

## NEWSLETTER

### Contents

Despite the parliamentary majority's pushback and numerous legal disputes, the Parliament was dissolved

The annulment of the "stolen billion law" is unconstitutional

Chiefs wanted in most Moldovan courts

The saga of the Șor case - delays, an offer to return the money and judges with questioned integrity

ECtHR: The mandatory vaccination of children is not violating human rights

In two cases, the ECtHR orders the Republic of Moldova to pay over EUR 3,500,000

In Brief

### About LRCM

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

## Despite the parliamentary majority's pushback and numerous legal disputes, the Parliament was dissolved

After the resignation of the Chicu Government on 23 December 2020, Parliament rejected the nominees for prime minister put up by President Maia SANDU twice. On 29 March 2021, President Maia SANDU asked the Constitutional Court (CCM) to find the circumstances that warranted the dissolution of Parliament. On 31 March 2021, Parliament declared a state of emergency until 30 May 2021, during which it was not possible to organize elections (see the LRCM's Newsletters [30](#) and [31](#) for more information). Three opposition MPs challenged Parliament's decision to declare a state of emergency in the CCM. They held that the declaration of a state of emergency was unjustified and in violation of procedure, and that the real reason for declaring it was preventing the dissolution of Parliament.

On 15 April 2021, the CCM [passed an opinion](#) finding that both conditions for dissolving Parliament provided by Article 85 of the Constitution were met. Specifically, a government had not been appointed within three months. This term had started on 23 December 2020 (the dismissal of the Chicu Government) and had ended on 23 March 2021. Then Parliament rejected two requests for the investiture of a government, on 11 February and 25 March 2021 respectively. The CCM passed its judgment by three votes to two. Judges Vladimir ȚURCAN and Serghei ȚURCAN had [dissenting opinions](#).

The CCM's judgment of 15 April 2021 drew fierce criticism of the CCM judges from the supporters of the parliamentary majority. Because of threats, the CCM's Chief Judge Domnica MANOLE [requested](#) special protection, which was granted.

The following day, 16 April 2021, Socialist MPs [announced](#) that they would seek the dismissal of the three CCM judges who had voted in favor of the 15 April 2021 judgment, accusing them of the usurpation of the Constitutional Court. On 23 April 2021, Socialist MPs and those from Pentru Moldova Platform (the Șor Party) passed a [statement](#) by 54 votes, recognizing the captivity of the Constitutional Court and expressing a vote of no confidence in the three judges. The 54 MPs

### Legal Resources Centre from Moldova



The state of emergency declared on 31 March 2021, which prevented the dissolution of Parliament, was ruled unconstitutional for lack of convincing reasoning

also stated that they did not recognize the CCM's judgment of 15 April 2021.

On the same day, Socialist MPs filed a [parliament decision to revoke the appointment of Domnica MANOLE as Constitutional Court judge](#) and voted it along with MPs from Pentru Moldova Platform (the Șor Party). Immediately after, Socialist MPs filed a [decision to nominate Boris LUPAȘCU as Constitutional Court judge](#) in place of Domnica MANOLE and voted it along with MPs from Pentru Moldova Platform. On the same day, Boris LUPAȘCU was sworn in before the parliamentary majority.

The [international community](#) expressed concern about the attempt to intimidate the CCM and disapproval of both decisions passed by MPs from PSRM and Pentru Moldova Platform. Over 90 Moldovan NGOs released a [joint public statement](#) declaring that the revocation of the mandate of a Constitutional Court judge was an attempt at usurping the state power. The Venice Commission President [issued a statement](#) declaring that the “no-confidence vote in the judges of the Constitutional Court” was not a ground for revoking them and urged the Parliament of the Republic of Moldova to cancel its statement and decisions of 23 April.

On the same day, MP Sergiu LITVINENCO of the Action and Solidarity Party (PAS) challenged Parliament's decisions concerning the revocation of Domnica MANOLE and the appointment of Boris LUPAȘCU in the CCM and requested its suspension. On the evening of 23 April 2021, the CCM [suspended](#) both parliament decisions pending the examination of the application. On 27 April 2021, the CCM [ruled](#) that both decisions were unconstitutional. On the morning of 27 April 2021, before the issue of the CCM's judgment, [Boris LUPAȘCU requested Parliament](#) to cancel the decision concerning his appointment as Constitutional Court judge, citing the need to protect the image of the CCM and to restore public peace.

