

## NEWSLETTER

### Contents

After a row of legal disputes, the CEC decides there will be 150 overseas polling stations

The Constitutional Court terminated the mandates of four members of the Superior Council of the Magistracy

The government reached an agreement with S.A. Gemenii—the latter will not lose its property

Falun Dafa—a case lost at the ECtHR and a telling example of injustice

Illicit enrichment and failure to explain wealth—between myth and reality

Another 13 police officers convicted over the death of Andrei BRĂGUȚĂ

In Brief

### About LRCM

Legal Resources Centre from Moldova (LRCM) is a nonprofit organization that contributes to strengthening democracy and the rule of law in the Republic of Moldova with emphasis on justice and human rights. Our work includes research and advocacy. We are independent and politically non-affiliated.

### After a row of legal disputes, the CEC decides there will be 150 overseas polling stations

On 11 July 2021, the Republic of Moldova will hold its snap parliamentary elections. Since 1994, Moldovan citizens can [vote abroad](#). According to Article 31 of the Election Code, the number of overseas polling stations (PS) is decided based on three criteria: (1) the turnout at the previous election, (2) the results of the pre-registration of voters abroad, and (3) the number of citizens located abroad according to the information presented by host countries to the Ministry of Foreign Affairs and European Integration (MFAEI). The Central Election Commission (CEC) must set up overseas PSs following consultation with the MFAEI at least 35 days before the elections.

On 30 April 2021, the CEC approved the [budget of expenses](#) for the organization of the elections of 11 July 2021, which includes expenses for the opening of 150 overseas PSs. Although the total budget of expenses approved by the CEC was MDL 125 million, on 12 May 2021 the government [allocated](#) only MDL 70 million. The government recommended the CEC to reduce the expenses for the organization of the elections and pledged to cover the shortfall on the eve of the elections. Interim Prime Minister Aureliu CIOCOI [encouraged](#) Moldovans residing abroad to volunteer on election day to reduce costs.

On 25 May 2021, the MFAEI [made a proposal to CEC concerning the establishment of overseas PSs](#) and proposed the opening of 191 PSs. On 4 May 2021, one day before the legal deadline for setting up overseas PSs, the CEC's Chairman Dorin CIMIL addressed MFAEI [a request proposing 162 PSs](#). The next day, on 5 June 2021, at the proposal of the CEC's Secretary Maxim LEBEDINSCHI, the CEC [approved the organization of 139 PSs abroad, by five votes to four](#). This decision was voted by the CEC members put forward by the Socialist Party (PSRM) and the Democratic Party (PDM). The number and location of PSs were the same as during the 2020 presidential elections, despite the fact that in 2020 11 PSs in France, Germany, the United Kingdom and Italy ran out of ballots early, while the number of citizens pre-registered to vote abroad for the 2021 elections increased by 67%, from 60,000 to 100,000. The decision to set up 139 PSs was not discussed in advance and was adopted after the amendment of



The CEC's refusal to organize more polling stations abroad was politically motivated and, had it respected the legal criteria, there should have been fewer polling stations in Russia and more polling stations in Italy, the United Kingdom, Germany and France.

the draft decision proposed by the CEC's chairman concerning the opening of 162 PSs, which was done at the same meeting of the CEC. The five CEC members cited insufficiency of funds as the reason for reducing the number of PSs.

The CEC's decision of 5 June 2021 was met with outcry and criticism, including from [President Maia SANDU](#) and [the ombudsman](#). In a communiqué, the government [expressed their surprise](#) at the CEC's refusal of the MFAEI's proposal. Interim Prime Minister Aurel CIOCOI said that the government had not signaled that it was unable to cover the expenses for more overseas PSs. The President of the country, the ombudsman, and the Prime Minister requested the number of overseas PSs to be increased. By contrast, Justice Minister Fadei NAGACEVSCHI [distanced himself](#) from the government's communiqué, stating that it represented an act of pressure on CEC.

