

REPORT ON MONITORING THE SELECTIVITY OF CRIMINAL JUSTICE

Chisinau 2019



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LIST OF ABBREVIATIONS

BEM	“Banca de Economii din Moldova” Bank
NBM	National Bank of Moldova
ECHR	European Court of Human Rights
NAC	National Anticorruption Center
CP	Republic of Moldova Criminal Code
CPP	The Republic of Moldova Criminal Procedure Code
SCJ	Supreme Court of Justice
SCM	Superior Council of the Magistracy
Mol	Ministry of Interior
APO	Anticorruption Prosecutor’s Office
PDM/PD	Democratic Party of Moldova
PL	Liberal Party of Moldova
PLDM	Liberal Democratic Party of Moldova
PN	Our Party
PSRM	Party of Socialists of the Republic of Moldova
RM	Republic of Moldova
MP	Member of Parliament

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EXECUTIVE SUMMARY

The **purpose** of these monitoring efforts was to establish the traits specific to the phenomenon of “selective justice” – which is widely discussed in society, but lacks clear definition or regulation in national jurisprudence – by observing several resounding criminal cases, either at the stage of investigation or of examination in court. To this end, the authors of the report developed a monitoring methodology, and, with the help of the monitors (teams of lawyers and journalists from the South, Center and North of the Republic of Moldova), subsequently examined the development of 14 criminal cases during the period of February to July 2019.

The sample included the analysis of 98 court hearings in 14 criminal cases, filed in respect to 29 persons, of which 21 held public functions at the time of the offence or later acquired this status during the stage of criminal investigation. Defendants were charged with 48 offenses, of which 38 were committed in aggravated circumstances: corruption, abuse of power in office in relation to misappropriation and fraud, forgery of public documents, money laundering, and the adoption of manifestly illegal court decisions.

The report shows that selective justice is the product of an unnatural collaboration between politics and justice, and that the selectivity of justice manifests either favorably or unfavorably to subjects with a political affiliation, depending on how close the subjects are to the political forces that control justice.

The majority of subjects targeted in the case files monitored under this effort are politically affiliated (13 of 14 cases). As a rule, they are members of opposition parties. In one of the 14 cases, the accused renounced his previous political affiliation and joined the ruling party. In three out of 14 cases, subjects acquired a political party affiliation during the course of the study and examination of the case files in court.

The report notes two distinct types of selectivity criteria in the criminal process specific to selective justice: 1) selectivity criteria in public communication, and 2) selectivity criteria in the criminal process.

Based on the first type of criteria, it was established that, as a rule, the press learns about this type of criminal case primarily from leaks (40 percent), press releases (20 percent), statements by dignitaries (20 percent), or other sources (20 percent). Without exception, leaks were made to media outlets or blogs affiliated with the ruling party.

In 42 percent of the cases, prosecutors’ investigations were preceded by journalistic investigations with reference to the same violations. However, criminal cases were started either much later, or were made public in political circumstances sensitive to the accused or politically convenient to the ruling party.

Communication between the investigative body and the press within the criminal case monitoring process depended largely on the subject. In cases of those accused with links to the ruling party, prosecutors had a narrower scope of communication and avoided sharing details. In cases of accused representatives of opposition parties, prosecutors engaged in more intense communication, offering evidence from the case such as documents and video recordings. In cases when investigated/prosecuted subjects communicated with the media, the report finds that in 13 of the 14 monitored cases, the subject of the criminal prosecution had the opportunity to communicate with the press, either at court hearings, by telephone or while participating in programs. The only subject whose right to communicate with the press was restricted, even in an open trial, is the former Prime Minister Vlad Filat (currently in opposition to the government). At the same time, the only subject who had the opportunity to communicate with the press on the topic of his case, but who refused to do so, was Ilan Sor (affiliated with the governance).

On the basis of the **second type of criteria, from the procedural-criminal perspective**, the experts found the existence of different approaches in similar criminal cases which, according to prosecutors, relate to the so-

called “billion dollar bank fraud” case. The report presents a detailed analysis of procedural-criminal actions applied in the cases of Ilan Sor, Vlad Filat, Veaceslav Platon and Chiril Lucinschi, and concludes that Ilan Sor received preferential treatment from the relevant investigatory and court bodies.

Fifty percent of the court hearings in the monitored case files physically took place in judges offices, a **space unfriendly for the participation of members of the public who are interested in upholding justice**. In 92 percent of cases, information about court hearings was published correctly on the court website; however, in four percent of hearings affecting three criminal cases, information on the court hearings was not published at all on the court webpage in certain instances. In another four percent of hearings, monitors identified errors in relevant announcements on the court page. Of the 12 cases monitored at the trial stage, only in one case (the Sor case) was the trial declared closed to the public.

Of the 12 monitored cases that were examined in court, the defense motioned for **recusal** only in three cases (25 percent). Over the course of monitoring, **judges were changed in two cases**: in the case of Sor, when the case was relocated from the Chisinau Court of Appeals to the Cahul Court of Appeals, and in the case of Tutu, when the judge-rapporteur was changed completely. According to law, after judicial inquiry has begun, any change in the court order requires that the inquiry be restarted from the beginning.

The report finds that **delays in court proceedings** are also a specific criterion for selective justice cases. Of the 98 court sessions monitored, 68 (69 percent) were postponed, of which 20 sessions (21 percent) were postponed at the judge’s request, 12 sessions (12 percent) were postponed at the prosecutor’s request, and 41 sessions (42 percent) at the request of the defense party. Only one session (one percent) was postponed at the request of the injured party.

The delay depended on the subjects of the trial and on court procedures, especially since the monitoring coincided with the campaign period for the February 2019 parliamentary elections, and five of the accused were electoral candidates. In cases involving opposition subjects that seemed likely to be convicted, the court proceedings went quickly, while in cases of those with a chance of being acquitted - examination of case files was often delayed. This phenomenon was reversed in cases involving subjects close to the ruling party.

It is important to examine delays in criminal proceedings regarding persons with political affiliations, as the speed of conducting a trial may provide political advantages or disadvantages to the government.

The report finds two cases of **inequality of arms** in the trial, when court refused the defense’s request to bring new evidence.

Monitors who attended court sessions reported **ethical issues relating to judges** in 11 of 98 sessions (11 percent). In the case of Vlad Filat and the case of former judge Constantin Tutu, a judge involved in the cases revealed that he was subject to **intimidation** by the president of the Chisinau Court of Appeals and the Prosecutor’s Office.

I. Introduction

I. INTRODUCTION

In recent years in the Republic of Moldova, the failure of reforms in the justice and anticorruption sectors has been increasingly discussed, and law enforcement bodies are often accused of investigating cases on demand. If five to ten years ago society primarily discussed the phenomenon of “telephone justice,” today the discussion has turned to selective justice. According to a recent study,¹ the great majority of society believes that justice is influenced by the following factors: 76 percent - by the Government; 80 percent - by personal enrichment interests; and 87 percent - by political interests.² At the end of 2018, the European Parliament stated that *“it remains deeply concerned with selective justice practices of the judiciary in the Republic of Moldova and points out that [...] it suffers from limited independence from the executive and is used as a tool against political opponents and business interests.”*³

I.1 What is “selective justice?”

Although “selective justice” is widely used by the public, it nevertheless lacks a clear definition. For the purpose of this report, selective justice has been defined as ***justice making choices and setting differences between the subjects of justice, even though it is expected to be fair and apply the law equally to all.***

The most common questions regarding various defendants found in similar situations are:

- Why were criminal proceedings instituted against one person and not against another?
- Why are trial proceedings going quickly for one defendant and taking much longer for another?
- Why are liberty deprivation measures imposed against one person pending trial, while not against another?
- Why is one individual being held in pretrial detention in a better place, and another in a place with much worse conditions?
- Why is the trial public in one case and closed in another?
- Why does one defendant receive a much harsher punishment than another?
- Why were goods of very high value seized/confiscated from one defendant and not from another?
- Why a court judgement immediately is enforced for one defendant, while for another defendant enforcement is postponed until the final adjudication of the case in the higher court?

1 Impact assessment study of the National Strategy for Integrity and Anti-corruption 2017-2020 - Moldova, supported by UNDP Moldova and the Ministry of Foreign Affairs of Norway, Chisinau, 2018

<http://www.md.undp.org/content/dam/moldova/docs/Publications/studiu%20Civis%20CNA.pdf>

2 *Ibidem*, figure 7, pag.37.

3 European Parliament resolution of 14.11.2018 on the application of the EU-Moldova Association Agreement, pct.19

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2018-0458+0+DOC+XML+V0//RO>

I. Introduction

I.2 Methodology of monitoring the selectivity of justice

This report is based on a monitoring methodology developed at the beginning of 2019, as part of the project “Mobilizing Civil Society to Support Judicial Integrity in the Republic of Moldova,” implemented by the ‘Lawyers for Human Rights’ Public Association (LHR), with support from Freedom House and funding from the U.S. Department of State, Bureau of Anti-Narcotics and Law Enforcement Affairs (INL). The monitoring activities were structured as follows:

- Monitoring was carried out by four teams consisting of paired lawyers and journalists;
- One team each was deployed in the northern and southern regions of the country, respectively, while two were formed in Chisinau;
- Each of the four teams was assigned to monitor three cases (at least 12 cases total);
- Monitored cases were required to meet three basic criteria: **1) to pertain to criminal law; 2) to be politically sensitive;**⁴ **and 3) to have resonance** (national or local);
- The monitoring efforts covered both the criminal prosecution stage and the cases’ examination in court, if it progressed to that stage;
- Monitoring covered the six-month period from February 1 to July 31, 2019.

Although several justice monitoring projects have been implemented in Moldova, LHR’s unique monitoring methodology resulted in the following improvements to previous efforts:

- a. Media issues relating to selective justice were monitored in parallel with legal issues during the investigation and adjudication of the monitored cases;
- b. Cases were monitored in their entirety (by virtue of their public resonance), rather than only in court hearings.⁵

I.3 Sample of cases monitored

Fourteen criminal trial cases were identified for monitoring, as follows:

In Chisinau:

- 1) The case of Chisinau Mayor General, Dorin Chirtoaca (the parking file)
- 2) The case of MP Chiril Lucinschi (bank fraud)
- 3) Case No. 2 of former Prime Minister Vlad Filat (bank fraud)
- 4) The case of Transport and Road Infrastructure Minister Iurie Chirinciuc
- 5) The case of the professional athlete and MP Constantin Tutu
- 6) The case of the judge Domnica Manole
- 7) The case of the Former President of the Academy of Sciences Gheorghe Duca and his wife Maria Duca

4 According to the “Methodology for monitoring the selectivity of criminal justice,” Chisinau, 2019, page 6, sensitive files will be selected from a political perspective based on whether the subject is affiliated with or has certain links with parliamentary, extra-parliamentary, government or opposition parties or whether, having no such affiliations/links, he/she is of interest to politicians.

5 Monitoring results are detailed in separate case monitoring sheets, templates for which are provided in chapter 4 of the “Methodology for monitoring the selectivity of criminal justice,” Chisinau 2019.

I. Introduction

In the northern region:

- 8) The case of Parcova Mayor Marcel Snegur
- 9) The case of Riscani Mayor Victor Bogatico and local councilors Alexandr Poneatovschi and Lilian Salagor
- 10) The case of Road Repair and Construction Department Municipal Enterprise Director Serghei Pcela

In the southern region:

- 11) The case of BEM administrator and Orhei Mayor Ilan Sor (bank fraud)
- 12) The case of Comrat Mayor Sergei Anastasov
- 13) The case of Ruskaia Kiselia Mayor Gheorghe Gospodinov
- 14) The case of Cimislia Mayor Gheorghe Raileanu

More details on these cases and developments of case file proceedings against them, together with monitors' comments, may be found in Annex 1 to this Report.

Nota Bene: Including these cases in the monitored sample does not mean that the persons targeted are guilty of the allegations against them, or that they should not be held responsible according to the law. These cases were selected due to the fact that they met the selection criteria established for monitoring: that their cases involve violations of the criminal code, that the subjects have political affiliations, and that their cases are publically resonant. During case monitoring, the existence of these criteria suggest that they may present deviations and/or differentiated legal or investigative approaches. This speaks more to the fact that the Prosecutor's Office and the judicial system are not independent, than of the fact that these cases would be handled illegally.

