

NEWSLETTER

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GOOD GOVERNANCE

THE EUROPEAN PARLIAMENT ADOPTED A RESOLUTION ON THE POLITICAL CRISIS IN THE REPUBLIC OF MOLDOVA

On 5 July 2018, the Parliament of the European Union adopted a [Resolution on the political crisis in Moldova](#), which mainly referred to the invalidation of local elections in Chişinău (details of invalidation can be found in [Newsletter no.18, April-June 2018](#)). The Resolution notes that the decision to invalidate the results of the elections for Mayor of Chişinău was taken on dubious grounds and non-transparently, significantly undermining the electoral process. It also mentions that the will of people has not been respected and that it creates a dangerous precedent for future elections. The European Parliament mentioned that the decision of the courts, which have already been cited many times as politically influenced, is an example of state capture and reveals a very deep institutional crisis in Moldova. The European Parliament urged the Moldovan authorities to reform the judiciary, including the procedure for appointment of judges, to respect a multi-party parliamentary system and the rule of law, as well as to ensure respect for human rights. As a result, the European Parliament requested the European Commission to suspend macro-financial assistance and budgetary support to Moldova, indicating that any decision on future payments will be made after the parliamentary elections, provided that they are conducted in accordance with international standards and only after meeting the conditions set out in the agreement concerning the macro-financial assistance.

On 7 July 2018, the Government published a [press release](#), stating that the resolution as of 5 July 2018 was wrongful and politically charged, noting that "... all commitments for receiving the EU funding have been fulfilled and that the decision to suspend funding is unjustified and represents an interference in the internal matters of the Republic of Moldova". The press release further mentions that, at a meeting, the Prime Minister has brought to notice of the ambassadors of the EU countries that "if things in justice are not going as they have to, it is the joint responsibility of the Government and the European partners, as well as the representatives of civil society who have participated in the implementation of the judiciary reform".

On 11 July 2018, the member organizations of the National Platform of the Eastern Partnership Civil Society Forum [issued a public statement expressing](#) their deep concern and indignation regarding the evasion of the current Government from responsibility for failure to reform the judiciary and shifting it to the shoulders of the development partners and civil society. The organizations mentioned that the responsibility for reforms in the judiciary rests exclusively with national authorities - the Parliament, the Government and, to a large extent, with the judiciary. The statement

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also mentions that dangerous practices have been instituted in the judiciary and that the political influence on judges and prosecutors had increased. Several examples in this regard have been provided.

On 18 July 2018, 716 mayors signed a [declaration](#) to the Parliament of the European Union, expressing their disagreement with the Resolution of 5 July 2018, stating that it was based on incorrect information

THE EU PARLIAMENT:
THE DECISION OF THE
COURTS TO INVALIDATE
THE LOCAL ELECTIONS
IN CHIȘINĂU IS AN
EXAMPLE OF STATE
CAPTURE

provided by some opposition leaders from Moldova. The mayors have been concerned about further attraction of European funds for the development of Moldova. Previously, the Executive Director of the Congress of Local Authorities of Moldova (CALM) [declared](#) that at least 600 mayors out of a total of 898 are controlled by the Democratic Party of Moldova, which raises reasonable suspicions with regard to the declaration of those 716 mayors.

JUSTICE

THE PARLIAMENT AMENDED THE PROCEDURE FOR THE APPOINTMENT AND PROMOTION OF JUDGES AND THE STATUS OF THE JUDICIAL INSPECTION

On 27 September 2018, [the Parliament adopted several legislative amendments](#) that strengthened the powers of the Superior Council of Magistracy (SCM) and its Boards, as well as improved the procedures for selection and promotion of judges. The draft [was adopted in the second reading as early as on 19 July 2018](#), but on 6 September 2018 [the President of the Republic of Moldova refused to promulgate the law](#). Essentially, the President invoked that the prohibition for the SCM members to participate in contests regarding transfers to another position is contrary to the right to work. Meanwhile, on 24 July 2018, the SCM decided that two members of the SCM, [Anatolie GALBEN](#) and [Dorel MUSTEATĂ](#), should be promoted. In September, the Parliament rejected the President's objections. The law entered into force on 19 October 2018.

The score obtained at the contest for the candidates to be appointed for the first time as judges is calculated according to a new formula. The new version of art. 5 of Law no. 154/2012 on selection, performance evaluation and career of judges provides that at least 50% shall constitute the grade obtained at the exam taken in front of the Final Examination Board of the National Institute of Justice (NIJ) and no more than 50% shall constitute the score awarded by the Board for Selection and Career of Judges (BSCJ) and, eventually, by the SCM. Such amendments strengthen the role of the NIJ and encourage the academic excellence of candidates. Previously, according to the [Regulations of the SCM](#) concerning the criteria for the selection, promotion and transfer of judges, the studies at the NIJ or exam at the NIJ accounted for 30% of the maximum score.

Under the adopted amendments, the contest for filling of the vacant positions of judge, chairperson and deputy chairperson of the court should be usually organized twice a year. Until the

contest is announced, the SCM publishes on its official webpage the information on all vacant positions of judges or those that can become vacant in the next six months. All vacant positions of judges or those that can become vacant shall be brought to the next contest. Previously, a separate contest was held for each vacancy. Under the new amendments, in order to become a judge, the candidates choose the positions open to contest in the decreasing order of their score at the contest. The results of the contest should be published on the official webpage of the SCM within two working days since the date the contest is over. The SCM will not nominate the candidate, if it finds that s/he does not meet the legal requirements for the position of a judge. The refusal must be motivated. These amendments will ensure that all NIJ graduates will participate in the contest for the vacant positions open to contest, the SCM will fill in these vacancies, including in the "less attractive" courts, as well as ensure the appointment of the candidates with the highest score. At the same time, the SCM will be able to offer additional points to the candidates, which cannot exceed 20% of the maximum score. It is not clear from the law how the SCM will offer this score and whether the assessment should be made only for some of the candidates or for all candidates participating in the same contest. The SCM has to develop a regulation in this regard.

