

## DECLARATION

### THE NON-TRANSPARENT APPOINTMENT OF THREE JUDGES TO THE CONSTITUTIONAL COURT UNDERMINES PUBLIC TRUST AND CONFIDENCE IN THE INDEPENDENCE OF THE CONSTITUTIONAL COURT

17 December 2018

The signatories of this statement are deeply worried about the totally non-transparent way of appointing the latest three judges to the Constitutional Court by the Superior Council of Magistracy, the Government, and the Parliament. The consecutive and sudden early resignations, as well as the hasty, secret, and politically charged appointments denote the disregard for the importance of the High Court and deepens public distrust in its independence.

The Constitutional Court is formed of six judges. Within three days, two judges of the Constitutional Court, Igor DOLEA and Victor POPA, suddenly and secretly submitted their resignations, even though their terms had not expired yet. At the same time, within four days, from 11 through 14 December 2018, the Superior Council of Magistracy (SCM), the Government, and the Parliament appointed three new judges to the Constitutional Court.

On 11 December 2018, the SCM appointed Corneliu GURIN as a judge of the Constitutional Court. According to the [SCM's press release](#) following its meeting on 11 December, the SCM took this decision in response to the request of the Chief Judge of the Constitutional Court regarding the resignation of Mr. Igor DOLEA from judicial office at the Constitutional Court and asking the SCM to appoint another judge to this institution. This topic was absent both in the [agenda of the SCM meeting](#), supposed to be published 3 days before the meeting, and in the [additional agenda](#). Contrary to [previous practice](#), when the Court announced resignations the same day, neither the Constitutional Court, nor the SCM published any information about Mr. Igor DOLEA's resignation on their websites. Judge Igor DOLEA's term expires on 12 February 2019. He resigned on 10 December 2018, two months before the end of his term. The following day, the SCM examined the request of the Constitutional Court's Chief Judge regarding the vacancy of the judicial office and the appointment of a new judge. The SCM had not announced any competition for appointing a new judge. [Corneliu GURIN acknowledged](#) that he had decided to apply at the invitation of the Chairman and some members of the SCM. Mr. Corneliu GURIN's candidacy was the only one examined by the SCM. The latest three constitutional judges appointed by the SCM had been identified on a competitive basis (for details, see SCM Decision No. 130/6 of 12 February 2013 on the appointment of Judges Tudor PANȚÎRU and Igor DOLEA and [Decision No. 117/7 of 6 March 2018](#) on the appointment of Judge Mihai POALELUNGI).

The following day, 12 December 2018, the Government appointed Artur REȘETNICOV as a judge of the Constitutional Court. Just as with the appointment of Corneliu GURIN by the SCM, this topic did not figure on the [agenda of the Government's meeting](#). It is worth noting that this office had been vacant since March 2018, when the current Justice minister Victoria IFTODI resigned from it due to her appointment as minister. The latest two constitutional judges appointed by the Government had been identified on a competitive basis (for details see [Government Order No. 132 of 23 October 2015](#) and [Government Order No. 33-d of 14 April 2017](#)).

On 14 December 2018, with 54 votes, the Parliament appointed Raisa APOLSCHII, Parliament deputy from the Democratic Party and chair of the parliamentary Legal Committee for Appointments and immunities, as a judge to the Constitutional Court. As of 14 December 2018, the websites of the

Constitutional Court and the Parliament did not contain any public information about the vacancy of the office of constitutional judge from the Parliament. The terms of the constitutional judges appointed by the Parliament, Victor POPA and Aurel BĂIEȘU, [are valid](#) until 29 March 2019 and 5 April 2019, respectively. Later, public sources reported the sudden and unannounced resignation of constitutional Judge Victor POPA. Just as with the unannounced resignation of Judge Igor DOLEA, the website of the Constitutional Court did not contain any information about this fact. The Parliament Plenum votes on the judicial candidacies for the Constitutional Court proposed by the Legal Committee for Appointments and immunities, presided by Ms. Raisa APOLSCHII herself. The Parliament's website does not contain information about any of the Commission's meetings held over the past two weeks. Neither did the appointment of a constitutional judge appear on the agenda of the Parliament's plenary session of [14 December 2018](#). The Parliament's website does not even contain a report of the Legal Committee, by which Raisa APOLSCHII was put forward for the voting as a judge of the Constitutional Court.

