

## NEWSLETTER

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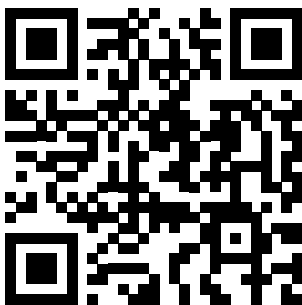
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## BRIEF NEWS



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## RAISING THE SALARIES OF THE JUSTICE SECTOR EMPLOYEES – NECESSITY OR INDULGENCE?

In October 2023, the Parliament [amended](#) the State Budget Law. Among other things, the salaries of the employees who assist judges and prosecutors were increased. Likewise, the salaries of the judges and prosecutors who passed/will pass the external evaluation (vetting) and of the judges of the Constitutional Court were increased. According to the authorities, the salary increases were made to motivate young and competent professionals to join and stay in the system, given that courts and prosecutors' offices are facing an acute shortage of qualified personnel.

The interim president of the Chişinău District Court [publicly addressed](#) the Superior Council of Magistracy (SCM) and the country's leadership. She mentioned that, only in the Chişinău District Court, **97 positions were vacant in September 2023**. In 2023, 35 people were employed and 44 resigned, thus more people left the system than joined it. According to the interim president, the main reason is precarious remuneration. The large number of vacant positions leads to the delay in examining cases and substantially affects the quality of justice.

Before the salaries were increased, judicial assistants had a basic monthly salary of 8,040 MDL, registrars received about 7,240 MDL, and court secretariat employees were remunerated on average with 5,800 MDL. In 2023, the national average gross salary was forecasted at 11,700 MDL. Thus, the calculations show that judicial assistants and clerks were remunerated on average 35% less than the national average. The salaries of prosecutors' consultants and employees of the prosecutors' offices were comparable.

[According to the Ministry of Justice](#), the salaries of civil servants in the justice sector were increased by 30%, on average. According to a [job advertisement](#) of the Chişinău District Court, after the salaries were increased, the salary of judicial assistants are of 11,030 MDL, registrars would receive 9,950 MDL, and secretariat employees would be paid 8,580 MDL a month. Despite the increase of the salaries of civil servants in the courts, they remain lower than the national average gross salary.

The salaries of judges and prosecutors who passed the external evaluation increased on average by 40%, which in real numbers would

## 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

Although the salaries of staff who assist judges increased by 30%, their salary is still lower than the national average gross salary.

represent over 32,000 MDL per month. The salaries of the judges of the Supreme Court of Justice (SCJ) and of the SCM members who passed the external evaluation are around 44,000 MDL per month, while that of the judges of the Constitutional Court – about 49,000 MDL. Last year, [the LRCM published an analysis](#) that found that Moldova was paying its judges the lowest salaries among the 46 member-states of the Council of Europe.

## THE DECISIONS OF THE SCM REGARDING JUDICIAL PERSONNEL – OCTOBER 2023

In October 2023, the Superior Council of Magistracy (SCM) initiated a series of changes in the judiciary. These changes relate to a functional reconfiguration of the judiciary, but also to the needs of some judges.

On 11 October 2023, the SCM approved [17 judge](#) transfer requests from the regional courts to Chişinău or near Chişinău. Judges motivated their transfer requests by personal, practical, or professional development circumstances. 14 of 17 judges were transferred to the Chişinău district Court, where 23 positions were available, and three others to the Criuleni and Hânceşti courts. The judges will be transferred effectively from 1 December 2023.

The SCM meetings in October also addressed the distribution of judge positions in the judiciary. On 18 October 2023, [the SCM decided](#) to reduce the number of staff of the Supreme Court of Justice (SCJ) by 13 judge units and 26 judicial assistant units. This staff was distributed as it follows: Bălţi, Cahul, Chişinău, Cimişlia, Criuleni, Drochia, Edineţ, Hânceşti, Soroca District Courts received one more judge and the Ungheni District Court – two judges.