On 7 June 2021, the [Civic Coalition for Free and Fair Elections \(CALC\)](#) stated publicly that CEC had acted arbitrarily, against the interests of overseas voters. According to [the CALC's opinion of 11 May 2021](#), authorities were expected to open at least 153 PSs abroad and to increase the number of PSs in the localities where the ballots had run out early in the 2020 elections and where more citizens had pre-registered for voting.

On 8 June 2021, CEC reviewed its decision and [approved the opening of 146 overseas PSs](#), seven more than it had decided on 5 June 2021. These PSs were opened in the cities where ballots had run out early during the 2020 elections. In none of the decisions taken on 4, 5, and 8 June 2021, the CEC explained how it had taken into account the three criteria set in the Election Code for the establishment of overseas PSs.

Seven election candidates challenged the CEC's decisions of 5 and 8 June 2021 in court. On 17 June 2021, the Chişinău Court of Appeals (CCA) [set aside](#) the annex to the CEC's decisions of 5 and 8 June 2021, which listed PSs, and ordered the CEC to adopt a new list of overseas PSs. The CCA noted the superficiality of the information in the MFAEI's opinion, which failed to explain how the three criteria set in the Election Code for the establishment of overseas PSs were applied. The court further stressed that the CEC and the MFAEI had worked poorly to organize the voting overseas, ignored the negative experience of the previous presidential elections and failed to properly address the situation caused by the COVID-19 pandemic. The CCA also mentioned the ambiguity of the government's messages concerning the financing of the elections. The court proceeding exceeded the statutory time frame of three days prescribed for election disputes, not least because of the postponements and numerous recusals made by the election candidates.

In the very day the CCA issued its judgment, CEC [convened for the first time with](#) the MFAEI to discuss the list of overseas PSs. Nevertheless, on the same day, the CEC filed an appeal against the CCA's judgment to the Supreme Court of Justice (SCJ). On 22 June 2021, the SCJ [upheld](#) the judgment of the Chişinău Court of Appeals.

The next day, on 23 June 2021, 18 days before the elections, the CEC [decided to open](#) 150 PSs abroad, as provided in the budget of expenses prepared by it at the beginning. In essence, the CEC increased the number of PSs in the countries where previously ballots had run out early, namely in Germany, United Kingdom, France, and Italy. In Russia, it increased the number of PSs in Moscow and its neighborhoods at the expense of other localities, where it closed PSs.

One week before the elections, the Action and Solidarity Party (PAS) reported potential obstructions of the overseas voting by the Electoral Bloc of Communists and Socialists (BECS). PAS stated that BECS' representatives assigned to the overseas precinct electoral bureaus did not answer phone calls or said that they did not know that BECS had delegated them to an electoral bureau. A precinct electoral bureau has no more than 11 members and each election candidate may nominate one member to it. Previous elections have shown that overseas voters, particularly in Western Europe, the United States and Canada, tend to vote for right-wing parties.

## The Constitutional Court terminated the mandates of four members of the Superior Council of the Magistracy

On 10 June 2021, the Constitutional Court effectively terminated the mandates of four professor members of the Superior Council of the Magistracy (SCM) (Ion CREȚU, Elena BELEI, Carolina CIUGUREANU-MIHAILUȚĂ and Valentina COPTILEȚ). The court took this decision on the grounds that [the law under which they had been appointed](#) had been declared unconstitutional. [The court found](#) that the law that increased the number of SCM members from 12 to 15 was adopted hastily in first reading, before the government decision on the approval of the bill entered into force, which was contrary to the Constitution. [The application](#) was filed by two PAS MPs who claimed that the procedure for amending the law had not been followed and that the contest organized in Parliament to appoint the four had been biased.

[The court's judgment](#) held that, by cascading effect, the four SCM members have been appointed based on a parliament decision that was based on a law that was declared unconstitutional. According to the court, once the law was declared unconstitutional, the number of SCM members decreased from 15 to 12. For this reason, the professor members of the SCM cannot keep on serving their term since their "office" at the SCM no longer exists. The court explained that this case was different from the one where it had declared [unconstitutional the provisions of the law that formed the basis for the election of Alexandr STOIANOGLO as Prosecutor General](#). In that case, the court ruled that its judgment did not produce the effect of terminating the mandate of Prosecutor General because that case did not concern the abolishment of the office of Prosecutor General.