In two of the 14 cases (14 percent), monitoring started at the stage of criminal prosecution, while in the other 86 percent of cases monitoring started when cases were already under judicial review. Of the 12 cases at the stage of judicial review, a total of 98 court sessions took place over the six-month period of monitoring. Of the 98 monitored sessions, 62 sessions (63 percent) were held before district courts (52 - in Chisinau, seven - Balti, three - Cimislia), and 36 sessions (37 percent) were held before Courts of Appeals (18 - Chisinau, Balti - 13, Cahul - five).

Only in one case (Filat case No. 2) of the 12 cases monitored at the stage of court examination, the defendant was held in detention; in all other cases the defendants were tried in a state of freedom. Seventy-four percent of monitored cases were at the initial stage of judicial research, 20 percent - at the opening and preparatory stages, and six percent - at intermediate and final stages (debate, final word and deliberations).

In 1 out of 14 cases (the Chirinciuc case), which was in regards to three of 29 persons targeted in the monitored cases, the trial was carried out according to a simplified procedure for reaching a guilty verdict based on evidence provided at the stage of accusation (art. 364/1 CPP).

Twenty-nine persons were targeted in 14 of the monitored files, of which 26 (89 percent) were men and three (11 percent) were women. The average age of monitoring subjects was 53.

I. Introduction

Of the 29 case subjects monitored, 21 (73 percent) held public positions at the time of the offence or were appointed to such positions during the investigation of their criminal cases (e.g., Tutu and Sor cases). Of those, 52 percent held a public office of a political nature (i.e. MPs, ministers, locally elected officials), 10 percent were from the private sector, and 21 percent were unemployed.

These 29 people were accused of and/or indicted for committing **48 offenses**,⁶ of which **38 offenses (79%) were allegedly committed in aggravated circumstances**. Of the 48 offenses:

- Thirty-four (**71 percent**) are offences of corruption (art.326-329 CP), misappropriations and fraud committed through abuse of power (art.190 and 191 CP), forgery of public documents (art.352 / 1 CP), money laundering (art.243 CP) and the adoption of manifestly illegal court decisions (art.307) – **violations in the jurisdiction of specialized anti-corruption criminal investigation and prosecution bodies** (NAC and APO)
- Fourteen offenses (29 percent) refer to the violation of traffic safety rules (art. 264 CP), false statements (art.312 CP), air pollution (art. 230 CP), hooliganism (art. 287 CP), average intentional injury of body integrity (art. 152 CP) and intentional murder (art. 145 CP) – **violations within the jurisdiction of the criminal investigation bodies of the Ministry of Interior**.

In nine of the 14 cases monitored (64 percent), the criminal prosecution was started on the basis of a self-assessment by the criminal prosecution body based on information received from other bodies (NBM reports) and on the basis of reports by that criminal prosecution body. In the other five cases (36 percent), criminal prosecution started based on complaints and denunciations filed by other persons.

One third of the subjects (ten out of 29) who appeared in half of the monitored cases (seven out of 14) were imposed liberty deprivation measures pending trial in the form of arrest in an investigative isolation ward and/or in home arrest, with a total average detention span of 7.25 months.

⁶ In one of the monitored cases, the case of Comrat mayor, Sergei Anastasov, the monitors could not find the fact or legal qualification that was given to the accused. In this case, involvement was alleged only in the commission of an episode, the cause being not yet sent to the court.

II. Justice and politics

II. JUSTICE AND POLITICS

In recent decades, issues of Moldovan justice, such as the lack of independence among prosecutors and judges are intensely debated, while political interference in the affairs of the judiciary and the Prosecutor's Office is seen as the source of this scourge. The output of the unnatural collaboration between politics and justice gives rise to a phenomenon called "selective justice."

And yet, why would the tendency of politics be to control justice? Every political party seeks to rule. Ruling parties seek to stay in power at any cost, while opposition parties fight to take their place. With their vote, citizens determine which parties lead and which don't. For this reason, in the struggle for power among political parties, the views of the electorate play a decisive role. Criminal cases involving politicians are of public interest and are therefore widely publicized. Thus, for parties in power, criminal proceedings against their representatives carry damaging electoral potential. Equally harmful are criminal cases against members of the political opposition.

II.1 Identifying selective approaches in justice

The politician in power understands that criminal proceedings against the opposition are a sure impediment to increasing its electoral rating and are therefore a good method of maintaining the ruling party's power. This is the main (electoral) temptation that drives the politician to attempt to serve the functions of justice. While the methods may vary, they all come down to the loyalty of law enforcement agencies, the Prosecutor's Office and the justice system to powerful political actors.

Even when concealed from the public eye and difficult or even impossible to prove, this loyalty has external manifestations that take the form of criminal cases that benefit the political interests of the government. The interests of government involve attracting public attention to the sins of the opposition/political competitors, and reducing public exposure to the sins and procedural indulgence of the government. This is the process of selectivity.

The selectivity of justice has two primary manifestations: favorable and unfavorable to subjects with political affiliations:

Manifestations of selectivity favorable to political subject:	Manifestations of selectivity unfavorable to political subject:
<ul style="list-style-type: none"> - The subject has political affiliation with ruling parties, - The subject changes political affiliation in favor of ruling parties, - An unaffiliated subject becomes a member of ruling parties. 	<ul style="list-style-type: none"> - The subject has political affiliation with parties competing with those in government, - The subject left the ranks of the ruling party, - The subject changed political affiliation in favor of competing parties.

In trying to control justice to serve their own interest, government succumbs to the corrupting influence of power, and those committing the greatest sins are not representatives of the opposition. For this exact reason, the public is critical in cases which seem to treat government abuses with leniency, while media coverage of alleged abuses by the opposition are viewed with skepticism.

II. Justice and politics

CASE STUDY 1.

Criminal cases against mayors and district presidents

"In five years, from 2013 to 2017, prosecutors filed over 100 criminal cases against mayors and district presidents. This figure was determined by journalists from the Center for Journalistic Investigations based on analysis of open sources and discussions with several local leaders. Most often, locally elected representatives from the opposition are targeted by legal institutions. Some claim they have up to eight criminal files opened against them in a single term. As a rule, only a small part of these files go to trial, and the number of mayors convicted criminally is very small. In contrast, in the past two years, several mayors with criminal records left their party to approach the Democratic Party."

(Source: investigatii.md, 18 December 2017, Infographic// Republic of Moldova Map of indicted mayors⁷)

In most cases, "selective justice" or "on political orders" are titles given by the press to resounding criminal cases that involve political interests.

On the other hand, decision makers within the judiciary and Prosecutor's Office deny the existence of this phenomenon. In these circumstances, a point of logical confusion arises: to what extent is selective justice the creation of politicized justice bodies or of press institutions?

In order to find answers to these questions and to describe the widely discussed phenomenon of "selective justice," selectivity criteria were identified in public communication and the criminal process.

Selectivity criteria in public communication:	Selectivity criteria in criminal trial proceedings:
1. The means by which the press learns about a case of high public interest;	1. Similar cases with different legal approaches;
2. The authorities' reaction to violations investigated by journalists;	2. Accomplices with different procedural statuses;
3. Information about the arrest or enforcement of the arrest;	3. Public access to court hearings;
4. The level of openness of the criminal investigation/prosecution body towards the press;	4. Recusal of the judge/prosecutor;
5. Communication with the press regarding the person investigated, tried, or detained;	5. Changing of the judge/prosecutor;
6. The court's attitude towards journalists.	6. Delaying the trial;
	7. Inequality of arms in the criminal proceedings;
	8. Ethical issues relating to judges;
	9. Intimidation of the parties (i.e., a defendant, prosecutor, or judge).

⁷ <https://www.investigatii.md/ro/investigatii/justitie/infografic-harta-primarilor-penalii-din-republica-moldova>

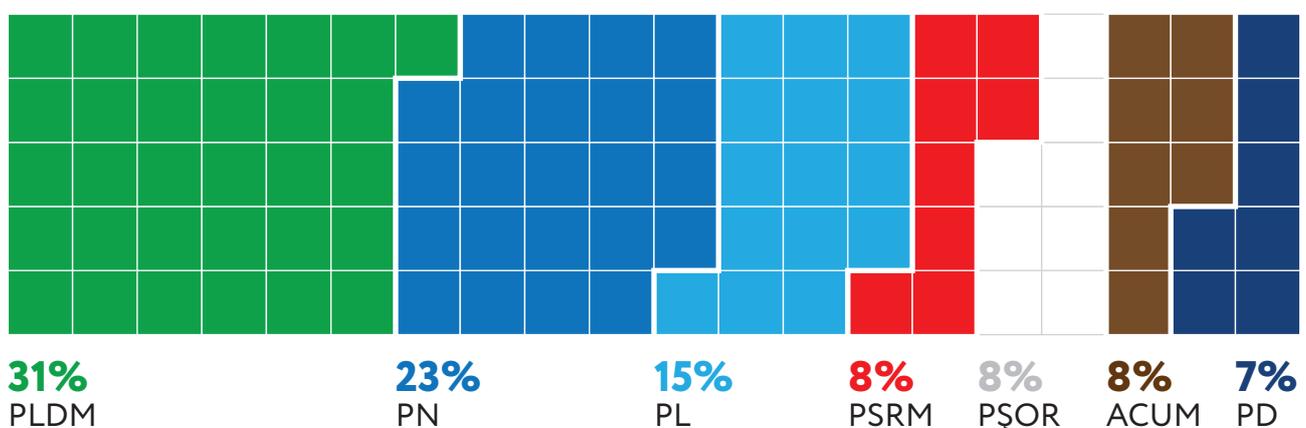
II. Justice and politics

A detailed description of favorable and unfavorable manifestations of the selectivity of justice for politically-affiliated subjects is included in Annex 1 of this report. The findings of the monitoring process, analyzed in this report, are included in chapters III (Public Communication) and IV (Procedural Aspects).

II.2 Political affiliation and its changes in the course of monitoring

In 13 of the 14 cases analyzed, the existence of political context and a political affiliation on behalf of the suspect or the defendant was found. Eleven cases relate to opposition party members.

Political Affiliations of Suspects/Defendants



In nine cases out of the 14 cases, suspects were party members at the time of the criminal prosecution. In three cases they became party members during the investigation and examination of the cases in court.

In most of the monitored cases, the press reported that the purpose of launching criminal proceedings was political, either to cause the suspect to give up his/her previous political affiliation and join the Democratic Party, or to pressure the suspect/accused to give up his/her public office (in most cases, the mayoral term).

In the case of Sergei Pcela, the defendant resigned as a member of PN and joined the ruling party (PDM).

CASE STUDY 2.

Serghei Pcela, PN member, joins PD during the case examination

As the Director of Balti Road Repair and Construction Municipal Enterprise, Serghei Pcela, was, at the time the case was initiated, an active member of Our Party, while at the end of 2017, after the file was sent to trial, Pcela joined the Democratic Party, participating alongside PDM members at several conferences in which he harshly criticized the PN and its leadership. After joining the PDM, the examination of the case in court began to experience delays. In the course of two years, only a few witnesses were examined at court hearings.

(Source: monitoring sheets, 1 February 2019 – 31 July 2019)

II. Justice and politics

“It all comes from the fact that I was repeatedly asked to come out at a press conference and denigrate the party leader, Mr. Renato Usatii. I categorically refused.” - Serghei Pcela’s statement for the BTV television channel in October 2016, when the criminal prosecution was initiated.

(Source: BTV8, 26 October 2016, Директор ДРСУ Сергей Пчела задержан на 72 часа⁸)

In three of the 14 cases, the suspects/defendants obtained a political affiliation after the initiation of the criminal cases. We refer here to the cases of:

- **Constantin Tutu**, who during the examination of his file in court became a member of the Democratic Party, and later a PDM MP.
- **Ilan Sor**, who during the investigation of the case and its examination in court created his Party, won the election for Orhei City Hall, and became an MP from the Sor Party, a formation which, according to the independent press favored the former leader of the Democratic Party, Vlad Plahotniuc.⁹
- **Domnica Manole** who ran for parliamentary elections in February 2019 from the ACUM Bloc, without being a party member.

In one case, the press reported on the political influence of representatives of the Socialist Party in the investigation. This is the case of Cimislia Mayor Gheorghe Raileanu.

CASE STUDY 3.

The promises of a PSRM MP to file a criminal case regarding the Mayor of Cimislia

According to a recorded discussion between PSRM MP Vlad Batrincea and a member of PN, which was covered in the press, the later was persuaded to join the PSRM in exchange for the position of Cimislia Mayor.

The Socialist MP promised the removal of Gheorghe Raileanu, based on facts which initiated a criminal case. In a recorded discussion, Batrincea gave assurances that he would cause trouble for Mayor Gheorghe Raileanu, and that PSRM would provide support for “the fight against the Mayor, including information.”