On 18 October 2023, the SCM rejected the temporary transfer of [five judges](#) to the SCJ. The transfer is called to mitigate the effect of the resignations of over 90% of SCJ judges in March 2023, in the context of the adoption of the Law on the External Evaluation (Vetting) of the SCJ judges. Among the candidates who requested to be temporarily transferred to the high court are: [Elvira Lavciuc](#), judge from the Orhei District Court, in office since April 2009, [Stelian Teleucă](#) from the Chişinău Court of Appeals, [Andrei Guţu](#) from the Bălţi District Court since June 2006, [Ghenadie Comerzan](#), former investigating judge and deputy court president at the Briceni District Court, and [Dorin Munteanu](#) from the Chişinău District Court. The reasoned decision of the SCM has not yet been published.

On 24 October 2023, the SCM plenary admitted the requests of [four judges](#) regarding the reconfirmation in office after the first five year mandate. Judges [Speranţa Clima](#), [Cristina Panfil](#), [Taisia Prutean](#) and [Svetlana Bîcu](#) are among the approximately 40 judges who have been waiting for at least a year to pass the reconfirmation filter. On 1 April 2022, several amendments to the Constitution entered into force, which provides for the exclusion of the reconfirmation of judges in office after the first five years of activity. According to those amendments, court judges are appointed from the start until reaching the age limit. This change,

17 judges transferred, four reconfirmed, two dismissed and others awaiting reconfirmation – the SCM began resolving personnel issues in the judiciary.

however, do not apply to judges whose original five-year mandate expired by 1 April 2022.

In the same meeting, the SCM refused to reconfirm two judges, with the effect of dismissing them from office. Judges [Svetlana Tizu](#) (Chişinău District Court) and [Eugen Popovici](#) (Orhei District Court) were not confirmed for reasons related to their integrity. Ziarul de Gardă previously [wrote](#) that Eugen Popovici had been detained on suspicion of bribery but was later acquitted of all charges. Svetlana Tizu was [acquitted](#) in a corruption case involving a total of five judges [caught](#) on video. Five members of the SCM voted for this refusal. Judges Tizu and Popovici can challenge their dismissal to the SCJ.

At the meeting on October 24, the SCM was to discuss the reconfirmation in office of [four other judges](#) previously rejected by President Maia Sandu. The SCM plenary postponed the examination of this issue due to lack of quorum (at least 2/3 of the votes (8) are needed for reconfirmation).

In early June 2022, [President Sandu rejected 24 judges](#) because they did not meet the requirements of integrity and impeccable reputation. The President's reasoning published online was quite general, without reference to specific cases or specific judges. According to the law, the President of the country can reject the candidate proposed by the SCM only once, meaning the President cannot repeatedly reject the same candidate.

## THE VENICE COMMISSION ADOPTED FOUR OPINIONS REGARDING THE REPUBLIC OF MOLDOVA – WHAT ARE THE MAIN RECOMMENDATIONS?

During the session of 6-7 October 2023, the Venice Commission [adopted](#) four opinions regarding the Republic of Moldova. These opinions focus on legislation recently passed by Parliament and that has a significant impact on the country's legal and political landscape.

The first [opinion](#) refers to the legislative amendments [adopted](#) on 31 July 2023 regarding the prohibition of representatives of a party [declared unconstitutional](#) to run in elections. Although this restriction can be justified by the aim of defending the Constitution and the integrity of a democratic state, the Venice Commission emphasized the importance of respecting the principle of proportionality of this restriction. Automatic sanctions based solely on party membership and a specific position precludes individualisation and may arbitrarily affect a large number of people. The Commission recommended the Moldovan authorities to introduce an individual assessment mechanism to identify those candidates who actively promoted the illegal aims of the party declared unconstitutional and grant procedural guarantees to the persons concerned.

Another [opinion](#), adopted in light of the [previous recommendations](#) of the Venice Commission, evaluates the [Law on the Intelligence and Security Service of the](#)

The Venice Commission emphasizes the need for individual evaluation of electoral bans for candidates of a party declared unconstitutional.

