LRCM | LEGAL RESOURCES CENTRE FROM MOLDOVA

# NEWSLETTER

**NO. 20** | OCTOBER – DECEMBER **2018**

## GOOD GOVERNANCE

### EUROPEAN INSTITUTIONS ARE CONCERNED ABOUT THE DETERIORATION OF DEMOCRATIC STANDARDS AND THE LEVEL OF CORRUPTION IN MOLDOVA

In the autumn of 2018, the Council of Europe (CoE) and the European Parliament have warned Moldovan authorities about the deterioration of democratic standards and the need to ensure the rule of law in Moldova.

On 11 October 2018, ***25 members of the Parliamentary Assembly of the Council of Europe (PACE) adopted a declaration*** voicing concern about the deterioration of basic democratic standards in the Republic of Moldova: rule of law, democratic institutions, independence of judiciary, media freedom, and harassment of opposition. MEPs called on the Moldovan authorities to ensure that the results of Chişinău mayoral elections in summer of 2018 are fully respected, adjust the electoral law according to the recommendations of the Venice Commission and to ensure that citizens of the Republic of Moldova living abroad will be able to participate freely in the upcoming parliamentary elections. MEPs also expressed their concern by the pressure posed on NGOs denying their right to access foreign funding and requested that the Monitoring Committee visited the Republic of Moldova as a matter of urgency.

On 14 November 2018, ***the European Parliament adopted a Resolution on the implementation of the EU Association Agreement with Moldova***. The resolution mentions, among other things, some achievements in the banking system, reform efforts in the field of public administration and in the area of public finance management, the legislative amendments adopted in July 2018 meant to strengthen merit-based selection and promotion of judges, as well as their accountability and so on. At the same time the MEPs underlined backsliding in relation to democratic standards in Moldova to which Moldova had subscribed notably as part of the Association Agreement (AA), such as democracy – including fair and transparent elections respecting the will of the citizens, as well as a multi-party democratic system – and the rule of law – including the independence and impartiality of the judiciary. It is mentioned in the Resolution that the Republic of Moldova is a state captured by oligarchic interests with a concentration of economic and political power in the hands of a small group of people exerting their influence on the Parliament, the Government, political parties, the state administration, the police, the judiciary and the media and leading to highly unsatisfactory implementation of legislation with little benefit for the citizens.

## CONTENTS

The European Parliament also noted regressions and concerns in other AA-regulated areas such as the media, combating money laundering, combating corruption, the need for independence, impartiality and efficiency of the judiciary and anti-corruption institutions, the need for publishing of the second Kroll report and for a swift and transparent prosecution of all those responsible for the USD 1 billion bank fraud unveiled in 2014, as well as the recovery of stolen assets, for prompt examination of cases that are pending or undergoing investigation, notably that of Ilan SHOR etc. The European Parliament has expressed concerns about undue or disproportionate criminal proceedings that target human rights defenders, independent judges such as Domnica MANOLE and Gheorghe BALAN, journalists and critics of the government or of the President of the Democratic Party of Moldova, Vladimir PLAHOTNIUC.

**The European Parliament: the Republic of Moldova is a state captured by oligarchic interests with a concentration of economic and political power in the hands of a small group of people**

The European Parliament reiterated its position that any decision on future macro financial assistance disbursement should only take place after the parliamentary elections scheduled for February 2019 and on condition that they are conducted in line with internationally recognised standards. Also, the European Parliament mentioned that the payment of all budget support programmes should remain on hold until meaningful progress in democratic standards takes place, including reform of the judiciary and judicial action against the persons responsible for the bank fraud in line with the European Parliament Resolution as of 5 July 2018.

## CONSTITUTIONAL COURT: CITIZENS CAN INITIATE REFERENDUMS, BUT ONLY WITH THE CONSENT OF THE PARLIAMENT

On 12 March 2018, the Central Electoral Commission refused to register the initiative group for a legislative republican referendum (the group called for cancelling the mixed electoral system introduced in 2017), arguing that there is no legal provision that clearly establishes the right of citizens to initiate legislative referendum. The refusal came even if art. 155 of the Electoral Code provided that the referendum could be initiated by 200,000 citizens, 1/3 of the MPs, the President or the Government. On 3 April 2018, three MPs representing Liberal Democrats requested the Constitutional Court (CCM) to explain whether citizens have the right to initiate legislative referenda.

On 2 October 2018, on the last day of the deadline for considering the referral, the CCM adopted a decision on citizens' right to initiate a referendum. According to the decision, citizens may request the initiation of any type of republican referendum (consultative, legislative, constitutional or regarding the dismissal of the President). This requires at least 200,000 citizens. In the case of the constitutional referendum, as stipulated under Art. 141 of the Constitution, at least half of the citizens must come from the second level administrative and territorial units, and at least 20,000 signatures must be registered in support of the initiative in each of them.

It is not required to get prior approval of the CCM to initiate a legislative referendum. The CCM approval is nevertheless necessary to initiate a constitutional referendum (which refers to the amendment of the Constitution). In the latter case, as is apparent from Art. 135 par. (1) letter c) of the Constitution, the CCM has to decide until the referendum is initiated "on the conditions for the draft validation". In the case of a legislative referendum not aimed at amending the Constitution, under Art. 135 par. (1) letter d) of the Constitution, the CCM only has to confirm the results of the referendum. The CCM may not confirm the results of the referendum initiated by citizens when the text voted at the referendum contravenes the Constitution.

**The Parliament must verify the text of questions proposed for a legislative referendum, which significantly reduces the chances of holding the referendum not supported by the parliamentary majority**

The CCM noted that, although the law does not expressly stipulate it, there should be a preliminary verification of the text proposed for the legislative referendum. The text must not contravene international law or the fundamental principles of democracy, human rights and the rule of law. Current legislation does not specify who will do this verification. The CCM concluded that "given that the Parliament has the necessary legal tool kit to verify the conditions of validity of the draft laws, until the procedure for initiating legislative referendums is regulated, the competence to verify the validity of the texts subject to the referendum will belong to it". It is also mentioned in the decision that if the Parliament finds that the text of the draft law submitted by the citizens to the referendum is not in line with the conditions of validity or if it involves issues of constitutionality, it may refuse

to hold the referendum in a reasoned manner. Until taking the decision on the draft, the Parliament must seek advice and expertise on it according to the general procedure (obtaining opinions from authorities, civil society and the parliamentary committees).

The deadline for the Parliament to decide on the referendum proposed by citizens is not mentioned in the CCM decision. In 2003, the CCM declared it had no powers to intervene when the Parliament did not put to the vote the issue of organizing a national legislative referendum. On the other hand, the approval by the Parliament of the referendum proposed by the citizens is done by a decision of the Parliament. Given that the vote in the Parliament is eminently political, it substantially reduces the chances of accepting initiatives that are not agreed with the parliamentary majority. On the other hand, de facto, the acceptance by the Parliament deprives the popular initiative of any effect, because it is simpler to initiate a referendum by 1/3 of the MPs than to secure the vote of the majority of the MPs for the referendum requested by the citizens.

In a previous decision, no. 15 as of 11 April 2000, the CCM found that the Parliament cannot reject proposals for holding of the referendum initiated by citizens. According to this decision, "the rejection by the Parliament of the proposal for holding a referendum initiated by citizens contravenes the constitutional provisions stipulated by Art. 2 para. (1) and Art. 39 para. (1) of the Supreme Law". The CCM mentioned in the decision of 2018 that it reviewed its decision taken in 2000 without explaining why it did this.

## TORMENTS OF THE REFERENDUM HELD ON 24 FEBRUARY 2019

On 27 July 2018, the Parliament decided that the parliamentary elections in the Republic of Moldova will take place on 24 February 2019. The elections will take place based on the electoral system introduced in 2017, where 50 MPs are elected on party lists and 51 on single-member constituencies. The Government has rejected many critical opinions regarding this system as well as proposals for improvement, invoking that, as recommended by the Venice Commission, the electoral legislation should not be changed by less than a year until the election.

> THE REFERENDUM HELD ON THE SAME DAY WITH PARLIAMENTARY ELECTIONS WAS INTRODUCED THROUGH VICIOUS LEGISLATIVE PROCEDURES AND FOR CREATING CONFUSION AMONG VOTERS

On 27 July 2018, Art. 156 para. 2 of the Electoral Code (restrictions on the republican referendum) stipulated that the republican referendum cannot take place 60 days before and 60 days after the day of the parliamentary elections. In 2014, there was an attempt to hold a referendum simultaneously with the parliamentary elections, but the Constitutional Court (CCM) did not support the initiative (Opinion no. 1/2014). It noted that, although it was not expressly mentioned in the Electoral Code, given the purpose of the prohibition in the Electoral Code, it is self-evident that the referendum cannot take place on the day of the parliamentary elections. The simultaneous holding of the parliamentary elections and the referendum hinders the voting process, which could make it impossible to exercise the right to vote because of the queues at the polling stations. It also complicates the identification of the voting option by the voter, who will have to decide on a number of very different issues. The CCM also noted that cutting budget spending, even in a period of economic crisis, is not enough to justify the organization of the referendum on the day of the parliamentary elections.

On 8 November 2018, the Parliament adopted Law no. 238. This law amends the Electoral Code. The initial version of the draft law did not propose to amend Art. 156 para. 2 of the Electoral Code. On 24 October 2018, the MP from the Democratic Party Sergiu SÎRBU proposed to complete the draft law with the provision allowing holding of the referendum on the Election Day. According to him, the amendment is necessary to execute the opinion of the Constitutional Court no.1 / 2014! In fact, the opinion of the CCM suggests that holding of elections and the referendum on the same day is not welcome. Mr Sîrbu's amendment was accepted by the Plenary of the Parliament.

On 28 November 2018, Law no. 238 was promulgated by the President Igor DODON. On 30 November 2018, it was published in the Official Gazette. Even though the law was published in the Official Gazette on 30 November 2018, it entered in force only one month later, on 30 December 2018.

Despite the fact that the amendments to the Electoral Code did not come into force and there was no certainty that the President of the country will promulgate the law (the President could have refused the promulgation in December, and in December the Parliament already had no power to vote the draft repeatedly because its term of office had expired), on 13 November 2018, Vladimir PLAHOTNIUC, the Chairperson of the Democratic Party, announced that a referendum on the

reduction of the number of Members of the Parliament would be held on the day of the parliamentary elections. On 29 November 2018, 35 MPs of the Democratic Party registered in the Parliament a draft for holding of the referendum. The draft was approved on the following day on 30 November 2018, even though the amendments to the Election Code had not entered into force at that time, and the text in force at that time provided for a ban on holding a referendum on the Election Day. Also, the draft was not subjected to anti-corruption expertise, an act without which, according to the law, the decision of the Parliament could not be adopted. On the other hand, the draft requires budgetary expenditures, and such acts, under Art. 131 para. 4 of the Constitution cannot be adopted without the approval of the Government. The approval of the Government is not published on the website of the Parliament. It does not appear to exist, because on 29 and 30 November 2018 the Government did not even convene for the meeting.

Even though the law allowing the holding of the referendum on the Election Day did not enter into force, on 14 December 2018 the Central Electoral Commission approved the estimate of costs for the referendum. It seems that all these deviations have been committed to make it possible for the referendum to take place on the Election Day. If all the organizational aspects were started after the date of entry into force of Law no. 238 (30 December 2018), the referendum of 24 February simply could not take place because of too short period of time.

The referendum of 24 February 2019 was an advisory one, i.e. its conclusions are not binding. Voters have been asked if they agree to reduce the number of Members of the Parliament from 101 to 61 and if they support the recall of the MPs who do not perform their duties properly. The recall of the MP is contrary to the Venice Commission standards, as also mentioned in the opinion on the draft laws on amending legislative acts on electoral system in the Republic of Moldova. On the other hand, reducing the number of MPs implies the amendment of the Constitution. It is unlikely that any party in the future parliament will have a constitutional majority.