(Source: investigatii.md, 18 December 2017, Infographic// Republic of Moldova Map of indicted mayors¹⁰)

8 <https://esp.md/sobytiya/2016/10/26/direktor-drsu-sergey-pchela-zaderzhan-na-72-chasa>

9 <https://moldova.europalibera.org/a/de-ce-%C3%AEi-atac%C4%83-ilan-%C8%99or-pe-maia-sandu-%C5%9Fi-pe-andrei-n%C4%83stase-/29378802.html>
<https://radiochisinau.md/andrei-nastase-si-maia-sandu-despre-protestele-sustinatorilor-lui-ilan-sor-adevaratul-organizator-este-vlad-plahotniuc---71855.html>
<https://cotidianul.md/2018/07/24/maia-sandu-comenteaza-protestele-organizate-de-ilan-shor-este-o-unealta-impotriva-opozitiei-folosita-de-plahotniuc/>

10 <https://www.investigatii.md/ro/investigatii/justitie/infografic-harta-primarilor-penali-din-republica-moldova>

II. Justice and politics

In two cases (Dorin Chirtoaca and Iurie Chirinciuc), the independent press wrote, referring to the accused, that criminal files were investigated as a measure to pressure the Liberal Party faction to vote in Parliament in favor of the mixed electoral system, promoted by the Democratic Party and the Socialist Party in 2017.

CASE STUDY 4.

PL representatives accuse PDM of applying pressure to vote in favor of the mixed electoral system

Minister of Transport and Road Infrastructure, Iurie Chirinciuc, was detained by anti-corruption prosecutors on April 27, 2017. A month later, on May 26, 2017, Chisinau Mayor Dorin Chirtoaca was detained. Both are representatives of the Liberal Party and have been accused of trafficking in influence related to public procurement. Dorin Chirtoaca's case was initiated again in 2015, however, the politician's detention took place two years later. In a press conference held after Chirtoaca's arrest, the leader of the Liberal Party, Mihai Ghimpu, said that both cases were opened as a result of a political directive, based on the Liberal Party's refusal to vote to change the electoral system.¹¹

This reasoning was later supported by Chirinciuc, who repeatedly told the press, both at the time of detention and during court sessions, that he was the victim of a political case due to the Liberals' lack of support for the uninominal electoral system.¹²

Dorin Chirtoaca gave two reasons for the political case against the Liberal Party - one for the refusal of PL MPs to support the electoral system amendment, and the second - the desire of Democrats to take control of Chisinau City Hall.¹³ The mixed electoral system was adopted by Parliament in the first reading on June 11, 2017.

11 <https://www.pl.md/libview.php?l=ro&idc=78&id=6936&t=/Presa/tiri/Partidul-Liberal-parasete-Coalitia-de-guvernare>

12 <http://protv.md/actualitate/ministrul-transporturilor-liberalul-iurie-chirinciuc-a-fost-retinut--1860741.html>
<https://moldova.europalibera.org/a/condamnarea-lui-iurie-chirinciuc/28667812.html>

13 <https://moldova.europalibera.org/a/dorin-chirtoac%C4%83-acuz%C4%83-procurorii-de-fals-%C5%9Fi-manipulare-%C3%AEn-dosarul-parc%C4%83riilor-cu-plat%C4%83/29882206.html>
http://alegeri.md/w/Partidul_Liberal

III. Selectivity of justice in public communication

III. SELECTIVITY OF JUSTICE IN PUBLIC COMMUNICATION: ENHANCED PUBLIC ATTENTION TO CASES INVOLVING POLITICAL COMPETITORS

In order to 1) verify the selectivity of justice hypothesis in public communication by investigative and prosecutorial bodies regarding cases of high public interest featuring political actors, and 2) verify the level of public exposure to investigated and/or indicted subjects as controlled by the authorities, the cases selected were monitored from the following perspectives: the means by which the press learns about a case of high public interest (section III.1), the reaction of the authorities to the facts investigated by journalists (section III.2), the available information on the arrest or the application of the arrest, (section III.3), the degree of openness of the criminal prosecution body and/or accuser towards the press (section III.4), communication with the press on the subject investigated, prosecuted or detained (section III.5), the attitude of the court towards journalists (section III.6).

III.1 The means by which the press learns about a case of high public interest

According to this criterion, the following assumptions of favorable selectivity for government representatives and unfavorable selectivity for their political competitors were verified during the monitoring:

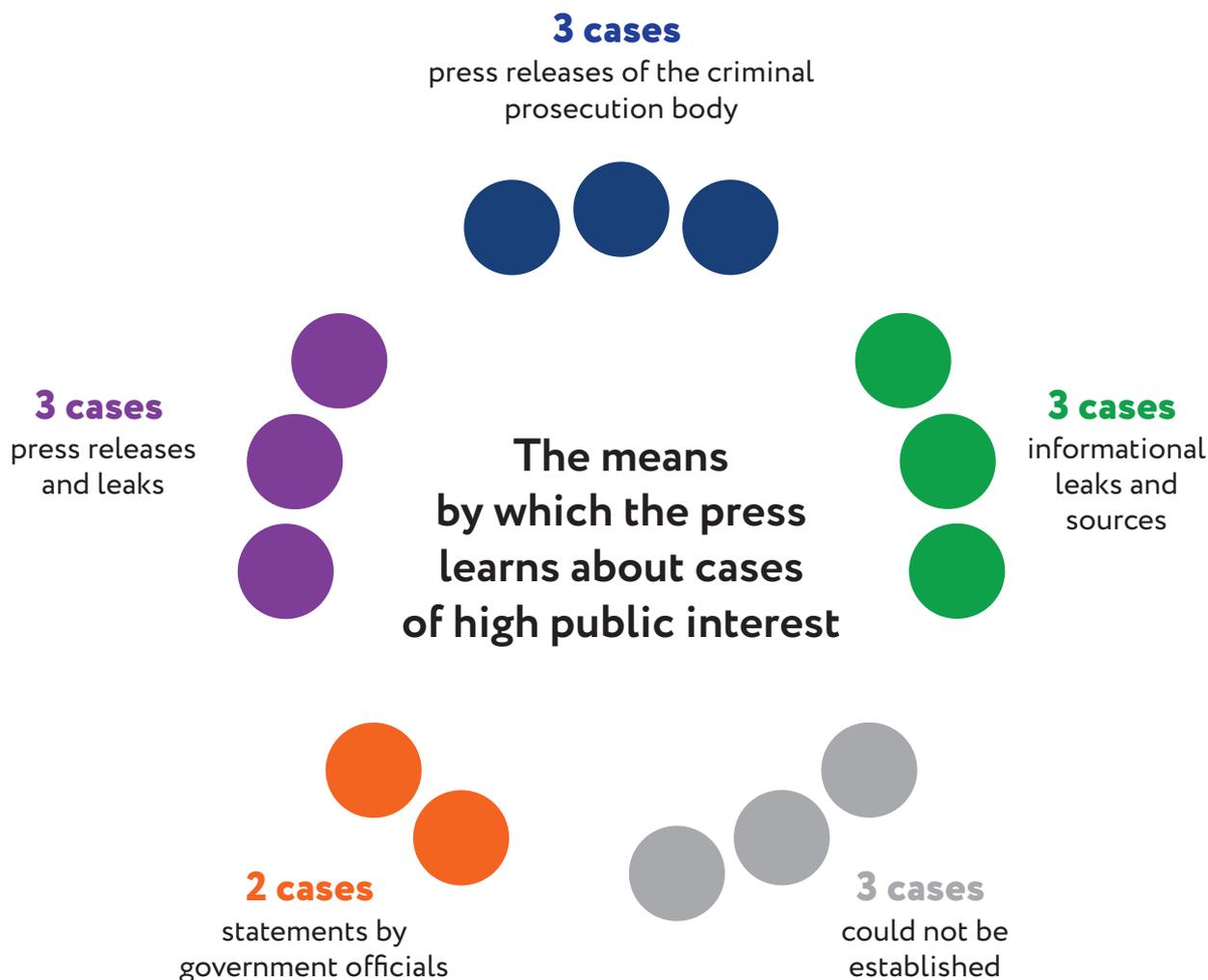
Manifestations of favorable selectivity – reduced public resonance	Manifestations of unfavorable selectivity – increased public resonance
<ul style="list-style-type: none"> - Official communiqués, respecting the protection of personal data and presumption of innocence; - Dissemination of limited evidence by law enforcement, while respecting the protection of personal data. 	<ul style="list-style-type: none"> - Statements on sources, before publication of an official statement, without respecting the protection of personal data and presumption of innocence; - Statements on sources, with dissemination of evidence, without respecting the protection of personal data, before/in absence of an official statement; - Statements of political leaders who “anticipate” the reaction of law enforcement bodies.

The sources via which the press learned about the existence of criminal cases are very diverse. According to monitoring results, we cannot say that there is a preferential communication method regarding such cases. In 20 percent of cases, the press learned about new investigations from press releases of the criminal prosecution body, in another 20 percent of cases - from leaks and sources, in another 20 percent - from press releases and leaks, and the remainder from statements by government officials. It is notable that in six out of 14 monitored cases, informational leaks were used to make information public about the existence of the criminal case.

The six cases of leaks were exclusively reported on in media outlets affiliated with the Democratic Party and to its leader or the one in which the PDM leader Vlad Plahotniuc preferred to offer exclusive interviews¹⁴.

14 <https://www.deschide.md/ro/stiri/social/10834/UPDATE--OFICIAL-Ministrul-Chirinciuc-re%C8%9Binut-pentru-72- de-ore.html>
<https://www.timpul.md/articol/procuratura-cere-suspendarea-lui-dorin-chirtoaca--dosarul-trimis-in-justitie-113121.html>
https://www.prime.md/ro/tone-de-gunoi-incendiate-la-balti_38359.html
https://www.publika.md/perchezitii-la-intreprinderea-silvica-de-la-balti-intr-un-dosar-de-taiere-ilicita-a-padurilor_2814121.html
<https://deschide.md/ro/stiri/social/12244/VIDEO--Primele-declara%C8%9Bii-ale-lui-Chiril-Lucinschi-la-re%C8%9Binerea-sa.html>
<https://deschide.md/ro/stiri/social/39857/Z%C4%83ng%C4%83nesc-c%C4%83tu%C8%99ele-la-A%C8%98M--So%C8%9Bii-Duca-%C3%AEvinui%C8%9Bi-%C3%AEintr-un-dosar-de-corup%C8%9Bie.htm>

III. Selectivity of justice in public communication



Leaks generally referred to information on new criminal cases (Serghei Pcela), to the time and place of detention (Iurie Chirinciuc), or to details and evidence from the case file (Chiril Lucinschi).

One of the most relevant examples is the case of former MP Chiril Lucinschi. Information that was subsequently verified in the criminal investigation was disseminated several months earlier in an article on an online platform that is, according to independent monitoring, part of Vladimir Plahotniuc's media trust. Journalists operated with documents that subsequently were also the basis of the criminal case, making it likely that the journalists received the documents from persons within the investigative body itself.

III. Selectivity of justice in public communication

CASE STUDY 5.

Leaks from Chiril Lucinschi's case file via PDM-affiliated sources

On July 28, 2016, Today.md editorial published an article entitled: "Investigation: Lucinschi's Media, funded by BEM funds." In the article, the portal announced that it was in possession of information including several documents that would prove the opening statement: "Most notably, at the order of Vlad Filat, Ilan Sor extracted over 440 thousand USD from the banking system and transferred it to the accounts of Chiril Lucinschi's company." Several transactions from 2012-2014 were presented between companies in the Sor group (TOMTON TRADE CORP, PRIMOTEKS IMPORT and HEZBURG LLP) and Chiril Lucinschi's company - IPA International Project Agency, as well as bank statements confirming the transactions.

The article also quotes chief anti-corruption prosecutor Viorel Morari, who confirmed that he also held this information, but that "we are in a legislative blockade that we are trying to overcome, because the person in question has immunity and we cannot advance certain aspects." Within a month of the material's appearance, the criminal prosecution of Chiril Lucinschi started. Later, the original article on the Today.md portal became inaccessible,¹⁵ but it was preserved by media outlets that republished it (mostly, press from the PDM holding¹⁶).