In the fall of this year, new SCM members are expected to be elected—six by the General Assembly of Judges and the rest by Parliament.

The court's judgment goes beyond judicial disputes and sets a precedent for the legislative process. One of the judges' arguments for invalidating the amendments to the SCM Law was the flagrant violation of the legislative procedure because the government's decision on the approval of the bill had not been published in the Official Gazette at the time the bill passed its first reading in the Parliament. Thus, any bill voted in violation of the mandatory legislature steps and public consultation risks being declared unconstitutional.

The Constitutional Court's judgment has the consequence of hindering the work of the SCM. Now, only eight members with a valid mandate out of the 12 members can appear at the SCM. The positions of two tenured professors are vacant. The position of the chief justice of the Supreme Court, who is an *ex officio* member of the SCM, is also vacant, and the justice minister cannot attend the SCM's meetings as the Government has resigned. In order to be deliberative, the SCM meetings must be attended by eight members. Therefore, the absence of any of the eight "remaining" members makes it impossible for the SCM to make any decision.

The resetting of the SCM membership will take a few more months. At the General Assembly of Judges [scheduled](#) for 1 October 2021, judges are expected to elect six new judges as SCM members. Most likely, Parliament will also appoint non-judge members of the SCM. The judgment will have effects on this process too, as several provisions declared unconstitutional were meant to ensure greater fairness in future elections for SCM membership. Among other things, these provisions required candidates for SCM member to pre-register and allowed them to carry out campaigns for elections to the SCM.

## The government reached an agreement with S.A. Gemenii—the latter will not lose its property

The ECtHR's judgment, which opened for the possibility that S.A. Gemenii would lose its property, has not been enforced for 12 months, apparently, as a result of an agreement between the Government and S.A. Gemenii.

By its 18 February 2020 judgment in [Ojog and Others v. Moldova \(the Gemenii Case\)](#), the European Court of Human Rights (ECtHR) ordered the Government either to return the applicants the part of the Gemenii premises that had been taken from them in 2005 or to pay EUR 2,120,000 in exchange. Additionally, the ECtHR ordered the applicants to return approximately 200,000 shares owned in S.A. Gemenii to the state. Immediately after the ECtHR's judgment, Prime Minister Chicu demanded that the judges whose fault has led to the case lost at the ECtHR, to be held accountable and said that the state would not pay the 2 million euros from public funds. Not a single judge has been held accountable, however.

On 18 March 2020, the Government filed a motion for revision at the SCJ, requesting the return of the part of the property (over 2,500 sq. m.) seized in 2005 to the four applicants in the ECtHR case. The examination of the revision was slowed down by the government representative and S.A. Gemenii (see [the LRCM's Newsletter 26](#) for more information). The government representative even requested for the revision of the ECtHR's judgment, which the ECtHR dismissed in September 2020. Although the ECtHR's judgment was to be

enforced by 18 May 2020, [the SCJ ruled](#) in this case only on 9 June 2021, after more than 15 postponements and only after the government representative had withdrawn their motion for revision.

According to [a communiqué from the government representative](#), on 5 May 2021, the Government signed a settlement agreement with S.A. Gemenii, undertaking to withdraw its motion for revision while S.A. Gemenii undertook to pay the EUR 2,120,000 ordered by the ECtHR. In addition, S.A. Gemenii undertook to pay a significant part of the default interest of more than EUR 70,000 owed for the failure to enforce the ECtHR's judgment on time. The Government undertook to cede S.A. Gemenii the 200,000 shares of S.A. Gemenii that the applicants had to give them according to the ECtHR's judgment. The settlement makes reference to a guarantee letter issued by S.A. Gemenii on 19 May 2020, by which it undertook to compensate the Government for the default interest related to the motion for the revision of the ECtHR's judgment.