It seems that the referendum was introduced for the referendum messages to be used in the campaign for parliamentary elections by the Democratic Party. On the other hand, on 24 February 2019, the voters received four ballots, two for the elections and two for the referendum. Considering the low level of political culture in the country, it could not avoid making less informed voters confused. At the same time, the referendum has hampered the voting process, creating real prerequisites for longer queues at polling stations, especially in the polling stations abroad. This could discourage future participation in voting.

## THE DECISION-MAKING TRANSPARENCY OF THE PARLIAMENT NEEDS IMPROVEMENT

The Legal Resources Centre from Moldova (LRCM) has published a policy document that provides analysis of both legislation and practice of the Parliament of the Republic of Moldova with regard to compliance with decision-making transparency at different levels of participation, and namely within the framework of public consultations, access to information of public interest and active involvement and dialogue with civil society.

> THE REGULATIONS IN THE DRAFT CODE OF PARLIAMENTARY RULES AND PROCEDURES CONCERNING PUBLIC CONSULTATIONS ARE EVEN VAGUER THAN THOSE IN FORCE

As far as public consultations in the Parliament are concerned, the legislative framework is too general to be explicit and applicable, and the rules are divided into several normative acts without any normative act that would provide for the entire public consultation process of a normative act initiated or examined by the Parliament. It is recommended to clarify the legal framework and concentrate all the norms in a single normative act - either in the current Rules of Procedure of the Parliament or in the draft Code of the Parliamentary Rules and Procedures. In practice, public consultations in the Parliament are limited to the publication of the draft regulatory acts on the website of the Parliament and targeted consultation with stakeholders or other forms of consultation are not used. Six case studies presenting six draft laws in the areas monitored by the LRCM since 2011 until 2018, which were conceptually amended by the Parliament in the second reading without holding public consultations, are presented in the analysis. It is a negative practice, which negatively affects the principle of transparency in decision-making and the rule of law.

It was mentioned in the document that the Parliament provides access to information on draft legislation, but much of it is missing and should have been published, such as the deadline for submitting comments, all amendments proposed by the MPs, modifications which were done in the normative act before adopting it in the final reading, etc. Also, the agendas of the parliamentary committees meetings and those of the Plenary of the Parliament are not published in due time. Adoption of draft laws as a matter of urgency is not announced on the website of the Parliament, and the Rules of Procedure of the Parliament do not regulate this legislative

procedure. The Public Policy Document contains a series of recommendations for improving the decision-making transparency in the Parliament.

On 2 November 2018, a legislative initiative of three MPs regarding the adoption of a Code of Parliamentary Rules and Procedures ("Parliamentary Code") was registered in the Parliament. In the case of adoption, the document would replace the Rules of Procedure of the Parliament and the Law on the Status of the Member of the Parliament. According to the LRCM and the Association for Participatory Democracy (ADEPT), the document that should regulate transparency in the decision-making process at the level of the Parliament was drafted in violation of the rigours of the decision-making transparency. The NGOs have pointed out that the draft was recommended by the Legal Committee for adoption in the first reading 12 days after the registration, although anti-corruption expertise, which is mandatory under the Law on Normative Acts no. 100/2017, as well as the Government approval mandatory under Art. 58 of the Rules of Procedure of the Parliament no. 797/1996 were missing on the webpage of the draft law. On 22 November 2018, the draft was adopted in the first reading. An analysis of the content of the document highlights the existence of very vague provisions on access to information, transparency in decision-making process and cooperation with the civil society. The draft Parliamentary Code contains regulations on public consultations that are even vaguer than those currently in force and they are set out in different sections of the Parliamentary Code.

The draft Code regulates the organization and functioning of the Parliament, the legislative procedure, the legal relations between the Parliament and other authorities. The document states that the parliamentary factions can be constituted by at least six MPs, compared to five as it is now. The draft regulates the relations of the Parliament with the President of the country, the procedure of his suspension and lifting of his immunity, as well as provisions on ensuring the interim presidency of the country. The Code also regulates the parliamentary oversight, including law enforcement procedures. A separate chapter is dedicated to the MP's status and ethics, including sanctions for non-compliance with the provisions of the Code. The document preserves the immunity for the MPs.

The draft Parliamentary Code also refers to the coverage of the activity of the Parliament by mass media, obliging media institutions to treat factions, groups of MPs or MPs from the parliamentary majority and parliamentary opposition in a non-discriminatory way by offering them equal conditions for to present their views freely. This rule is included in Art. 9 of the draft, being entitled "The Public Nature of the Parliamentary Activity", but it includes obligations for the media.

On 26 November 2018, more than 30 non-commercial organizations requested the Parliament of the Republic of Moldova to organize genuine public consultations on the draft Code of Parliamentary Rules and Procedures, including the organization of public debates with the participation of civil society organizations, giving sufficient time for that, and avoid adoption of this important document in a hurry. The draft was not adopted in the final reading until the expiration of the term of office of the Parliament. Regretfully, the draft was not subjected to public consultations until the end of February 2019.

## BAROMETER OF PUBLIC OPINION 2018 - POVERTY AND CORRUPTION REMAIN AMONG THE BIGGEST CONCERNS OF MOLDOVANS

On 4 December 2018, the Institute for Public Policy (IPP) presented the latest results of the Barometer of Public Opinion (BOP). According to the results, over 70% of the respondents believe that the direction in which things are going in the Republic of Moldova is wrong and only 17% consider that the direction is the right one. The issues of greatest concern are prices, the future of children and poverty, unemployment and corruption. At least 87% of respondents are not satisfied with the efforts of authorities to fight corruption. One third of respondents considered that, in order to change the economic situation in the country, it is first of all necessary to change the leadership of the country (30%). A similar number of respondents consider fighting corruption among these priorities.

**ONLY 15% OF RESPONDENTS CONSIDER THAT CITIZENS ARE TREATED EQUALLY BY THE JUDICIARY IRRESPECTIVE OF THEIR WEALTH STATUS**

The church continues to enjoy the highest level of trust (70%), followed by local public administration (40%) and media outlets (35%). On the opposite side is the Parliament (13%), the Constitutional Court (13%) and political

parties (12%). Trust in the judiciary has grown insignificantly if compared with the same period of the last year (16% in November 2018 versus 14% in November 2017), but continues to be positioned at the end of the trust ranking.

As far as the exercise of civil and political rights is concerned, 64% of respondents said they did not feel free to go out and protest against the decisions taken by the leadership of the country. Similarly, 63% of those surveyed do not feel free to say what they think about the leadership of the country. These results are worrying, especially if we compare them with the situation in November 2009 (after the violent protests of 7 April 2009), when the rate for both questions did not exceed 43%.

Asked about the invalidation of the mayor's elections in Chişinău municipality in the summer of 2018, 26% believed that the Democratic Party and its Chairperson, Vladimir PLAHOTNIUC, were guilty of cancelling the election results, while only 9% of the respondents believed that the judiciary had honoured its duties in this case.

For the first time the BOP issue as of November 2018 included some specific questions about the functioning of the judiciary. Asked whether citizens were treated equally by the judiciary, only 36% considered that they were treated equally irrespective of gender, 31% - regardless of age, 25% - regardless of ethnicity, 17% - regardless of political opinion/ affiliation, 17% - regardless of the office held, and 15% - regardless of the wealth status. Meanwhile, on average only 15% of respondents believe that law enforcement bodies (lawyers, prosecutors, police officers, judges, and NAC employees) are independent and only 17% of respondents believe that judges will adopt a fair decision if they or their relatives are to be taken to court.

## THREE NEW JUDGES WERE APPOINTED TO THE CONSTITUTIONAL COURT

**Between 11 and 14 December 2018, within four days,** the Superior Council of Magistracy (SCM), the Government and the Parliament **have appointed by one new judge to the Constitutional Court (CCM) each.** This **became possible after the sudden and secret resignation, just a few days before it, of two constitutional judges,** Igor DOLEA and Victor POPA, whose terms of office were to expire on 12 February 2019 and 4 April 2019, respectively. Also, the position of a constitutional judge was vacant since March 2018, when the current Minister of Justice, Victoria IFTODI, resigned from the position of the constitutional judge in connection with her appointment as a minister.

> **Half of the Constitutional Court membership was changed within a week in December 2018, just before the parliamentary elections of 24 February 2019**

The appointment of constitutional judges took place in a non-transparent manner and no public contest was organized. None of the institutions that have appointed constitutional judges included this topic in the agendas of their meetings, and the nominated candidates were the only ones to be considered. Earlier, both the Superior Council of Magistracy (SCM) and the Government had a positive practice of organizing contests for the selection of the judge at the CCM.

On 11 December 2018, the SCM has appointed Corneliu GURIN as judge of the CCM, replacing the judge Igor DOLEA, appointed by the SCM based on the public contest on 12 February 2013. At the same meeting, the SCM examined both the request of the CCM President concerning the resignation of the judge Igor DOLEA starting with 10 December 2018 and the appointment of the new judge. This issue was not included either in the agenda of the SCM meeting, which should be published 3 days before the meeting or in the additional agenda. According to Mr. Corneliu GURIN, he was invited to present his candidacy both by the President and some members of the SCM. The SCM did not announce a contest for the appointment of a new judge and examined only the candidacy of Mr. Corneliu GURIN. The last three constitutional judges appointed by the SCM were identified based on the contest (see for details the SCM Decisions No. 130/6 as of 12 February 2013 on the appointment of judges Tudor PANȚÎRU and Igor DOLEA and Decision No. 117/7 as of 6 March 2018 on the appointment of the judge Mihai POALELUNGI). At the end of January 2019, the SCM decision on the appointment of the constitutional judge was not yet published on the SCM website.

On the following day, on 12 December 2018, after about 9 months since the position has been vacant, the Government appointed Arthur REŞETNICOV, the member of the Parliament (MP) on the list of the Democratic Party, as the judge at the CCM. Previously, Mr. Reşetnikov was a member of the Party of Communists and the Head of the Security and Intelligence Service during the April 2009 events, when mass maltreatment of young people and deaths following the protests against the results of the parliamentary elections took place. This issue, as well as the appointment of Mr. Corneliu GURIN by the SCM, was not included in the agenda of the Government meeting. Surprisingly, it does not appear even in the minutes of the Government meeting as of 12 December 2018. The last

two constitutional judges appointed by the Government were appointed based on the contest (see for details Government Ordinance No. 132 as of 23 October 2015 and Government Ordinance No. 33-d as of 14 April 2017).

Two days later, on 14 December 2018, the Parliament appointed Mrs. Raisa APOLSCHII, the MP from the Democratic Party and Chairperson of the Legal Committee for Appointments and Immunities of the Parliament as the judge at the CCM by 54 votes. The position became vacant after the sudden and unannounced resignation of the constitutional judge Victor POPA two days before it. The Legal Committee of the Parliament, chaired namely by Mrs. Raisa APOLSCHII, proposed to the Plenary of the Parliament to appoint Mrs. Apolschii to the position of the constitutional judge. However, this issue does not appear on the agenda of the meeting of the Legal Committee as of 12 December 2018 and the report of the Legal Committee according to which Mrs. Raisa APOLSCHII was proposed to be voted for the position of the judge at the CCM was not published on the website of the Parliament.

The CCM consists of six judges. Thus, half of the CCM membership was changed in a week, shortly before the parliamentary elections of 24 February 2019. Several NGOs have voiced concerns **about the non-transparent way of appointment of the last three judges to the CCM, saying it undermines public trust in the independence of the CCM. The signatory organizations mentioned that the selection of candidates** also raises reasonable doubts about their political affiliation with the Democratic Party of Moldova (DPM), which could lead to the excessive politicization of the CCM and its use in political struggles.