Republic of Moldova (ISS) and the [Law on Counterintelligence and Intelligence Activity](#). Although most of the previous recommendations were integrated into the final version of these laws, not all of them were fully followed. The Venice Commission reiterated the importance of creating a group of independent experts to oversee the activity of the ISS and of establishing an effective mechanism to challenge the actions of the ISS. The Commission also recommended legal improvements regarding the margin of discretion granted to the ISS when applying counterintelligence measures, clarifying the role of the President of the Republic of Moldova and the Parliament in controlling the activity of the ISS, as well as the clearer definition of some notions used in the law.

The Commission's third [opinion](#) concerns the [draft Law on the Anticorruption Judicial System](#), which proposes the establishment of specialized courts for corruption cases. The Commission recommended the authorities to intensify efforts to complete the process of external evaluation of judges and possibly assign corruption cases to judges who will pass the vetting. It also suggested a detailed analysis of the data to ensure a sufficient number of judges in that court. Additionally, the Commission emphasized the importance of creating a specialized anticorruption chamber within the Supreme Court of Justice and mentioned that the selection procedure of judges should be entrusted to the Superior Council of Magistracy, eliminating the need for a pre-selection made by another institution. The Commission also suggested the elimination of the 'lifestyle' check of anticorruption judges, considering that checking their wealth is sufficient to assess their integrity.

The last [opinion](#) of the Venice Commission concerns the [amendments](#) made to the legislation regarding the external evaluation of judges and prosecutors (vetting). The Commission noted that most of the recommendations from the June 2023 [opinion](#) have been implemented. The Commission also emphasized the importance of reintroducing in the final text of the law the provision that ensures that the person is not charged retroactively for violating rules that did not exist on the day the act was committed.

## ALEXANDR STOIANOGLO: DISMISSAL FROM OFFICE, ECTHR RULING AND APPEALS TO THE CONSTITUTIONAL COURT

On 24 October 2023, the European Court of Human Rights (ECtHR) delivered its judgment in [the case of Stoianoglo v. Moldova](#). The plaintiff, a former general prosecutor, claimed that he had no access to the court to challenge his suspension from office as a result of the initiation of the criminal case against him, but also the lack of effective remedy at the national level in this regard. A retrospective description of the suspension and initiation of the criminal case against Alexandr Stoianoglo can be found in the [LRCM Newsletter no. 37](#).

The ECtHR found that the suspension of a prosecutor can be justified but must

The former General Prosecutor won at the ECtHR due to flawed legislation, which was already fixed. The ECtHR decision does not require Stoianoglo's reinstatement.

be examined on a case-by-case basis. The national legislation of October 2021 did not allow the applicant to challenge in court his suspension from office, the suspension being automatic by law. The ECtHR concluded that an automatic suspension violates the right to access to justice. The ECtHR did not examine the merits of the criminal charge against Stoianoglo nor whether the suspension from office was justified. There is [another application](#) filed by Alexandr Stoianoglo on the ECtHR's docket, which refers to the validity of his house arrest ordered in the same criminal case.

The ECtHR ordered the Republic of Moldova to pay 3,600 EUR as moral damage but rejected the claims regarding legal fees. [At a press conference](#), Stoianoglo mentioned that reinstating him as general prosecutor would represent the effective execution of the ECtHR judgement.

In 2022, the Law on the Public Prosecution Service was [amended](#) and the mechanism for suspending the General Prosecutor from office was revised. According to the amendments, the General Prosecutor is suspended by law for up to three days. Before the given term expires, the Superior Council of Prosecutors (SCP) is to convene an extraordinary meeting and decide on keeping or terminating the suspension from office. The SCP decision can be appealed to the Supreme Court of Justice within 10 working days from the date on which the decision was communicated to the person concerned. Therefore, the legislative deficiency criticized by the ECtHR was removed, a fact also emphasized in the ECtHR judgement.

