

NEWSLETTER

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IN BRIEF

THE SCM ORGANIZED THE FIRST COMPETITION FOR THE APPOINTMENT OF JUDGES AFTER A TWO-YEAR BREAK

On 16 and 17 November 2023, the new composition of the Superior Council of Magistracy (SCM) successfully held the first competition for the appointment of judges under the aegis of the [new Law](#) on the selection and performance evaluation of judges, approved in June 2023. [Over 80 registered candidates](#) competed for [15 vacant judge positions](#) in various courts, including the Chişinău District Court. The new selection process used a weighted scoring system, considering the performances in the exams of the National Institute of Justice (NIJ) – a maximum of 60% of the evaluation, the scores obtained by the candidates at the Board for Selection – a maximum of 20% of the evaluation, as well as the evaluation by SCM members – a maximum of 20%.

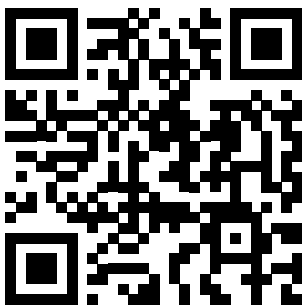
According to the new law, the SCM had the task of verifying to what extent the candidates' profiles correspond to several new criteria imposed by the law. These include possessing personal qualities such as integrity, fairness, the ability to handle stressful situations, and analytical and decision-making ability. Other important criteria relate to the ability to solve complex legal cases, compliance with the rules of professional ethics and the relevance of previous experience for the position applied for, as well as experience in specialised legal positions. The new law also provides for assessing candidates for participation in non-formal educational activities or projects, as well as for command of English or French – the official languages of the Council of Europe.

The interviews lasted two consecutive days and each candidate was evaluated according to a methodology that included the presentation of atypical legal scenarios and the candidate's proposed solutions. Candidates' professional history, previous achievements and contributions in the judicial field were also checked. Each member of the SCM asked a question, which in some situations included simulations and case studies to test candidates' ability to handle hypothetical situations that require analytical thinking and quick decision-making.

Towards the end of the second day, 17 November, 15 candidates chose their positions in the order of the scores obtained; in the end, all vacant positions were filled, including those in Taraclia and Ceadr-Lunga offices considered less attractive due to being far from Chişinău. Three candidates were disqualified for failing to show up. SCM 'preferred'



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The most recent SCM competition for appointing judges: 5.3 candidates for one vacant position and 70% of those selected were NIJ graduates.

NIJ audiences. About 73% (11 of the 15 selected candidates) are NIJ graduates, while the remaining four have at least five years of legal experience. All candidate interviews can be accessed online here: [day one](#) and [day two](#).

JUDICIARY VETTING DIGEST – LEGISLATIVE AMENDMENTS, MORE INTERVIEWS, AND A CONSIDERABLE PAY RISE

Several important events related to the external evaluation of the justice system (vetting) took place in November. On 1 and 2 November 2023, the Pre-Vetting Commission again interviewed the candidates for the Superior Council of Prosecutors (SCP): [Anatolie Gîrbu](#), [Cristina Gladcov](#) and [Vitalie Codreanu](#). On 1 August 2023, the Supreme Court of Justice (SCJ) invalidated the decisions of the Pre-Vetting Commission regarding the three mentioned candidates failing the evaluation. For this reason, on 23 August 2023, the General Assembly of Prosecutors refused to elect new members-prosecutors of the SCP (for details, see [LRCM Newsletter no. 60](#)). On 8 December, [the Commission published the decisions](#) regarding the three prosecutors. According to them, Anatolie Gîrbu, Cristina Gladcov and Vitalie Codreanu failed the pre-vetting. On 23 November 2023, the Pre-Vetting Commission interviewed again the judge of the Chişinău Court of Appeals, [Angela Bostan](#), and on 28 November 2023 – the former judge [Tatiana Chiriac](#). The last two applied for the Superior Council of Magistracy (SCM) and previously failed the pre-vetting. On 1 August 2023, the SCJ also annulled the decisions of the Pre-Vetting Commission regarding them and ordered their re-evaluation.

