

NEWSLETTER

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IN BRIEF

FIFTH ANNUAL JUSTICE AND ANTICORRUPTION REFORMS FORUM

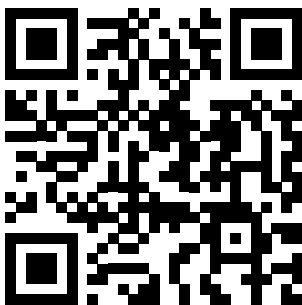
On 19-20 September 2023, the Legal Resources Centre from Moldova (LRCM), in collaboration with the Government of the Republic of Moldova, [organized](#) the fifth annual [Justice and Anticorruption Reforms Forum](#). The Forum [was opened](#) by the Prime Minister of the Republic of Moldova, Dorin Recean, the Ambassador of the United States of America (USA) to the Republic of Moldova, Kent D. Logsdon, the Ambassador of the European Union to the Republic of Moldova, Jānis Mažeiks, and the Executive Director of the LRCM, Ilie Chirtoacă. Daniel-Marius Morar, Former Chief Prosecutor of the National Anticorruption Directorate of Romania, and Peter Kiefer, a judicial expert, with over 40 years of experience working with the courts of Oregon, Arizona and California, USA.

The Forum brought together the main actors of the justice sector, politicians, national and international experts, civil society, and development partners, to identify and boost reforms in the field of justice and fighting corruption, and ways of reducing the risks related to the reforms. The two-day event was structured into four discussion panels. Each panel included current statistical data and the opinions of citizens regarding the topics addressed.

[On the first day of the Forum](#), the discussions focused on the main reforms, namely the external evaluation, the reform of the Supreme Court of Justice (SCJ), as well as on the effective investigation and sanctioning of corruption. Concerning the process of external evaluation of judges and prosecutors, which started in April 2022, we are currently at the stage of establishing the composition of the Superior Council of Prosecutors (SCP) and the evaluation of judges and candidates for the position of SCJ judge. Following the entry into force of the [Vetting Law](#), the third stage will begin, which will focus on the evaluation of judges and prosecutors who hold key positions – court presidents, heads of prosecutors' offices, specialized prosecutors' offices, and courts of appeal. The process met with backlash, which slowed the implementation of the reform and the rapid delivery of results. During the discussions, references were made to the SCJ decisions of 1 August 2023, regarding the 21 candidates for the Superior Council of Magistracy and SCP membership who failed the pre-vetting (see [LRCM Newsletter no. 60](#)). Other difficulties identified include the insufficient



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Ambitious justice and anticorruption reforms are long-term processes. Although the speed of reform implementation and the confidence of citizens in this process are essential, the quality of the reforms' implementation remains the determining factor.

number of candidates for SCJ vacancies, even among non-judges, as well as resignations as a result of failing the pre-vetting. The identified solutions propose to increase the salaries of those who were successfully vetted and ensure proactive communication. The evaluation mechanism represents a commitment assumed by the Republic of Moldova in the European accession, in its capacity as a candidate country. According to experts, this process is inevitable, being only the beginning, as ensuring high-quality competence and professionalism among judges and prosecutors is a constant necessity that must never be forgotten.

Fighting corruption is an equally important commitment on which the European path of the Republic of Moldova depends. Following the [delimitation of the powers](#) of the Anticorruption Prosecutor's Office (APO) and the National Anticorruption Centre (NAC), during the discussions, the lack of resources and logistics of the APO in the long term was highlighted. In this regard, significant emphasis was placed on the need to strengthen the APO to enable it to fight effectively against high-level corruption. The importance of ensuring whistleblower protection, the specialisation of prosecutors and ensuring effective cooperation between the APO and other institutions such as NAC, the Prosecutor's Office for Combating Organised Crime and Special Cases, the National Integrity Authority and the Prevention and Combating of Money Laundering Service was also highlighted.