On 6 October 2023, the SCP took note of the [decree signed](#) by President Maia Sandu regarding the dismissal of Alexandr Stoianoglo from the position of General Prosecutor. On 23 October 2023, the SCP launched a [public competition](#) for the selection of a new general prosecutor. The deadline is 22 November 2023. Meanwhile, Stoianoglo's lawyers [challenged](#) the President's decree in court. On 2 November 2023, a group of MPs in the Parliament requested the Constitutional Court (CC) to suspend the President's decree. On 6 November, the CC [rejected the request for suspension](#) because no argument to support the suspension was presented.

## THE TRANSPARENCY OF THE SUPERIOR COUNCIL OF PROSECUTORS – BETWEEN THE LAW AND REALITY

On 26 October 2023, the Legal Resources Centre from Moldova (LRCM) presented the '[Transparency of the Superior Council of Prosecutors' Report](#) in which it analysed how transparent the Superior Council of Prosecutors (SCP) was between 1 January 2020 and 30 June 2023. The report identified several shortcomings in the SCP's activity, including poor reasoning of decisions, examining issues behind closed doors and systemic delays in publishing decisions.

During the monitoring period, 109 SCP sittings were planned, of which 90 (83%) were held. The other 19 (17%) were postponed, mainly due to a lack of quorum. According to the law, the agenda of SCP sittings must be published on the



About half of the important topics were decided by the SCP behind the closed doors.

Internet at least two days before the meeting. The agenda of 15 sittings (14%) was published with the breach of this norm. 11 agendas were published the day before the sitting, and the other 4 – on the day of the sitting itself.

SCP included 805 topics on the agenda. Of the topics examined, 124 (15%) related to the selection, performance, and career of prosecutors. 203 issues (25%) concerned the discipline and ethics of prosecutors, and another 83 (10%) referred to the approval of the priorities and activity reports of the SCP, of the boards of prosecutors, and the approval of the normative acts of the SCP. The other topics on the agenda, which represented about 50%, referred to technical aspects, such as announcing competitions, referring candidates to boards for evaluation, and examining applications or complaints. These matters can also be decided by the SCP president, without packing the SCP agenda.

369 subjects were discussed by the SCP in public session, and other 289 (36%) – in closed session or the final decision was taken 'in deliberation'. Other 217 topics were excluded from the agenda and/or their discussion was postponed for other meetings. Discussing more than a third of the matters in closed or partially closed sittings seriously affects the transparency of the SCP. Moreover, resorting to 'deliberation' to make decisions on many important issues is not in line with the law, as the institution of 'deliberation' is not provided for by the Law on the Public Prosecution Office, under which the SCP functions.

According to the SCP Regulation, the reasoned decisions of the SCP are to be published on the SCP website within 10 working days from their adoption at the latest. Of the 568 SCP decisions published on the website during the monitoring period, only 23 (4%) were published in time. Most of them (12) were published on the last day. The average term for publishing a SCP decision is 42 working days, four times longer than the established term. The belated publication of the SCP's reasoned decisions, combined with the consideration of many important matters by the SCP behind closed doors, cannot but decrease the public trust in the SCP. Moreover, they make the work of SCP difficult to understand even for professionals.

The LRCM found that, most often, the reasoning of SCP decisions is poor, with more emphasis on reporting legal circumstances and reproducing legal provisions. From the text of most SCP decisions, it is difficult to understand their reasoning.

## I BRIEF NEWS

On **10 October 2023**, the Superior Council of Magistracy (SCM) [started the procedure](#) to select a judge at the Constitutional Court (CC). On 30 October 2023, the SCM [published an open call for the selection](#) of candidates, which lays out the conditions they must meet and the dossier they must present. The deadline is 20 November 2023. The SCM [considered](#) the previous competition as a failure because none of the 11 candidates got the necessary votes of the SCM members. The position at the CC is vacant since January 2021, when judge Ababii died.