On 20 November 2023, the SCJ rejected Iurie Bejenaru's appeal against the decision of the Pre-Vetting Commission. On 31 March 2023, [the Commission found](#) financial and ethical irregularities and concluded that Iurie Bejenaru did not pass the pre-vetting. Consequently, the latter could not run for the SCM. In the spring of this year, Bejenaru resigned from the position of SCJ judge. [The SCJ concluded](#) that since Iurie Bejenaru is no longer a judge, he can no longer run for the SCM. On 22 November 2023, [the SCJ rejected the appeal filed by Ana Tîpa](#), a candidate for the SCM from civil society, because the reasons cited for cancelling the decision of the Pre-Vetting Commission were unfounded.

Currently, in the SCM there are two vacant membership positions from civil society, which are to be filled by the Parliament based on a public competition. In November 2023, the deadline for applying for these positions expired. The Parliament's legal committee preselected [eight candidates](#). They are Aliona Corcenco, Leonid Chirtoacă and Veaceslav Gu an, who applied for this position in the previous competition, lawyers Vitalie Ciuchitu and Ion Rusu, Sergiu Băieşu, university professor at the Department of Law of the State University of Moldova, Tatiana Tabuncic, member of the Integrity Council, and Anatolie Minciuna, ex-interim president of the Chişinău Court of Appeals.

The monthly salary of the SCJ judge who passed the vetting will be around 55,000 MDL, 50% more than at present.

On 24 November 2023, Parliament adopted in final reading the [amendments to all three vetting laws](#), which entered into force on 7 December 2023. All three commissions and secretariat employees will have the same immunity from criminal proceedings. Previously, immunity existed, but it was different from one commission to another. The amendment also provides that the submission of the appeal to the SCJ suspends the release from office of the judges who failed the vetting. [Law no. 252/2023](#) was adjusted to allow the evaluation of the first two runners-up in the competition for management positions, not just the winner of the competition, as it was previously. This change was introduced to reduce the risk of competitions being repeated due to the winner of the competition failing the vetting afterwards. The draft law also introduced the possibility of temporary transfer of judges in appeal courts whose activity is jeopardised by the large number of vacant positions. The minimum experience from which a judge can be promoted to the appeal courts has also been reduced (from six to four years). The last two amendments aim at the possible unblocking of the activity of the courts of appeal in the event of the mass resignation of the judges of these courts at the beginning of the vetting. Vetting of Court of Appeals judges could begin in January-February 2024.

On 24 November 2023, Parliament appointed Tatiana Răducanu, proposed by the PAS Faction, and Cornel Lebedinschi, proposed by the Bloc of Communists and Socialists, as [members of the Prosecutors' Vetting Commission](#). Tatiana Răducanu is a former SCJ judge and currently a member of the Pre-Vetting Commission. Cornel Lebedinschi worked in the Ministry of Internal Affairs and is the brother of a former leader of the Socialist Party. On the same day, Parliament confirmed the nominal composition of the Prosecutors' Vetting Commission. The Commission also includes foreign experts [Christopher Lehmann](#), [Irmantas Mikelionis](#) and [Johanna Saskia de Vries](#). One position of national member is still vacant, but this is not an obstacle to starting the work of the Commission.

On 27 November 2023, the Judges' Vetting Commission held its first hearings. Three people were interviewed – [Aliona Miron](#), acting SCJ judge, and the candidates for the position of SCJ judge, [Sergiu Brigai](#) and [Viorica Puica](#). Their interviews lasted less than 10 minutes each. The Commission announced that it has no doubts about their financial and ethical integrity. The Commission's reports are to be submitted to the SCM, which will make decisions on whether the candidates passed or failed the vetting.

On 1 December 2023, the Government approved [the draft Budget Law for the year 2024](#). It provides for at least a 50% salary increase for the judges and prosecutors who will be successfully vetted. The draft law also provides for a 25% increase in the salary of SCM members who passed the pre-vetting. Consequently, the monthly salary of the SCJ judge and the members of the SCM will be around 55,000 MDL. The draft law does not provide for an increase in the salaries of the other judges and prosecutors, because the latter should be encouraged to be vetted and occupy the key positions in the judiciary, many of which are vacant.

The Constitutional Court ruled unconstitutional one of the provisions that was applied to the evaluation of Alexandr Stoianoglo's performance, as a result of which he was released from the position of Prosecutor General, on the grounds of being 'unsatisfactory'. It remains uncertain whether this fact would constitute a reason to annul the presidential decree releasing Stoianoglo from office.