[On the second day of the Forum](#), topics related to the optimisation of the judicial map and future of justice were addressed. When discussing the optimisation of the judicial map, which is closely related to citizens' access to justice, certain shortcomings were identified. These include transport costs and the time required to transfer personnel between the main and secondary offices, the difficulty of forming court panels in the offices where a small number of judges are active and the need to move judges from other locations, the increase in the number of cases compared to the actual number of judges, which leads to delays in examining cases. Good practices from the Kingdom of the Netherlands, Denmark and Estonia were presented at the Forum. To facilitate the rapid employment of staff and ensure their professional growth, it was emphasized that courts should be located near economic development centres. The need to staff the courts and streamline procedures to ensure the random and uniform distribution of cases and the specialisation of judges was also emphasized.

Digitization of the justice system is an inevitable step towards the future of justice. During the panel discussion, several deficiencies of this process were highlighted, with a focus on the resource, staff, and equipment crisis. The importance of collaboration with development partners in this regard was emphasized. Although significant progress has been made, such as the implementation of the audio and video recording system of court hearings accessible to the parties, the court's portal and the e-File solution system, the need to improve communication between courts and professionals, which is still often bogged down by bureaucracy and paperwork, was highlighted. The importance of developing tools and platforms to facilitate efficient input and retrieval of information by judicial staff and the creation of communication tools with citizens, such as a centralized electronic archive similar to the one in Estonia, has also been emphasized.

International experts and development partners mentioned that the ambitious reforms regarding justice and anticorruption announced in the Republic of Moldova are ongoing processes. Citizens' trust in these initiatives is essential and the speed of reform implementation plays a substantial role. However, the quality of these initiatives is the determining factor. In addition to the increased attention from citizens and development partners, there is also political will to proceed with these reforms. And the support of the international community is an essential asset for the Republic of Moldova.

LRCM will publish a summary of the main recommendations from the Forum, which will be sent to the Ministry of Justice, development partners and other decision-makers, but also to all participants of the Forum.

SCM MEMBER TARGETED IN A CORRUPTION CASE. SYSTEMIC PROBLEMS UNDERMINE THE ACTIVITY OF THE PRE-VETTING COMMISSION

On 20 September 2023, it was reported that one of the members of the Superior Council of Magistracy (SCM), made up of people who were successfully pre-vetted, was previously accused in a criminal case of corruption. The case refers to [Iulian Muntean](#), lawyer, former university lecturer. He passed [the external evaluation procedure](#) in August 2023, and on 7 September 2023, [the Parliament appointed him as a member of the SCM](#) (see [LRCM Newsletter no. 59](#)).

On the same day, Iulian Muntean [publicly admitted](#) that, in 2018, he [was featured in a criminal case](#) that targeted dozens of professors of the Academy of Economic Studies from Moldova. He noted that he was searched as part of the criminal investigation but was neither detained nor arrested. Although he was charged in September 2018, he has not been notified of any decision or action on the case to date. He considered that the case was closed and did not inform the Pre-Vetting Commission of it.

On 21 September 2023, the Pre-Vetting Commission [declared](#) that, during the evaluation procedure, it was not informed of any criminal case in which the candidate Iulian Muntean was featured. The Commission requested the relevant information from the National Anticorruption Centre (NAC) and the Security and Intelligence Service, as well as collected data from various public and private sources. Furthermore, the Commission specified that, when voluntarily completing the ethics questionnaire, Iulian Muntean did not indicate any criminal procedure that would concern him.

The Anticorruption Prosecutor's Office (APO) [specified](#) that it did not receive any request for information from the Pre-Vetting Commission regarding Muntean, as was previously done in the case of other candidates for the SCM and the Superior Council of Prosecutors. At the same time, the APO noted that it is not obliged to automatically gather and present to the Pre-Vetting Commission information related to the persons subject to evaluation.

One month after his appointment, SCM member Iulian Muntean submitted his resignation. He did not inform the Pre-Vetting Commission about the accusations brought against him in a criminal corruption case. Law enforcement bodies accuse each other of failing to reflect this information in the Unified Registry of Criminal Records.

On 22 September 2023, the SCM members issued [a statement](#) expressing their concern regarding the situation. Given that Iulian Muntean did not present any plausible argument as to why he failed to disclose that he had been accused, they considered that the best solution would be for him to resign. The Minister of Justice also [suggested](#) that he resign.