On 28 April 2021, the CCM examined the constitutionality of the parliament decision concerning the declaration of a state of emergency. The Legal Resources Centre from Moldova (LRCM) submitted to the CCM their [opinion](#), arguing that the state of emergency was not justified because there were efficient ways of curbing the pandemic without introducing this measure. The CCM ruled that the declaration of a state of emergency [was unconstitutional](#), because the parliament's decision lacked proper reasoning and that without such a reasoning the state of emergency cannot be introduced. Judge Vladimir ȚURCAN had a [dissenting opinion](#), holding that the CCM was not competent to consider the constitutionality of Parliament's decision concerning the declaration of a state of emergency.

On 26 April 2021, two PAS MPs requested the Prosecutor General to start a criminal investigation on the usurpation of power through the events that happened in Parliament on 23 April 2021. They also requested to have Boris LUPAȘCU brought to justice. On 27 April 2021, the press [published a footage](#) of a meeting between Deputy Prosecutor General Ruslan POPOV and Boris LUPAȘCU that took place on 25 April 2021. On 28 April 2021, the Prosecutor General's Office [released a communiqué](#) mentioning that the meeting was actually an accidental encounter and the Prosecutor General's Office had not yet received a complaint against Boris LUPAȘCU on that day. On 28 April 2021,

[the Prosecutor General refused to start the investigation](#) for lack of suspicion that there had been a crime.

On 29 April 2021, President Maia SANDU [signed](#) the decree to dissolve the Parliament and set the date of the snap parliamentary election for 11 July 2021.

## **The annulment of the “stolen billion law” is unconstitutional**

CtEDO – obligarea funcționarului verificat de a justifica averea sa dobândită cu mulți ani în urmă nu reprezintă o sarcină excesivă

On 4 December 2020, a group of MPs filed a draft law to repeal the [Law 235/2016](#). The latter (also known as the “Stolen Billion Law”) provided for the Finance Ministry’s returning the National Bank of Moldova (NBM) the sums credited by the latter (approximately MDL 14.1 billion) and stolen from the banking system in the years 2013 and 2014. Parliament’s Legal Department and the NBM gave negative opinions for this bill and recommended withdrawing it from the legislative procedure. Nevertheless, on 16 December 2020, the parliamentary majority of PSRM – Pentru Moldova (the Șor Party) passed [the draft law](#) in two readings, even without the government’s opinion on the matter.

MPs Adrian CANDU and Vladimir CEBOTARI challenged the law of 16 December 2020 in the Constitutional Court (CCM), arguing, among other things, that the annulment of the commitment made by the state through Law 235/2016 could hinder the development of the national economy, thus leading to instability and uncertainty for foreign businesses and investors. The applicants also held that the challenged law had been passed contrary to the constitutional provisions that require the government’s consent to any amendments that entail the increase or decrease of budgetary revenues or expenditures (Article 131 (4) of the Constitution).

On [18 March 2021](#), the CCM ruled that the challenged law was unconstitutional as it had been passed in the absence of the government’s opinion. The CCM reiterated that passing legislation with consequences for the budget without the government’s opinion is contrary to the procedure established under Article 131 (4) and (6) and Article 6 of the Constitution. The Court reiterated that, where a draft law has effects on the budget, Parliament must request the government’s opinion on the matter and the government must issue it. Judge Nicolae ROȘCA had [a concurring opinion](#). He supported the adopted solution but added that the cancellation of the state bonds issued under the repealed law negatively impacted the legal certainty as an element of the rule of law (Article 1 (3)) and national interests in economic, financial and foreign transactions (Article 126 of the Constitution).

On [23 April 2021](#), the parliamentary majority of PSRM – Pentru Moldova (the Șor Party) voted once again to repeal Law 235/2016. On [14 May 2021](#), the President’s Office announced that President Maia Sandu refused to promulgate the law and returned it to Parliament.