DECISION OF THE CONSTITUTIONAL COURT – GROUNDS FOR THE REINSTATEMENT OF THE FORMER PROSECUTOR GENERAL STOIANOGLO?

On 9 November 2023, the Constitutional Court (CC) ruled [unconstitutional](#) one of the legal provisions that formed the basis of the [performance evaluation](#) of the former Prosecutor General Alexandr Stoianoglo (more in [the LRCM Newsletter no. 45](#)). The decision of the CC was based on the Alexandr Stoianoglo's [request](#) in a case related to the challenging of the [Regulation](#) on the performance evaluation of the Prosecutor General, adopted by the Superior Council of Prosecutors (SCP) on 22 November 2021.

CC ruled unconstitutional art. 311 para. (5) of the [Law on the Public Prosecution Service](#) (as amended before 10 October 2022), which provided that the criteria for evaluating the performance of the Prosecutor General are established by a regulation approved by the SCP. The CC held that the Prosecutor General exercises a mandate of constitutional rank and giving the SCP excessive powers to regulate the performance evaluation criteria, which can lead to dismissal, significantly diminishes the stability of its mandate. The evaluation criteria must be established by the Parliament by law, in a clear manner, but not by a normative act inferior to the law. The decision adopted was based on [the Opinion](#) of the Venice Commission of 13 December 2021, by which it was held that giving the SCP practically unlimited power to establish the substantial requirements in which the Prosecutor General can be dismissed would be contrary to the pre-eminence of law. The Commission noted that, in general, the SCP can develop the norms provided for in the laws through its own acts, however, it is excessive for it to be able to develop norms capable of affecting the constitutional mandate of the Prosecutor General.

The decision in question was adopted with the vote of three out of five CC judges. CC judges [Nicolae Roşca](#) and [Liuba Şova](#) had dissenting opinions. They considered that Stoianoglo's request was to be rejected as repetitive as previously, on 30 September 2021, the [CC ruled](#) the request to verify the constitutionality of the mentioned provision inadmissible. The dissenting judges held that the jurisprudence of the European Court of Human Rights established that the term 'law' should be understood in its 'substantial' sense and not the 'formal' one. That is, this term also includes lower-ranking normative acts, not just laws passed by Parliament. At that time, the CC did not consider that the Parliament acted contrary to the Constitution when it delegated to the SCP the prerogative to adopt an act that would regulate the manner of evaluation of the Prosecutor General.

It should be noted that the article ruled unconstitutional [was amended](#) back in October 2022. At that time, the legislator took into account [the recommendations of the Venice Commission](#), expressly indicating in the Law on the Public Prosecution Service the criteria for evaluating the performance of the Prosecutor General. Thus, although on the date of the pronouncement of the CC decision, the given article no longer existed, the CC considered it necessary to examine the submitted referral, on the grounds that the administrative act issued by the SCP based on the old rule is challenged in court.

It remains uncertain whether the decision of the CC of 9 November 2023 would constitute grounds for annulling the [presidential decree](#) of 26 September 2023 regarding the release of Alexandr Stoianoglo from the position of Prosecutor General. The decree in question was issued on the basis of the [Report of the Evaluation Commission](#) and the [SCP Decision](#) of 23 May 2022, by which Prosecutor General Alexandr Stoianoglo's performance was deemed 'unsatisfactory'. The act issued by the SCP is in force and produces legal effects, but it is also the subject of a judicial case.

THE ANTICORRUPTION PROSECUTOR'S OFFICE WILL INVESTIGATE HIGH-LEVEL CORRUPTION CASES – NEW AMENDMENTS VOTED BY PARLIAMENT

On 24 November 2023, the Parliament [adopted](#) in its final reading the draft law to amend the Criminal Procedure Code of the Republic of Moldova, intending to endow the Anticorruption Prosecutor's Office (APO) with sufficient capacities to detect, investigate and prosecute high-level corruption. This initiative was supported by [60 MPs](#) and comes as a result of [adopting a law](#) in the summer of this year, which established the delimitation of the powers of the APO and the National Anticorruption Centre (NAC) in investigating high-level corruption cases (see the [LRCM Newsletter no. 60](#)). The amendments will enter into force in March 2024.