On 25 September 2023, the Parliamentary Legal Committee for Appointments and Immunities held [public hearings](#) to elucidate the circumstances of the case. The director of the NAC mentioned that in the Unified Registry of Criminal Records (Registry) no information was recorded regarding the submission of accusations against Muntean. Accordingly, the NAC did not know about its procedural-criminal quality and could not communicate this fact to the Pre-Vetting Commission. Although the 2018 criminal case was initiated by the NAC, the indictment of Muntean was carried out by the APO that handled the case. According to the NAC, the responsibility for completing the Registry rested with the APO prosecutor. On the other hand, the representatives of the APO mentioned that, according to an inter-institutional order, the obligation to make entries in the Registry belongs to the criminal investigation officers, thus, the responsibility for failing to register the information was passed on to the NAC. At the hearings, it was found that it is a common practice when the record sheets for the submission of accusations are not registered in the Registry. In conclusion, the Chair of the Legal Committee for Appointments and Immunities noted that this case reveals a serious systemic problem, whereas granting the person a procedural status, without recording this fact in the Registry, is inadmissible and may leave room for abuse from law enforcement bodies.

The day after the hearings, Iulian Muntean resigned, which [was approved](#) by Parliament on 5 October 2023. At the same time, the APO [announced](#) the initiation of a criminal investigation on the fact of the alleged illegal actions of some employees of NAC, concerning this case.

GENERAL PROSECUTOR STOIANOGLO HAS BEEN DISMISSED. WHAT'S NEXT?

On 26 September 2023, President Maia Sandu [signed the decree](#) releasing from office the suspended General Prosecutor Alexandr Stoianoglo. According to the law, the General Prosecutor can be dismissed only at the proposal of the Superior Council of Prosecutors (SCP). The SCP formulated such a proposal [as early as 23 May 2022](#), noting Stoianoglo's insufficient performance (see [LRCM Newsletter no. 45](#)).

President Sandu hesitated to issue the decree, waiting for the judges to examine the appeal against the SCP decision. After over a year, it is still pending at the Chişinău Court of Appeals. [According to the President's office](#), the judge's decision was no longer expected, because "the court's decision... is procrastinated", and the decree "comes in the context of the European Union's recommendations to ensure the replacement of the position of the General Prosecutor".

The new General Prosecutor is unlikely to be appointed before March 2024.

According to [the Law on the Public Prosecution Service](#), the vacancy of the position of the General Prosecutor is to be filled within six months at the latest, i.e., by 26 March 2024. He is selected by the SCP and appointed by presidential decree for a 7-year term. On 6 October 2023, the SCP members [decided to amend](#) the Regulation regarding the selection of the General Prosecutor and, subsequently, the announcement of the competition.

Candidates for the position of General Prosecutor will have 30 days to submit their applications. Afterwards, those preselected will be invited for an interview with the SCP. At one of the recent SCP meetings, decisions on appointing chief prosecutors were postponed in order to be taken by the new SCP. Most likely, the selection of the next General Prosecutor will be made by the new composition of the SCP, but it is not clear yet when that will be. The four-year mandate of the current SCP members has expired, and the five prosecutor members of the SCP were not elected at the General Assembly of Prosecutors. Their election has been delayed pending the external re-evaluation of all candidates. The postponement was possible after the Supreme Court of Justice annulled, on 1 August 2023, three decisions of the Pre-Vetting Commission regarding the candidates for the SCP (see [LRCM Newsletter no. 60](#)).

According to the [Law on the External Evaluation of Judges and Prosecutors](#), the winner of the competition can be appointed General Prosecutor only if he/she passes this evaluation. Given that the new SCP has not yet been formed, a simple calculation suggests that the new General Prosecutor is unlikely to take office before March 2024.

Alexandr Stoianoglo was appointed General Prosecutor on 29 November 2019 and effectively exercised this position until 5 October 2021, when he was suspended from office by the SCP. Several criminal cases were opened against him for excess of power, corruption, and false statements, which were connected. The criminal case was [sent to court](#) in October 2022, but it is still pending before the Chişinău District Court. Alexandr Stoianoglo appealed to the European Court of Human Rights (ECtHR) [his suspension from office](#) and [the initiation of criminal cases against him](#), which he considers to be politically motivated. In May 2022, the ECtHR communicated the cases to the Government.