III.2 Reaction of authorities to journalist investigations

According to this criterion, the following assumptions of favorable selectivity for the government representatives and unfavorable selectivity for their political competitors were verified during the monitoring:

Manifestations of favorable selectivity – reduced public resonance	Manifestations of unfavorable selectivity – increased public resonance
<ul style="list-style-type: none"> - Apathetic and delayed investigation of violations by persons affiliated with ruling parties. 	<ul style="list-style-type: none"> - Immediate investigation of violations of persons considered political competitors; - Delayed investigation of violations of political competitors, but at politically convenient times for ruling parties.

In almost half of the cases (six out of 14), the press previously covered the facts that are the subject of the monitored investigation. In two cases, the violations were reported by investigative journalists or civic activists (Chirinciuc file¹⁷ and the Chirtoaca file¹⁸). However, criminal investigations do not refer to newspaper articles or evidence obtained by journalists. In contrast, monitoring has shown that public announcements of many of these criminal case files are timed strategically to coincide with sensitive political circumstances for the accused or politically appropriate circumstances for the party in government. This is true even if cases were initiated earlier (shortly after press investigations or public disclosures).

¹⁵ <http://today.md/ro/news/politic/10552>

¹⁶ https://www.publika.md/culmea-ipocriziei-hotii-miliardului-din-pldm-initiaza-motiune-de-cenzura-pe-tema-furtului-de-la-bem_2757981.html
https://www.prime.md/ro/posturile-de-televiziune-ale-lui-lucinschi-finantate-din-banii-bem_37987.html

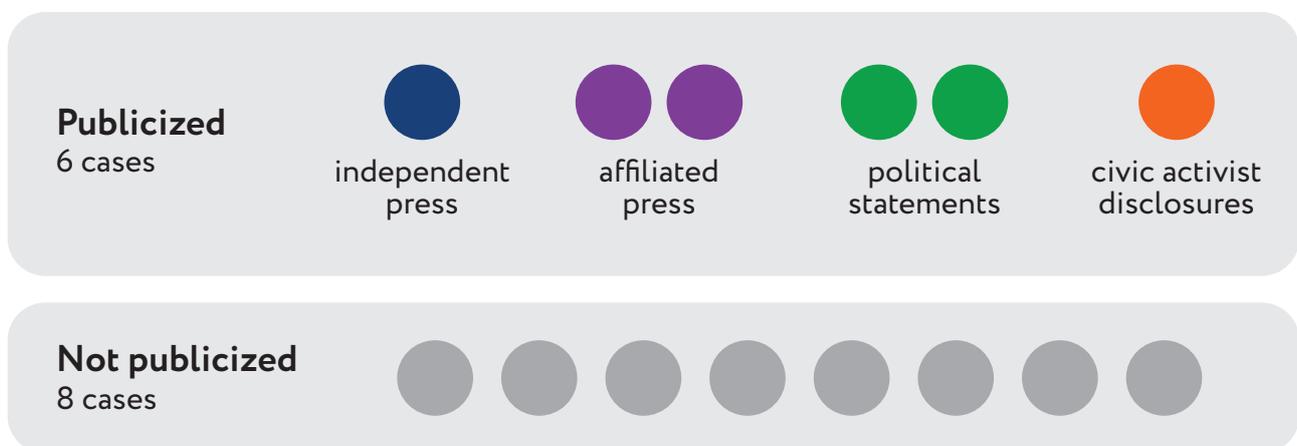
¹⁷ <https://anticoruptie.md/ro/investigatii/achizitii-publice/drum-din-bani-publici-pana-la-firma-ministrului-iurie-chirinciuc>

¹⁸ <https://victorchironda.eu/2016/04/21/schema-de-estorcare-a-banilor-de-la-cetateni-prin-intermediul-parcarilor-cu-plata/>

III. Selectivity of justice in public communication

For instance, the press covered the alleged illegal activity of **Iurie Chirinciuc and Dorin Chirtoaca** in 2016¹⁹. However, information about both case files was made public by prosecutors in the spring of 2017, when the PDM was intensely promoting the uninominal electoral system in Parliament and sought votes for the adoption of the document²⁰. The leader of the PL, Mihai Ghimpu, as well as several political analysts²¹ associated the investigation and arrest of Chirtoaca and Chirinciuc, were pressured to influence the PL faction to vote in favor of modifying the electoral system. At that time, the PL was a vocal opponent of the changes to the Electoral Code.²²

Previous media coverage of violations by journalists



In the case of **Vlad Filat**, information relating to the criminal case ultimately opened against him was revealed to the public in July 2015 by another political actor, Our Party leader Renato Usatii.²³ Usatii's disclosures were covered by several media institutions, both independent and politically affiliated. However, the case file does not refer to these disclosures by the politician. Usatii has stated that he was never summoned by the Prosecutor's Office in relation to this case. Despite the fact that the criminal prosecution of this case was started in October 2015, the prosecutors made a public announcement on the existence of the criminal case only in January 2019, after more than three years (although, according to Filat's lawyer, criminal proceedings on this case were on hold beginning in 2016). Vlad Filat and his lawyer Victor Munteanu believe that the case was publicized around the time of the election campaign to affect the image of the Liberal Democratic Party, previously led by Filat.²⁴

19 <https://anticoruptie.md/ro/investigatii/achizitii-publice/drum-din-bani-publici-pana-la-firma-ministrului-iurie-chirinciuc>
<https://victorchironda.eu/2016/04/21/schema-de-estorcare-a-banilor-de-la-cetateni-prin-intermediul-parcarilor-cu-plata/>

20 http://www.viitorul.org/files/library/Reforma_sistemului_electoral.pdf

21 <https://moldova.europalibera.org/a/revista-presei-alla-ceapai/28509965.html>
<https://newsmaker.md/rus/novosti/liberaly-popali-pod-udar-pochemu-u-odnopartiytsev-gimpu-nachalis-problemy-s-zakono-31070>
<https://www.dw.com/ro/show-politic-sau-lupt%C4%83-%C3%AEmpotriva-marii-corup%C8%9Bii/a-38614020>

22 <http://www.pl.md/libview.php?l=ro&idc=78&id=6964&t=/Presatiri/Votarea-Sistemului-Mixt-este-o-lovitura-impotriva-democratiei>

23 <http://protv.md/stiri/actualitate/renato-usatii-il-acuza-pe-vlad-filat-ca-si-ar-fi-platit-serviciile---1064431.html>

<http://www.allmoldova.com/ru/news/renato-usatii-filat-si-a-finatat-pr-ul-electoral-din-miliardul-furat-de-la-bem>

24 <http://www.jurnal.md/ro/news/f8265c5cbc7cc93c/avocat-noul-dosar-impotriva-lui-filat-unul-electoral-era-finalizat-din-2016-iar-cauza-e-trimisa-in-judecata-abia-acum.html>

III. Selectivity of justice in public communication

In *Ilan Sor's* case, information relating to the criminal case ultimately opened against him was revealed to the public one year before the initiation of the criminal investigation. For the first time, the fact that Ilan Sor would be the beneficiary of companies that contracted non-performing loans of over five billion lei was mentioned in the Kroll 1 report, published in May 2015.²⁵ Although the document presented several conclusive pieces of evidence indicating that Sor was the main beneficiary of money stolen from the BEM, the Social Bank and Unibank via non-performing loans, the Anti-Corruption Prosecutor's Office initiated a criminal case for large-scale fraud and money laundering for the Chairman of the BEM Board of Directors only on June 22, 2016. From May 2015 to June 2016, Sor filed a self-denunciation, which was the basis for detaining and arresting former Prime Minister Vlad Filat, the main opponent of Democratic Party leader Vlad Plahotniuc.

Former MP Chiril Lucinschi made a public²⁶ accusation²⁷ that his case file was picked up from a shelf in order to force him to renounce his intention to give away his TV7 channel to the Public Association "Alternative Media," which subsequently founded the TV8 channel, which is critical of the government. The criminal case on Lucinschi was started in August 2017, but information was made public only in May 2018.²⁸

III.3 Information about arrest or enforcement of arrest

According to this criterion, the following assumptions of favorable selectivity for the government representatives and unfavorable selectivity for their political competitors were verified during the monitoring:

Manifestations of favorable selectivity – reduced public resonance	Manifestations of unfavorable selectivity – increased public resonance
<ul style="list-style-type: none"> - The law enforcement body does not communicate to journalists about the time and place of the detention; - The law enforcement body does not communicate to journalists regarding details on the enforcement of arrest. 	<ul style="list-style-type: none"> - The law enforcement body communicates to journalists (possibly those affiliated with the government) about the time and place of detention of persons considered political competitors; - The law enforcement body communicates to the journalists regarding details on the enforcement of arrest.

In nine of the 14 cases monitored, the media was surprisingly well informed about the place and time of the defendant's court escort and had the opportunity to report on the arrests.

In two cases – regarding the Director of the Balti Road Repair and Construction Department Municipal Enterprise, Sergei Pcela, and the Mayor of Ruskaia Kiselia, Gheorghe Gospodinov – the press learned about the subsequent arrest via leaks or from other sources. As in the case of initiating criminal prosecution, informational leaks were usually made to media outlets close to the Democratic Party.²⁹

²⁵ https://ro.scribd.com/doc/264120732/Kroll-Project-Tenor-Candu-02-04-15#from_embed

²⁶ <https://protv.md/actualitate/o-noua-sedinta-de-judecata-in-dosarul-lui-chiril-lucinschi-fostul-deputat-pldm-sustine-ca-dosarul-sau-este-o-razbunare-a-fostei-guvernari-si-spera-ca-dupa-plecarea-democratilor-judecatorii-ii-vor-face-dreptate-video--2498189.html>
<http://tv8.md/tv8-show/cutia-neagra-cu-mariana-rata-marturisiri-propuneri-capcana-si-cursa-de-la-sor-12-07-19/>

²⁷ <https://deschide.md/ro/stiri/social/31624/VIDEO--Descinderi-PCCOCS-%C3%AEn-sudul-republicii-Un-primar---re%C8%9Binut-%C8%99i-acte-ridicate-de-la-mai-multe-prim%C4%83rii.htm>

²⁸ <https://moldova.europalibera.org/a/chiril-lucinschi-retinut-de-cna/28509076.html>

²⁹ <https://www.publika.md/30-de-zile-de-arest-pentru-serghei-pcela-seful-directiei-reparatie-si-construcție-drumuri-balti-2793791.html>
https://www.canal3.md/ro/serghei-pcela-fost-retinut_36670.html
<https://deschide.md/ro/stiri/social/31624/NEWS-ALERT--Descinderi-PCCOCS-%C3%AEn-sudul-republicii-Un-primar---re%C8%9Binut-%C8%99i-acte-ridicate-de-la-mai-multe-prim%C4%83rii.htm>

III. Selectivity of justice in public communication

CASE STUDY 6.

A blogger announces Dorin Chirtoaca's detention a month before it takes place

The information that Dorin Chirtoaca was to be subjected to a criminal investigation and arrested appeared in publically available media at least one month before the arrest. On his blog, blogger Eugeniu Luchianiuc wrote in April 2017 that, after the arrest of Deputy Mayor of Chisinau Nistor, Grozavu Chirtoaca's detention would follow. Luchianiuc, quoting sources, noted that Grozavu would denounce Chirtoaca in the "parking file" and the mayor of Chisinau would be placed under arrest.³⁰

(Source: *luchianiuc.com*, 27 April 2017, *Adio Chirtoaca?//Grozavu colaboreaza cu ancheta*³¹)

III.4 Openness of the criminal investigation/prosecution body towards the press

According to this criterion, the following assumptions of favorable selectivity for government representatives and unfavorable selectivity for their political competitors were verified during the monitoring:

Manifestations of favorable selectivity – reduced public resonance	Manifestations of unfavorable selectivity – increased public resonance
<ul style="list-style-type: none"> - Law enforcement body/state accuser refuses to provide information and make statements; - Law enforcement body/state prosecutor provides limited information and makes brief statements; - Law enforcement body/state accuser organizes press conferences at which he/she provides information that is apparently favorable to the subject of the investigation, refuses to answer questions or only answers questions of journalists affiliated with the government. 	<ul style="list-style-type: none"> - Law enforcement body/state accuser organizes press conferences for journalists, answers all questions; - Law enforcement body/state accuser provides detailed information and statements on the case.

Usually, cases were made public by the prosecutors via press releases at the time of the completion of the criminal prosecution. Press conferences were used by prosecutors as a means of communication with the press only in three of the 14 cases.³² In seven of 14 cases, prosecutors offered statements or comments to the press about the case. Usually, this happened at the request of the press, either prior to or following the court hearings. In two cases - Cimislia mayor Gheorghe Raileanu, and the file of Comrat mayor, Sergei Anastasov – the prosecutors refused to provide basic information about the existence of a criminal case and the procedural status of the detained person. Requests for information were sent in writing by journalists in accordance with the Law on Access to Information. In the case of Gheorghe Raileanu, the prosecutors did not respond to the request, while in the case of Sergei Anastasov they refused to provide information based on classified nature of the investigation.