# JUSTICE

## THE SCJ UPHOLDS THE SCM DECISION ON THE DISMISSAL OF JUDGE DOMNICA MANOLE

By decision no. 451/21 as of 4 July 2017, the Superior Council of Magistracy (SCM) proposed to the President of the Republic of Moldova to dismiss the judge at Chişinău Court of Appeal Domnica MANOLE. The SCM has reasoned its proposal by two main grounds.

**THE SCM:**

**EXPLAINING THE REASONS FOR THE DISSENTING OPINION AFTER THE PUBLIC DELIVERY OF THE JUDGEMENT AND DISSENTING OPINION IS A VIOLATION OF THE RESTRICTIONS ON DIRECT COMMUNICATION OF JUDGES WITH MASS MEDIA ON PENDING CASES, WHICH IS PUNISHABLE BY THE DISMISSAL OF THE JUDGE FROM OFFICE**

First of all, the SCM found the incompatibility of the judge with the interests of the position of a judge because of the risk factors presented mainly in two opinions of the Security and Intelligence Service (SIS), grounding the judgment by the provisions of Art. 15 para. (4), (5) of Law no. 271 as of 18 December 2008 on the Verification of Holders and Candidates for Public Positions. In the SIS opinions the reference was made to the criminal case initiated against Mrs. Manole in 2016 in connection with her judgement on the referendum (see for details LRCM Newsletter no. 10, p. 4), which was just at the stage of criminal prosecution, as well as to another criminal case related to the declaration of assets, which was dubiously re-opened in 2016 after the criminal prosecution on the same circumstances was refused in 2015. The SIS also referred to several civil cases in which Mrs. Manole participated in a panel with two other judges, accusing her of partiality and delay in their examination, which, according to the SIS, undermined the collection of debts by the state. The other judges examining the respective cases were not subjected to disciplinary or investigative actions. Also, some of those judgements were upheld by the Supreme Court of Justice (SCJ). However, the SCM did not take these aspects into account.

Secondly, the SCM found Mrs. Manole's incompatibility with the position of the judge for the violation of the restrictions provided by Art. 8 para. (3), ($3^1$) of Law no. 544 as of 20 July 1995 on the Status of the Judge regarding the communication of the judge with the media and the parties to the trial, invoking the provisions of Art. 25 para. (1) letter i) of Law no. 544 as of 20 July 1995 on the Status of the Judge. Mrs. Manole was charged with direct communication with the media about a case under proceedings in the court, while the law provides that such communication may only take place through the person in charge of relations with the media. That communication took place in connection with the case of *Andrian Candu vs JVFC Jurnal de Chişinău Plus Ltd*, in which Jurnal de Chişinău requested the Court of Appeal to reopen the time-limit, and the panel consisting of three judges, including Mrs. Manole, dismissed the appeal. Mrs. Manole, however, had a dissenting opinion, which she

announced at the public court hearing on 8 June 2017, after the judgement to dismiss the appeal was delivered. On 14 June 2017, five days after the judgement and dissenting opinion were delivered, Mrs. Manole was contacted by a journalist from Jurnal TV station, who was not a party to the trial, whom she explained why she had formulated the dissenting opinion. This was qualified by the SCM as direct communication with the media about a case under proceedings in the court for which the judge was declared incompatible with the position of a judge.

> **The SCJ modified only the operative part of the SCM decision, without admitting of the appeal and cancelling, in whole or in part, the SCM decision.**

On 5 July 2017, judge Manole lodged an appeal against the SCM decision to the SCJ. At the same time, she requested the President of the country not to issue the decree on dismissal until the SCJ decided on the case, but he ignored the request and on 21 July 2017 signed the decree on her dismissal from office.

Within the proceeding of examination of the appeal on dismissal by the SCJ, Mrs. Manole invoked the exception of unconstitutionality of some provisions of Law no. 271 as of 18 December 2008 regarding periodic verification of judges by the SIS. By the decision of the Constitutional Court (CCM) no. 32 as of 5 December 2017, the provisions referring to the SIS verification of candidates for the position of judge and judges in office were declared unconstitutional (see details on the CCM decision in LRCM Newsletter No. 16, p. 3).

Taking into account the unconstitutionality of the institution of the SIS verification of judges on 18 January 2018, Mrs. Manole has requested the SCM to cancel its decision on her dismissal from office. She invoked that the provisions underlying her dismissal had been declared unconstitutional (SIS opinions), and communication with mass media had to be examined within the framework of a disciplinary procedure in which the SCM could be involved only after the case had been examined by the Disciplinary Board. By decision no. 64/4 as of 6 February 2018, the SCM dismissed Mrs. Manole's request on the grounds that the administrative act that was executed cannot be revoked.

The case was examined in 13 court hearings at the SCJ. During the examination of the case, Mrs. Manole had recused or requested the abstention of some judges from the examination of the case, including Mr. Ion DRUȚĂ, who on 3 May 2018 was appointed the chairperson of the SCJ, being at the same time the full member of the SCM, and the SCM was the party to the proceedings. The recusal was not admitted.

On 19 November 2018, the SCJ dismissed Mrs. Manole's appeal and upheld the SCM decision based on which she was dismissed. The SCJ did not examine the part of the SCM decision that concerns the SIS opinions, invoking the CCM decision as of 5 December 2017. At the same time, although Law no. 793 on Administrative Proceedings, in force at that time, did not provide for such a competence, the SCJ excluded only the phrase "*Art. 15 para. (4), (5) of Law no. 271-XVI as of 18 December 2008 on the Verification of Holders and Candidates for Public Positions*" from p. 2 of the SCM decision, but without admitting the appeal and cancelling, in whole or in part, the decision of the SCM. Thus, the reasoning of the SCM decision remains largely focused on issues related to the incompatibility of Mrs. Manole based on the SIS opinions, and the operative part of the decision is limited to communication with mass media.

The SCJ referred only to 5 arguments provided by Mrs. Manole's appeal, which it considered decisive in resolving the case. First, the SCJ did not find a violation in conducting of the SCM meeting as of 4 July 2017 secretly, reasoning this mainly on the need to protect the personal data contained in the SIS opinions, but without clarifying what data were meant. Second, the SCJ did not find any violation of the judge's right to defence because of her inability to raise objections and provide explanations to the SCM regarding the communication with the journalist from Jurnal TV about the dissenting opinion in the case of *Andrian Candu vs. JVFC Jurnal de Chişinău Plus Ltd*. The judge argued that she had learned of this accusation only at the SCM meeting on 4 July 2017, in brief, without being able to provide explanations. The SCJ examined the minutes of the SCM meeting as of 4 July 2017 and found that the judge had the opportunity to counter what she was charged with because she had the opportunity to hear the accusation from the rapporteur member and to answer a question regarding this issue from another member. The SCJ did not explain whether the judge had enough time to get acquainted with charges and to prepare her defence within the framework of the same hearing. Third, the SCJ did not accept Mrs. Manole's argument that the accusation concerning communication with mass media had to be examined in a disciplinary procedure that was not within the terms of reference of the SCM. The SCJ has argued that the restrictions imposed on judges, including those related to the communication of judges with mass media, do not fall within the disciplinary domain, but are within the powers of the SCM, which dismisses judges who violate those restrictions. This interpretation is dangerous for the independence of judges, since it allows the dismissal of judges directly by the SCM outside of disciplinary proceedings

and without taking into account the gravity of the offence.

Fourth, the SCJ rejected Mrs. Manole's complaint about the violation of private and family life as a result of the deprivation of the right to exercise the profession of judge and application of a disproportionate sanction. The SCJ found that dismissal from office was the result of the foreseeable application of the legal provisions that impose a series of clear restrictions on judges. According to the SCJ, although the subject of Mrs. Manole's statements for JurnalTV about her dissenting opinion in the case of *Andrian Candu vs. JVFC Jurnal de Chişinău Plus Ltd* "was largely a matter of public interest, communication with the media had to be done through the press service of the court". In the opinion of the SCJ, the manner in which Mrs. Manole acted "allowed to use her image in a political struggle". Or, in the opinion of the SCJ, "judges enjoy a special status and multiple constitutional guarantees just to keep their neutrality, to be more reserved, and not to participate in politically-tinged activities". Fifth, the SCJ rejected Mrs. Manole's claims about the absence of statement on the number of votes pro and contra in the SCM decision as of 4 July 2017. The SCJ has confirmed that the number of votes was not indicated in the SCM decision, but noted that this could be deduced because no dissenting opinion was submitted by the members of the SCM. This reasoning of the SCJ raises questions because on 12 June 2014 the SCJ cancelled a decision of the SCM invoking several violations in the minutes of the SCM meeting and the lack of information on the number of votes of the SCM members in the CSM decision. The SCJ did not invoke or provide reasons for changing the practice. The SCJ decision is irrevocable.

**SCJ:**

**ALTHOUGH THE SUBJECT OF MRS. MANOLE'S STATEMENTS FOR JURNALTV ABOUT HER DISSENTING OPINION IN THE CASE OF ANDRIAN CANDU VS. JVFC JURNAL DE CHIŞINĂU PLUS LTD "WAS LARGELY A MATTER OF PUBLIC INTEREST, COMMUNICATION WITH THE MEDIA HAD TO BE DONE THROUGH THE PRESS SERVICE OF THE COURT".**

Mrs. Manole's case was monitored by the representatives of the civil society and development partners of the Republic of Moldova. As early as on 5 July 2017, several NGOs made a public statement declaring the decision of the SCM to dismiss the judge Domnica MANOLE from office as an act of selective justice undermining the independence of the judiciary. The signatory organizations have requested the President of the Republic of Moldova not to sign the decree on dismissal from office of the judge until the case has been settled, but this appeal was ignored. On 1 August 2017, several CSOs qualified the decree on dismissal of the judge Domnica MANOLE from office as a confirmation of the selective justice phenomenon and undermined independence of the judiciary, and called on all national authorities to respect the independence of the judiciary, which is an essential pillar of the rule of law and democratic state.

The European Parliament, in its *Resolution on the implementation of the EU Association Agreement with Moldova* as of 14 November 2018, expressed concern about the proceedings targeted against independent judges, with reference in particular to Mrs. Manole (paragraph 26). In January 2019, the United Nations Special Rapporteur on the situation of human rights defenders, Michel FORST presented the report to the UN Human Rights Council on the visit to the Republic of Moldova on 25-29 June 2018, in which he also expressed concern about the risks faced by the independent judges, with express reference to Mrs. Manole, as a result of exercising independent activity and their perception by the authorities as opponents of the Government or influential persons (paragraph 40). In the report of the International Commission of Jurists on the independence of justice in the Republic of Moldova in 2019, the case of Mrs. Manole is mentioned among the cases that seem to be focused on suppressing the opposition or preventing dissenting opinions in the judiciary.

## NEW LEGISLATION ON REMUNERATION IN THE BUDGETARY SECTOR - HOW DID THIS AFFECT THE SALARIES OF JUDGES?

Since 2014 the judges were remunerated under a special law. Their salary was recalculated annually, depending on the average salary in the economy. Consequently, in 2018, the salary of a judge-beginner was over 18,000 MDL and could reach up to 37,000 MDL in the case of the Chairperson of the Supreme Court of Justice (SCJ). Within the last five years, the judges' salaries have practically tripled, largely due to the increase of the average salary in the economy, while salaries of other public servants have increased insignificantly.

On 23 November 2018, the Parliament adopted Law no. 270 on the Unitary Pay System in the Budgetary Sector. It sets up a single system for calculating salaries in the budgetary sector. Law no. 270 entered into force on 1 December 2018, repealing the special law on the remuneration of judges. According to the new law, the salary of any employee in the budgetary sector will be calculated according to the reference value established by the budget law, the coefficient of increase established by Law no. 270 for each position and allowance in

addition to the salary. The Budget Law for 2019 set different reference values for employees of different domains. The general reference value for the year 2019 makes up 1,500 MDL. For the employees of the judiciary (judges and prosecutors) the reference value makes up 2,500 MDL, and for the Constitutional Court (CCM), the SCJ and the Superior Council of Magistracy (SCM) - 2,600 MDL.