Law No. 947/1996 on the Superior Council of Magistracy was amended, prohibiting the judge members of the SCM, as well as the judges seconded to the NIJ and the SCM Secretariat, to be transferred or promoted during their term of office and six months after the termination of the mandate or expiry of the term of secondment. A similar provision exists for the members of the Superior Council of Prosecutors (CSP), in art. 75 par. (2) of Law no. 2/2016 on the Prosecutor's Office. The amendments also provide that the President of the Supreme

Court, the Minister of Justice and the Prosecutor General cannot vote when the SCM decides on career, disciplinary responsibility and dismissal of judges.

The Law on the Superior Council of Magistracy further stipulates that the agreement or disagreement of the SCM to initiate criminal prosecution against a judge must be reasoned and published on the official webpage of the Council, with the anonymization of data on the identity of the judge. Previously, only the operative part of these decisions of the SCM was published on the SCM webpage.

The law also provides for the amendment of the Judicial Inspection status. It will have operational autonomy, the

number of inspectors-judges has been increased from five to seven, their term of office has been increased from four to six years, and the inspector-judge will be able to exercise only one term of office. At the same time, only persons who have not exercised the position of judge during the last three years, can be appointed as an inspector-judge, and the judges in office will no longer be able to be seconded to the SCM as inspector-judges. The prohibition for the judges in office or who have held the office of judge within the last three years to run for the position of inspector-judge is unjustified, because it does not provide sufficient guarantees for independence. These [arguments were presented by the LRCM to the Legal Committee of the Parliament](#) within the framework of debates on the draft law.

THE LAW ON DISCIPLINARY LIABILITY OF JUDGES HAS BEEN SUBSTANTIALLY AMENDED

On 29 August 2017, the Ministry of Justice submitted for public consultations the draft law "on Reforming the Judicial Sector", which also contained amendments to [Law no. 178 as of 25 July 2014 on disciplinary liability of judges](#). On 27 April 2018, the draft was submitted to the Government for consideration. On 23 May 2018, the draft was approved by the Government and on 19 July 2018, it was adopted by the Parliament in final reading.

The draft implements several proposals made by the Legal Resources Centre from Moldova (LRCM) [on 24 October 2017](#), or submitted to the Legal Committee for Appointments

and Immunities of the Parliament [on 16 July 2018](#). They concern simplification of the procedure for examination of the disciplinary cases against judges by: reviewing the disciplinary procedure with the view to exclude admissibility panels; by assigning more powers to the Judicial Inspection to investigate complaints and file accusations before the Disciplinary Board; detailing the rules for selection of the members and alternate members of the Disciplinary Board; clarification of disciplinary offences of judges. [The amendments in question](#) were published on 14 September 2018 in the Official Gazette and entered into force on 14 October 2018. It remains to be seen how they will be applied in practice.

A NEW LAW REGULATING THE PROCEDURE OF EXAMINATION OF DISPUTES AGAINST THE STATE WAS ADOPTED

On 19 July 2018, the Parliament adopted the [Administrative Code of the Republic of Moldova](#). The Code provides for duties of administrative authorities and courts while issuing of administrative acts and sets out the procedure for examining the administrative disputes. The Code has over 250 articles and will enter into force on 1 April 2019.

THE ADMINISTRATIVE
CODE REQUIRES
PUBLIC MEETINGS
OF THE COLLEGIATE
ADMINISTRATIVE BODIES

equally, and to act in good faith, impartially and within a reasonable time. Article 31 of the Code imposes the obligation to provide reasoning for any administrative act of individual nature.

Article 66 of the Code obliges the public authority to establish a subdivision or appoint a person responsible for public relations. Art. 67 further stipulates that the meetings of the collegiate administrative bodies, as a rule, shall be public and establishes the general obligation of the public authorities to ensure the conditions for the participation of the interested persons in the meetings of the collegial bodies. Article 83 provides that participants in the administrative proceedings have the right of access to the administrative file.

Under art. 3 of the Code, the administrative legislation aims to ensure respect for the rights and freedoms of persons, taking into account the public interest and the rule of law. The Code obliges public authorities to act in line with the law, to examine ex officio any situation, without being bound by the position of the parties involved, to treat persons in similar situations

Articles 143 and 144 of the Code provide for the right of the authority to withdraw, including with retroactive effect, the unlawful act of individual nature, even if it is final. The assessment of legality is made according to the situation at the moment of its issuance. In order to challenge an administrative act or failure to issue it in the court, it is necessary

**SINCE 1 APRIL 2019,
THE SCM AND THE
SCP DECISIONS WILL
BE CHALLENGED AT
CHIȘINĂU COURT OF
APPEAL, NOT
AT THE SCJ**

to go through the preliminary procedure. It can be initiated within 30 days from the communication or notification on the administrative act. If the public authority fails to decide on a request within the time limit, the preliminary application can be filed within one year from the expiry of the time limit for issuing a decision, which is 15 calendar days. While settling the preliminary request, the public authority can take a decision that worsens the situation of the applicant, unless the law expressly provides otherwise.

The Administrative Code also regulates the procedure for the examination of administrative disputes, the Law on administrative court being repealed. Unlike the latter, the Code provides only for three categories of administrative acts that cannot be challenged in the court: the exclusively political acts of the Parliament, of the President of the Republic of Moldova and of the Government; administrative acts of diplomatic nature related to the foreign policy of the Republic of Moldova; and acts of military command.

The Administrative Code amends the powers of the courts to review administrative disputes. The judgements of the Superior Council of Magistracy (SCM) and the Superior Council of Prosecutors (SCP), what are currently within the jurisdiction of the Supreme Court of Justice (SCJ), will be transferred for examination in the first instance to Chișinău Court of Appeal. Also, the courts of appeal will settle in the first instance actions against normative acts which cannot be challenged in the Constitutional Court. Article 201 of the Code provides that if

an administrative action contains inseparable administrative and civil claims, it shall be examined by the administrative court. The current legislation provides that such disputes are within the jurisdiction of the ordinary law courts.

An administrative action must be filed within 30 days from the date of notification on the decision regarding the preliminary application or from the notification on the administrative act, unless the law provides no preliminary proceedings. Under Article 221, the public authorities are obliged to present to the court the administrative file together with their response to the claim. If at the second request the public authority does not fulfil its obligation to present the documents, the judge can fine it with up to 250,000 lei. The fine can be repeated in the event of further non-compliance.

