetting (see the [LRCM Newsletter no. 56](#) and [no. 57](#), for more details), requested that the agenda be completed with the examination of their requests for the deferral of the GAP for the part concerning the election of prosecutor members and alternate members to the SCP. The requests cited the judgments of 1 August 2023 of the Supreme Court of Justice (SCJ) that annulled the decisions of the Pre-Vetting Commission to fail the corresponding prosecutors and ordered their reevaluation.

Several prosecutors have expressed their views on this subject. The requesting prosecutors stated that the GAP for electing prosecutor members and alternate members to the SCP should be deferred to avoid the violation of their right to be elected to the self-administration body. Prosecutor [Iuri Lealin](#), candidate for the SCP who had passed vetting, said that postponing the GAP would be irresponsible because the prosecution system had so many stringent problems to solve and, therefore, any delay in the formation of the new SCP was unwelcome. [Sergiu Russu](#), chief prosecutor of a division from the Prosecutor General's Office, also objected to the deferral and proposed a compromise solution – amending the [GAP's Regulations](#) so that, if the three prosecutors passed reevaluation, their candidacies for the SCP could be voted at a later date. This proposal, however, was not put to a vote. After heated debates and the speeches of the three prosecutors, the assembly admitted the request to include the topic on the agenda and subsequently, by the vote of 258 prosecutors, the requests for deferral submitted by Cristina Gladcov, Vitalie Codreanu, and Anatol Gîrbu were admitted. Thus, the GAP ended. After the reevaluation of the three prosecutors, the SCP will convene another general assembly.

During the assembly, the participants heard the activity report of the SCP, along with statistics about the work of the prosecutors' self-administration body, its objectives, and achievements. The participants did not have questions on this topic.

I IN BRIEF

After, at the end of July, Parliament approved a bill that prohibited the members of a party declared unconstitutional from running in the election, on **4 August 2023**, the “Șor” Party, whom this decision targeted, [filed a complaint](#) with the Constitutional Court, requesting the verification of the constitutionality of the provisions in question. According to the law, this restriction covers (i) members of the executive body of a party that was declared unconstitutional and (ii) those holding elective office, such as mayors and local councilors. Initially, the ban also covered the lists of alternate party candidates, but this limitation was removed after criticism from civil society organizations.

On **8 August 2023**, the Superior Council of Magistracy (SCM) reinstated [Liubovi Brînză](#) at the Chișinău Court of Appeals. Judge Brînză, who also happens to be the spouse of the dean of the Faculty of Law of the State University of Moldova, was charged in 2018, together with a prosecutor, a lawyer, and three other judges, with involvement in a scheme for issuing court judgments in exchange for material benefits. The evidence suggested that the bribe was facilitated by various individuals, including a lawyer and a judicial assistant. A [video](#) presumably showing Judge Brînză handing out money to another judge appeared online in 2018. Most of the suspects in the investigation were eventually acquitted, except for the judicial assistant, who was sentenced to a three-year suspended prison term for influence peddling. A [doctor](#) who had bribed the judges has signed a plea agreement. In a public statement, [the SCM confirmed](#) that Judge Brînză had resumed judicial activity at the Chișinău Court of Appeals after [acquittal](#) by the Comrat Court of Appeals in June 2023. Between 2010 and 2023, only one Moldovan judge charged with corruption was sentenced to prison. This judge fled the country after being convicted in June 2014.

On **10 August 2023**, the [Pre-Vetting Commission](#) announced the first decisions regarding the evaluation of the integrity of five lay candidates from the second group of candidates nominated by Parliament for the Superior Council of Magistracy (SCM). The Commission passed [Aliona Corcenco](#), [Veaceslav Guțan](#), [Vitalie Sîli](#), and [Iulian Muntean](#) and failed [Ana Tîpa](#). On 16 August 2023, the Commission announced that [Lucia Popescu](#) had passed the vetting. On 25 August 2023, the Commission announced its last decisions, passing [Leonid Chirtoacă](#), who met the integrity criteria, and failing [Nicolae Agachi](#). Of the nine candidates from the second group nominated by Parliament, eight underwent the evaluation and one withdrew from the competition, which is equivalent to failing the evaluation. Six out of eight candidates passed the evaluation. Candidates may challenge decisions regarding their failure at the evaluation at the Supreme Court of Justice within five days of communication. The LRCM reported on the hearings of the second group of lay candidates for the SCM in its [Newsletter no. 59](#).

On **11 August 2023**, Judge Gheorghe Balan [rejected](#) the Anticorruption Prosecutor's Office's motion for extending house arrest for Vladimir Andronachi. The judge replaced this measure with release on bail on the request of [four sureties](#) (two mayors from the District of Cahul, the abbot of a monastery, and a former high

school principal). They deposited MDL 22,000 to the court's account. Under the [Criminal Procedure Code](#), a bail is the written commitment by which trustworthy persons guarantee, through their authority and a deposited sum of money, that the defendant will comply with public order and will appear before the criminal investigation body or in court upon summoning. Each surety must deposit a sum of money from 50 to 300 conventional units (from MDL 2,500 to 15,000). However, the sureties risk no liability if the former Democratic MP evades prosecution or leaves the country. The only sanction would be the confiscation of the money deposited as bail. The judge's order is not appealable. [At a press briefing](#), Chief Prosecutor of the Anticorruption Prosecutor's Office Veronica Dragalin requested Parliament to allow amending the Criminal Procedure Code so that prosecutors could challenge certain decisions they consider wrong. Former Democratic MP Vladimir Andronachi is charged in the criminal cases of the Banking Fraud and Metalferos (see [Newsletter no. 53](#)).

On **21 August 2023**, the Superior Council of Magistracy (SCM) [published](#) the updated list of candidates for the position of judge of the Supreme Court of Justice. According to the latest changes, three new candidates entered the competition – prosecutor Iuri Lealin, who passed the evaluation for member of the Superior Council of Prosecutors, Judge Aurelia Cazacliu of the Chişinău District Court, Buiucani office, and interim deputy chief prosecutor Ion Teţcu of the Călăraşi Prosecutors' Office. Judge Oxana Parfeni from the Chişinău District Court withdrew from the competition. So far, 25 candidates have entered the competition for the position of judge of the Supreme Court of Justice (SCJ). In the meantime, on [25 August 2023](#), the SCM [decided](#) to extend the application period for SCJ vacancies by another 45 calendar days from the day the announcement was published in the Official Gazette of the Republic of Moldova. This extension, however, applies only to judge candidates because the number of judges who entered the competition is lower than the number of available vacancies.

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