## Chiefs wanted in most Moldovan courts

15 out of the 20 courts from the Republic of Moldova are ruled by persons in the acting role. In some courts, this situation has been lasting for several years.

On 27 April 2021, the Superior Council of the Magistracy (SCM) [announced the application deadline for multiple competitions](#) for administrative vacancies in the judiciary. In the end of April 2021, more than half of administrative positions in the judiciary were filled by persons sitting in the acting role. At least 12 positions of chief judge at district courts, two positions of chief judge at appellate courts, and even the position of chief justice of the Supreme Court (SCJ) remain vacant. The situation is particularly serious at district courts. As of 31 April 2021, only three district courts ([Anenii Noi](#), [Căușeni](#), and [Soroca](#)) out of the total of 15 had chief judges. The district courts of [Bălți](#), [Chișinău](#), [Cahul](#), [Cimișlia](#), [Comrat](#), [Criuleni](#), [Drochia](#), [Edineț](#), [Hîncești](#), [Orhei](#), [Strășeni](#), and [Ungheni](#) have acting chief and deputy chief judges. In some district courts (Cahul, Drochia, and Cimișlia), acting office holders have been filling in for more than two years. Many competitions were repeated because applicants did not acquire the required number of votes from SCM members. Other competitions were postponed because some applicants had not passed the performance evaluation at the Judicial Performance Evaluation Board, which is currently gridlocked due to the expiration of the term in office of its members.

Appellate courts are in the same situation. The term in office of the chief judges of the [Bălți Court of Appeals](#) and the [Comrat Court of Appeals](#) expired more than six and, respectively, 23 months ago. The [Supreme Court of Justice](#) is not an exception either. Persons in the acting role have been running it for more than 17 months. After the resignation of the former chief justice Ion DRUȚĂ in November 2019 ([see the LRCM's Newsletter 23 for more information](#)), the Supreme Court's Justice Vladimir TIMOFTI took on as acting chief justice. After Parliament appointed Tamara CHIȘCA-DONEVA deputy chief justice of the SCJ in early March 2021 ([see the LRCM's Newsletter No. 30 for more information](#)), she took over as acting chief justice of the SCJ.

Judges' unwillingness to apply for administrative positions is hard to explain. The status of chief judge entitles the incumbent to a higher salary and a smaller caseload. These benefits, however, do not seem to be sufficient to convince judges to take part in competitions. This is because competitions are based on the vote offered by SCM members rather than on applicants' merits.

Under the Constitution of the Republic of Moldova, chief and deputy chief judges (with the exception of the SCJ) are appointed for four years by the President of the Republic of Moldova, following nomination by the SCM. Chief and deputy chief justices of the SCJ are appointed by Parliament, following nomination by the SCM.

## The saga of the Şor case - delays, an offer to return the money and judges with questioned integrity

For all his claims of innocence and official lack of such sums of money, Ilan ŞOR offers to indemnify the state for the damage caused by the bank fraud.

As of 2 April 2021, it has been three years since the Cahul Court of Appeals (Cahul CA) started the examination of the case of Ilan ŞOR, which is still under way (see the LRCM's Newsletter 27 for more information). The LRCM has prepared [an infographic about the "saga"](#) of this case.

Until 1 April 2021, the Cahul CA had scheduled 59 hearings and adjourned 51 of them. The reasons advanced for adjournment include the recusal of judicial panels, unfounded applications to the Constitutional Court, the absence of lawyers from hearings and the lack of expert opinions [previously ordered by court](#).

On 22 April 2021, RISE Moldova [published an investigation](#) about the wealth of Judge Andrei NICULCEA and his links with the Şor family. Judge Niculcea had tried the case and sentenced Ilan Şor for a less serious crime than the one the prosecution had charged him with. According to the journalistic investigation, the judge's partner had run a concession (a beauty salon) at the Chişinău International Airport when Ilan ŞOR was officially in charge of the airport. RISE Moldova also wrote that the judge's partner had travelled by air abroad with Ilan ŞOR's sister on a few occasions. After June 2019, when Ilan ŞOR fled Moldova to Israel, Judge Niculcea has visited Israel several times. Despite statutory requirements, the judge has never declared the real estates, cars and business of his partner. The judge claims he does not live with the alleged partner, even though his car was spotted several times leaving the yard of the partner's house in the morning.