Under the new provisions, the APO will prosecute all types of corruption-related offences committed by high-level officials, including embezzlement of foreign assets, money laundering, illegal financing of political parties, as well as filing incomplete or false asset declarations. Anticorruption prosecutors will have the competence to investigate crimes committed by persons whose appointment or election is regulated by the Constitution of the Republic of Moldova (such as the President of the country, MPs, ministers, judges, prosecutors, etc.) or who are invested in office by Parliament, President or Government (leaders and persons with positions of responsibility within the central administrative authorities or subordinate institutions) and some elective positions (mayors and local councillors of municipalities, etc.).

However, anticorruption prosecutors will be able to investigate crimes committed by any person when the amount of money or the value of services, goods, privileges, or advantages offered or received exceeds 10,000 conventional units (500,000 MDL) or if the value of the damage is greater than 100,000 conventional units (5 million MDL).

Considering the recent 'decoupling' of the APO from the NAC, but also the need to ensure the good operability of the specialised prosecutor's office, the amendments provide those future vacant positions of prosecutors and criminal investigation officers will be filled, as well as the provision of the APO with technical means so

The law will enter into force in March 2024, and until then, the Anticorruption Prosecutor's Office will get additional human and technical resources.

that it can function at full capacity. At the same time, between 1 and 31 March 2024, the criminal cases in the criminal investigation phase within the APO and within NAC, for which they will no longer be competent to carry out the criminal investigation according to the new provisions, will be forwarded to the Prosecutor General to be examined and assigned according to competence.

CHANGES AT THE CONSTITUTIONAL COURT: THE NEW PRESIDENT AND THE SIXTH ELECTED JUDGE

On 9 November 2023, Nicolae Roşca resigned from the position of president of the Constitutional Court (CC). The announcement was published on the same day, on the CC's official website, a few hours after the CC [partially admitted a request](#) made by the lawyer of the former Prosecutor General Alexandr Stoianoglo and declared unconstitutional Article 311 (5) of the Law on the Public Prosecution Service, which provided for the evaluation of the activities of the Prosecutor General based on a regulation approved by the Superior Council of Prosecutors.

Nicolae Roşca was president of the court from [25 April of this year](#), after judge Manole's mandate expired. On 10 November 2023, Domnica Manole was re-elected as president of the CC with the majority of votes.

Following the start in October of the procedure to select a judge at the CC, the Superior Council of Magistracy (SCM) announced that two candidates have [applied](#) – Viorica Puica, interim president of the Supreme Court of Justice (SCJ), and Sergiu Russu, chief prosecutor of the Anti-Trafficking in Human Beings Section of the General Prosecutor's Office (GP).

Viorica Puica is a career judge, working since 2002 at the Chişinău District Court, Centre headquarters. The judge became the interim president of the SCJ on 25 August 2023, following a temporary transfer. Sergiu Russu is a career prosecutor, working in the Dubăsari Territorial Prosecutor's Office, including as chief prosecutor, but also in various managerial positions within GP. In 2021, he worked as interim chief prosecutor of the Prosecutor's Office for Combating Organised Crime and Special Cases.

On 24 November 2023, the SCM held the competition and after interviewing the candidates, with the unanimous vote of the members present at the meeting, Viorica Puica [was appointed](#) as a judge at the CC, for a six-year term. The candidates' interviews were held behind closed doors. The interim president of the SCM, Sergiu Caraman, [stated that the interviews](#) will be made public soon on the SCM website. On the same day, Viorica Puica [took the oath](#) in the plenary session of the Parliament.

Viorica Puica, SCJ judge, was elected as Constitutional Court judge.

I IN BRIEF

On **3 November 2023**, the Ministry of Justice [updated](#) the number of notary positions required throughout the Republic of Moldova by adding 33 units. This procedure [is carried out](#) once every three years, and new positions were added because of the complaints about insufficient notaries to cover citizens' requests or even their total absence in certain parts of the country. The criteria considered include the number of inhabitants, the extent of the territory of notarial activity, economic needs, and the income ceiling of notaries.