The decision of the first instance court can be appealed within 30 days from the delivery of the operative part of the decision of the first instance. No new evidence can be presented to the court of appeal, unless the participant proves that it was impossible to present them in the first instance court. However, art. 238 of the Code stipulates that the court of appeal is entitled to request new evidence ex officio. Unlike the general proceedings, which provide for three situations for referral of the case to retrial to the court of the first instance, art. 240 of the Code stipulates in absolute terms that the court of appeal is not entitled to send the administrative case for retrial to the first instance court.

The Administrative Code provides for a special 30-day period for filing a cassation in administrative proceedings. The cassation is lodged to the court of appeal and not to the SCJ, as in other cases. The SCJ examines the cassations in the absence of parties. If the cassation is admitted, the SCJ can issue its own decision or submit the case for retrial to the appeal court.

THE CIVIL CODE HAS BEEN UPDATED ACCORDING TO THE LATEST EUROPEAN AND INTERNATIONAL TRENDS

On 19 July 2018, the Parliament voted in the first reading [the draft Law on the modernization of the Civil Code](#). The draft was adopted in final reading on 15 November 2018 and will enter into force on 1 March 2019. The draft includes amendments to all five books of the Code, this being the largest package of amendments since the adoption of the Civil Code in 2003. Amendments include new concepts and institutions designed to contribute to more accurate and predictable civil legislation. These include amendments

concerning the institution of the natural person (including the legal capacity), the person's domicile, patrimony, real rights and succession.

According to the explanatory note to the draft law, while elaborating amendments the authors consulted the Draft Common European Framework of Reference (DCFR), the German Civil Code, the French Civil Code and the Romanian Civil Code, the Civil Code of the Russian Federation, as

well as other sources. The author of the amendments is the Working Group under the Ministry of Justice formed in 2013,

consisting of university professors, judges, notaries, lawyers and officials of the Ministry of Justice.

THE POSITION OF THE DEPUTY PRESIDENT OF THE SUPREME COURT OF JUSTICE IS VACANT FOR MORE THAN TEN MONTHS

On [20 February 2018](#), Petru URSACHI resigned as the judge and deputy President of the Supreme Court of Justice (SCJ) without announcing the reason for resignation. The Superior Council of Magistracy (SCM) accepted the resignation and announced a contest to fill in the vacancy. The deadline for submitting applications expired on 26 March 2018. [The judges of the SCJ Petru MORARU, Liliana CATAN, Anatolie ȚURCAN and Nadejda TOMA](#) participated in the contest. Although [the SCM had to decide on the results of the contest on 10 July 2018](#), that meeting

was cancelled and the issue was not included on the SCM agenda anymore.

On [2 October 2018](#), the SCM decided that Vladimir TIMOFTI would act as interim President of the SCJ. The order was issued at the request of the SCJ President. It is unclear why the SCM has appointed an interim if four candidates, including the person appointed as the interim, were awaiting for the contest results and the decision on the contest could have been taken as early as on 2 October 2018.

THE SUPERIOR COUNCIL OF MAGISTRACY PROPOSED THE PROMOTION OF TWO OF ITS MEMBERS, EVEN IF A RECENTLY ADOPTED LAW PROHIBITS THIS

On 24 July 2018, the Superior Council of Magistracy (SCM) decided that two members of the SCM have to be promoted. [Anatolie GALBEN](#) was proposed to the President to be appointed as a judge at Chișinău Court of Appeal and [Dorel MUSTEAȚĂ](#), participating in a contest with a single candidate, was proposed to the Parliament for appointment as a judge at the Supreme Court of Justice (SCJ).

was invoked by the President of the country when he refused to promulgate the law. It seems, however, that the proposal to promote the members of the SCM was not supported by the President and the Parliament. At the end of 2018 there was no decree of the President on the appointment of Mr. Galben to the position of judge of Chișinău Court of Appeal or a decision of the Parliament appointing Mr. Musteață as the judge of the SCJ.

The SCM promoted its two members, although it knew about the existence of [a draft law](#) adopted by the [Parliament](#) on 19 July 2018 that had to be promulgated by the President and that prohibited to promote the SCM members during their term of office. [The draft law was returned to the Parliament](#) by the President of the country, but it was repeatedly adopted by the Parliament on 27 September 2018. It [entered into force](#) on 19 October 2018. [Mr. Musteață declared](#) that this draft law restricts his right to professional growth. The same argument

Over the last eight years, at least four members of the SCM have been promoted to positions while exercising their term of office as a member of the SCM (Victor MICU and Anatolie ȚURCAN to the Supreme Court of Justice, Nichifor COROCHII and Dorel MUSTEAȚĂ to Chișinău Court of Appeal). In 2017, the Legal Resources Centre from Moldova [recommended](#) to ban the judge members of the SCM being promoted. Allowing the promotion turns the SCM into a bridge for career growth for judge members of the SCM.

THE WORLD BANK PUBLISHED THE RESULTS OF AN OPINION POLL CONCERNING JUSTICE

On 27 September 2018, the World Bank in Moldova made public [the results of an opinion poll](#) conducted between August-October 2017 among citizens, representatives of the business community and the employees of the judiciary. The responses of citizens and those of the employees of the judiciary differ significantly. The poll shows a high degree of dissatisfaction among citizens and business community as regards the quality of justice. 44% of citizen respondents mentioned they saw no change in the justice sector over the last two or three years,

while 12% believed that the situation worsened. Only one out of five citizens surveyed considers court judgements equitable and impartial, while 65% of citizens do not rely on a fair trial. 76% of the respondents believe corruption has increased or remained at the same level as in 2011.

On the other hand, 72% of respondents from among judges and 50% of respondents from among prosecutors saw an improvement in the quality of justice in 2017 as compared to

2011. More than 78% of respondents from among judges and prosecutors have high expectations that judiciary reforms will improve the system efficiency, but less than a third of them

believe that reforms have been successful so far. At the same time, 72% of respondents from among judges and 52% of respondents from among prosecutors said they do not feel safe.