At a press conference on 27 April 2021, Ilan ŞOR made a proposal to the National Bank of Moldova, the Finance Ministry, and the Prosecutor General's Office (PGO) [to return](#) the damage caused by the "theft of the billion" within three days. Ilan ŞOR said he would indemnify the state for the financial fraud and would recover the money later from "the beneficiaries of the bank fraud." He did not specify, however, who those beneficiaries. In exchange, he asked the PGO to stop the criminal investigation and to revoke the arrest warrant. Nothing came out of those declarations though. The criminal investigation went on, the arrest warrant remained effective and the money was never returned.

On 5 May 2021, the media leaked [a footage](#) showing one of Ilan ŞOR's lawyers pass a bag to Judge Tudor BERDILĂ, who sits in the Şor case at the Cahul Court of Appeals. The lawyer claims that the bag contained "a [bottle of] wine and a [bar of] chocolate." The law prohibits judges from accepting gifts from case parties. Afterwards, citing this footage, Şor's lawyers requested—[albeit without success](#)—the recusal of the judge and the transmission of the case to another court of appeals.

## ECtHR: The mandatory vaccination of children is not violating human rights

ECtHR: There is a consensus about the importance of immunization. Although vaccines may have adverse effects, these are rare and preventable through preliminary health checks.

On 8 April 2021, the European Court of Human Rights (ECtHR) ruled on [Vavricka and Others v. the Czech Republic](#). In this case, the ECtHR's Grand Chamber ruled for the first time on the mandatory immunization. Although the judgment does not refer to vaccines against COVID-19, the approach seems to be the same.

The ECtHR passed the judgment after several families from the Czech Republic had filed an application about the mandatory immunization of pre-schoolers. The applicants claimed that Czech Republic violated the right to privacy and to family life, protected by Article 8 of the European Convention on Human Rights (ECHR). The Czech Republic imposes a general legal obligation to inoculate children against nine diseases. Parents who do not have their children inoculated risk being fined. Children who do not have all their inoculations—excluding those who cannot get a jab due to health issues—are not allowed into kindergartens.

The ECtHR ruled that the mandatory immunization of children in the Czech Republic was not a violation of private life. It reiterated that there was a general consensus concerning the importance of immunization for the prevention of severe diseases. Although vaccines may have adverse effects, these are rare and preventable through a preliminary examination of immunization seekers, while the safety of vaccines is constantly monitored by competent agencies. According to the Court, the mandatory immunization policy of the Czech Republic is in line with the best interests of the child and with the protection against severe diseases. Immunization is not mandatory for children with medical contraindications. Besides, immunization is not made forcibly, the only consequences of failure to comply with the immunization obligation being fines for parents and denial of attending kindergartens. The fine is not big and is imposed only once. Parents may choose the preferred vaccine for their child and enjoy certain leeway in the time allowed for immunization. In addition, although immunization is mandatory for admission to kindergarten, it is not required for admission to school. The ECtHR also dismissed the applicants' argument concerning the violation of conscience because this right does not cover opinions about immunization.

## In two cases, the ECtHR orders the Republic of Moldova to pay over EUR 3,500,000

On 27 April 2021, the European Court of Human Rights (ECtHR) ruled on just satisfaction in the case of [Fabrica de Zahăr din Ghindești S.A. v. the Republic of Moldova](#). The Court awarded the applicant company EUR 2,000,000 in material damages, which must be paid within three months.

In its [main judgment](#) of 3 December 2019, the ECtHR found that authorities had violated the right to a fair trial and the right of ownership as the SCJ had admitted a time barred cassation lodged by Banca de Economii S.A. and passed an irrevocable decision against the applicant company. After the ECtHR's

Moldova has to pay EUR 70,000 as default interest for failure to comply with a judgment of the ECtHR for more than 12 months

judgment of 3 December 2019, the government representative and the applicant company [filed motions for revision](#) in the SCJ, requesting compensation for material damages cause to the applicant company. On 24 June 2020, the SCJ issued an [order](#) whereby it partially admitted the motions for revision, quashed the judgment that admitted the time barred cassation and dismissed the bank's cassation. However, the SCJ refused to award the compensation.