**THE UNITARY SYSTEM FOR CALCULATING SALARIES IN THE BUDGETARY SECTOR INTRODUCED IN NOVEMBER 2018 DID NOT DIMINISH THE SALARIES AND DID NOT CHANGE THE RULES ON SPECIAL PENSION ALLOWANCES FOR JUDGES**

As a result of the new calculation method, salaries calculated before the application of additional allowances for judges - beginners have increased by 12% and for judges working in courts with 6-12 years of experience -by 10%. Also, the salaries of the President of the CCM and of the SCM President have increased by 15% and 23%, respectively. The other judges also had increases in salaries, but more modest. Judges of the courts of appeal with more than 15 years of experience were the only category of judges who had a decrease of 2% in the salary. At the same time, the additional allowance to the salary, which was not provided for by the old law on the remuneration of judges was introduced. Following the salary reform, the salary of a judge-beginner is 20,650 MDL, a judge at the court of appeal with the smallest experience (5 years) - 24,925 MDL, and a judge at the SCJ with the smallest experience (10 years) - 30,654 MDL.

The salary of most judges in the country has increased as a result of application of the new law, but judges did not support the new law. They were worried that their salaries would be reduced, and the special pension allowance cancelled. Those fears have not come true. The new law, unlike the previous one, does not guarantee the continuous increase of the judges' salaries proportionally to the increase of the average salary in the economy. However, the new system for calculating the salary of judges seems to be justified for the long term perspective. Judges and prosecutors had the highest salaries in the budget sector in 2015, and their salaries increased by 40% between 2015 and 2018 only because of the increase of the average salary in the economy. This has further increased the discrepancy between the salaries of judges and those of other public servants, which could not fail to feed the animosities towards judges. However, there is a risk that the Parliament will not increase the salaries of judges in the future, so no one can have the legitimate expectation of the steady growth of the salary. On the other hand, the Parliament cannot reduce the judges' salaries in the absence of an economic crisis, because the CCM has clearly stated that it contravenes the Constitution.

Unlike the previous legislation, which did not allow additional monthly allowances to the judge's salary, Law no. 270 introduces such allowances for professional, scientific or didactic degree or for the holding of honorary titles. These additional monthly allowances range from 100 to 500 MDL. Like the old law, the new law stipulates that public employees (including judges and prosecutors) can receive lump sum bonuses, which cannot exceed the monthly salary of the awarded person.

The new pay system in the budgetary sector has not changed either the rules on special pension allowances for judges, or their right to the allowance at the honourable retirement from the system. Thus, according to the Law on the Status of the Judge, judges who have reached the age of 50 and have at least 20 years of service, including at least 12 years and 6 months in the office of judge, are entitled to receive a special pension. Its amount varies depending on the tenure in the office of judge, from 55% to 80% of the monthly salary of a judge in office with the similar tenure. Also, under the Law on the Status of the Judge, at the honourable retirement from the system, the judge receives a lump sum allowance equal to the product of the number of years worked as a judge and 50% of the position salary at the time of retirement from the system. Thus, a judge of the SCJ with tenure of 35 years in the position of a judge will receive an allowance on retirement from the system of over 550,000 MDL.

## INVESTIGATIVE JUDGES AFTER 15 YEARS OF ACTIVITY - WITH LITTLE EXPERIENCE, HIGH WORKLOAD AND INDULGENT TOWARDS PROSECUTORS

On 17 December 2018, within the framework of a public consultation the Legal Resources Centre from Moldova (LRCM) presented the analytical document "Fifteen Years of Investigative Judges' institute: Achievements and Prospects for the Future". The document examines the efficiency and challenges of the investigative judges' institute, a special category of judges created in 2003 to provide additional protection to human rights at the stage of prosecution.

According to the document, the practice of appointment of investigative judges, the volume and complexity of examined files are just some of the challenges of the investigative judges'

activity that require intervention. Amendments to the legislation introduced in 2017-2018, by which the criterion of minimum three years of experience for holding the position of the investigative judge was cancelled, constitute a major backsliding since the establishment of the investigative judge position in 2003, because the judge's experience is crucial for the effective observance of human rights at the stage of criminal prosecution.

> **WITHIN THE LAST 11 YEARS THE AVERAGE RATE OF GRANTING THE PROSECUTORS MOTIONS FOR ARREST WAS 84%, AND GRANTED MOTIONS FOR WIRE-TAPPING CONSTITUTED 97%!**

Although the total number of investigative judges remains constant over the past ten years, their workload has increased significantly (approximately 48,000 materials and files examined in 2018 as compared to circa 25,000 in 2009). This directly impacts the possibility of performing a qualitative examination of the materials and cases that fall within the exclusive competence of investigative judges. At the same time, although the primary goal of the judicial oversight performed by investigative judges is to guarantee protection of human rights, in the past years, investigative judges have widely adopted the practice of warranting arrests excessively often and granting the prosecutors' motions for wire-tapping without a second thought. Within the last 11 years the average rate of granting the motions for arrest was 84%, and motions for wire-tapping constituted 97%!

The LRCM recommends coming back to the mandatory requirement of minimum three years of experience for the appointment as an investigative judge, to adjust the positions of the investigative judges depending on the workload of judges, and to consider the opportunity to reassess the levels of complexity of the files examined by the investigative judges. It is also appropriate to discuss the status of this special category of judges, which deserves to be similar to the status of the courts of appeal judges, in order to enhance the independence and attractiveness of the investigative judge position. The LRCM also recommends ensuring more rigorous control when it comes to granting the motions for wire-tapping and arrest warranting. In order to improve the quality and thoroughness of the examination of these measures, the defence should request the examination of these motions in public hearings more often. Another way of improving the reasoning of court decisions issued by investigative judges with regard to pre-trial arrests and home arrests, including their prolongation, would be publication of such decisions.

# ANTI-CORRUPTION AND INTEGRITY

## EUROPEAN COMMISSION REPORT ON VISA-FREE TRAVEL REGIME: MOLDOVA NEEDS TO TAKE IMMEDIATE MEASURES TO FIGHT CORRUPTION AND MONEY LAUNDERING

On 19 December 2018, the European Commission published its second report on the fulfilment of visa liberalisation requirements by 8 Western Balkan and Eastern Partnership countries, including Moldova. The report is accompanied by a Commission staff working document. The European Commission shall annually report to the European Parliament and the European Council on fulfilment of visa-free travel regime requirements.

> **EUROPEAN COMMISSION: THE INVESTOR CITIZENSHIP SCHEME LAUNCHED IN MOLDOVA COULD POSE MIGRATORY AND SECURITY RISKS FOR THE EU**

The report mentions an increase in the phenomenon of irregular migration from Moldova between 2016 and 2017, namely the increase in the number of refusals of entry (+ 56%) and the number of illegal stays (+ 15%). The Commission has shown concern with the exponential increase in the number of applications for asylum in the European Union (EU) from Moldovan citizens (+ 128% in the first half of 2018), most of them unfounded (the asylum recognition rate was 1.48 % in 2016 and 1.35% in 2017).

The Commission underlined that in November 2018 Moldova launched an investor citizenship scheme (see details in the LRCM Newsletter no. 15, p. 5), which needs to be closely monitored, as it could pose migratory and security risks. Another major concern of the Commission is organized crime and cybercrime. Moldovan organised crime groups continue to represent an important security threat for the EU, particularly in Austria, France, Germany, Latvia and Poland. In particular, Russian-speaking organised crime groups exploit Moldova as a transit country to launder money and transfer it into the EU. There is an increasing number of cybercrime services from Moldova.

The European Commission has urged Moldova to take immediate steps to fight corruption. According to the Commission, the adoption of the package of laws on the fiscal reform in July 2018 has raised concerns regarding the political

will to fight corruption. The adopted legislation includes a capital and fiscal amnesty, which had been previously withdrawn from the legislative agenda following criticism from, inter alia, the EU (see details on the draft law withdrawn at the beginning of 2017 in the LRCM Newsletter no. 12). It also includes a so-called "business package", which re-introduces the "de-criminalisation" of several economic crimes (see more details in the LRCM Newsletters no. 16 and no. 17).

**European Commission: The package of laws of the Republic of Moldova on the fiscal reform adopted in July 2018 has raised concerns regarding the political will to fight corruption**

In order to keep the visa-free travel regime in the future, the European Commission has requested Moldova, among other things, to align the laws on fiscal reforms with the EU standards, to strengthen the National Integrity Authority by appointing the necessary number of integrity inspectors, to step up efforts in order to fight high-level corruption and ensure a thorough, impartial prosecution of the banking fraud, the recovery of the misappropriated funds and bringing all those responsible to justice without further delay.

## WHAT DO THE CERTIFICATES OF INTEGRITY CONTAIN AND WHAT IS THE PROCEDURE OF THEIR ISSUANCE?

On 9 October 2018, the National Integrity Authority (NIA), the Public Service Agency (PSA) and the National Probation Inspectorate (NPI) approved the Regulation on the procedure of integrity certificates issuance.

The document stipulates that the NIA issues certificates of integrity at the request of the heads of the public entities, in the case of procedures for contest-based employment or in case of natural persons intending to apply for the positions of the Member of the Parliament, the President of the Republic of Moldova, mayor or local counsellor. Applicants must file the requests for obtaining the certificate of integrity to the NIA office or through the PSA. The document will be handed over to the addressee personally within 15 days only by the NIA and will be valid for 3 months from the date of issue.

**Between November 2018 and January 2019 the NIA issued 1,595 certificates of integrity, of which only six contained remarks regarding the violations of integrity regimes**

The certificate of integrity includes information about the finding acts that remained final within the last 3 years regarding candidates for public office, unjustified assets, conflicts of interests, violations of restrictions, unsettled incompatibilities, violations of limitations and prohibitions to hold a public office resulting from the NIA findings or court judgements that have remained final. The LRCM has developed an infographic that provides more details about the certificate of integrity.

On 25 January 2019, the NIA announced that between November 2018 and January 2019 it issued 1,595 certificates of integrity, of which only six contained remarks regarding the violations of integrity regimes. The figures in question indicate the high workload of the integrity inspectors had while issuing some documents that were virtually of no legal value.

## HOW UNIFORM IS THE PRACTICE OF THE SUPREME COURT OF JUSTICE REGARDING THE CASE-LAW ON INTEGRITY ISSUES?

On 15 November 2018, the Legal Resources Centre from Moldova (LRCM) presented the analytical document: "Case-law on integrity issues - is the practice of courts uniform?" The analysis establishes to what extent the judicial practice is uniform in cases involving violation of the regime regarding declaration of assets, conflict of interest and incompatibilities of civil servants.

Within the framework of this research there were analysed all the judgements of the Supreme Court of Justice (SCJ) adopted since 1 January 2014 to 30 June 2018, as well as the decisions given by the courts of appeal and the first instance courts in those cases. The analysis reveals that the solutions in some of the court decisions on assets declaration were not consistent as regards the way of declaration of bank accounts without turnover, justification of undeclared assets, and the way of addressing the official's argument that s/he did not declare the assets appropriately because s/he did not understand how the assets should have been declared. The analysis did not reveal any serious divergences in cases concerning the conflict of interests. However, some cases regarding the incompatibility have been settled differently.

The authors also found that the acts of the former National Integrity Commission had been cancelled, especially in cases of high-ranking officials. In their cases 10 out of 16 actions

(62.5%) were admitted, compared to only 3 out of 17 actions (17%) admitted in case of medium-ranking officials.
The LRCM invited the participants at the event, as well as the concerned institutions (SCJ and National Integrity Authority), to come up with recommendations and comments on the document, but they were not provided.