CONSTITUTIONAL COURT: THE PROHIBITION FOR JUDGES TO VERIFY THE GRADE OBTAINED AT THE ADMISSION EXAMINATION TO THE BAR IS UNCONSTITUTIONAL

On 3 July 2018, the Constitutional Court (CCM) [declared unconstitutional](#) article 43 par. (4) of [Law no. 1260 as of 19 July 2002 on the Bar](#). It provided that the decisions of the Bar Examination Board could be challenged in the court only in the part related to the examination procedure, and that the awarded score could not be challenged. [The exception of unconstitutionality](#) was raised by Vasile VANȚEVICI, from Cahul, who failed to promote the admission exam to the Bar.

The CCM found that the given text was contrary to articles 20 and 43 of the Constitution (free access to justice and the right to work). The CCM has emphasized that persons who meet the standards of this profession should be admitted to the profession of an attorney. If there are well-trained lawyers and they do not pass the exam due to faulty procedures, general confidence in the attorney's profession may be affected. The CCM has found that the court review must be in fact and in law with respect to any aspect of the examination (procedural or substantive).

JUDGES CAN ANNUL THE DECISION ON FAILURE TO PASS THE BAR EXAM, IF IT IS "UNREASONABLE", BUT CANNOT REASSESS THE CANDIDATE'S PERFORMANCE

If theoretical aspects of the score awarded by the Board are challenged, the courts should not engage in providing their own reasoning and substitute its vision with that of the Bar Examination Board. Judges should only verify if the decision of the Bar Examination Board is reasonable. The decision of the Bar Examination Board is unreasonable, if there is no "line of logical analysis" in it. A simple error that does not affect the essence of the candidate's assessment is not sufficient to annul the decision of the Bar Examination Board.

The performance at the exam, which, in the opinion of the court, was evaluated in unreasonable manner must be reassessed by an independent board, other than the Bar Examination Board, by a repeated evaluation of the written test or audio recordings of the oral test. The CCM issued a request to the Parliament of the Republic of Moldova to amend the Law on the Bar.

ANTI-CORRUPTION

DESPITE THE CRITICISM, THE PARLIAMENT ADOPTED THE LAW THAT ALLOWS LEGALIZATION OF UNDECLARED ASSETS

On 24 July 2018, six MPs from the Democratic Party of Moldova (DPM) registered [the draft law on voluntary declaration and tax incentives](#). The draft provided the right to legalize assets and financial means that were not declared before by voluntarily declaration and payment of the tax amounting 3% of their value. The draft also stipulated that people who will voluntarily declare their income will not be sanctioned for tax evasion, and assets that are voluntarily declared will not be the subject of a criminal case. According to the draft, persons who, from 1 January 2009 up to present have held or hold a number of public positions and senior state functions, persons who have been convicted of bank fraud or who have the status of suspected or accused in criminal cases related to bank fraud, cannot benefit from this law. The draft provided for two deadlines for

CAPITAL AMNESTY CAN AFFECT INVESTIGATIONS AND RECOVERY OF MONEY DEFRAUDED FROM THE BANKING SYSTEM

voluntary declaration - 10 December 2018 for monetary funds and 1 November 2018 for other types of assets.

The draft law was [positively endorsed](#) by the Government at the meeting of 25 July 2018, the next day following the registration of the draft. On the same day the Parliamentary Committee for Economy, Budget and Finance [recommended](#) the adoption of the draft law in both readings. On the following day, on 26 July 2018, the last day of the summer parliamentary session, and two days after its registration, the draft was voted in two readings by 56 MPs from the DPM and the EPPM. Anti-corruption expertise, mandatory under Law no. 100/2018 on normative acts, was missing from the set of documents published on the website of the Parliament. The draft law was

promulgated by the President Dodon and was published in the Official Gazette on 17 August 2018. Voluntary declaration has started on the date of publication and will end on 1 February 2019.

The legislative initiative was criticized by some parliamentary parties, [civil society organizations](#), [the International Monetary Fund](#) (IMF), [World Bank](#) (WB) and diplomatic missions to the Republic of Moldova ([US Embassy](#), [EU Delegation](#)). Civil society organizations mentioned that there was no impact analysis of this reform, that the effect of the tax amnesty would be that of deepening and encouraging corruption, and that [there is a risk](#) of endangering investigations and subsequent recovery of assets misappropriated from the banking sector. A similar draft was proposed by the MPs from the DPM in 2016, which was strongly criticized by both the community of experts, [civil society](#), and also by international bodies ([IMF](#) and [WB](#)), and was subsequently withdrawn by the authors.

Three months after its adoption, on 1 November 2018, several MPs from the DPM registered another [draft law](#) on amendment of the [Law on voluntary declaration and tax incentives](#). The amendments concerned two main aspects: (1) the extension of the list of subjects who cannot benefit from this law - persons who have been or are subjects to declaration of their assets and personal interests under the provisions of

THE LISTS OF SUBJECTS
OF VOLUNTARY
DECLARATION WILL NOT
BE MADE PUBLIC

[Law no. 133/2016 on the declaration of assets and personal interests](#), as well as their family members (spouse, minor child, including adopted child or person dependent on the subject of declaration) and cohabitee of the persons concerned; and (2) the increase of the tax for voluntary declaration from 3% to 6%. A week later, on 8 November 2018, the draft was adopted in both readings without public debates and in the absence of anti-corruption expertise. The authors of the draft amendment [could not explain](#) the reason for the amendment of the law three months after its adoption, and why these provisions were not included in the original draft, nor how to treat persons who had already voluntarily declared their assets before 1 November 2018, but no longer meet the criteria introduced on 8 November 2018.

Both the adopting the legislation on capital amnesty and its implementation lack transparency. The State Tax Service, which establishes how to submit, receive, record and keep notifications on the voluntary declaration of assets, [has refused](#) to provide journalists any information about subjects of voluntary declaration, including statistical information. It invoked art. 16 par. (9) of Law no. 180/2018, according to which, by way of derogation from the provisions of art. 131 of the Tax Code, the information related to the enforcement of this law will be presented only at the request of the National Integrity Authority, the Office for Prevention and Combating of Money Laundering and the subject of the voluntary declaration.