According to the communiqué of the government representative, the amounts owed under the ECtHR's judgment were paid on 26 May 2021. Shortly after that, the government representative requested the SCJ to approve the settlement of 5 May 2021 and to terminate the revision procedure. On 9 June 2021, [the SCJ issued two orders](#). By the first one, it dismissed the request for the approval of the settlement on the grounds that this could not be done at the revision phase. By the second one, the SCJ terminated the revision procedure because the compensation ordered by the ECtHR had been paid and, therefore, the applicants in the ECtHR case could not insist on the return of the property.

The above facts suggest that the delay of more than 12 months in the enforcement of the ECtHR's judgment was due, at least in part, to an agreement between the Government and S.A. Gemenii. Thus, back in May 2020, 12 months before the settlement with S.A. Gemenii, the Government had already agreed with S.A. Gemenii that the latter would compensate the default interest related to the motion for the revision of the ECtHR's judgment. This motion had no reasonable chances of success. Apparently, this motion for revision was filed to provide S.A. Gemenii sufficient time to find the resources needed to pay the EUR 2,120,000. This is also clear from the numerous subsequent postponements requested by the government representative during the revision procedure. It is surprising that the Government ceded S.A. Gemenii approximately 200,000 shares of S.A. Gemenii that it was to obtain from Mr. Ojog and others under the ECtHR's judgment.

## Falun Dafa—a case lost at the ECtHR and a telling example of injustice

On 29 June 2021, the European Court of Human Rights (ECtHR) ruled in [A.O. Falun Dafa and Others v. Moldova](#). The ECtHR found that the ban on the organizations' symbol and the subsequent dissolution of two non-governmental organizations (NGOs), on the grounds that they used this symbol, violated the freedoms of religion and association.



Judges banned NGOs on the eve of Plahotniuc's visit to China and reconsidered their decisions after the ECtHR communicated the case to the Government.

The applicant organizations practice Falun Gong, a spiritual practice whose purpose is to promote kindness, tolerance, and spirituality through exercise and meditation. This practice is banned in China and [persecuted by Chinese authorities](#) abroad. The international symbol of the organizations is Falun, which represents an orange swastika on a red background, accompanied by Yin-Yang symbols.

The applicant organizations were accused by another NGO of using a symbol that spreads hatred, resembles the Nazi swastika and infringes on the rights of veterans. The latter started a legal action under the Anti-Extremism Law (later declared unconstitutional), calling for the ban on the Falun symbol and the dissolution of the organizations. National courts banned the Falun symbol without hesitation, on the grounds that it was extremist and ordered the dissolution of the NGOs. The court judgments were adopted in 2015, on the eve of Vladimir PLAHOTNIUC's official visit to China.

When the ECtHR communicated the case to the Government in December 2018, the government representative requested the Supreme Court of Justice (SCJ) to lift the ban on the Falun symbol, to invalidate the liquidation of the organizations and to award compensations. The case was reopened and the decisions to dissolve the organizations and to ban the Falun symbol were later overturned as contrary to freedom of religion and association. The SCJ noted that an NGO is not entitled to request the liquidation of another NGO under the Anti-Extremism Law—the argument invoked by the applicants from the outset and previously rejected by judges three times, including at the SCJ. However, the SCJ did not award compensations.

This case is [a telling example of injustice driven by political considerations](#). Even though judges lifted the bans, the justice minister did not exclude the Falun symbol from the Register of Extremist Materials to this day and the SCJ's judgment remains unenforced. The ECtHR found a violation of the applicants' rights because, although the judges had found a violation of freedoms of religion and association, they had not awarded compensations for human rights violations and the SCJ's judgment had never been enforced.

## Illicit enrichment and failure to explain wealth—between myth and reality

Although the National Integrity Authority (NIA) has started several [cases concerning the possession of unaccounted assets](#) by public officials, so far there had not been any case of their confiscation. Most NIA's acts get challenged in court and final decisions in these cases have not yet been issued.