In the case of former Minister of Transport and Road Infrastructure, Iurie Chirinciuc, the prosecutors were much more open and released video and audio evidence from the case file.

³⁰ <https://luchianiuc.com/blog/2017/04/27/adio-chirtoaca-grozavu-colaboreaza-cu-ancheta/>

³¹ <https://www.investigatii.md/ro/investigatii/justitie/infografic-harta-primarilor-penali-din-republica-moldo>

³² Dosarul Sor, dosarul Chirinciuc si dosarul Bogatico

III. Selectivity of justice in public communication

CASE STUDY 7.

Dissemination of video images from the file of Iurie Chirinciuc

On April 28, 2017, the National Anticorruption Center released several video recordings filmed with a hidden camera in Iurie Chirinciuc's office and other locations. In the pictures, Iurie Chirinciuc appears to be talking to other people and taking a bag that is described as containing money. The images were released one day after the arrest of Iurie Chirinciuc by prosecutors in the criminal case in which the Minister was accused of passive corruption and abuse of power.

Prosecutors released the images in the context of PL leader Mihai Ghimpu's statements at a news conference that the information released on Thursday, April 27, by the National Anticorruption Center does not align with the text of document issued to Iurie Chirinciuc informing him of his status as a suspect.³³

(Source: Agora.md, 28 april 2017, VIDEO. CNA ofera imaginii in dosarul Chirinciuc: Ministrul ar fi primit „otkat” de la agenti economici)

Subsequently, prosecutors did not publish other evidence. It is worth mentioning that the detention of Iurie Chirinciuc on April 27, 2017 was made with the participation of the press. Journalists were informed “by sources” in the Prosecutor's Office about the location and time when the detention would take place.³⁴

(Source: ProTV Chisinau, 27 april 2017, Ministrul Transporturilor, Iurie Chirinciuc, retinut. Liberalul spune ca este un dosar politic, pentru ca PL nu sustine votul uninominal al democratilor. În acelasi dosar de coruptie, CNA a mai incatusat 3 persoane - VIDEO)

III.5 Communication of the person under investigation, defendant or detainee with the press

According to this criterion, the following assumptions of favorable selectivity for government representatives and unfavorable selectivity for their political competitors were verified during monitoring:

Manifestations of favorable selectivity – reduced public resonance	Manifestations of unfavorable selectivity – increased public resonance
<ul style="list-style-type: none"> - The investigated subject, who is under arrest, offers comments to journalists when brought to hearings/other public venues; - The accused subject is not prevented by his/her escort from communicating with journalists. 	<ul style="list-style-type: none"> - The investigated subject, who is under arrest, does not communicate with the press, either because journalists are not informed when the subject is brought to hearings, or because the journalists do not have authorized access to the building/near the office where the procedural actions take place; - The accused subject is prevented by his/her escort from communicating with journalists (he/she is taken very quickly, the guards get between the defendant and the journalists, the guards dismiss the journalists, so they cannot reach the defendant).

³³ <https://agora.md/stiri/31566/video-cna-ofera-imaginii-in-dosarul-chirinciuc-ministrul-ar-fi-primit-otkat-de-la-%20agenti-econom>

³⁴ <http://protv.md/actualitate/ministrul-transporturilor-liberalul-iurie-chirinciuc-a-fost-retinut--1860741.html>

III. Selectivity of justice in public communication

In 13 of the 14 cases monitored, the subject of the criminal prosecution had the opportunity to communicate with the press, either in the context of the court hearings, by telephone or by other means. Some of the subjects benefited from massive publicity during the parliamentary elections this year by registering as candidates: Dorin Chirtoaca, Gheorghe Raileanu, Ilan Sor, Constantin Tutu, Domnica Manole, Iurie Chirinciuc.

During the monitoring, the only subject to whom the right to communicate with the press was restricted is former Prime Minister Vlad Filat. At the same time, the only subject who had the opportunity to communicate with the press regarding his case, but who refused to do so, was Ilan Sor. They later communicated with the public via video recordings on social networks and at press conferences, but not to journalists in the courtroom.

CASE STUDY 8.

Limitation of Vlad Filat's communication with the press via security escort

From his first court hearing, Vlad Filat asked the court to allow him to engage in discussion with the press after the court session. The court noted that Vlad Filat had permission to talk to the press, but that he also must follow the direction of his escort. At each court hearing, the defendant managed to answer only one or two questions briefly. Each time, the escort took him out of the courtroom immediately after the court session ended and led him into the courtroom only upon the arrival of the judges, thus creating obstacles for Vlad Filat's communication with the press.

Although the former Prime Minister's case is, according to prosecutors, related to the billion dollar bank fraud, Ilan Sor - another individual accused in relation to the same fraud - received different treatment. Ilan Sor³⁵ was able to communicate with the press whenever he wanted via detailed statements, conferences, shows, and Facebook posts.³⁶ Unlike the Filat 2 case, the Sor file was examined behind closed doors.

III.6 The court's attitude towards journalists

According to this criterion, the following assumptions of favorable selectivity for government representatives and unfavorable selectivity for their political competitors were verified during monitoring:

Manifestations of favorable selectivity – reduced public resonance

- Depending on the interest of the defendant, he/she adopts an attitude of openness towards journalists or, conversely, is reluctant to engage.

Manifestations of unfavorable selectivity – increased public resonance

- Depending on the interest of the government in the case of the defendant, he/she adopts an attitude of openness towards journalists or, conversely, is reluctant to engage.

The monitoring records of the court hearings indicate that the judges usually demonstrated a positive attitude towards journalists, allowing them access to court hearings, with the right to film the opening of court sessions and the pronouncement of sentences. However, in several cases, the judges demonstrated a hostile attitude towards journalists or restricted their right to access information on the trial.

35 <https://unimedia.info/ro/news/efe7717d420399a4/live-update-o-noua-sedinta-de-judecata-in-dosarul-filat-ii-dupa-doi-ani-vlad-filat-din-nou-in-fata-magistratilor.html>

36 <https://www.facebook.com/watch/?v=2073341766215349>
<https://agora.md/stiri/9931/video-live-ilan-shor-face-o-conferinta-de-presa>

III. Selectivity of justice in public communication

In the case of former Chisinau Mayor **Dorin Chirtoaca**, the judges allowed filming only at the preliminary hearing. During the remainder of the legal proceedings, journalists were only allowed to enter the courtroom.

At the trial of former MP **Chiril Lucinschi**, journalists demanding the right to record the entire court hearing were refused.

The most negative attitude of judges toward the press was demonstrated during the trial of former Prime Minister **Vlad Filat**.

CASE STUDY 9.

The attitude of judges and the security escort towards journalists in the Vlad Filat case

Although the trial is open to the public, the masked men who escort the politician to and from the courtroom have repeatedly forbidden journalists to attend the trial or communicate with the defendant. At the April 15, 2019 hearing, the masked men did not allow journalists to enter the courtroom until the full team of judges examining the case had entered. Subsequently, the escort prevented cameramen from accessing the courtroom, after which the judges also revoked permission to enter to other journalists who had already entered the courtroom with the purpose of filming or photographing the former Prime Minister. "If you take photos, we will declare the session closed," threatened judge Djeta Chistol.³⁷

At another court hearing, masked men from the "Pantera" Special Detachment forbade journalists from sitting on the chairs opposite the former PLDM leader. When the judges withdrew for deliberations, the masked men asked several journalists to leave the meeting room where Vlad Filat was located. Masked men also forbade journalists to film the conclusion of a court hearing, although the court had given permission for this.

At a hearing on April 18, 2018, the judges decided to remove a Jurnal TV journalist from the trial. One of the judges stated that this would have been incorrect behavior in the previous hearing. "While the judge read her final judgment, you interrupted her and made statements, replied, shouted. You are hereby removed from the court hearing. Have a nice day."³⁸

However, in most cases journalists demonstrated a very low level of interest to attend court hearings. In 80 percent of the monitored hearings, monitors reported they were the only journalists present at the trial. This loss of interest on the journalists' part was primarily due to the frequent delays associated with court hearings, as well as by the great distance needed to travel from Chisinau to attend to court hearings (the Sor file was judged at the Cahul Court of Appeals, located approximately 140 km from Chisinau).

³⁷ <https://www.privesc.eu/arhiva/66264>

<https://noi.md/md/politica/ilan-sor-ii-ameninta-pe-nastase-si-sandu-cu-curaua-video>

³⁸ <http://tv8.md/2019/06/26/video-update-sedinta-de-judecata-in-dosarul-filat-ii-ex-premierul-a-retras-recursul-inaintat-la-curtea-de-apel/>
<http://www.jurnaltv.md/news/717fd5c03aa638bf/dupa-doi-ani-filat-din-nou-in-instanta.html>

IV. SELECTIVITY OF JUSTICE IN THE CRIMINAL PROCESS: A GENTLE APPROACH TO THOSE IN POWER

In order to verify the hypothesis of the selectivity of justice from the procedural-criminal perspective in the selected cases, the behavior, actions and decisions of investigative bodies, the Prosecutor's Office and the courts were monitored. In this regard, the following elements were monitored: the existence of similar cases with different legal approaches (section IV.1), the existence of accomplices with different procedural statuses (section IV.2), the public's access to court hearings (section IV.3), recusals of judges and prosecutors (section IV.4), changes of the judge or prosecutor assigned to the case (section IV.5), delay of the trial (section IV.6), inequality of arms in the criminal proceedings (section IV.7), ethical issues relating to judges (section IV.8), and intimidation of the relevant parties (defender, prosecutor, judge) (section IV.9).

IV.1 Similar cases with differentiated legal approaches

According to this criterion, the following assumptions of favorable selectivity for the government representatives and unfavorable selectivity for their political competitors were verified during the monitoring:

Manifestations of favorable selectivity - mild approach	Manifestations of unfavorable selectivity - tough approach
<p>In a different but similar public case, the criminal prosecution body/judge adopts a milder position towards the subject, for example:</p> <ul style="list-style-type: none"> - Arrest is not requested/applied, arrest is requested/applied at home or through other mild preventive measures; - Placing the subject in the "more comfortable" NAC preventive detention confinement cells; - Delaying the transfer of the case to court (including intervention in the prosecutor's prescribed sentence to the court) and/or delaying the examination of the case in court; - Failure to suspend government officials from office during the case investigation and trial; - Request of the prosecutor to apply a milder punishment for the deed/damage caused, as opposed to similar/related cases, for which the requested penalty is harsher, although the facts are more serious and the damages are higher; - Termination of the trial (in criminal prosecution or in court), fines or convictions via suspended application of the sentence, application of insignificant fines, failure to deprive the right to hold office, deprivation of freedom for insignificant periods, etc. 	<p>In a different but similar public case, the criminal prosecution body/judge adopts a tougher position towards the subject, for example:</p> <ul style="list-style-type: none"> - Arrest is requested/applied, arrest is not requested/not applied at home or other non-preventive measures; - Placing the subject in a preventive confinement cell with poor conditions (Penitentiary No. 13); - Swift transfer of the case to court and/or rapid examination of the case in court; - Suspension from office during the investigation and trial of the case; - Request of the prosecutor to apply a harsher punishment for the act/damage caused, as opposed to similar/related cases, in which the requested sentence is milder, although facts are equally or less serious, and damages are lower; - Conviction with full application of the sentence, with the application of higher fines, with the deprivation of the right to hold office, with imprisonment for longer periods, etc.

IV. Selectivity of justice in the criminal process: a gentle approach to those in power

Experts found that different legal approaches were applied in four similar cases, relating to three of the monitored subjects - **Vlad Filat**, **Ilan Sor** and **Chiril Lucinschi**, as well as one subject outside the monitoring - **Veaceslav Platon**. All four cases allege connections to the so-called "billion dollar bank fraud." **Ilan Sor** is accused of large-scale fraud and money laundering during his tenure as Chairman of the BEM Board of Directors. Vlad Filat and Chiril Lucinschi are accused of large-scale money laundering. As the alleged organizer of the criminal scheme, Veaceslav Platon is accused of fraud committed by an organized criminal group, money laundering and highly active corruption.