Another judgment where the ECtHR awarded several millions of euros in damages was delivered on 18 February 2020 in [the case of Ojog and others v. the Republic of Moldova \(the Gemenii Case\)](#). The ECtHR ordered the government to pay the applicants EUR 1,500,000 on account of lost income and either to return the part of the Gemenii premises that had been taken from the applicants or to pay another EUR 2,120,000. On 18 March 2020, the government filed a motion for revision in the SCJ, requesting the recovery of the part of the premises taken from the applicants. The motion for revision is still pending examination, even though the time-limit for enforcing the ECtHR's judgment elapsed 12 months ago, on 18 May 2020 (see [the LRCM's Newsletter No. 26](#) for more information). In addition to the compensations owed in this case, the Republic of Moldova has to pay other EUR 70,000 default interest for failure to comply with the ECtHR's judgment on time. This is the first time that Moldova fails to comply with an ECtHR judgment on time.

The revision of the Gemenii Case has been adjourned more than 15 times. On 8 April 2021, a new hearing of this case was due, but Government Representative Oleg ROTARI requested another adjournment. Mr. Rotari said that, considering multiple adjournments made by the court, the government decided to find other solutions to complying with the ECtHR's judgment in full by paying the EUR 2,120,000 instead of returning the part of the Gemenii premises. The SCJ admitted the government representative's motion for adjournment and scheduled the next hearing for 27 May 2021. The government's readiness to pay this amount ahead of the SCJ's decision is strange, considering that it has not withdrawn the motion for revision where it insists on the recovery of the property taken from the applicants.

Recently, the LRCM has published [an infographic](#) about the Republic of Moldova and the European Court on its website. The infographic shows that the compensations paid by Moldova until 31 December 2020 based on the ECtHR's judgments and decisions amount to EUR 19,200,000. This sum does not include the EUR 2,000,000 awarded in the case of Fabrica de zahăr din Ghindești and the EUR 2,120,000 that may be paid in the Gemenii Case if the applicants do not receive their part of the premises. EUR 19,200,000 is enough to pay 51,656 average salaries, 213,986 average retirement pensions and all expenses for the administration of justice for one year.

## In Brief

On 31 March 2021, [the Parliament announced a competition](#) to fill the office of ombudsperson. Applicants were to apply by 20 April 2021. Under [the regulations on the organization and conduct of the competition](#), the special committee was to have considered the applications within three days of

the application deadline at the latest and to have published the shortlisted applicants' resumés, motivation letters, and declarations of assets and interests. On 15 May 2021, this information was still missing on Parliament's website. Considering that Parliament was dissolved on 28 April 2021, proceeding with the competition with the current membership of Parliament lacks legitimacy. The competition should be organized by the legislature elected after the 11 July 2021 election.

On 23 April 2021, the Chişinău Court published a [reasoned judgement](#) that acquitted Judges Galina MOSCALCIUC and Ludmila OUŞ of the Chişinău Court of Appeals and Judges Svetlana TIZU and Victoria HADÎRCA of the Chişinău Court in a case concerning corruption ([see the LRCM's Newsletter No. 31 for more information](#)). The judgment has more than 400 pages, including 40 dedicated to the dissenting opinion of Judge Eugeniu BEŞELEA. Despite having a dissenting opinion, he agreed with the acquittal verdict. Judge Beleşea only criticized the appropriateness of some of the admitted evidence concerning the actions of the involved judges, particularly the evidence obtained via wiretapping and GPS location.

## I LRCM's Team

**Vladislav GRIBINCEA**  
Executive Director

**Daniel GOINIC**  
Legal Officer

**Nadejda HRIPTIEVSCHI**  
Program Director

**Victoria MEREUŢĂ**  
Legal Officer

**Sorina MACRINICI**  
Program Director

**Aurelia CELAC**  
Accounting & Financial Manager

**Oxana BRIGHIDIN**  
Legal Officer

**Olga CORTAC**  
Director of Administrative Service

**Ilie CHIRTOACĂ**  
Legal Officer

**Alina FRIMU**  
Assistant of Financial Administrative Service