On 4 March 2021, Dumitru DIACOV challenged the act by which the NIA had found that he possessed unaccounted property in excess of MDL 600,000 (see [the LRCM's Newsletter 33](#) for more information). Although the act was

Although the NIA found that Dumitru DIACOV was unable to justify his wealth, judges refused to seize his bank accounts

challenged in March 2021, [the court hearings were set](#) for September 2021. The case has been assigned to Judge Tatiana AVASILOAIE, who, as the NIA has found later, also failed [to declare a luxury apartment](#) worth MDL 1,330,000 in the center of the capital.

On 19 March 2021, according to [Article 35 of the Law on the NIA](#), the integrity inspector asked in court for the confiscation of the unaccounted property and the seizure of the bank accounts owned by Dumitru DIACOV and his wife. On 28 May 2021, the Chişinău district Court [dismissed the NIA's motion for the confiscation](#) of the property. The reasoned judgment is not available yet, but the NIA considers the judgement unfounded and intends to challenge it. On 24 March 2021, the Chişinău district Court also dismissed the NIA's motion for the seizure of the bank accounts owned by the Diacovs. On 17 June 2021, the Chişinău Court of Appeals (the Chişinău CA) also [dismissed the NIA's cassation against this decision](#). The court argued that the NIA had failed to justify the need for seizure. The decision of the Chişinău CA is irrevocable. As a result, the Diacovs can withdraw any amount from their bank accounts.

On 7 June 2021, the NIA communicated that prosecution authorities [refused to start](#) criminal proceedings based on the NIA's acts that found illicit enrichment and misrepresentation. Prosecutors invoke the lack of the elements of the crime, the expiration of the time-limit for the NIA's controls, or that the NIA's acts get challenged in court. In the case of [former MP Nae-Simion PLEŞCA](#), prosecution authorities refused to start prosecution, but the court overturned the prosecutors' dismissal and ordered them to resume investigations. In response to the NIA's communiqué, on 8 June 2021, the Prosecutor General's Office [stated that the NIA's acts](#) contained irregularities and the NIA could challenge prosecutors' decisions in court.

## Another 13 police officers convicted over the death of Andrei BRĂGUŢĂ

On 4 June 2021, the Buiucani Office of the Chişinău district Court issued another [judgment](#) in the case of Andrei BRĂGUŢĂ, who had died in August 2017. Experts say that Andrei BRĂGUŢĂ died as a result of ill-treatment by fellow inmates and the subsequent placement in a holding cell without clothes and without a mattress and a blanket. These conditions caused the development of pneumonia, which resulted in his death. The police officers were convicted for having tolerated the ill-treatment of Andrei BRĂGUŢĂ by his inmates and for having left him naked in a cold cell. Five officers of the pre-trial detention facility were sentenced to effective imprisonment and other eight, to suspended imprisonment. Most likely, the victim's lawyer, who considers the penalty too lenient, [will challenge](#) the it in appellate court.

Andrei BRĂGUŢĂ [was arrested](#) for speeding and resisting police on 15 August 2017 and died on 26 August 2017. After his death, prosecution started three criminal cases. The first one concerns his ill-treatment and involves three

After the death of Andrei BRĂGUȚĂ, prosecutors started three criminal cases against his fellow inmates who mistreated him, the police officers who tolerated his ill-treatment and placed him in a cold cell and the doctors who failed to provide him the necessary medical assistance.

police officers and four fellow inmates. On 19 July 2019, [six of them were convicted](#) and one police officer was acquitted.

Currently, another case against two doctors charged with the violation of the rules for providing medical assistance is also pending before the first instance court. The latest hearing in this case took place on 5 July 2021 and was adjourned because one defendant was announced wanted.

The case of Andrei BRĂGUȚĂ is complex and highlights serious systemic issues, such as the apprehension of a person, the treatment and management of cases involving people with disabilities, abusive arrests, ill-treatment in detention, the quality of medical assistance, the inefficiency of the mechanism for reporting torture and the poor quality of legal aid offered by some lawyers. It is important to address these issues as a matter of priority to prevent similar situations in the future.