Analysis of the behavior of prosecutors and judges in the four cases indicates preferential treatment was demonstrated **on the part of the investigative and court body towards Ilan Sor, considered an affiliate of the PDM government**. Legal procedural differences between the treatment of **Ilan Sor** as Orhei Mayor and **Dorin Chirtoaca** were also observed.

These varying procedural approaches may be summarized as follows:

- **Preventive arrest and provisional detention conditions.** **Ilan Sor** was held in a detention center for 42 days in the NAC isolation ward, where the conditions of provisional detention are very good. Sor was also under house arrest for 11 months and was prohibited from leaving the country for 25 months. Despite this, he was recorded taking several trips abroad, both on personal vacation and on a trip to Strasbourg in October 2017, where he met several European officials. **Vlad Filat** was criminally investigated while in detention in Penitentiary No. 13. The judges did not apply preventive detainment measures regarding the former Prime Minister in case No. 2, as Vlad Filat had already been in detention for 4 years. However, when he was initially detained in the first case, Vlad Filat was in custody for 13 months, from detention to sentencing. **Veaceslav Platon** has been in detention since July 25, 2016, from the moment he was detained by law enforcement in Kyiv and extradited to Chisinau. Like Vlad Filat, Veaceslav Platon was detained in Penitentiary No. 13 and remained after conviction to serve his sentence. **Chiril Lucinschi** was under house arrest for ten months, after which he was placed under judicial control.
- **Delayed examination of the case.** Three years after the submission of **Ilan Sor's** case file to court, there is no definitive court decision. The examination of the case file at the Chisinau Court took ten months. His prescribed sentence was drafted in July 2017, but for six months the file was blocked in the court of first instance due to the need to translate the sentence into Russian (the request came from the defendant, who claimed that he does not understand Romanian even though he previously filed two complaints against Vlad Filat and Veaceslav Platon in Romanian). For 22 months, the file was processing in the Court of Appeals in the judicial investigation phase. During the trial there were several delayed court hearings. **Vlad Filat's** first case was examined in the lower court, the Court of Appeals and the Supreme Court of Justice for 16 months. **Veaceslav Platon's** case was processing in the three national courts for 17 months. Platon's sentence was also translated into Russian, and the procedure took one-and-a-half months. The case of **Chiril Lucinschi** was examined in the lower court for eight months and has been held by the Court of Appeals for 16 months at the judicial investigation stage.
- **Fulfillment of defendants' requests in the electoral context.** The Court of Appeals accepted **Ilan Sor's** request to postpone court sessions during the winter 2019 election campaign on the grounds that the defendant was an electoral candidate. In the case of **Dorin Chirtoaca**, the court refused to postpone the trial because of the election campaign, despite a request to do so by the defendant.

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- **Administration of evidence.** In *Ilan Sor's* case, the Cahul Court of Appeals accepted the request for the defense to carry out an economic and financial expert analysis. In *Chiril Lucinschi's* case, the judges rejected a similar request.

Another exception made in favor of *Ilan Sor* was the transfer of his case file to the Cahul Court of Appeals, where the access of the press to the court hearings is more difficult due to their great distance from the capital city. This transfer benefited *Ilan Sor*.

- **Applying confiscation of assets.** The court hearing on the substance of the case did not result in a seizure of *Ilan Sor's* assets as an insurance measure, as it did in the case of the other three criminal cases in connection with the bank fraud: *Vlad Filat*, *Chiril Lucinschi*, and *Veaceslav Platon*.
- **Suspension from office.** At the request of the prosecutors, *Dorin Chirtoaca* was suspended from the position of Mayor of the Chisinau municipality. A similar request in the case of Orhei mayor *Ilan Sor* was rejected.
- **Punitive measures requested by the prosecution.** *Ilan Sor* and *Veaceslav Platon* were accused by prosecutors of committing identical acts – large-scale fraud and money laundering. For *Sor*, who allegedly laundered five billion lei from Banca de Economii, the prosecution requested a prison term of 19 years, depriving him of the right to hold certain positions in the banking system for a term of five years. In *Platon's* case, although the alleged amount is approximately six times lower (800 million lei), the punishment demanded by prosecutors was slightly higher - 23 years in prison, including the deprivation of the right to hold certain positions in the banking system for a term of five years.
- **Penalty imposed by the court.** *Veaceslav Platon* was finally sentenced to 18 years in a closed prison. The prescribed sentence of the Mayor of Orhei, on the other hand, underwent changes during the course of the proceedings. The court re-classified the accusation of “large-scale fraud” (punishable by 8-15 years in prison according to the Criminal Code) to “large-scale damages by deception or abuse of confidence, if the act does not constitute misappropriation” (punishable by up to three years in prison by the penal code) and large-scale money laundering. Finally, *Ilan Sor* was sentenced to seven-and-a-half years of deprivation of liberty in a semi-closed prison.

IV.2 Accomplices with different procedural status

According to this criterion, the following assumptions of favorable selectivity for government representatives and unfavorable selectivity for their political competitors were verified during the monitoring:

Manifestations of favorable selectivity - mild approach	Manifestations of unfavorable selectivity - tough approach
<ul style="list-style-type: none"> - Within the same case of the subject investigated/prosecuted, his accomplice who is affiliated with the ruling party is not recognized as a suspect, accused, or indicted party, but as a witness, a victim, an injured party or one of no status. 	<ul style="list-style-type: none"> - In the same criminal case, the accomplice affiliated with opposition parties is recognized in the same procedural capacity as the subject investigated/judged, or as a suspect, accused, or indicted party.

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These circumstances were found in two of the 14 cases monitored, the case of **Iurie Chirinciuc** and that of **Dorin Chirtoaca**. In the criminal case of Iurie Chirinciuc, the former head of the State Road Administration **Veaceslav Teleman** was also initially detained. Veaceslav Teleman was placed in a confinement cell together with Iurie Chirinciuc and the other businessmen. Subsequently, his case file was disassociated from the base file and thereafter has remained in the criminal prosecution phase. Moreover, in the sentencing statement issued on behalf of Iurie Chirinciuc in the court of first instance, his links with Veaceslav Teleman were mentioned. However, at the Chisinau Court of Appeals, Teleman's lawyer asked that all the accusatory references to Veaceslav Teleman be struck from the sentence of the first court, as they were not proven in the court hearing. The Chisinau Court of Appeals accepted the request of Teleman's lawyer.

In the criminal case of Dorin Chirtoaca, Deputy Mayor of Chisinau **Nistor Grozavu** and the Head of the Department of Transport and Communications, **Igor Gamretchi** were also targeted. Both were accused in association with the "parking file," but they hold the status of witness in Dorin Chirtoaca's case file. Igor Gamretchi was sentenced to three years with suspension, and nothing is known about Nistor Grozavu's file. Grozavu continued to serve as Deputy Mayor of the capital, and proposed Silvia Radu, who is close to PDM, for the position of Chisinau Interim Mayor.

IV.3 Public access to court hearings

The following assumptions of favorable selectivity for government representatives and unfavorable selectivity for their political competitors were verified during court hearings:

Manifestations of favorable selectivity - mild approach	Manifestations of unfavorable selectivity - tough approach
<ul style="list-style-type: none"> - Court hearings take place in the courtroom; - Trial is open to the public; - Information about court hearings was published correctly on the court portal; <p>Note: depending on defendant's interest, these elements may be reversed.</p>	<ul style="list-style-type: none"> - Court hearings take place in a judge's office; - Trial is closed to the public; - Information about the court hearings was published incorrectly on the online court portal; <p>Note: depending on the government's interest, these elements may be reversed.</p>

IV.3.1 Insufficient space for the public to attend the court hearing

Regarding the location of court hearings, 50 out of the 98 monitored hearings took place in a judge's office, and 48 in the courtroom. Thus, just over half of the monitored hearings took place in spaces inhospitable for public participation. However, all the court hearings were recorded without interruption, in accordance with the law. To some extent, this is a guarantee of the procedural legality of the hearings, as it allows court records to be verified. However, this guarantee is not absolute, as it is unlikely that the records of all hearings held in judges' offices will be externally verified.

CASE STUDY 10.

Monitored cases examined in judges' offices:

- The case of **Ilan Sor**. Cahul Court of Appeals, three out of five monitored hearings were held in the judges' offices;

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- The case of **Dorin Chirtoaca**. Chisinau court, Buiucani headquarters, 21 out of 25 monitored hearings took place in the judges' offices, and the final 4 sessions in a courtroom;
- The case of **Serghei Pcela**, a representative of the PN who subsequently joined PDM. Balti court, seven monitored hearings were held in the judges' offices;
- The case of **Domnica Manole**, who became a PPDA supporter. Chisinau court, Buiucani headquarters, two monitored hearings were held in the judges' offices;
- The case of **Gheorghe** and **Maria Duca**. Chisinau court, Buiucani headquarters - all 17 monitored hearings were held in the judges' offices.

(Source: monitoring sheets, 1 February 2019 – 31 July 2019)

IV.3.2 Misinformation of the public wishing to attend the court hearing

In 92 percent of the cases, information about the court hearings was published correctly on the court website.

In four percent of the hearings, monitors pointed out the existence of errors in court announcements website (Tutu case and Manole case).

In another four percent of the hearings regarding three criminal cases, the court hearings was not published at all on the website in several instances (Pcela case, Raileanu case, Sor case).

CASE STUDY 11.

Failure to publish information about trial sessions in the Ilan Sor case

At the beginning of 2019, the TV8 channel reported that the agenda of scheduled hearings for the Sor case disappeared from the website of the Cahul Court of Appeals, with the exception of two sessions that took place in April and May 2018.

Representatives of the Cahul Court of Appeals explained that, at the request of the Court Administration Agency, the court made classified the hearings in Ilan Sor's case file as "closed sessions." At the same time, the Agency announced that it requested the Court of Appeals to take measures necessary to ensure the correct documentation of the electronic file. The SCM refused to intervene to analyze the situation. A few days after the "secrecy" of the court announcements was harshly criticized by the press, the public publication of all court documents in Ilan Sor's case was resumed.

(Source: TV8, 21 January 2019, *Agenda sedintelor de judecata in dosarul lui Ilan Sor de la Curtea de Apel Cahul a disparut de pe site-ul instantei*³⁹)

39 <http://tv8.md/2019/01/22/agenda-sedintelor-de-judecata-in-dosarul-lui-ilan-sor-de-la-curtea-de-apel-cahul-a-disparut-de-pe-site-ul-instantei/>

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IV.3.3 Closing the trial/hearing to the public

Of the 12 cases monitored at the trial stage, the trial was declared closed to the public in only in one case (Sor case). In this case, five trial sessions were held during the monitoring period, which constitutes five percent of all sessions.

As the monitoring process began when the case was already in the process of examination in the Cahul Court of Appeals for an extended time period, the monitors could not capture the reasons for closing the trial to the public. In these cases, monitors were limited to verifying whether court hearings were announced correctly, if they took place according to the court notice, and if the defendant (Ilan Sor), his defenders and prosecutors appeared at court hearings and made press statements outside the courtroom.

CASE STUDY 12.

Grounds for closing the trial to the public in the Ilan Sor case and related cases

The Ilan Sor case is part of a larger series of criminal files investigated in connection with the so-called “billion dollar” fraud case in the banking system of the Republic of Moldova. The cases of ex-Prime Minister Vlad Filat (PLDM), businessman Veaceslav Platon and former PLDM MP Chiril Lucinschi have been or still are part of the same series of files related to the bank fraud.

In the cases of Vlad Filat and Veaceslav Platon, court proceedings were also held behind closed doors, the argument being that public access would allow accomplices of the accused to find sensitive information that would jeopardize the recovery of the fraudulent funds by the criminal prosecution body; they could transfer the money from the accounts that the prosecutors identified to other accounts or jurisdictions. The defendants were tried in custody, and were unable to communicate with possible accomplices.

In the case of Ilan Sor, the defendant was tried while at liberty, and enjoyed unlimited communication with possible accomplices who could further disguise the stolen funds. Moreover, he had the opportunity to travel abroad, where he facilitate such transactions directly, even during the trial of his case. Ilan Sor’s liberty was brought to an end after the change in government.

The Ilan Sor case has interesting differences in comparison with the case of Chiril Lucinschi, who was also at liberty for a period during the course of his court proceedings. While at liberty, Chiril Lucinschi could communicate freely with any possible accomplices, as did Ilan Sor, but Chiril Lucinschi’s file was open to the public.

Thus, in comparison with Vlad Filat and Veaceslav Platon and with Chiril Lucinschi, it is unclear why the former BEM administrator, who was at the epicenter of the bank fraud, was judged in a closed trial while in a state of liberty.