THE CONSTITUTIONAL COURT SUSPENDED, THEN CANCELLED THE BAN ON RUNNING FOR THE FORMER LEADERS OF THE 'ŞOR' PARTY

On 28 September 2023, the Constitutional Court, through [its decision](#), suspended the application of Art. 16 para. 2 letter e) from the [Electoral Code](#). This provision prohibited members of political parties declared unconstitutional from running for office for five years. Representatives of the former 'Şor' Party prohibited from running referred to the alleged violation of Article 38 of the Constitution, which guarantees the right to vote and the right to be

Constitutional Court:
While the intent of the recently enacted law may be to protect national security and public order, the specific restrictions are excessive and potentially arbitrary.

elected. They emphasized that the provision affects the electoral rights of those associated with a party declared unconstitutional, with possible long-lasting consequences.

After analysing the complaint, the Constitutional Court emphasized that the Constitution guarantees citizens the opportunity to be elected and registered as candidates by the electoral authorities. After debating that in front of the Court, the judges decided to suspend the provisions in question, ruling that if a certain provision is later found to be unconstitutional after the registration period for the general local elections of 5 November 2023 ended, the persons concerned would be deprived of their constitutional right to be elected. Following this decision, members of the former 'Şor' Party were able to register as candidates for these elections.

Later in the meeting of 3 October 2023, the Constitutional Court examined the complaint in detail. With the vote of three judges "for" and two "against", the Court [decided to declare the provisions in question unconstitutional](#). The Court determined that while the intent of the newly enacted law may be to protect national security and public order, the specific restrictions are excessive and potentially arbitrary. Moreover, analysing the informative note that preceded the adoption of the law, the judges of the Court found that the Parliament failed to ensure, through the provisions submitted, a procedure that would ensure the possibility of evaluating each person and their contribution to the actions that led to the declaration of the unconstitutionality of the party, to decide in each case whether they can be a candidate in the elections.

Despite the decision of the Constitutional Court, the next day, the Commission for Exceptional Situations [reintroduced the ban](#) in the Electoral Code. On the same day, the Parliament approved [amendments to the Electoral Code in two readings](#). The amendments state four main criteria as a basis for excluding candidates from running for public office. These include violations of electoral law and international sanctions imposed by other states.

The amendments to the Electoral Code targeting the 'Şor' Party were also analysed by the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (ODIHR). In its most recent [opinion](#) issued on 6 October 2023, the Venice Commission criticized the recent changes (declared unconstitutional in the meantime) to the Electoral Code. According to the Commission, the provisions in question apply a broad and automatic ineligibility to certain members of parties considered unconstitutional to run for public office without a proper individualized assessment. The Commission and ODIHR recommended that national authorities implement measures that could restrict from participating in elections only members of the party declared unconstitutional, whose actions genuinely threaten democratic values.

The violations found in Moldovan cases are varied, being an indicator of the precarious protection of human rights, especially in the justice system.

VIOLATIONS ADMITTED BY THE REPUBLIC OF MOLDOVA AND FOUND BY THE ECtHR OVER 26 YEARS

On 12 September 2023, 26 years have passed since the Republic of Moldova joined the European Convention of Human Rights (ECHR) and since then the European Court of Human Rights (ECtHR) has been examining the claims submitted against our state. LRCM [summarized in a document](#) all the violations committed by the Republic of Moldova, reviewing their type and the sentencing decisions.

The more than 5,000 pages of ECtHR jurisprudence in the cases against the Republic of Moldova were summarized in a 21-page document. The violations are systematised in a table according to the articles of the ECHR and the type of violations found by the ECtHR. In the table, for each category, are mentioned all the decisions in which a violation of the same type was found.

Between 12 September 1997 and 11 September 2023, 590 judgments were issued in which the ECtHR found 764 violations of the ECHR. The most frequently violated rights are the right to a fair trial (Art. 6 of ECHR) – 239 violations (31.3%); the prohibition of torture (Art. 3 of ECHR) – 180 violations (23.6%); the right to liberty and security (Art. 5 of ECHR) – 113 violations (14.8%); the right to an effective remedy (Art. 13 of ECHR) – 65 violations (8.5%); the right to respect for private and family life (Art. 8 of ECHR) – 47 violations (6.2%); the right to life (Art. 2 of ECHR) – 22 violations (2.9%).