### In Brief:

On 27 April 2021, the Chișinău Court of Appeals overturned the judgment concerning the dismissal of the former secretary general of the Moldovan Bar Union (UAM), Igor MOLDOVAN. The [court ordered the Bar Union to pay him](#) over MDL 400,000 in unpaid salary, default interest and moral damages. UAM's Council had fired Igor MOLDOVAN on 9 June 2018, after allegations that he had illegally spent over MDL 140,000 for a party at a luxury restaurant in the capital to celebrate the International Women's Day. On 17 June 2019, the Chișinău district Court dismissed the case. The Chișinău Court of Appeals quashed the judgment of the first instance court and ordered the reinstatement of Moldovan. UAM filed a cassation. Igor MOLDOVAN's father is a former justice of the SCJ.

On 1 June 2021, the SCM appointed Judge Dorin DULGHIERU of the Chișinău Court of Appeals as a member of the Board of the National Institute of Justice (NIJ) for a four-year term. Nine of the 12 members of the SCM voted for his candidacy. Dorin DULGHIERU [competed](#) with Judge Svetlana ȘLEAHTI CHI from the Băl i Court of Appeals, who received only three votes. The NIJ's Board is the supreme governing body of the NIJ formed of 13 members, of whom seven are appointed by the SCM from judges, four by the Prosecutor General from prosecutors, one by the Ministry of Justice and one by the Senate of the Moldova State University.

On 10 June 2021 [the President of the Republic of Moldova signed a decree](#) that established the Anti-Corruption Advisory Committee to the President of the Republic of Moldova (CCIA). CCIA's main duty is to analyze systemic corruption issues that affect Moldovan institutions. CCIA will identify and implement ways and means to improve the anti-corruption efforts of relevant actors. CCIA will convene on a quarterly basis. The institution has its own secretariat and no one can influence its agenda or decisions. CCIA is modeled on similar institutions from [Afghanistan](#) and [Ukraine](#).



On 15 June 2021, after a closed-door hearing of [the candidates for judge](#) of the Constitutional Court, the Superior Council of the Magistracy (SCM) [declared the competition failed](#), as none of the 16 candidates obtained more than half of the votes of the SCM members. [The SCM announced a new competition](#), where the application deadline is 12 August 2021.

On 17 June 2021, [five people were arrested on charges of tailing a judge](#) brought by prosecutors of the Prosecution Office for Fighting Against Organized Crime and Special Cases. The press mentioned that Judge Angela BOSTAN of the Chişinău Court of Appeals was among the judges who had been tailed. [In early July](#), prosecutors had also arrested a former police officer who had allegedly coordinated the tailing. According to media reports, the tailing was meant to force the judge to resolve a case she was handling in a way that was favorable for the controversial businessman Veaceslav PLATON.

In June 2021, [the LRCM began filming a series of videos](#) about the activity and procedures of the European Court of Human Rights (ECtHR). The video productions are meant to promote this topic and to familiarize lawyers with the work, structure and procedure of the ECtHR. The videos will include both theoretical information and practical examples about the ECtHR. Follow our web site [ww.crjm.org](http://ww.crjm.org) and our social media accounts to watch the tutorials.

## I LRCM's Team

**Vladislav GRIBINCEA**  
Executive Director

**Daniel GOINIC**  
Legal Officer

**Nadejda HRIPTIEVSCHI**  
Program Director

**Victoria MEREUȚĂ**  
Legal Officer

**Sorina MACRINICI**  
Program Director

**Aurelia CELAC**  
Accounting & Financial Manager

**Oxana BRIGHIDIN**  
Legal Officer

**Olga CORTAC**  
Director of Administrative Service


**Ilie CHIRTOACĂ**  
Legal Officer



**Alina FRIMU**  
Assistant of Financial Administrative Service







This newsletter was prepared within the project Institutional Support for Organizational Development, funded by Sweden. The views expressed in this newsletter are those of the LRCM and do not necessarily reflect the position of Sweden.

### 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](mailto:contact@crjm.org)  
 [www.crjm.org](http://www.crjm.org)

 [crjm.org](http://crjm.org)  
 [crjmolдова](https://twitter.com/crjmolдова)