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IV.4 Recusal of the judge/prosecutor

According to this criterion, the following assumptions of favorable selectivity for government representatives and unfavorable selectivity for their political competitors were verified during monitoring:

Manifestations of favorable selectivity - mild approach	Manifestations of unfavorable selectivity - tough approach
<ul style="list-style-type: none"> - The defense submits unfounded Appeals to the judge/prosecutor, which are accepted. 	<ul style="list-style-type: none"> - The defense submits well-founded accusations (an obviously hostile attitude, existence of political connections with government, etc.) to the judge/prosecutor, which are rejected.

A judge may not participate in a case trial will abstain or be dismissed if there are circumstances that bring his impartiality into question (e.g., a judge's kinship, previous participation in the examination of the case in certain procedural stages, exposure prior to a defendant's guilt or innocence, etc.). Requests for recusal are prepared in the preparatory stage of trial, but also during examination of the case – usually before beginning the investigation of the evidence. Parties are not limited in opportunities to repeatedly submit claims. However, if this is done for the purpose of delaying a case's examination, if it is associated with judicial misconduct or malicious intent, or if the request for recusal is repeatedly submitted in bad faith and/or abusively, a court may apply a judicial fine to the requester.⁴⁰

The examination of accusations made in criminal cases of high public interest implicating politically affiliated persons are of particular interest for understanding the existence and manifestations of the phenomenon of the selectivity of justice, as it allows us to see if the defense invokes political justifications and/or differences of treatment toward judges.

Out of the 12 monitored cases examined in court, the defense filed charges only in three cases (25 percent): the cases of Dorin Chirtoaca, Chiril Lucinschi and Ilan Sor.

The Dorin Chirtoaca case involves persons implicated in the given criminal offenses, but who enjoy witness status (Deputy Mayor Nistor Grozavu). In these circumstances, the judge's recusal by the defendant and his defenders in this case is not surprising.

CASE STUDY 13.

Recusal of judge in the case of Dorin Chirtoaca at the April 2, 2019 hearing

Dorin Chirtoaca's lawyers Gheorghe Malic and Tatiana Iovu filed an additional request for the recusal of Judge Alexandru Negru, who is examining the criminal case against the former Chisinau Mayor. Defenders accuse Alexandru Negru of exceeding his duties and not ensuring a fair trial. The defenders also claim that the judge schedules court sessions without consulting them.

"During the April 2, 2018 court hearing, Alexandru Negru, in an unjustified decision, decided to finalize the hearing of witness Nistor Grozavu, while the defense still had a number of questions to ask him. But Negru, without hearing any of the parties including the prosecutor, violated Dorin Chirtoaca's right to free expression. He has never provided a justification for this decision, causing a lack of clarity on his reasoning for the decision. At the conclusion of the hearing on April 2, Negru set the date for court hearings contrary to the established provisions, authoritatively, and without consulting the relevant parties or taking issues relating

40 Art.33 si 34 CPP.

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to the court schedule and availability into account. Although I informed him on April 2 that on that day I would be engaged with other court sessions, he refused to change the date of the hearing, and I was unable to present myself on that day for fully justifiable reasons,” lawyer Gheorghe Malic stated.

Similar arguments were invoked by lawyer Tatiana Iovu, who claimed that judge Alexandru Negru was externally influenced.

“Mr. Negru’s behavior as judge shows a lack of impartiality. He is either motivated by his own interest or by external influence. We want to have a fair judicial process in this case,” stated Tatiana Iovu.

Arguments were also brought by Dorin Chirtoaca, who demanded the recusal of Judge Negru.

“I support the request of the lawyers. I strongly urge that the Appeals should be a serious one. We can no longer review this case file with Judge Negru. He is a judge who insults lawyers, that is all. Even today during the trial he told them, in passing: ‘You talk too much, sit down.’ The trial judge admitted witnesses who are not actually witnesses. We do not have a legally constituted court. Infractions during the hearing were committed. It was demonstrated by lawyers that Grozavu hid the fact that he had signed certain documents; when asked about this deception, Grozavu said that he did not see it necessary to admit the signing of those documents. And Negru accepted this answer. The court ignored it. I submitted a request for recusal on the grounds of distrust, and on the basis that he did not allow me to question Nistor Grozavu. If he continues as a judge on this case, we will witness the discretization of the judicial institution and will demonstrate to the public the complicity between the Prosecutor’s Office, Plahotniuc and Dodon,” Chirtoaca said at the hearing.

In reply, the case prosecutor, Dumitru Robu, rejected the accusations brought by the lawyers and Dorin Chirtoaca and asked the judge Andrei Niculcea to reject this request as unfounded. “I request that this request be rejected, as it is unfounded. The request is of a repeated, abusive nature, submitted with ill-will and aiming to delay the criminal trial. The prosecution calls for the rejection of Malic’s request and the imposition of a fine in respect of Gheorghe Malic on the repeated request for a recusal,” Robu stated.

(Source: Unimedia, 11 April 2019, “Cererea de recuzare a judecatorului Alexandru Negru, inaintata de avocatii lui Dorin Chirtoaca, a fost respinsa. „O sa se faca dreptate doar la CEDO sau cind va cadea regimul Plahotniuc”⁴¹)

At the same time, only in the case of Chirtoaca was the **prosecution’s recusal** present, both separately from that of the judge (for example, at the May 29, 2019 hearing), as well as the **prosecution’s recusal together with that of the judge** (for example, at the February 14, 2019 hearing).

41 <https://unimedia.info/ro/news/87e8d48df428d8ef/cererea-de-recuzare-a-judecatorului-alexandru-negru-inaintata-de-avocatii-lui-dorin-chirtoaca-a-fost-respinsa-o-sa-se-faca-dreptate-doar-la-cedo-sau-cand-va-cadea-regimul-plahotniuc.html>

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CASE STUDY 14.

Recusal of prosecutor in the Dorin Chirtoaca case at the May 29, 2019 court session

At the hearing on May 29, 2019, Dorin Chirtoaca's lawyers decided to recuse the case prosecutor. The former Mayor stated that the accusation was related to the fact that the prosecutor had offended his defender, whom he called "dumb headed." Also, according to Dorin Chirtoaca, the prosecutor allegedly mocked international trial courts using profane expressions such as "CEDO - #uedo".⁴²

The judges rejected Dorin Chirtoaca's request regarding the recusal of prosecutor Dumitru Robu. Only Deschide.MD reporters managed to get a statement from the state prosecutor who manages the case of the former Mayor. "I mentioned that the prosecution aims to delay the lawful examination of the criminal case. Following the Appeals, the court rejected the claim as unfounded," Dumitru Robu said. The prosecutor also stated that it is not necessary for Dorin Chirtoaca's defenders to accuse him. "It is already the fourth or fifth time the recusal is requested. There is only one purpose - to denigrate me, to delay. Even the judge was recused several times" Dumitru Robu stated.

(Source: Deschide.md, 29 May 2019, Astazi are loc o noua sedinta de judecata in dosarul fostului primar Dorin Chirtoaca⁴³, Dosarul Chirtoaca // Fostul primar a cerut recuzarea procurorului⁴⁴)

CASE STUDY 15.

Judge and prosecutor recusal in the Dorin Chirtoaca case at a February 14, 2019 court session

At the hearing on February 14, 2019, Dorin Chirtoaca's lawyers called for the dismissal of judge Alexandru Negru and prosecutor Dumitru Robu.

Dorin Chirtoaca told journalists that the prosecutor again selectively presented several pieces of evidence, accumulated in 2015, although the court asked the prosecutor, on February 9, to submit all the materials. Dorin Chirtoaca claims that since an accused person cannot see all the materials of the case file, he is not guaranteed the right to defense and the trial cannot be continued.

The suspended Mayor also said the prosecutor claims the Mayor is not targeted in the case file regarding the falsification of the auction. "The criminal prosecution will finalize the case file regarding the falsification of the auction, to see who and what role we had there and then we all can defend on the prosecution bench. But it is not the accused in that file that are brought to me here as witnesses. No accomplice-witnesses may be identified, especially since the prosecutor says that I was not implicated in that matter," Dorin Chirtoaca said.

42 Translator's note: "CEDO-#uedo" is an untranslatable wordplay obtained by rhyming the Romanian version of ECHR (CEDO) with an *argot* profanity derivative.

43 <https://deschide.md/ro/stiri/social/31667/Dosarul-Chirtoac%C4%83--Fostul-primar-a-cerut-recuzarea-procurorului.htm>

44 <https://deschide.md/ro/stiri/social/31702/Procurorul-Robu-despre-recuzarea-cerut%C4%83-de-Chirtoac%C4%83-Sunt-ac%C8%9Biuni-provocatoare.htm>

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On the other hand, prosecutor Dumitru Robu said that claims by the prosecutor and judge have an abusive intent towards the defense and the defendant to not examine the substance of the criminal case. "Today we were going to examine the substance of the criminal case and hear Gamretchi (the former head of the Transport Directorate, editor's note), but the defense filed a claim recusing both the prosecutor and the judge, abusively and in bad faith, without formulating on the bases provided by the criminal procedure," said Dumitru Robu.

(Source: NTV.md, 14 February 2019, Avocatii lui Dorin Chirtoaca au cerut recuzarea judecatorului si procurorului⁴⁵)

Another case relevant for the analysis is that of **Chiril Lucinschi**. During the monitoring, in two out of seven court hearings held in this case during the reference period (April 5, 2019 and May 17, 2019), the defense submitted Appeals to recuse the judges of the Chisinau Court of Appeals, Alexandru Spoiala and Silvia Vrabie. The reason given for the recusal request regarding two of three judges from the trial court was their refusal to approve financial expert analysis on the case, even on behalf of the defendant, under the circumstances where, in the case of Ilan Sor, the court made a similar request. The claim was rejected.

At the same time, during the monitoring of the hearing of May 20, 2019 on Ilan Sor, the court session was postponed because the financial expert analysis had not yet been completed. Therefore, the acceptance of the financial expert analysis in one case and the rejection of the same request in a related case took place practically simultaneously (April-May 2019).

CASE STUDY 16.

Recusal of two judges in the Chiril Lucinschi case at the April 5, 2019 court session

In the hearing on the Chiril Lucinschi case on Friday, April 5, the Chisinau Court of Appeals rejected the lawyers' request for financial-accounting expert analysis, and the defendants requested the recusal of two judges.

A judge had a separate opinion.

Prosecutors classify lawyers' accusations as schemes meant to delay the trial. "We believe that the submitted requests are only intended to delay the process. The defense knows very well how long the commissions take," argued prosecutor Eugen Rurac.

A similar request for expert analysis was submitted by Ilan Sor's lawyers in September 2018, and was accepted by the Cahul Court of Appeals. Since then, several court hearings have been postponed due to the fact that the expert analysis has not been finalized.

(Source: anticoruptie.md, 6 April 2019, O noua sedinta cu scintei in dosarul lui Chiril Lucinschi. Magistratii au respins demersul avocatilor, iar acestia au solicitat recuzarea completului⁴⁶)

45 <http://ntv.md/index.php?newsid=16304>

46 <https://anticoruptie.md/ro/dosare-de-coruptie/o-noua-sedinta-cu-scintei-in-dosarul-lui-chiril-lucinschi-magistratii-au-respins-demersul-avocatilor-iar-acestia-au-solicitat-recuzarea-completului>

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As the examination of the **Sor file** was done behind closed doors, the reasons for the accusation were not immediately identified by the monitors during the hearing. The reasons were instead presented by Ilan Sor in a video post on social media,⁴⁷ in which he mentioned that he is aware that the judges are under pressure from the new government. On July 25, 2019, prosecutors called for the issuance of an arrest warrant for Ilan Sor, since he violated the preventive measure of judicial control.

CASE STUDY 17.

Recusal of Cahul Court of Appeals judges in the Ilan Sor case at the July 25, 2019 court session

On July 17, prosecutors announced that they are carrying out a series of criminal prosecution actions in the case based on Ilan Sor illegal crossing of the State Border on June 14-17. On July 25, the Cahul Court of Appeals heard the Sor case. The MP did not attend the meeting. Vadim Banaru, the MP's new lawyer, initially submitted a request to reject the team of judges examining the case file. After this request was rejected, the lawyer filed a new application regarding the rejection of the full panel of judges examining the Appeals.