On **12 October 2023**, the Chişinău Court of Appeals [obliged](#) the Superior Council of Magistracy (SCM) to re-examine the notification of the acting General Prosecutor Dumitru Robu from 24 May 2022, regarding the release of the agreement for the initiation of the criminal investigation against judge [Oleg Melniciuc](#). The notification refers to [the accusation of sexual harassment](#) by the judge of a student who, in the spring of 2022, carried out her internship at the court where the judge worked. On 27 May 2022, the SCM [rejected the notification](#) citing 'the lack of evidence regarding the reasonable suspicion that the judge committed the crime'. Melniciuc is the first judge [sentenced in a first-level court](#) to seven years in prison for illicit enrichment. Currently, the criminal case is being tried at the Chişinău Court of Appeals, and the judge is [suspended from office](#).

Between **18 October** and 10 November 2023, the competition for the selection of candidates for the Superior Council of Magistracy (SCM) membership on behalf of the Parliament will take place. It [was announced](#) by the Parliament following [the termination](#) of Iulian Muntean's mandate (more details in the [LRCM Newsletter no. 61](#)). The candidates must meet several [cumulative conditions](#), such as having a degree in the field of law or another relevant field, experience in the field of law and being well-known for their activity in the field of jurisprudence or another related field for at least 10 years, a good command of the Romanian language and proof of personal integrity and a good professional reputation.

On **20 October**, the Vetting Commission [issued a statement](#) according to which lawyers Ion Creţu and Artur Macovei withdrew from the competition for the position of the judge of the Supreme Court of Justice (SCJ). Artur Macovei withdrew his application after receiving the first batch of questions, and Ion Creţu withdrew it even earlier, when he was asked to declare his assets. Currently, the Commission is evaluating three SCJ judges in office and 20 candidates for the position of SCJ judge remaining in the competition after the two withdrew. Two other candidates for the SCJ have passed the Pre-Vetting Commission assessment and are exempt from vetting.

On **25 October 2023**, the LRCM held a public lecture at the State University of Moldova – '[The European Court of Human Rights explained for everyone](#)'. The event took place in the context of the 26<sup>th</sup> anniversary since citizens of the Republic of Moldova can complain against Moldova to the European Court. About 80 students from the departments of law, journalism, and international relations, as well as young professionals, attended the lecture. The participants got familiar with the referral mechanism of the European Court, its procedure and the Court's main jurisprudence in Moldovan cases. In December 2023, LRCM will hold another public lecture, in the context of International Human Rights Day, marked annually on 10 December.

On **26 October 2023**, the Parliament [approved](#) Iulian Rusu's resignation from the position of Head of the National Anticorruption Centre (NAC). The real reasons for resignation are not known. On the same day, the Parliament appointed [Alexandru Pînzari](#) as Head of the NAC for a 5-year term. Alexandru Pînzari is working at NAC

since 2016. He held the position of Head of the General Territorial Directorate 'North' of the NAC, and, from August 2023 – the position of Deputy Head of NAC.

On **26 October 2023**, the Parliament of the Republic of Moldova [approved](#) the termination of Vitalie Miron's membership in the independent Commission for the evaluation of the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors (Pre-Vetting). Miron [submitted his resignation](#) and announced the end of his work on 6 October 2023. The resignation does not block the activity of the Commission.

The Parliament wants to introduce the position of 'Vice President' at the Superior Council of Magistracy (SCM). According to the draft [briefing note](#), the introduction of the vice president position was deemed necessary for several reasons, including continuity of operations, to ensure that the functions of the SCM president can be carried out in their absence. Secondly, for efficiency and delegation, so that the vice president can be delegated by the SCM specific duties and responsibilities during the SCM meetings. The draft law [was voted](#) in its first reading on 5 October 2023, even though the draft law was not publicly consulted.

## | LRCM'S TEAM

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Executive Director

**Aurelia CELAC**  
Accounting & Financial Manager

**Daniel GOINIC**  
Program Director

**Olga CORTAC**  
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**Vladislav GRIBINCEA**  
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Legal Officer

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Communication Specialist

**Valeria BUTORINA**  
Junior Legal Officer



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### LEGAL RESOURCES CENTRE FROM MOLDOVA



33, A. Șciusev st.,  
MD-2001, Chișinău,  
Republic of Moldova



+373 22 84 36 01



+373 22 84 36 02



[contact@crjm.org](mailto:contact@crjm.org)



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