THE LRCM IDENTIFIED THE SHORTCOMINGS OF THE STRATEGY FOR THE RECOVERY OF FUNDS MISAPPROPRIATED FROM THE BANKING SYSTEM

The Legal Resources Centre from Moldova (LRCM) analysed [the Strategy for the recovery of funds misappropriated from the banking system of the Republic of Moldova](#) during 2007-2014 [made public by the Prosecutor General's Office at a press conference in June 2018](#). The

LRCM has noticed that the Strategy does not state exactly what amount has been stolen from the banking system. The complete investigation of the fraud cannot be carried out without knowing this fact. [The LRCM analysis](#) also established that at least 20% of the amounts proved stolen from the banking system are not investigated in general. Although at least 13.3 billion lei were proved stolen, prosecutors are seeking to recover only 10.7 billion. Prosecutors report that Mr. Shor had defrauded 5.2 billion lei, although the judges of the first instance found that there was no evidence of defrauding by Mr. Shor of 2.5 billion lei, but only 2.7 billion lei. Similarly, the authorities report the collection of 2.7 billion lei from Ilan SHOR, although there is no court decision in this regard. The Strategy does not mention the

AFTER THREE YEARS
OF INVESTIGATION,
NOT A SINGLE LEU OF
DEFAUDED MONEY HAS
YET BEEN RECOVERED

fact that, after three years of investigation, not a single leu of defrauded money has yet been recovered.

The LRCM believes that the Strategy is rather an advocacy document, including due to the fact that it was made public on the eve of the visit of Moldovan leadership to Brussels. These issues raise doubts about the independence of the institutions that made the Strategy public, but also about their involvement in political games. At the same time, the Strategy mostly concerns activities already covered by legislation, which casts doubt on its practical value.

On 27 September 2018, the LRCM [organized a public event](#) to discuss this analysis. The Members of the Parliament, representatives of the central public authorities, of the judiciary, of development partners and civil society were invited to the event. Only the Government and the National Integrity Authority accepted the invitation on the side of public authorities.

HIGH PROFILE CASES

ONE JUDGE ACCUSED OF CORRUPTION WAS ACQUITTED AND ONE JUDGE ACCUSED OF ABUSE - AMNESTIED

[On 16 April 2014](#), the former chairperson of Glodeni Court, [Ion CAZACU](#), was caught red-handed by anti-corruption prosecutors and officers of the National Anti-Corruption Centre (NAC). The arrest took place in the courtroom, immediately after the first one received 10,000 lei from the prosecutor [Liviu VELIȘCO](#). For this amount, an accused person had to be stripped of punishment for committing a road accident under influence of alcohol. The prosecutor, Liviu VELIȘCO, initially cooperated with the investigative bodies. Shortly after he was criminally charged, he resigned and later left the country. He did not appear in courts that examined the case. On 29 April 2014, Mr. Cazacu was suspended from office pending examination of the criminal case. On 25 April 2016, Grigoriopol Court found Ion CAZACU and Liviu VELIȘCO not guilty. The court found that the defendants were victims of a provocation planned by the NAC. On 17 September 2018, another panel of judges of Chișinău Court of Appeal upheld the acquittal, reiterating that a provocation had taken place. The decision as of 17 September 2019 is not final and has been appealed to the Supreme Court of Justice (SCJ) by the prosecutor. If it is upheld by the SCJ, Ion CAZACU will be entitled to request for re-instatement as a judge and payment of the unpaid salary.

On 20 July 2018, Mihail GAVRILIȚĂ, former chairperson of Strășeni Court, [was amnestied](#) in a criminal case that concerned the adoption of over 30 manifestly unlawful court judgements. By his judgements, the former judge helped numerous Russian and Ukrainian nationals to obtain documents that they or their relatives were born in Bessarabia until 1941. Based on these judgements they intended to acquire the citizenship of Romania. On 20 July 2018, the judge was amnestied after he had pleaded guilty in committing the offence provided art. 307 of the Criminal Code (deliberate adoption of a manifestly unlawful decision).

In July 2018, the Anti-corruption Prosecutor's Office finalized criminal prosecution and submitted to the court the criminal case on alleged [four episodes of corruption](#) committed by the judge of Chișinău Court of Appeal, Sergiu ARNĂUT. The criminal case is based on the report of a defence counsel who declared that he asked the judge to help him win several civil cases. For these "services", the judge allegedly claimed 150,000 lei. Previously, on [12 December 2017](#), the judge was suspended from office by the Superior Council of Magistracy.

ANOTHER JUDGE WHO PUBLICLY TALKED ABOUT PROBLEMS FROM JUSTICE SECTOR WAS FIRED

In Puhăceni village, Anenii Noi district, numerous locals have been dissatisfied that several enterprises have reopened the sand quarries, which in their view leads to the deterioration of the roads by heavy trucks and the loss of pastures and farm lands. [Judge Gheorghe BALAN](#) attended local meetings, where this topic was discussed. The Balan family owns property in that locality.

On 6 October 2017, Mihai BALAN, former Director of the Security and Intelligence Service (SIS), [submitted a motion](#) to the Superior Council of Magistracy (SCM) requesting to hold judge Balan liable. The SIS informed that it had video footage of his speeches at the meetings with local people. On 24 October 2017, the SCM [received a collective complaint](#) signed by Denis PLAMADEALĂ, Mayor of Puhăceni, a representative of the Democratic Party, and other eight local councillors. They invoked that judge Balan would have exerted pressure and made threats to initiate criminal cases against them. They presented pictures with Mr. Balan and

Andrei NĂSTASE, the leader of the Political Party Dignity and Truth, where, in their opinion, the magistrate "was propagating in favour of the party."

On 20 April 2018, the members of the Disciplinary Board of Judges (DB) [decided to propose](#) to the SCM to dismiss the judge. The DB members found that two disciplinary offences were committed: unlawful interference with other authorities and officials in order to resolve some requests and other behaviour that prejudice professional honesty, integrity or prestige of justice. The Board found that the judge had given written and verbal advice on disputable issues and that he had conducted a political activity by applauding the speeches of an opposition leader who had come to one of the local meetings. The DB considered committed offences incompatible with the position of a judge.