## THE LRCM HAS LAUNCHED 2 INFOGRAPHICS ON SELECTIVE JUSTICE AND SANCTIONS IN CASES OF CORRUPTION

The Legal Resources Centre from Moldova (LRCM) has developed two infographics on selective justice and sanctions in cases of corruption. The cases of Filat, Shor and Platon were analysed in the first infographic . All data shown in the infographic reflect the situation as on 15 November 2018. The authors analysed several aspects demonstrating the selective approaches of the justice bodies in these three cases, such as the duration of preventive measures and criminal proceedings, place of detention, indictments and court findings, imposed punishments, etc. For example, the duration of the preventive measures in the cases of Filat (1 year and 27 days of pre-trial arrest) and Platon (1 year, 4 months and 23 days of pre-trial arrest) is much longer than in those two cases against Mr. Shor (22 days of pre-trial arrest in case no. 1 and 43 days of pre-trial arrest and 10 months and 16 days of home arrest in case no. 2). Mr. Filat and Mr. Platon were detained in Penitentiary no. 13, which has very poor detention conditions, and Mr. Shor - in the National Anti-corruption Centre's pre-trial facility, as well as at his home.

The duration of proceedings is another aspect suggesting a selective approach. In the case of Filat the courts have adopted a final conviction judgement within 13 months in the case of Platon - in 17 months. In the cases against Mr. Shor at the end of March 2019, there is still no final conviction judgement. On the contrary, case no. 1 against Mr. Shor after more than 43 months (3 years and 7 months) of criminal prosecution has not been sent to the court by the prosecutors yet, and case no. 2 is still under examination in the court of appeal after more than 29 months since it has been sent to the court.

The convictions in these three cases also reveal selective justice, Mr. Shor being convicted of a less serious offence than requested by prosecutors. The courts convicted Mr. Filat (passive corruption and influence peddling) and Mr. Platon (fraud and money laundering) on all charges brought by prosecutors. In the case of Mr. Shor, prosecutors have requested a conviction for fraud and money laundering, as in the case of Mr. Platon. However, the judges convicted Mr. Shor for the first offence requested by prosecutors - money laundering, but the second offence - fraud - they have requalified into a less serious offence - causing damage, arguing they have not found that Mr. Shor has benefited from the money defrauded from Banca de Economii.

And the punishments imposed in these three cases are different. In the case of Filat, for the bribe of about 23 million USD received from Mr. Shor, the judges imposed punishment of 9 years of imprisonment, a fine of 60,000 MDL, deprivation of the right to hold certain public positions for 5 years and withdrawal of the state distinction the Order of the Republic. In the case of Platon, for the damage of about 58 million USD caused to the banking system, the judges imposed punishment of 18 years of imprisonment and deprivation of the right to hold positions in the banking system for 5 years. On the other hand, in the case of Shor, for the damage of about 350 million USD caused to the banking system, the court of the first instance decided to impose a punishment of 7 years and 6 months of imprisonment, without deprivation of the right to hold positions in the banking system.

The way in which judges have decided to seizure the assets also raises questions about a selective approach. In the cases of Filat and Platon, the judges decided to seizure the assets in the sum of 474 million MDL and 870 million MDL, respectively. In the case of Shor, the judges have admitted the civil action in principle, and the damages have to be recovered in another trial after termination of the criminal proceedings. Taking into account the duration of trial in cases against Mr. Shor, it is not clear when this will happen, and his wealth will remain untouched for quite a long time.

In the second infographic, the LRCM analysed sanctions in four cases of grand corruption initiated by the authorities in 2016-2017, where accused persons pleaded guilty at the stage of criminal prosecution. The analysed cases referred to persons who had both leadership positions in the state, and also political connections. These are the cases that refer to Valeriu TRIBOI, former Deputy Minister of Economy, proposed by the Democratic Party of Moldova (DPM) (abuse of power), Iurie CHIRINCIUC, former Minister of Transport and Road Infrastructure, proposed by the Liberal Party LP) (influence peddling and abuse of power), Igor GAMREȚKI, former chief of the Public Transport and Communication Directorate at Chişinău City Hall, proposed by LP (influence peddling) and Veaceslav CEBAN, former head of the department of the State Protection and Guard Service, former head of the Department of Penitentiary Institutions (DPI) and former Deputy Minister of Internal Affairs (influence peddling).

In the cases described in the infographic the procedure provided under Art. 3641 of the Code of Penal Procedure, which stipulates a 1/3 reduction of imprisonment punishment and ¼ of fines in case of pleading guilty, has been applied. In all cases the judges applied the minimum penalties provided by the Criminal Code, which they subsequently reduced in line with Art. 364[1] of the Code of Penal Procedure. Convictions of imprisonment with real execution were not applied to any of those four persons targeted in the cases under analysis. In two cases (Triboi and Chirinciuc), the judges applied the shortest possible term for the prohibition of holding public office - 5 years. In the case of Mr. Gamreţki, the Supreme Court of Justice (SCJ) overruled the prohibition of holding public office. In the case of Mr. Ceban, the Criminal Code does not provide for such a sanction for the influence peddling offence. In three cases out of four (except for Mr. Triboi), after pleading guilty, the people were released from custody under judicial control. Court judgements were published in three cases out of four, but they were anonymized. Only in one case, that of Mr. Gamreţki, two judgements, of the court of first instance and of the SCJ were published in full, that of the court of appeal was published, but anonymized.

# NOTORIOUS CASES

## THE DEAN OF THE LARGEST LAW FACULTY IN MOLDOVA IS PROSECUTED FOR CORRUPTION

On 9 October 2018, the Prosecutor General's Office issued a press release stating that on the same day, anti-corruption prosecutors conducted searches in the office of Sergiu BRÎNZĂ, Dean of the Law Faculty of Moldova State University (USM). Also on 9 October 2018, he was detained together with another person. It is mentioned in the press release that a supervisor of PhD theses would have given money to the dean of the faculty in August 2018 in several instalments. "The dean of the faculty, in exchange for money, had to facilitate the defence of doctoral thesis by two PhD students." On 11 October 2018, those two detainees were arrested and several months later released. The Head of the International and European Law Department, Violeta COJOCARU, acts as interim of the Dean of the Faculty of Law.

On 23 October 2018, the Prosecutor General's Office issued another press release stating that on the same day anti-corruption prosecutors came to Chişinău Court of Appeal within the framework of the case regarding influence peddling. Subsequently, this case has been consolidated with several cases of passive corruption. The first prosecution began in August 2018. Five judges were suspected in this criminal case, including Liuba BRÎNZĂ, the wife of Mr. Sergiu BRÎNZĂ. According to the press release three judges of the Court of Appeal and two judges of Centru District Court received sums of money in particularly large proportions for to issue favourable judgements on several criminal cases. Prosecutors also published a video record in which a judge counted money and put it into separate envelopes, probably, to be given to other people. A few days later, those five judges were placed in the penitentiary or under house arrest.

Judge Liuba BRÎNZĂ participated in the examination of the appeal on the criminal case against the controversial businessman Veaceslav PLATON. His appeal was dismissed on 18 December 2017. In February 2018, the defence lodged an appeal to the Supreme Court of Justice (SCJ). However, the case file reached the SCJ only on 21 September 2018. Their appeal was dismissed by the SCJ on 14 November 2018.

## THE FIRST CRIMINAL CASE AGAINST A JUDGE ACCUSED OF ILLICIT ENRICHMENT SUBMITTED TO THE COURT

On 7 March 2017, the Anti-corruption Prosecutor's Office (AP) initiated the prosecution against the chairperson of Râşcani District Court of Chişinău municipality, Oleg MELNICIUC, following the appearance of a journalistic investigation showing that the magistrate and his family owned assets that exceeded their legal income several times. On 27 June 2017, the AP conducted searches and detained the magistrate based on the case initiated under Art. 3302 of the Criminal Code - Illicit Enrichment. On 3 October 2017, the Superior Council of Magistracy (SCM) admitted the request of Mr. Melniciuc to be suspended from office until 1 March 2019 in connection with the granting of partially paid leave for minor child care.

On 10 October 2018, AP announced the completion of criminal prosecution and submission of the criminal case in which the magistrate was charged with committing offences

of illicit enrichment and false statements for trial. According to the AP during the period of 2013-2017, Mr. Melniciuc provided incomplete and false data in his declarations on assets. He falsely indicated the alienation of a real estate and twice lower price for the purchase of a car for to increase the declared earnings unreasonably.

The magistrate and his family owned property, the value of which substantially exceeded the acquired financial means and the prosecutors found that they could not be obtained legally. According to prosecutors, the magistrate and his wife, although they indicated in their declarations on assets for the period of 2014-2016 the total sum of obtained revenues in the amount of 1,444,958 MDL, made purchases of goods and services and cash withdrawals in the total amount of 2,085,101 MDL. The magistrate reasoned that some income came from donations from his mother and father-in-law.

Six court hearings took place since October 2018 to the end of March 2019, but they all were postponed at the request of the defence or at the request of the prosecutor. The next hearing is scheduled for 18 April 2019. This is the first case in which a Moldovan judge is accused of illicit enrichment.

## VEACESLAV PLATON WAS CONVICTED IN A NEW CRIMINAL CASE

On 14 November 2018, more than a year after the conviction by the court of appeal, the Supreme Court of Justice (SCJ) adopted a decision of inadmissibility of appeals lodged in the "BEM case" on the Veaceslav PLATON's involvement in bank fraud. The SCJ (the panel of judges consisting of Vladimir TIMOFTI, Nadejda TOMA and Anatolie ȚURCANU) upheld the decision of Chişinău Court of Appeal, by which Mr. Platon was sentenced to 18 years in prison. For more details on the examination of this case and the solutions of the court of the first instance, see the LRCM Newsletters no. 14 and no. 16. The SCJ decision was published on the website of the SCJ, being partially anonymized, unlike the judgements of the first two courts, which were not published.

> **Veaceslav Platon was convicted in one more criminal case and the punishment applied following the cumulation of sentences has increased from 19 to 25 years in prison**

The SCJ noted that the first two courts found that in November 2014 Mr. Platon had convinced Ilan SHOR, who at that time was the chairperson of the Banca de Economii Council, through cheating and abuse of confidence, to provide him with financial means amounting to 417,760,000 MDL, by offering loans to the companies managed by Mr. Shor. Mr Platon's lawyers have stated that their client had nothing to do with the firms listed in the court decisions and that the court had not proved this connection. The SCJ noted that Chişinău Court of Appeal upheld the decision of Chişinău District Court legally, both court decisions being reasoned.

The text of the SCJ decision did not mention the argument of the defence that the minutes of a hearing at Chişinău Court was falsified by modification of Mr Platon's statements. The defence counsels have indicated that Mr. Platon said that the beneficiary of the billion fraud would have been Vladimir PLAHOTNIUC, but in the minutes Vladimir FILAT was mentioned. The clerk of the court who changed the name of Plahotniuc into Filat was not sanctioned because of the expiry of the term for sanctioning.

In a month, on 14 December 2018, Veaceslav PLATON was convicted by Chişinău Court of Appeal in the "case of Moldasig" (the panel of judges consisting of Xenophon ULIANOVSCHI, Sergiu FURDUI and Stelian TELEUCA). More details about the solution of the court of the first instance can be found in the LRCM Newsletter no. 16. Chişinău Court of Appeal published an anonymous decision on this case on its web site on 28 January 2019.

Chişinău Court of Appeal upheld the finding of Buiucani District Court from Chişinău as of 12 December 2017, that sentenced Mr. Platon to 12 years of imprisonment for attempted fraud (Articles 27 and 190 para.(3) and (5) of the Criminal Code) and active corruption (Article 325 para.(2) letter (c) of the Criminal Code). The appeal court amended the judgement of Chişinău Court in the part that concerns the punishment, setting the punishment of imprisonment for a term of 13 years, a fine of 300,000 MDL with the deprivation of the right to hold positions within the legal entities and to carry out entrepreneurial activities for a period of 3 years. According to the lawyers, Mr. Platon was interrupted while having his last plea, and then he was removed from the room, which violated his right to defence.