Corneliu GURIN, Artur REȘETNICOV, and Raisa APOLSCHII were appointed as constitutional judges for a six-year term in an unprecedented hurry and with disregard for any appointment procedure. There were no explanations of the nine-month vacancy of a position at the Constitutional Court and of the sudden appointment of Mr. REȘETNICOV by the Government, without a competition. The resignation of Judges Igor DOLEA and Victor POPA, immediately followed by the unexpected appointment of Mr. Corneliu GURIN by the SCM and Ms. Raisa APOLSCHII by the Parliament, also raises doubts as to the possible hidden interests behind these appointments.

Neither the SCM, nor the Government explained why they had not followed the practice thoroughly established since 2013 of selecting constitutional judges through a public competition. Even possible arguments that the rush was due to the fact that the appointed judges had only one opportunity to get sworn into office by the Parliament at its last sitting scheduled for 14 December 2018 do not hold. On 12 December 2018, the amendment of Article 12 of Law No. 317 "On the Constitutional Court" became effective, laying out the rule that if a constitutional judge is unable to take the oath before the Parliament, the President of the Republic of Moldova, or the Superior Council of Magistracy, he/she may do it before the plenum of the Constitutional Court (for details see Law No. 272 of 29 November 2018 for the amendment of certain legislative acts, Official Gazette No. 462-466 of 12 December 2018).

The candidates chosen for the office of constitutional judge raise reasonable doubts about their political affiliation. Mr. Corneliu GURIN, for instance, served as Prosecutor General from 2013 through 2016. According to [secret annexes](#) of the Alliance for European Integration AIE2 of 2010, at that time, the Prosecutor General's Office was "offered" to the Democratic Party, which indicates Mr. Corneliu GURIN's strong affiliation with it. Moreover, his time in office as Prosecutor General falls squarely within the period of the "Russian Laundromat" and the "Billion-worth Theft." In his turn, Artur REȘETNICOV was the chief of the Security and Intelligence Service in April 2009, when Moldova saw one of its biggest tragedies since the Independence, with deaths and maltreatments of young people en masse, which remain unelucidated until this day. Up to a point Mr. Artur REȘETNICOV was a member of the Communist Party and used to address scathing criticism to the Democratic Party, after which he suddenly turned into its member. Just as Mr. Artur REȘETNICOV, Ms. Raisa APOLSCHII is a member of the Democratic Party. All these issues cast doubt at least as to the independence of the three candidates, which could have been mitigated should there be public and transparent competitions. Considering the parliamentary elections announced for 24 February 2019, the extremely hasty appointment of half of the judges of the Constitutional Court raises strong concerns about the excessive politicization of the Constitutional Court and its possible use in political struggles.

**We deeply regret the sudden and non-transparent way of resignation of Constitutional Judges Igor DOLEA and Victor POPA. We also disagree with the way the SCM, the Government, and the Parliament appointed Constitutional Judges Corneliu GURIN, Artur REȘETNICOV, and Raisa APOLSCHII, respectively. Such a way of appointing judges to an institution as important for the democracy and the rule of law as the Constitutional Court and its seemingly politicization are incompatible with the requirements of a functioning democracy. Moreover, this is a regression in comparison with previous practices of appointing constitutional judges.**

**We call on the Superior Council of Magistracy, the Government, and the Parliament to develop transparent and merit-based procedures for the appointment of judges to the Constitutional Court.**

**SIGNATORIES:**

1. Legal Resources Center from Moldova (LRCM)
2. Institute for European Policies and Reforms (IPRE)
3. East European Foundation (EEF)
4. Institute for Public Policy (IPP)
5. CPR-Moldova
6. Association for Efficient and Responsible Governance (AGER)
7. Transparency-International Moldova
8. Promo-LEX Association
9. WatchDog.md
10. Independent Journalism Center (IJC)
11. Center “Partnership for Development”
12. Institute for Strategic Initiatives (IPIS)
13. Association of Independent Press (API)
14. Centre for Investigative Journalism (CIJ)
15. Amnesty International Moldova
16. IDIS “Viitorul”