Mr. Balan considers that he has not violated any of the above-mentioned norms, and the notifications were a

revenge for his commitment to principles and the position in defending of his rights and interests. On [16 October 2018](#), the SCM upheld the DB decision and proposed to the President of the country the dismissal Mr. Balan from the position of judge. The SCM has reiterated that Mr. Balan's behaviour has clearly exceeded the legal limits of the compatibility with the position held. Mr. Balan challenged the SCM decision in the court and his case is pending before the Supreme Court of Justice. Despite this fact, on

3 January 2019, the President of the country signed the decree on dismissal of Mr. Balan from office.

Mr. Balan has been previously noted by his [critical speeches](#) against the leadership of the judiciary. At the General Assembly of Judges as of 23 March 2017, he reproached his colleagues that they had come to serve "an individual who almost reached the state of dementia", comparing the judiciary with a "sheepfold" full of cowards and incompetent persons.

JUDGES CHARGED WITH FACILITATION OF THE "RUSSIAN LAUNDROMAT" STILL WAIT FOR THEIR SENTENCE

Two years ago, between 21-23 September 2016, 15 judges and three bailiffs were arrested for the involvement in the scheme of money laundering of USD 20 billion from Russia, called "Russian Laundromat" (see details in [Newsletter no. 11, July-September 2016](#)).

The newspaper Ziarul de Gardă (ZdG) published an [investigation](#) revealing that in two years none of the accused judges had been convicted, not even by the court of the first instance. One judge died (Iurie ȚURCAN), another judge (Victor ORÂNDAȘ) and a bailiff have been put on the international wanted list. In some cases, the judges were changing, which led to the resumption of the case examination.

According to ZdG, judges are at large while their cases are examined by the courts. Out of 14 judges connected to the case only five are still in office. Seven other judges

resigned before their arrest in 2016. Two other judges (Ghenadie BÎRNAZ and Ștefan NIȚĂ) resigned after they were arrested in 2016. Ghenadie BÎRNAZ submitted his resignation application on 16 March 2018, and it [was accepted](#) by the Superior Council of Magistracy (CSM) four days later. On 7 May 2018, judge Ștefan NIȚĂ also requested resignation, which was [accepted](#) by the SCM on the following day. Nothing is mentioned in the decisions of the SCM about criminal proceedings against judges. The President of the country also approved the resignations of the judges. According to Ziarul de Gardă, those nine judges benefited from the unique redundancy indemnity (half of the average monthly salary of the judge multiplied by the number of years worked as a judge) and a special pension of the judge. [Dorel MUSTEATĂ, a member of the SCM](#), considers that these resignations are not forbidden by the law and have been previously accepted in cases of other troublesome judges.

HUMAN RIGHTS

DISSUADED FROM PROTESTING BY THE POLICE

On 3 September 2018, a group of [civil society organizations](#) [voiced their disappointment](#) with the way the state authorities acted during the meetings organized by several civic movements and political parties on 26-27 August and 1 September 2018. According to the signatory NGOs, the police showed selective attitude, being indulgent to the supporters and members of [SHOR Party](#) present in the Great National Assembly Square on 26 August, while, on the other hand, they [dispersed the protesters](#) of the movement [ACUM](#) and [OccupyGugută](#), applying to them forced eviction on 27 August 2018. Similar actions were admitted during the demonstration of 1 September 2018 dedicated to the Centenary March. This time police officers [seized the buses](#)

[of participants in the march and intervened in force](#), including by switching off the light in the place of demonstrations and intimidating participants through the massive presence of armed police and special anti-riot troops.

The signatory organizations requested the competent public authorities to ensure thorough investigation of all complaints concerning those events, to refrain in the future from actions that create the danger of altercations between protesters and to comply with the law on assembly in good faith. No response on the part of the authorities ever followed. The full text of the declaration is available in [Romanian](#), [English](#) and [Russian](#).

EXTRADITION OF SEVEN TURKISH TEACHERS - IS IT A NATIONAL OR POLITICAL INTEREST?

A [press release](#) of the Security and Intelligence Service (SIS) issued in the morning of 6 September 2018 reported about a “complex operation to prevent threats to the national security of the Republic of Moldova”. Soon, from [the information on a social network](#) it became clear that that it was about the detention of seven Turkish citizens, employees of the private Lyceum network “Orizont”. Subsequently, in [another press release](#) published on the same day, the SIS announced the declaration of the persons concerned as “undesirable” and their expulsion from the territory of the Republic of Moldova.

Forced removal of Turkish from Moldova citizens has been widely publicized in national and international media. [EU Commissioner for Enlargement and Neighbourhood Policy](#) called on the authorities of the Republic of Moldova to respect the rule of law and the right to a fair trial of detained and forcibly removed persons. Similar statements were made by a [group of Members of the European Parliament](#), [Amnesty International](#) organization, as well as by the [Ombudsman](#) of the Republic of Moldova. On the other hand, state

representatives [have stated](#) that the law enforcement bodies have complied with the law.

Several NGOs, including the LRCM, [have requested](#) the leadership of the Republic of Moldova to ask the Turkish President to return back all Turkish citizens illegally expelled by Moldovan authorities on 6 September 2018. According to them, in the absence of clear arguments, which would confirm that there really was a danger to the national security, a strong presumption is created that the operation carried out by the authorities took place due to political interests, being in fact the seizure of Turkish citizens at the request of the President of Turkey, because of their affiliation with the Gullen Movement. [The signatories of the appeal requested](#) the Prosecutor General to initiate criminal prosecution to hold liable all those persons who committed crimes in connection with the “removal” of those seven Turkish teachers legally staying on the territory of the Republic of Moldova. The Prosecutor General's Office did not react in any way to this request. The full text of the appeal is available in [Romanian](#) and [English](#).

NGOS HAVE DEVELOPED RECOMMENDATIONS FOR THE PARTICIPANTS IN THE PROTESTS

In August 2018, [Amnesty International – Moldova](#), [Legal Resources Centre from Moldova \(LRCM\)](#), [Rehabilitation Centre for Torture Victims „Memoria”](#), [Watchdog.md Community](#), [CPR Moldova](#), [Promo-LEX](#), [Transparency International – Moldova](#), in collaboration with the [Office of the Ombudsman](#), developed a set of Recommendations for the participants in protests, which are available in [Romanian](#) and [Russian](#).

The purpose of publishing the recommendations was to prevent possible violations of the right to peaceful protest and

to encourage protesters to comply with the law and to report on any possible violations. The recommendations list the main rights and obligations of the participants in the protests and the main obligations of the authorities in relation to the protesters. The recommendations also include advice on how to address the police or the prosecutor's office, as well as how to apply for state-guaranteed legal aid and the Office of the Ombudsman. Ensuring the right to a peaceful protest by public authorities is an essential element of democracy and the rule of law.