The most common types of violations are failure to enforce judgements – 82 violations (10.7%); cancellation of irrevocable court decisions – 58 violations (7.6%); improper investigation of ill-treatment – 55 violations (7.2%); detention in poor conditions – 48 violations (6.3%); ill-treatment – 39 violations (5.1%); illegal detention – 32 violations (4.2%). This fact is an indicator of the poor protection of human rights in Moldova, especially in the justice system.

The Republic of Moldova was obliged to pay compensation of over EUR 22 million. For details on the compensation offered, see another [analysis put together](#) by the LRCM, at the beginning of 2023.

I IN BRIEF

On 9 August 2023, the oligarch Vladimir Plahotniuc, [recently sanctioned](#) by the European Union (EU) for the attempt to destabilise the Republic of Moldova, [initiated](#) legal action against the Council of the EU for the annulment of the decision and the [Regulation implementing the decision](#), as well as legal fees compensation. He claims that the EU Council's decision was based on errors of judgment when including him on the list referred to in Article 1 of the Decision and Article 2 of the Regulation. He also claimed the violation of his rights under the EU Treaty and the EU Charter of Fundamental Rights. The sanctions imposed by

the EU on 30 May 2023 against Plahotniuc, as well as other people, such as Ilan Șor, Marina Tauber, Gheorghe Cavaliuc and Igor Chaika, include a travel ban and freezing of assets.

On 12 September, the Superior Council of Magistracy (SCM) [appointed](#) judge Livia Mitrofan as interim president of the Chișinău District Court, after judge Nicolae Șova, for personal reasons, submitted a request to cease exercising the position of interim president of the court. The SCM asked the judges from the Chișinău District Court to submit requests for appointment to exercise the interim position of president. Only Livia Mitrofan from the Chișinău District Court (Centru headquarters) submitted a request in this regard. Judge Mitrofan was appointed with 10 SCM member votes in favour. Livia Mitrofan has been working as a judge at the Chișinău District Court since 2017.

On 15 September, the Superior Council of Magistracy (SCM) [decided](#) to repeatedly submit to the country's President the proposal regarding re-confirmation for office until the age limit of seven judges: [Veaceslav Martînenco](#), [Serafim Vasilache](#), [Eugeniu Beșelea](#), [Dragoș Crigan](#), [Lucia Bagrin](#), [Nicolae Ghedrovici](#) and [Igor Negreanu](#). At the same time, the SCM delayed examining a similar issue regarding judge [Irina Păduraru](#), on the grounds that they needed to get additional information, and proposed that the President release judge [Lorina Ciubotaru](#) from office. According to the legislation, the President of the country can reject, provided with a reason, the SCM's proposal to appoint a judge only once. It should be reminded that, in June 2022, the country's President rejected the appointment of 13 [judges](#), out of a total of 40 proposed by the SCM, for re-confirmation for office until the age limit. Later, in November 2022, [11 more candidates were rejected](#).

At the meeting of 19-21 September, the [Committee of Ministers of the Council of Europe](#) examined the measures taken by the Republic of Moldova for the effective investigation of ill-treatment. The Committee found that the number of complaints of ill-treatment has decreased compared to 2019, but the rate of cases opened on these complaints is low, the rate of acquittals is particularly high, and trials take too long to deter potential acts of torture. On 26 July 2023, [the LRCM presented its submission on this subject](#) to the Committee. Most of the LRCM's recommendations are reflected in the Committee's decision.

On 21 September, MPs Irina Lozovan and Alexandr Nesterovschi, ex-members of the PSRM and current leaders of the 'Renaissance' Party, [had their parliamentary immunity lifted](#) and were subsequently placed in preventive detention for 30 days. The Chief of the Anticorruption Prosecutor's Office, Veronica Dragalin, [provided](#) details on this case, specifying the alleged involvement of the MPs in illicit financing of the 'Renaissance' Party by the criminal group of Ilan Șor (former 'Șor' Party). It seems that both Lozovan and Nesterovschi accepted illicit funds that were also used to corrupt another former MP and extra-parliamentary party leader, Arina Spătaru.

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