Taking into account the decision of the SCJ on "BEM case" and cumulating the penalty, the court imposed a final sentence of imprisonment for a period of 25 years in a closed prison, a fine of 300,000 MDL with the deprivation of the right to hold positions within the legal entities, in the banking system and to carry out entrepreneurial activities for a period of 5 years.

At the end of January 2019, Mr. Platon was in prison no. 13 from Chişinău. In the summer of 2018, Mr. Platon accused the management of the penitentiary of degrading treatment, among other things, because he had no water and could not receive parcels. In September 2018, Mr Platon's lawyers declared that they had been physically assaulted on 3 September 2018 in Penitentiary no. 13 by the employees of the special destination detachment "Pantera". Lawyers said they had a meeting with their client and asked the penitentiary administration to offer him medical assistance because he had visible injuries throughout the body and complained of being tortured in the cell on 24 August 2018.

# HUMAN RIGHTS

## THE CONSTITUTIONAL COURT HAS AGAIN EXPRESSED OPINION ON THE OBLIGATION TO VACCINATE CHILDREN

On 30 October 2018, the Constitutional Court (CCM) adopted decision no. 26 by which it acknowledged as constitutional Art. 52 para. (6) of Law no. 10 as of 3 February 2009 on State Surveillance of Public Health, which states that "*in order to be admitted to educational and recreational collectives and institutions, children must be systematically vaccinated, except for children who have reasoned and documented medical counter indications.*"

**Constitutional Court: The obligation to vaccinate children does not violate the right to education and respect for private life**

Mr. Vladimir ODNOSTALCO, the member of the Parliament of the Republic of Moldova, member of the faction of the Party of Socialists of the Republic of Moldova, made a referral arguing that Art. 52 of Law no. 10 as of 3 February 2009, on the basis of which the Government approved the National Immunization Programme for 2016-2020, restricts several rights for non-vaccinated children, including their right to education. The author requested this norm to be subjected to urgent review of the constitutionality, referring to the situation recorded at the beginning of the academic year 2018-2019, when more than 4,935 non-vaccinated for measles pupils were not admitted to educational institutions.

The CCM found that the goals pursued by the contested normative provisions were to protect the health of children as well as to protect public health from serious diseases which are spread intensively when the rate of vaccinated population decreases. Those who refuse immunization are also beneficiaries of the group immunity because they enjoy living in a disease-protected community. Restricting the admission of non-vaccinated children, but who can be vaccinated, to educational and recreational collectives and institutions is not a very drastic measure in terms of the right to education and the right to respect for private life. Children of parents, who do not want them to be vaccinated, although there are no counter indications, have alternative learning methods available. The CCM also noted that the differential treatment of vaccinated children compared to those non-vaccinated, but who can be vaccinated, from the perspective of their admission to educational and recreational collectives and institutions is objectively and reasonably justified.

Previously, on 2 August 2012, the CCM has been notified regarding the norm stipulated by Art. 52 para. (6) of Law no. 10 as of 3 February 2009 by the Ombudsman, but at that time the CCM found that compulsory vaccination does not constitute an interference with the person's physical integrity, the contested normative act being presumed constitutional.

## THE DENIAL OF ACCESS TO THE MATERIALS OF THE PROSECUTION FOR THE VICTIMS OF ILL-TREATMENT IS UNCONSTITUTIONAL

In the summer of 2018, the Constitutional Court (CCM) was requested to decide whether the prohibition under the Code of Penal Procedure (CPP) for the victim of a criminal offence to have access to criminal prosecution materials during criminal prosecution contravenes to Art. 20 (access to justice) and 24 para. 2 (prohibition of torture) of the Constitution. This procedure is of particular importance because in the Republic of Moldova neither the victim of the torture nor the accused, nor even their lawyers, have access to the criminal investigation materials until the criminal prosecution is completed, which can take years. The procedure was initiated by Vladislav GRIBINCEA, the Executive Director of the Legal Resources Centre from Moldova.

On 29 November 2018, the CCM, by the vote of all judges, concluded that the prohibition was contrary to the right not to be subjected to torture, but refused to state whether it was contrary to the right of access to justice. The finding of the CCM applies only to the victims of ill-treatment. The CCM avoided explaining whether other victims, such as the victim of a rape, domestic violence or road accident, should have access to criminal prosecution materials. This is strange, as the author of the referral requested this, and the Parliament, the Government and the Prosecutor General's Office (PG) did not object. On the contrary, the PG and the author of the referral have invoked EU Directive 2012/29, which provides for such a right for all victims of crimes. The CCM has not even referred to this argument. The CCM also refused, for formal reasons, to examine whether the same approach applies to the accused or his/her lawyer.

**The Constitutional Court hesitated to explain whether the denial of access to the criminal prosecution materials during the prosecution infringes the right to defence**

Even if the victim of ill-treatment should have access to criminal prosecution materials during the prosecution, the CCM offered to the prosecutors the right, in exceptional circumstances that can affect the conduct of prosecution, to deny access to certain criminal prosecution materials. The prosecutor's refusal must be reasoned and limited in time. It cannot refer to all the materials of the criminal prosecution or to the entire period of the prosecution. The CCM did not mention in its decision whether there should be judicial oversight regarding such refusal.

## ECtHR - MOLDOVA DID NOT SANCTION ADEQUATELY THE ABUSES OF THE POLICE IN APRIL 2019

On 30 October 2018, the European Court of Human Rights (ECtHR) delivered its judgement in the case of *O.R. and L.R. v. Moldova.* The ECtHR found violation of Art. 3 of the European Convention on Human Rights (ECHR) due to the lengthy investigation of ill-treatments that took place in April 2009 in Chişinău Police Headquarters. The ECtHR also found that the sanctions imposed on policemen applying torture were too lenient.

**ECtHR: Suspension of punishment with imprisonment for policemen accused of ill-treatment was contrary to Art. 3 of the ECHR**

The case concerns two young women who were detained by the police on 7 April 2009. They were taken to the General Police Commissariat in Chişinău and forced to strip naked in front of a policeman and do sit-ups while naked. Prosecutors initiated a criminal case against three policemen only nine months after the information about the crime became publicly known. One of the police officers was subsequently discharged from criminal proceedings and the other two were sentenced for ill-treatment to five years of imprisonment with suspended sentence.

The ECtHR found that the investigation was not prompt. The criminal prosecution was started 9 months after the date when the information about the offence became publicly known. Prosecutors have not reacted ex officio and have waited for a complaint from the victims. The ECtHR reiterated that when an authority suspects treatment contrary to Art. 3 of the ECHR it has to react on its own motion.

The ECtHR also considered that the sanctions imposed on the police are too lenient and cannot have a sufficient preventive effect. The judges sanctioned those two policemen with the minimum punishment provided by the law (5 years of imprisonment, with suspension of the punishment). National judges have invoked that the behaviour of the accused was determined by aggressive actions towards police by the protesters on 6 April 2009. The ECtHR noted that Art. 3 of the ECHR does not permit any derogations, even in the most difficult circumstances. The attempt by national judges to justify the minimum sanction imposed by the fact that the accused have acted in a situation of mass disorder is regrettable. In fact, by suspending the punishment with imprisonment, police officers were exempted from any criminal sanction. Moreover, during the proceedings the policemen were not suspended from office. The ECtHR also noted with concern that the indulgence of police officers accused of ill-treatment of the applicants was not a single incident. The statistics for the years 2011 and 2012 suggest a general tendency of Moldovan judiciary to protect state agents accused of ill-treatment.

The third policeman accused of threatening the applicants with the use of force was discharged from criminal proceedings on the ground that his deed was an administrative offence (excess of official authority). The administrative proceedings have been terminated because the prescription period for prosecuting administrative offences has expired. National judges refused to cancel the prosecutor's decision on discharge from criminal proceedings on the ground that it would violate the principle that no one can be repeatedly punished for the same

offence (Article 4 of Protocol 7 to the ECHR). The ECtHR found that the conduct of the accused represented inhuman and degrading treatment. Prosecutors and judges have not reasoned in any way why the deeds of the third policeman are contravention and not crime (Article 328 of the Criminal Code). Prosecutors were aware that by requalification of the offence they exonerate the person from any legal liability, which is incompatible with the obligation to prevent ill-treatment. Interpretation given by judges to the prohibition of holding criminally liable repeatedly is incorrect. In the present case, there was no irrevocable prior decision to hold liable for threatening the victims using force.

The applicants were represented before the ECtHR by Vladislav GRIBINCEA, the chairperson of the Legal Resources Centre from Moldova.

## THE VENICE COMMISSION RECOMMENDS THOROUGH REVIEW OF THE LEGISLATION REGARDING THE SIS ACTIVITY

On 20 October 2018, at the request of Victoria IFTODI, the Minister of Justice, based on the recommendation of the EU-Moldova Association Council, the Venice Commission (Commission) published its opinion on Law no. 120 on Preventing and Combating Terrorism. The Commission has examined the elements that could lead to abuse or major issues, if Law no. 120 is to be implemented, and namely: powers of the authorities, in particular the Security and Intelligence Service (SIS) to prevent and combat terrorism; the use of lethal force; restrictions imposed on media representatives. Although Law no. 120 entered into force on 17 August 2018, the Commission recommended its thorough review.

The Commission recommended reviewing the measures undertaken by the SIS in the domain of terrorism prevention, including collecting information on potential risks and threats to the anti-terrorism security. The Commission has found that some legal measures that the SIS may undertake, for example the right to involve free of charge the forces and means of the authorities competent in the domain of preventing and combating terrorism, as well as of other public authorities, businesses, institutions and organizations, as well as of other legal entities, irrespective of the type of property and legal form of organization, for carrying out anti-terrorist exercises can be interpreted as coercive and can interfere with the life of private individuals. The Commission recommends precise description of the measures that can be taken by the SIS in relation to each area of application and the law should provide for some of these measures to be authorized externally (a court order, a decision of the prosecutor's office, etc.) and to provide precise details for the relevant procedures.

**THE VENICE COMMISSION: LAW NO. 120/2017 ON PREVENTING AND COMBATING TERRORISM, IN FORCE SINCE 17 AUGUST 2018, HAS SERIOUS GAPS AND REQUIRES THOROUGH IMPROVEMENTS**

The Commission considers that it is unusual for the executive activities on preventing and combating terrorism to be coordinated by the Speaker of the Parliament, as provided by Law no. 120. Parliamentary control must exist, but it is to be strengthened/improved. The Commission recommends the control to be carried out either by the Sub-committee on the exercise of the parliamentary control over the activities of the SIS, or by a joint body of experts with political representation and/or respected members of civil society. In both cases, there must be a strong representation of the opposition in these bodies. These bodies must have access to specific files and not only perform a routine check. In the current version of Law no. 120 the sub-committee may not request information on the operational activity of the SIS or the identity of the undercover persons who are a part of the nominal roll staff or who have specific missions that require non-disclosure of their identity. The Commission is concerned about the fact that the sub-committee never analyses specific files and does not ask questions to the SIS staff. It is also necessary to implement an appropriate record keeping system of the SIS activity. As regards the expert body, the Commission found that the recommendation to create it (whether as a new control mechanism or to supplement the existing one) was given to the Republic of Moldova as early as in 2017.

Whatever these mechanisms are (a parliamentary sub-committee or a mixed body of experts), any ex post control would be entirely inefficient if there are no rules requiring activity record-keeping within the SIS, and if there are no reports/"paper trails" of actions (especially those related to the surveillance) taken by the SIS. It is crucial that the Internal Regulations of the SIS regulate putting in place a strict record keeping system. The law must also provide for access by the parliamentary sub-commission (or the mixed expert body) to those records, and the records should correspond to certain parameters (they should outline the reasons for specific actions of the SIS, their duration, extent, the information obtained, etc.). The

law should provide for the liability of the security personnel for grossly disproportionate actions, for inadequate planning and conduct of the counter-terrorist operations.