CIVIL SOCIETY

IN 2018 THE STATE HAS ALLOCATED OVER 2.4 MILLION EUROS TO FUND CSOS

Civil society organizations (CSOs) in Moldova are funded from sources coming from abroad for more than 80%. The Association “Institutum Virtutes Civilis” has analysed the legislation and practice on financing of the CSOs by the authorities of the Republic of Moldova. According to the [analysis](#), the funding of the CSOs directly by the state is done through state allocations/subsidies, contracting for the

provision of services and allocation of grants for projects implemented by the CSOs.

Government allocations/subsidies are funds granted to the CSOs in the form of transfers from the state budget to support certain categories of the population. The beneficiaries of them are some CSOs that are directly indicated in the Law on the

State Budget, and namely the Association of Blind Persons of Moldova, the Association of Deaf Persons of the Republic of Moldova, the Society of Disabled Persons of the Republic of Moldova, the National Olympic Committee and, from 2018, the National Paralympic Committee.

Project grants are non-reimbursable funding provided by central public administration (CPA) and local public administration (LPA) for implementing the activities in line with the priorities announced by the authorities. Grants are awarded on the basis of contests held by each state institution separately, according to their own rules.

According to the analysis, the central authorities that have direct funding programs for the CSOs are the Ministry of Education, Culture and Research, the Ministry of Agriculture, Regional Development and Environment, the Ministry of Health, Labour and Social Protection, the Diaspora Relations Office (State Chancellery). The total amount of direct funding of CSOs in 2017 amounted to 38,360,647.2 MDL (circa 1,889,687.05 euros). The amount planned for 2018 was 48,858,292.64 MDL (about 2,406,812.44 euros). The funded areas concern mainly

youth, education, social entrepreneurship, volunteering, inclusion and non-discrimination.

One of the main conclusions of the analysis is that there is the inconsistency of the legal framework on this issue and the need to develop a framework mechanism to grant direct state funding to the CSOs, that will standardize the conditions and procedures for granting of funding, as well as to establish similar rules for all institutions. It is also required to have strategic and budgetary planning at both national and local level, extend the areas of cooperation between the state and the CSOs, and develop a monitoring and evaluation system as regards the implementation of the state-funded projects.

On 2 August 2018, the Government published a [press release](#) announcing that it has allocated 10 million lei (about 500,000 euros) for the monitoring and evaluation of public policies by the CSOs. The mechanism for the purchase of services had to be developed by the State Chancellery. At the beginning of December 2018 neither the mechanism nor any announcement on reception of files from the CSOs was published.

(IN)TRANSPARENCY IN DECISION-MAKING AT THE PARLIAMENT

On 6 June 2018, the Government registered in the Parliament a [draft law](#) that provided for the alignment of several normative acts with the Law on Public Finance and Budgetary and Fiscal Responsibility. After the first reading, non-attached Member Vladimir CERNAT proposed several [amendments](#) to this draft law, one of which provided for the exemption from value-added-tax (VAT) and taxes for petroleum products to be marketed under duty-free regime. The amendment did not justify the necessity of this proposal, did not contain any economic and financial analysis, nor did it explain how it is related to the draft proposed by the Government. The Parliament [voted](#) the amendment in final reading the second day, on 27 July 2018, without this amendment having anything to do with the original draft, without holding any public consultations and without any debate in the plenary of the Parliament. Although no Government opinion on this amendment was published, the [report of the Committee for Economy, Budget and Finance](#) shows

that the Government was against this amendment (page 22 of the report).

According to [Transparency International Moldova](#), this amendment is contrary to the international commitments with the European Union on the elimination of duty-free facilities and practices and will have a negative impact on the state budget revenues. A [journalistic investigation](#) of Ziarul de Gardă revealed that the main beneficiary of this amendment is Ilan SHOR.

Under art. 131 par. 4 of the Constitution, no amendment affecting the state budget can be adopted without the approval of the Government. The President Igor DODON, however, promulgated the legislative amendments, although earlier he had declared he was still not sure whether to promulgate them. On 16 October 2018, the President [asked](#) the Constitutional Court to declare this amendment unconstitutional. The notification has not been examined by the Constitutional Court yet.

DENIGRATION AND SABOTAGE OF NON-GOVERNMENTAL SECTOR CONTINUE

In several editions of the [newsletter](#), the Legal Resources Centre from Moldova (LRCM) reported on negative actions and rhetoric by the representatives of state authorities and persons affiliated to the government as regards the activity of the CSOs.

Within the period of July and September 2018, there have been several events that can be described as attacks against the CSOs. These attacks endanger the normal functioning of the CSOs in Moldova and pose a threat to democracy.

On 26 July 2018, the Mayor of Orhei town and the chairperson of the political party SHOR [launched several harsh accusations](#) towards NGOs. Ilan SHOR has qualified the representatives of the human rights NGOs as a group of scammers working for heavy money granted by the USA and stated that many of the NGO leaders are beneficiaries of money stolen from the bank fraud. Shor also said that NGOs do not pay any taxes and do not publish activity reports. Shor promised, among other things, that once his party comes to power, he would approve the Law on Foreign Agents and would declare the activity of the NGOs illegal. Shor's reaction comes after several [civil society organizations have condemned his speech full of hatred](#) and threats addressed by the latter to journalists and political opponents.

Another case of denigration of the activity of representatives of non-commercial organizations is related to the activity of

Mr. [Rosian VASILOI, security policy expert at "IDIS Viitorul"](#). In a [video investigation](#) published on 16 August 2018, by a little-known investigation portal that distributes messages in support of the current government, several tendentious statements were made towards Mr. Vasiloï. He was accused of being a KGB agent and that, together with the banker convicted in the bank fraud case, Veaceslav PLATON, worked in the interests of the Russian Federation. Rosian VASILOI [immediately refuted the accusations](#), qualifying them as aberrant. The alleged investigation comes after the latter made [several statements](#) about smuggling of cigarettes over the river Prut and after he declared that smuggling was done under the protection of high-ranking officials. Mr. Vasiloï was also concerned that the authors of the investigation had access to personal data about him that could only be held by the state authorities.