On **6 and 16 November 2023**, by the decisions of [the president](#) and [the ad-interim president](#) of the Constitutional Court (CC) respectively, the requests submitted by a group of MPs regarding the suspension of the [presidential decree](#) of 26 September 2023 regarding the release of Alexandr Stoianoglo from the position of Prosecutor General, following the [unsatisfactory evaluation](#) of his performances were rejected. The decisions in question were subsequently confirmed by the plenum of the CC on **7 November 2023** and **21 November 2023**, respectively. Constitutional judges [Serghei Țurcan](#) and [Vladimir Țurcan](#) formulated dissenting opinions on the last decision of the CC, noting that the request for suspension is to be admitted, on the grounds that, in the case of the appointment of another person to the position of Prosecutor General, the eventual decision to declare the challenged decree unconstitutional will be ineffective. CC has not yet examined the merits of the [notification](#) and has not commented on it. On 23 October 2023, the Superior Council of Prosecutors (SCP) [started the competition](#) for the selection of the candidate for the position of Prosecutor General, setting 22 November 2023 as the deadline. Two candidates [applied](#) for the position – [Igor Demciucin](#), career prosecutor, and [Ilie Rotaru](#), lawyer. On 24 November 2023, [the SCP decided](#) to extend the application period until 29 December 2023.

On **9 November 2023**, the Constitutional Court ruled [inadmissible](#) the notification of the Commission for Exceptional Situations regarding the unconstitutionality of Article 225 para. (3) lit. e) from the [Administrative Code](#). This rule refers to the limits of judicial control over the proportionality of measures adopted in exceptional situations. The stake of this notification initiated by the Government was related to the impossibility of restoring the electoral rights for all the candidates of the 'Chance' Political Party. The notification was ruled inadmissible, and the legality of the candidates' exclusion from the elections is to be decided by the Chișinău Court of Appeals.

On **9 November 2023**, the Parliament voted in its first reading [the draft law](#) to amend, mainly, the Administrative Code, and subsequently the Enforcement Code. The draft law aims to improve the provisions related to administrative litigation and to remove the identified deficiencies. The main conceptual changes are the regulation of the possibility for citizens to claim compensation for damages with the submission of the preliminary request or legal action; clarification of the grounds for suspension of the administrative act; exclusion of the public authority's obligation to conduct the hearing of the petitioner ex officio; relieving citizens from the obligation to prove facts accessible to the public authority by

accessing interconnected information systems, including publicity registers; the express specification of the types of administrative contracts; the regulation of the new institution for declaring the prior request as inadmissible. The procedure for the execution of decisions rendered in administrative litigation has significantly changed. Thus, the courts of appeal will no longer be responsible for it, but the courts at the debtor's headquarters will mandate a bailiff. On 17 November 2023, [public consultations](#) were held concerning the draft law and proposals for its adjustment were debated. The draft law is to be finalized and voted on in its second reading.

On **14 November 2023**, the Superior Council of Magistracy (SCM) [admitted](#) the requests of the interim Prosecutor General, Ion Munteanu, by which he requested permission to prosecute four judges, [criminally investigated](#) by the Anticorruption Prosecutor's Office. Radu Grecu and Valentina Garabagiu from the Chişinău District Court, Buiucani headquarters, Garri Bivol from the Chişinău District Court, Centre headquarters, and Mihail Diaconu from the Chişinău Court of Appeals are the judges in question. They are suspected of influence peddling, passive corruption, and active corruption. Following the decision of the SCM, the four judges were suspended from office until a final decision is to be issued in the given case. On 24 November, [Mihail Diaconu](#) was placed under a 30-day house arrest, and [Valentina Garabagiu](#) was placed under a 30-day preventive arrest.

On **30 November 2023**, the Parliament of the Republic of Moldova [voted in its first reading](#) on the draft Law regarding the establishment of a specialised judicial system for the examination of corruption and related cases, including the competence to examine the legality of the findings issued by the National Integrity Authority (NIA), as well as NIA requests for unjustified asset confiscation. The system will include three levels: the Anticorruption Court with 15 judges, the Anticorruption Board of the Chişinău Court of Appeals with six judges, and the Supreme Court of Justice, which will examine cases in the last instance. The draft law proposes benefits, including improved remuneration for anticorruption court judges as well as their staff. If necessary, the judges of the anticorruption courts will be able to benefit from state security, housing, or non-taxable allowance for rent, if they are not from Chişinău. The Venice Commission has [reviewed](#) the draft and any objections will be considered for the second reading. The LRCM does not consider the initiative to establish an anticorruption judicial system appropriate (see [LRCM study](#) and [legal opinion](#)).

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