The Commission recommends that the journalists should be free to inform the public about the general situation during the terrorist crisis, so the state cannot completely prohibit interviews, as provided by Law no. 120. Limitations on the media reporting during a terrorist crisis should be of short duration, and concern only certain specific types of information (i.e. on the forces involved in the counter-terrorist operations, their position, methods, and alike).

Although the Commission has evaluated Law no. 120, the recommendations could be considered for the evaluation of the entire package of normative acts related to the SIS activity: The Law on the Intelligence and Security Service of the Republic of Moldova, the Law on Special Investigative Activity, the Code of Penal Procedure, the Law on Personal Data Protection.

## WHAT DOES NAC EXPERTISE SAY ABOUT THE PACKAGE OF LAWS ON PERSONAL DATA PROTECTION ADOPTED IN THE FIRST READING BY THE PARLIAMENT?

On 30 November 2018, the Parliament voted in the first reading two draft laws that regulate the personal data protection regime and the activity of the National Centre for Personal Data Protection (NCPDP). According to the information notes, the drafts in particular set forth the provisions of the new Personal Data Protection Regulation of the European Union (GDPR), binding since 25 May 2018 for all EU member states.

**NAC:**

**THE DRAFT LAW ON NCPDP INVOLVES CORRUPTION RISKS DUE TO THE CONCENTRATION OF ALL REGULATORY, CONTROL, INVESTIGATION AND SANCTION LEVERS IN THE POWERS OF A SINGLE AUTHORITY**

The new package of laws would introduce more innovations, including the right of the person to request the deletion or exclusion of certain personal information from the on-line space that is no longer up to date, is irrelevant and not of public interest but affecting his/her image (also conventionally called the “right to be forgotten”). At the same time, the project innovatively regulates the possibility of data portability - a way of achieving data circulation, including cross-border data, which can ensure the exchange of data between states and private companies. The draft also sets forth the innovative provisions of the EU Directive on the strengthening of the consent institution, so that in order to be valid, the consent of the individual for the processing of his or her personal data must be free from conditionality (e.g. granting consent for data processing should not be conditioned by the approval of a loan application).

In addition to the listed innovations, the package of laws voted in the first reading also contains serious shortcomings. These concern in particular the processing of personal data for journalistic purposes, which, according to the draft, is justified only in the presence of a determined public interest. This implies limiting the activity of journalists and may create unjustified barriers to their work. At the same time, some provisions aimed to regulate the activity of the NCPDP raise major concerns. According to the anti-corruption expertise carried out by the NAC, a number of regulations regarding the potential attributions of the NCPDP involve corruption risks due to the concentration of all regulatory, control, investigation and sanction levers in the powers of a single authority, i.e. the NCPDP. At the same time, the NAC report mentions the absence of a real mechanism that would ensure the control of the NCPDP activity, including the absence of a judicial authorization mechanism for all investigative measures proposed in the draft. These concerns have been raised earlier by the representatives of civil society as well. The anti-corruption report of the NAC requires the authors of the draft to preserve the intention of the European legislator exactly, without extensive and unilateral interpretations.

Until the draft was registered in the Parliament, the package of laws on data protection was not publicly consulted. The table of divergences resulting from opinions presented on draft laws includes only the recommendations submitted by state institutions. At the session as of 30 November 2018, Andrian CANDU, the President of the Parliament, acknowledged the need to improve the draft law, but called on MPs to vote the drafts in the first reading to avoid their being declared void taking into account the expiry of the term of office of the Parliament on 30 November 2018 .

## IN 2019, SEVERAL PROCEDURES OF THE ECtHR ACTIVITY WILL BE REFORMED

On 30 November 2018, the LRCM representatives attended the biennial meeting of the European Court of Human Rights (ECtHR) with NGOs and lawyers.

> **Starting with 2019, the ECtHR will apply a new procedure to facilitate the friendly settlement of cases**

The ECtHR representatives noted that the Brighton Declaration requests the ECtHR to act as a constitutional body in the domain of human rights. Starting with 2019, the ECtHR will apply a new simplified procedure to facilitate a quicker friendly settlement of the case. Namely, once the application is communicated, the ECtHR will propose an amount for just satisfaction, which, if accepted by the parties, will lead to the removal of the pending application. The parties will have 12 weeks to accept the ECtHR proposal. This will not apply to cases that generate new case law or which are of particular importance to public opinion, or where material damage is difficult to assess. If the simplified procedure is refused, the application will be examined under the general procedure.

Another innovation is the launch of the new electronic system - eComms. This is a service for electronic communication with plaintiffs or the plaintiffs' representatives. The service can be used only after the application has been communicated to the Government. The plaintiff's representative must register in this electronic system to receive notifications and submit the information requested by the ECtHR.

The lengthy duration of the examination of the received applications was also discussed at the meeting. At the end of 2018, circa 58,000 cases were pending at the ECtHR, of which 6,000 at first sight are considered to be inadmissible. The other 52,000 applications have high chances for success, of which 15,000 are quite complicated. The ECtHR tends to reach a situation when the application is communicated to the Government no later than 12 months after being filed, and the judgement is adopted within 2 years since the communication.

## THE LRCM INFORMED THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE ABOUT THE MEASURES TAKEN BY THE REPUBLIC OF MOLDOVA TO COMBAT ILL-TREATMENT

Between 4 and 6 December 2018, the Committee of Ministers of the Council of Europe (CM CoE) verified the measures taken by the Republic of Moldova to execute the judgements in Corsacov group of cases (ECtHR judgements on ill-treatment by the police and failure to investigate ill-treatment).

In this context, on 22 October 2018, the Legal Resources Centre from Moldova (LRCM) submitted a communication urging the CM of the CoE to request the Moldovan authorities for the following: transfer of the personnel of pre-trial detention facilities from the Ministry of Internal Affairs to the Ministry of Justice, install video cameras in all pre-trial detention facilities, and improve the quality of investigations into the allegations of ill-treatment and treat these cases with priority. Likewise, the LRCM recommended to amend the legal framework for the immediate suspension of persons suspected of ill-treatment from their duties throughout the entire duration of investigation as well as to amend the Criminal Procedure Code to provide the right to the victim of ill-treatment to have access to the materials of the criminal file and to exclude the mandatory psychiatric examination of the victims of ill-treatment.

The CM of the CoE has called on the Government of the Republic of Moldova to continue its actions on preventing and combating ill-treatment by promoting a firm policy of applying appropriate sanctions for these crimes, to ensure the involvement of victims of ill-treatment in the initiated investigations, as well as to provide information on existing practices regarding the suspension of the persons suspected of ill-treatment. The CM of the CoE also invited the authorities to provide data on the practical efficiency of new provisions by which the fine was excluded as a sanction for ill-treatment (amendments in force since 14 October 2018).

With a view to streamlining the execution of the ECtHR judgements and prevent similar violations in the future, non-commercial organizations can transmit communications to the CM of the CoE on measures taken by the state. Details on how to prepare them are described in the handbook "Implementation of Judgements of the European Court of Human Rights" elaborated by the European Implementation Network (EIN).

# CIVIL SOCIETY

## THE COUNCIL OF EUROPE RECOMMENDS THE MEMBER STATES TO STRENGTHEN THE PROTECTION AND PROMOTION OF CIVIL SOCIETY SPACE IN EUROPE

On 28 November 2018, the Committee of Ministers of the Council of Europe adopted a recommendation on the need to strengthen the protection and promotion of civil society space. The authors of the recommendation noted with concern that human rights defenders, civil society organizations (CSOs) and journalists are still all too often victims of violations and abuses of their rights, being targeted by threats and attacks, despite efforts at both national and international levels.

The Recommendation expresses the need to strengthen the protection and promotion of civil society space in Europe, taking into account the shrinking space for civil society, resulting from laws, policies and austerity measures taken recently by some Member States. The Recommendation calls on States to ensure an enabling legal framework and a conducive political and public environment for human rights defenders, including journalists, informal groups and CSOs for to be involved in the decision-making process. Implementation of the recommendation will be periodically monitored by the Council of Europe.

## ATTACKS ON CIVIL SOCIETY ORGANIZATIONS CONTINUE

On 18 October 2018 several NGOs, including the Amnesty International–Moldova (AIM), have requested by a declaration the leadership of the Republic of Moldova to ask the Turkish President to return back all Turkish citizens illegally expelled by Moldovan authorities in connection with „Orizont" case (details regarding „Orizont" case are available in Newsletter no. 19). Following the press conference held on this issue, the employees and activists of the Amnesty International - Moldova became the target of a media attack and harassment by pro-government TV stations and some politicians. They covered the press conference in a distorted way, accusing the organization of political partisanship and involvement of minors in illegal and political activities.

On 19 October 2018, AIM published a statement specifying that the press conference had a peaceful and non-political nature. AIM specified that the entire media lynching campaign came up after the AIM strongly criticized the authorities for kidnapping of Turkish citizens. Shortly afterwards the case of the AIM was the subject of some debates at the plenary session of the Parliament as of 1 November 2018. During that session the MP Sergiu SÎRBU made several statements regarding the AIM case. He described the AIM organization as a dubious organization that would have used children against their will and called on the Ombudsman for children's rights Maia BĂNĂRESCU to get involved in this case. The intervention of the MP Sîrbu is similar to the attacks previously launched by the media publications and has no factual grounds. Within a short time (about an hour) since the request of the MP Sîrbu, Mrs. Bănărescu came to the Parliament to offer explanations (see also the shorthand report of the Parliament session as of 1 November 2018, p. 61 – 89). In her speech she proposed, inter alia, the introduction of some criminal sanctions for involvement of children in "political" activities and expressed regret that such sanctions do not currently exist.

Actions to threaten the CSOs activity have also taken place in the case of Promo-LEX Association. On 29 December 2018, the Democratic Party of Moldova (DPM) stated in a press release that the election monitoring report elaborated by Promo-LEX lacks methodology and was based solely on personal observations rather than on objective information. Promo-LEX responded that the accusations of the DPM are unfounded, qualifying the position of the party as an impulsive response, hoping that this reaction was in no way intended to intimidate the observers. The monitoring report is based on a methodology described in the report, developed and updated by Promo-LEX in line with international standards and best practices on election monitoring. In the same context, the leader of the Political Party Shor has threatened to sue Promo-LEX for defamation, arguing inter alia that the organization is not independent and is subordinated to political parties.

These attacks are worrying and unprecedented; the purpose of them is to discourage the activity of civil society organizations and their involvement into public affairs.

## OPEN-DIALOG CASE - ARE AUTHORITIES AGAIN PROPOSING TO LIMIT THE EXTERNAL FINANCING OF THE CIVIL SOCIETY ORGANIZATIONS?

On 16 November 2018 the members of the Democratic Party published the results obtained by the Committee of Inquiry to elucidate the factual and legal circumstances concerning the interference of the „Otwarty Dialog“ Foundation (Open Dialogue) and its founder Ludmila KOZLOWSKA in the internal affairs of the Republic of Moldova and concerning the financing of some political parties in the Republic of Moldova („Open Dialogue Commission“). The Open Dialogue Commission report states, inter alia, that the Political Party ”Action and Solidarity Party“, the Political Party ”Dignity and Truth Platform“ and their leaders benefited from illegal funding by the Polish Foundation „Otwarty Dialog“ and did not declare it in the corresponding way.