IN BRIEF

Amendments to the Code of Civil Procedure entered into force on **1 June 2018**. These mainly concern the simplification of the proceedings for examining civil cases, detailed description of the procedure for preparing the case for examination, the clarification of the rules for the presentation of evidence and summoning of the participants, as well as the possibility of filing procedural documents in electronic format (e-file system). The objective of the new amendments is to reduce the duration of court trials and to streamline civil court proceedings. On 3 August 2018, the Code of Civil Procedure with all amendments was republished.

On **5 July 2018**, several CSOs made a public appeal for the adoption of a [Magnitsky-type law](#) in the Republic of Moldova. Organizations are proposing a draft law that stipulates three basic elements: blocking of access to the banking system for people who have already showed themselves as international criminals and respectively became undesirable on international lists; the prohibition to enter the territory of the Republic of Moldova for people who have become notable for serious violations of human rights and money stealing and the confiscation of assets acquired through fraud or money laundering. This civic initiative [was joined by several organizations](#) and natural persons. In the same context, a group of MPs [registered a legislative initiative in the Parliament of the Republic of Moldova](#).

On **12 July 2018**, the Delegation of the European Union to the Republic of Moldova awarded the civil society organizations that had a lasting and positive impact on democracy, economic development and social cohesion in the Republic of Moldova. The LRCM received the special award "ADVOCACY for CHANGE". The award was granted for the achievements within the project ["Promoting Equality – Strengthening](#)

[the Agents of Change"](#) implemented in partnership with the [Euroregional Centre for Public Initiatives \(ECPI\)](#). The project aimed to increase the awareness of the population on equality and non-discrimination in the Republic of Moldova.

On **12 July 2018**, the Parliament of the Republic of Moldova adopted the Law regarding whistle-blowers. Whistle-blowers are employees who disclose in good faith an illegal practice that constitutes a threat or prejudice to the public interest. The purpose of the law is to establish an effective mechanism for denouncing corruption and protecting whistle-blowers. The law stipulates the way of reporting on illegal practices within public and private entities, the procedure for their examination, the rights of whistle-blowers and measures for their protection, the obligations of employers, the powers of the authorities responsible for examining of such disclosures and those responsible for the protection of whistle-blowers. The identity of the employee who reveals illegal practices is not disclosed or communicated to persons who are allegedly liable for such practices. At the same time, public sector employees are obliged to denounce any inappropriate influences exerted on them, as well as other attempts to involve them in corruption actions. Previously, on **9 September 2013**, the Government approved the Framework Regulations regarding whistle-blowers and **on 5 August 2014** the SCM adopted the Regulations regarding whistle-blowers within the Superior Council of Magistracy and the courts.

On **12 September 1997**, the Republic of Moldova became a part of the European Convention on Human Rights (ECHR). On 12 September 2018, 21 years have passed since Moldova joined the ECHR. During this time, the European Court of Human Rights (ECtHR) issued 381 rulings on Moldovan

cases. In order to increase the level of informing of the society about the activity of the ECtHR in Moldovan cases, the LRCM published [several thematic analyses and studies, including the summary paper on the violations found in the Moldovan cases solved by 31 December 2017](#).

Between **13-14 September 2018** the LRCM [organized two training workshops](#) on application of the 2% mechanism (2% Law) for CSOs in Cahul and Căușeni. The workshops focused on explaining the 2% mechanism (registration procedure, stages, deadlines, institutions involved) as well as on the issues related to the use of amounts and reporting on them. Other topics covered liability and sanctions applied by the responsible bodies, the CSOs and taxpayers' access to information, as well as the opportunity to plan and implement an information campaign on 2% that is so important for achieving the results.

On **18 September 2018**, the LRCM launched the social movie-reel [Corruption kills - for real!](#) meant to increase the level of awareness of the citizens regarding the acts of corruption. The movie-reel illustrates the story of a citizen before the Last Judgement. He would have died in a road accident committed by a driver to whom he issued a driving license through corruption.

On **19 September 2018**, [at a round table](#), the LRCM discussed with the public authorities about the challenges in implementation of the 2% Law identified in the first two years of the law enforcement. Representatives of the LRCM and ECNL also discussed the prerequisites that could ensure the effective implementation of the mechanism and expressed their gratitude to the authorities for the openness and collaboration for to implement the 2% Law.

On **21 September 2018**, [the Constitutional Court decided](#), for the fourth time, on the temporary suspension from office of the President Igor DODON. The reason for the suspension is the repeated refusal of the President to appoint two ministers - Silvia RADU to the Ministry of Health, Labour and Social Protection and Nicolae CIUBUC as the Minister of Agriculture, Regional Development and Environment. [In the opinion of the President](#), the proposed candidates do not have the required professional qualifications or do not meet the integrity criteria to hold a public office. According to Constitutional Court, the President cannot refuse the repeated proposal to appoint a minister.

In **September 2018**, the [USAID Index](#) of the Civil Society Organizations (CSO) Sustainability in the Republic of Moldova for 2017 was launched. The Index examines the general environment for civil society, focusing on the legal framework, organizational capacity, financial sustainability, advocacy, service delivery, infrastructure and public image of the CSOs. In 2017 the Index for Moldova was 3.8, which more positive by 0.1 points as compared to the [last three years](#), when it was 3.9. The increase was due to the improvement of the legal framework, namely the adoption of the "2% Law", under which natural persons can assign 2% of their income tax to the CSOs from Moldova.

According to the [statistical report](#) published by the State Tax Service in autumn 2018, the number of beneficiaries of the 2% mechanism in 2018 increased by about 30% - from 302 to 393 beneficiaries. On the other hand, in 2018, 28,388 taxpayers, which is by 34% more than in 2017, have chosen to assign 2% of their income tax. The total amount validated in 2018 as a result of the percentage designation makes up 5.6 million lei (about 335.781 US dollars), twice higher than in 2017 (2.8 million lei).



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ABOUT LRCM

The Legal Resources Centre from Moldova is a not-for profit non-governmental organization based in Chișinău, Republic of Moldova. LRCM strives to ensure a qualitative, prompt and transparent delivery of justice and effective observance of civil and political rights in Moldova. In achieving these aims, LRCM combines policy research and advocacy in an independent and non-partisan manner.

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