Without providing a single example of the involvement of non-commercial organizations from Moldova in the actions described in the report, the Commission found “an increasing active involvement of foreign public associations and domestic associations with foreign funding in direct and indirect financing of activities of the political parties and activities that influence political options”. Although national legislation already explicitly forbids non-commercial organizations to fund political parties, the Open Dialogue Commission has concluded that these regulations are not sufficient. On the same date the Parliament has adopted a decision regarding the report of the Open Dialogue Commission and decided that the Government has to develop proposals to improve the legislation in order to ensure financial transparency and eliminate gaps that allow illegal funding of political parties by non-commercial organizations.

In the summer of 2017 the Minister of Justice and the deputy chairperson of the Democratic Party of Moldova Mr. Vladimir CEBOTARI initiated a similar project to limit the external financing of the CSOs that promote/monitor public policies.

## SUMMING UP THE 2% MECHANISM FOR THE YEARS 2017 AND 2018

The Legal Resources Centre from Moldova (LRCM) has summed up the results of the first year of implementation of the 2% mechanism for 2017. According to the results, **484 non-profit organizations** have registered in the List of 2% beneficiaries. Only 302 of them (about 62%) received percentage designations, 86% being NGOs and 14% - religious entities. The total number of organizations registered to benefit from the mechanism in the first year represents about **5%** of the total number of non-commercial organizations registered in the Republic of Moldova.

**21,204** taxpayers designated **4,140,868.43 MDL** (about 244,588 dollars / 210,090 Euro) to the beneficiary organizations in 2017. They represent circa **10%** of the total number of taxpayers who filed their income tax declarations in due time. Only **68%** of the designated amount (representing **76%** of the total number of designations) reached the beneficiary organizations (**2,821,243.60 MDL** or about 166,642 dollars / 143,138 Euro) because **32% were invalidated** (or **24%** of the total number of designations) mainly due to the income tax debts for the current or previous years not paid by taxpayers. After the validation of the designations, **90% of the sums were received by the NGOs** (2,543,114.45 MDL), and **10% - by the religious entities** (278,129.15 MDL). The largest amount received by a non-commercial organization was **1,374,555.89 MDL** (81,190 dollars / 69,739 Euro), which represents **49% of the total amount validated** and was transferred to the Public Association of Veterans and Retirees of the Ministry of Internal Affairs of the Republic of Moldova.

In 2018 the mechanism became more popular. According to official data, **28,388 taxpayers**, i.e. by **34%** more than in 2017, has chosen to designate 2% of their income tax to a non-commercial organization. The total validated amount makes up **5,631,042.36 MDL** (about 335,781 dollars / 287,886 Euro) and is twice more than the amount validated in 2017. Out of the total number of designations, **90%** (i.e. 25,518 designations) were validated, as compared to **76%** in the previous year, and only **10%** (2,869 designations) were declared not validated for various reasons. Out of the total validated amount, **92%** were transferred **to non-governmental organizations**, and **religious entities and their constituent parts** received around **8%**. Again in 2018, the biggest amount of designations, about **30% (1,691,298.75 MDL),** was received by the Public Association of Veterans and Retirees of the Ministry of Internal Affairs of the Republic of Moldova.

# IN BRIEF

On 28 September 2018, the Prosecutor General refused to come before the Parliament to provide details on the progress of the **“Billion Theft” investigation** following a request by several MPs in this regard. In a letter addressed to the

Standing Bureau of the Parliament, Eduard HARUNJEN reasoned the refusal of the Prosecutor General's Office by the fact that a possible hearing and the presentation of the details in this case contradicted the principles of the separation of powers in the state and constituted an interference in the administration of justice and criminal prosecution. Instead of it Mr. Harunjen proposed to the MPs to hear the director of the NAC on the issue of recovering the financial means defrauded from the banking system.

On 2 October 2018, **the European Commission against Racism and Intolerance (ECRI) published its 5th report on the Republic of Moldova.** ECRI recommends that authorities improve the legal framework to ensure effective fight against racism and discrimination. ECRI has found the escalation of hate speech in Moldovan public discourse, especially targeted against Roma, LGBT, community of African origin and women. ECRI recommends that the authorities take urgent actions to ensure that anyone using the hate speech is properly prosecuted and punished, the Audiovisual Coordinating Council to take firm actions in all cases of hate speech and impose appropriate sanctions, whenever necessary. ECRI recommends that the authorities should condemn hate speech and promote counter-speech by politicians and high-ranking officials, including discussion with the leadership of the Moldovan Orthodox Church on this subject. ECRI recommends that the authorities should strengthen the institutional capacity of the Equality Council (CPPEDAE) and the institution of the Ombudsman. For more details, see the full ECRI report in English, French and Romanian. Information about all ECRI reports regarding the Republic of Moldova can be accessed here.

Between 2017 and 2018, the Legal Resources Centre from Moldova (LRCM) has submitted several requests to the Superior Council of Magistracy (SCM), the Superior Council of Prosecutors (SCP) and the Prosecutor General, informing about the intention to conduct **a survey among judges, prosecutors and lawyers** and asking for support (mainly concerning the access to courts/prosecutors' offices) to conduct the survey, similar to the survey of 2015. Regrettably, the SCP and the Prosecutor General did not respond to the submitted requests, and the SCM, on 2 October 2018, did not accept the request, and subsequently informed the LRCM on the dismissal of the request as inappropriate (judgement was not published). At the same time, in 2018, the SCM accepted requests of the UNICEF and the Open Justice Programme to conduct some surveys among judges. Previously, the SCM refused the request of the LRCM concerning film screening and public debates on ethical dilemmas in the judiciary of the Republic of Moldova in several courts, even if the LRCM had preliminary agreement of the courts for these activities.

On 9 October 2018, the leader of the Democratic Party Vladimir PLAHOTNIUC announced about the initiative of **electing judges by citizens**. Although the civil society and some MPs have been dissatisfied and declared that the initiative will further politicize the judiciary, on 11 October 2018, the parliamentary majority voted the decision by which the Legal Committee for Appointments and Immunities was obliged to elaborate within 30 days a draft amendment to the Constitution. Upon expiration of this deadline, the draft was not elaborated, which confirmed the electoral and populist tentative of the given initiative.

At the SCM meeting as of 16 October 2018, Alexandru GHEORGHIEŞ announced that he will **withdraw from its mandate as SCM member** starting with 17 October 2018 and will continue to work as a judge and the chairperson at Bălți Court of Appeal. Mr. Gheorghieş was elected a member of the SCM at the General Assembly of the Judges (GAJ) as of 20 October 2017 and was seconded for to exercise his term of office as a member of the SCM for the period of 16 March 2018 - 16 March 2022. By the SCM Decision no.538/25 as of 27 November 2018, Luiza GAFTON, Judge at the Supreme Court of Justice (SCJ), has been seconded to the office of the SCM member for the period of 6 November 2018 through 16 March 2022. Mrs. Gafton has won the most votes among the alternate candidates. Currently, from those six judges, members of the SCM elected by the GAJ, one is from Chişinău court, two judges from Chişinău Court of Appeal and three judges from the SCJ.

On 30 October 2018, the Constitutional Court (CCM) invalidated some provisions recently introduced into the Code of Penal Procedure (Article 185 of the CPP) that allowed **warranting pre-trial arrest** in case the person suspected of committing the offence did not plead guilty. The CCM stated that the provisions of the CPP did not meet the constitutional requirements and the European Convention on Human Rights, as well as the case-law of the European Court of Human Rights in terms of guaranteeing the principles of the rule of law and the principle of presumption of innocence. In this case, the Court was notified by a lawyer, several judges and members of the Parliament of the Republic of Moldova.

During 2018, in connection with the **resignation of five judges from the SCJ**, the SCM requested the Ministry of Finance for additional allocation of 4.2 million MDL for the payment of the single redundancy allowance for five judges of the SCJ (No.379/19 and 508/24 ). As to the rest, the payment of the allowances related to the resignation of judges was made from the available financial resources. In 2018 five judges were appointed to the SCJ, and six judges resigned from the position of a judge at the same court. On 31 December 2018,

24 judges were working at the SCJ, three of whom were seconded to the office of the SCM members and one to the Judicial Inspection. Under Art. 26 of Law no. 544 as of 20 July 1995 on the Status of the Judge, the resigned or retired judge shall be paid a single redundancy allowance equal to the product of the number of complete years worked as a judge and 50% of the salary or of average monthly salary. 12 judges of the courts, seven judges of the courts of appeal and six judges of the SCJ were dismissed from office of the judiciary during 2018.

Between October and December 2018, media organizations have made several public statements condemning many **intimidations or limitations imposed on the activity of journalists**. For example, restricting the journalists' access to the Democratic Party of Moldova (DPM) briefings, threats and hate speech by the Mayor of Orhei, Ilan SHOR, abuses towards journalists at the DPM rally, practices restricting the access of journalists to the events dedicated to the Day of Orhei town, etc. At the same time, on 6 December 2018 the **Media Forum of the Republic of Moldova 2018** took place. Within the framework of the event there was adopted a resolution which stated with concern the degradation of media freedom in 2018; the worsening of conditions for the journalists' activity, revealed by the decrease of the public institutions transparency and the limitation of the access to certain categories of information of public interest; the intensification of cases of intimidation and harassment of journalists in connection with their professional activity, as well as the lack of an adequate response to these cases on the side of public institutions.

**The new headquarters of the Prosecutor's Office** located in Chişinău, 73 Stefan cel Mare si Sfant Av. was inaugurated on 21 December 2018. Several institutions of the Prosecutor's Office of the Republic of Moldova - General Prosecutor's Office, Superior Council of Prosecutors (SCP), Prosecution Office for Combating Organized Crime and Special Cases (POCOCCS) and the Head Office of Chişinău Prosecutor's Office are located in the same building. The new headquarters has a capacity for the activity of approximately 500 persons. Repair works cost was over 27 million MDL. On 11 November 2017, by decision no. 982 the Government has allocated to the Prosecutor General's Office a building and the land behind it, located in Chişinău mun., 73 Stefan cel Mare si Sfant Av. Next to it there are parking lots of the Democratic Party of Moldova. After the adoption of the Government Decision, it was found that several natural persons and legal entities had previously privatized several premises in this building. In an article by Ziarul de Gardă as of October 2018, it was mentioned that the authorities were accused of having exerted pressure on economic agents to renounce their ownership of some premises in that building. To the latter, the Public Property Agency (PPA) submitted injunctions on the initiation of the procedure for the termination of the contracts. In this respect, the PPA elaborated a draft Government Decision proposing the procurement of several real estate objects (9 non-residential premises, private property, located at 73 Stefan cel Mare si Sfant Av.) in the interests of the state. In the report on anti-corruption expertise as of 16 May 2018 the National Anti-Corruption Centre (NAC) concluded that the procedure under which the transfer of private property to public property will be carried out was omitted. The NAC concluded that the draft Government Decision did not meet the transparency requirements in the process of elaboration set by the Law on Transparency in Decision-Making Process and was adopted in violation of the Law on Public Finance and Budgetary and Fiscal Responsibility, because the Law on the State Budget for 2018 did not provide for such expenses.

USAID FROM THE AMERICAN PEOPLE

*This newsletter is made possible by the generous support of the American people through the United States Agency for International Development (USAID). The contents are the responsibility of LRCM and do not necessarily reflect the views of USAID or the United States Government.*

## 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.**

## LRCM TEAM

**Vladislav GRIBINCEA**
**Nadejda HRIPTIEVSCHI**
**Ion GUZUN**
**Sorina MACRINICI**
**Ilie CHIRTOACĂ**
**Daniel GOINIC**
**Dumitru AMBROCI**
**Olga BURUCENCO**
**Aurelia CELAC**
**Natalia ŞEREMET**
**Mihaela CIBOTARU**

## CONTACTS

**Legal Resources Centre from Moldova**

**33, A. Şciusev street, MD-2001 Chişinău, Republic of Moldova**
**+37322843601**
**+37322843602**
**contact@crjm.org**
**www.crjm.org**
**CRJM.org**
**CRJMoldova**
**CRJM**