(Source: Moldova.org, 25 July 2019, Ilan Sor, anuntat in cautare. Curtea de Apel Cahul a emis un mandat de arestare pe numele deputatului⁴⁸)

IV.5 Changing or replacing judges during trial

According to this criterion, the following assumptions of favorable selectivity for the government representatives and unfavorable selectivity for their political competitors were verified during the monitoring:

Manifestations of favorable selectivity - mild approach	Manifestations of unfavorable selectivity - tough approach
<ul style="list-style-type: none"> - In case of a possible conviction, the judge/prosecutor with an objective attitude is transferred, promoted or otherwise removed from case examination, and is replaced by a loyal judge/prosecutor. 	<ul style="list-style-type: none"> - In case of a possible acquittal, the judge/prosecutor with an objective attitude is transferred, promoted or otherwise removed from the examination of the case, and is replaced by a loyal judge/prosecutor.

The judge or court that examines the case must remain the same throughout the case trial. If this is not possible, the team of judges is subject to change only until the stage of judicial inquiry begins. After the initiation of the judicial inquiry, any change in the judicial process requires the case to revert back to the beginning stage of the judicial inquiry.⁴⁹ The judge can be changed in cases of abstention and recusal (examined in the previous section, IV.4), as well as in cases of transfer to another court, suspension from office for a long period of leave, resignation, dismissal, discharge, reassignment from office, etc.

From the perspective of studying the phenomenon of selective justice, the change of judge/prosecutors is interesting insofar as certain solutions that can lead to a change of judge/prosecutor depend on

47 <https://www.facebook.com/watch/?v=710006619442220>

48 <https://www.moldova.org/ilan-sor-anuntat-cautare-curtea-de-apel-cahul-emis-un-mandat-de-arestare-pe-numele-deputatului/>

49 Art.31 CPP.

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administrative decisions, where the political decision makers affiliated with the government can participate directly or indirectly. Thus, removing of a particular judge/prosecutor with an inconvenient political affiliation could be regarded as a form of involvement of by politicians in the execution of justice.

two cases of changing judges were identified during the monitoring: 1) in the case of Ilan Sor, when his case was relocated from the Chisinau Court of Appeals to the Cahul Court of Appeals, and 2) in the case of Constantin Tutu, when the judge-rapporteur on the panel of judges was removed.

CASE STUDY 18.

Changing judges in the Ilan Sor and Constantin Tutu cases

Former judges of the Chisinau Court of Appeals sent MP Sergiu Litvinenco materials which allege that judge Ion Plesca, President of the Chisinau Court of Appeals and Adriana Betisor, Deputy Head of the Anticorruption Prosecutor's Office, influenced the processing of some trials, such as that of former MP Constantin Tutu or that of current parliamentarian Ilan Sor.

"We recently received material from former judges of the Chisinau Court of Appeals. It is incredible what Adriana Betisor and Ion Plesca did for all the judicial decisions in various cases files that were "taken under control" to receive predetermined judgements... For example, the Sor file was moved to Cahul only because it was examined by a judge about whom Plesca was not certain if he would follow directions; and now it is clear why - the file had to be "pushed around" and delayed so that Sor could become a MP who would support Plahotniuc.

In the Tutu file, however, a judge from the team had to be removed, and the defendant was acquitted directly after the judge's departure," Litvinenco commented.

(Source: TV8, 11 July 2019, Dezvaluirile unor ex-judecatoare, despre cum magistratul Plesca si procurora Betisor ar fi fost implicati in dosarul lui Tutu si Sor⁵⁰)

During monitoring, no cases were identified that involved changing the prosecutor supporting the accusation. At the same time, there were several cases (the cases of Bogatico, Lucinschi and Filat) that included participation of two or even three prosecutors, which ensured the state position would be supported.

During the period of monitoring, incidents of substituting the prosecutor in order to change the course of a case's examination were reported in the media, although this did not occur in relation to monitored cases.

CASE STUDY 19.

Changing prosecutors during trial

Former judges from the Chisinau Court of Appeals sent MP Sergiu Litvinenco materials stating, "A person accused of money laundering was acquitted following a request received from as high a level as prosecutor Betisor (who was introduced to this case file by Deputy Prosecutor

⁵⁰ <http://tv8.md/2019/07/11/dezvaluirile-unor-ex-judecatoare-despre-cum-magistratul-plesca-si-procurora-betisor-ar-fi-fost-implicati-in-dosarul-lui-tutu-si-sor/>

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General Rosioru under suspicious circumstances, despite the fact that the case prosecutor did not want to request the acquittal),” Litvinenco commented.

(Source: TV8, 11 July 2019, *Dezvaluirile unor ex-judecatoare despre cum magistratul Plesca si procurora Betisor ar fi fost implicati in dosarul lui Tutu si Sor*⁵¹)

IV.6 Delaying the trial

According to this criterion, the following assumptions of favorable selectivity for government representatives and unfavorable selectivity for their political competitors were verified during monitoring:

Manifestations of favorable selectivity - mild approach	Manifestations of unfavorable selectivity - tough approach
<ul style="list-style-type: none"> - The trial is delayed due to participants in the trial, in the interest of the defendant; - The judge appoints court hearings over very large intervals of time. 	<ul style="list-style-type: none"> - The trial is delayed due to the defense, but admonished by judge; the prosecutor who cannot be present at a hearing is replaced by another prosecutor; - Court hearings are scheduled over sort time intervals.

In the event that a case cannot be judged due to the failure of one of the parties or the witnesses to attend, or for other justified reasons, the court, after consulting with the parties, may decide to postpone the hearing. Delaying the examination of the case due to the failure to present certain categories of trial participants (e.g., the defender, the witness, the expert, the translator, etc.) legally cited by the court or delay in carrying out certain procedural documents ordered by the court (e.g., conducting an expert appraisal) may entail the imposition of a fine. The decision of the court regarding the postponement of the hearing is adopted by means of a reasoned conclusion, which is recorded in the minutes of the hearing.⁵²

The monitoring period covered 98 court hearings on the selected cases. Sixty-eight meetings (69 percent) were postponed, of which 20 sessions (21 percent) were postponed at the judge’s request, 12 sessions (12 percent) at the prosecutor’s request, 41 sessions (42 percent) at defense’s request and only one session (one percent) at the request of the injured party.

The importance of examining delays in criminal proceedings regarding persons with political affiliations lies in the fact that speeding up a trial may produce political advantages for those in government; for example, to obtain the resolution of a case before an important political event, such as the local elections. Thus, depending on the anticipated judicial judgement on the case, the government could have an interest in a quick examination or a delay.

In anticipation of a conviction, the following conditions may be beneficial for the government:

- *The swift conduct of a trial against a political competitor*, so that a possible conviction disqualifies him/her in the electoral race. In this case, the defense may be interested in

51 <http://tv8.md/2019/07/11/dezvaluirile-unor-ex-judecatoare-despre-cum-magistratul-plexca-si-procurora-betisor-ar-fi-fost-implicati-in-dosarul-lui-tutu-si-sor/>

52 Art.331 CPP and art.201 CPP

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delaying the case examination so the defendant and his lawyers may be absent for various reasons (illness, travel, leave, participation in other court sessions) or delay the process by filing multiple applications to recuse the judge, prosecutor or both;

- *The slow progress of a court case regarding a person affiliated with the government*, so that his/her name is not brought up in the election campaign, or to allow him/her access to elective offices that carry immunities. Under conditions of political influence, delays could be caused either by the court or by the state accuser, who could invoke, for example, illness, the need to further study the case materials, personal leave, travel, participation in trainings, etc.

In anticipation of an acquittal, the following conditions may be beneficial to government:

- *The swift conduct of a court case regarding a person affiliated with the government*, so that a possible acquittal would “clear his/her name” before the electoral race. Under conditions of political influence, delays in the trial for reasons attributable to judges, prosecutors or defense are unlikely;
- *The slow progress of a lawsuit against a political competitor*, so that doubt about his reputation persists in the election campaign. Under conditions of political influence, delays could be caused either by the court or by the state prosecutor, who could invoke, for example, illness, the need to further study the case materials, personal leave, travel, participation in trainings, etc.

The monitoring carried out between February 1, 2019 and July 31, 2019 included the election campaign period for the February 24, 2019 parliamentary elections and the post-election period of political negotiations to form the parliamentary majority, which lasted until June 12, 2019. During this time the distribution of portfolios among the parliamentary majority was negotiated.

Thus, during the politically sensitive election period, it is particularly relevant to examine the speed with which the cases of politically affiliated subjects and their electoral competitors were examined, as well as the reasons for delays in these trials.

Of the 12 monitored cases, five defendants were involved in the February 2019 election campaign:

- Domnica Manole, ACUM Block
- Constantin Tutu, PD
- Ilan Sor, Sor Party
- Dorin Chirtoaca, PL
- Gheorghe Raileanu, independent (previously PLDM)

During the monitoring period, in the **Domnica Manole case**, only two court hearings were set, but were postponed due to judges' illness. Subsequently, on July 8, 2019, Domnica Manole was acquitted. Therefore, *the hypothesis to delay the trial of a political competitor with the possibility of a financial settlement is confirmed, as the reasons for the delay are attributable to state representatives.*

In the **Constantin Tutu case** that included the involvement of many parties (five defendants, their lawyers, two injured parties, three judges and a prosecutor),⁵³ six court hearings were scheduled during monitoring, of which only two were postponed due to a lack of defendants besides Tutu. Subsequently, on April 17, 2019, Constantin Tutu was acquitted. In this case, *the hypothesis of a swift trial of a subject affiliated with government in anticipation of an acquittal is confirmed, and the judges, the prosecutor, the defendant Tutu and his lawyers offered no opportunity to delay the examination of the case.*

⁵³ The most frequent delays usually occur in cases involving many participants, making it difficult to synchronize the presence of all parties.

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In the *Ilan Sor* case, five monitored court hearings were monitored, of which four were postponed due to the failure of the defendant, who was involved in the election campaign, to appear at court. This reason for absence was accepted by the court. Sor's lawyers also did not present themselves at court at the judge's request because the financial expert analysis requested by the defendant was not completed. In this case the *hypothesis of delaying the examination of a case regarding a government-affiliated person in the anticipation of a conviction is confirmed, with state representatives (judges) and defense lawyers both contributing to the defense.*⁵⁴

In the case of **Dorin Chirtoaca**, 25 sessions were initially scheduled during the monitoring period, of which the vast majority (19) were postponed for reasons including non-presentation of parties, personal leave, and illness of the defendant and one or both of his lawyers. There were also deferred hearings at the request of the prosecutor and judge. This also *partially confirms the hypothesis that, regarding political competitors, the court hearings are scheduled at short time intervals, and state representatives (judge and prosecutor) have much more availability than the defense to examine the case quickly. Due to the judge's visibly hostile attitude towards the defendant and his lawyers and the haste to examine the file during the election campaign, an unfavorable court judgment can be assumed.*

CASE STUDY 20.

Defense lawyer fined by judge to delay trial, prosecutor hostile to defender

Lawyer Gheorghe Malic, defender of Dorin Chirtoaca, former Chisinau Mayor, was fined by judge Alexandru Negru on several occasions because he did not show up for trial and for his conduct during the trial (alleged offenses brought to the state accuser). These fines were challenged. Similarly, lawyer Gheorghe Malic repeatedly mentioned that the prosecutor threatened him with both physical injury and with promises to initiate a criminal case against him.

For these reasons, the defense repeatedly demanded the judge and prosecutor's recusal, which were each rejected.

(Source: monitoring sheets, 1 February 2019 – 31 July 2019)

Three court sessions were scheduled in the case of **Gheorghe Raileanu** during the monitoring period, but all were postponed due to the lawyer's illness. Thus, the Raileanu case was not practically examined during the monitoring period, and the information accumulated by monitors is not sufficient to test a hypothesis. The case was delayed by the defense, but the state representative (the judge) also failed to schedule regular court hearings on the case. As Gheorghe Raileanu did not win the elections, we can assume political decision makers have a low level of interest toward his participation in elections.

IV.7 Inequality of arms in criminal proceedings

According to this criterion, the following assumptions of favorable selectivity for government representatives and unfavorable selectivity for their political competitors were verified during the monitoring:

⁵⁴ Although there is no court judgment on this case, the *Ilan Sor* case file is being examined in the Appeals Court, after Sor was sentenced to 7 years and 6 months of deprivation of liberty in a court of first instance.

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Manifestations of favorable selectivity - mild approach	Manifestations of unfavorable selectivity - tough approach
<ul style="list-style-type: none"> - The judge does not accept additional evidence requested by prosecution; - The judge rejects the prosecution witnesses; - The judge treats the witnesses of the defense more favorably (he does not interrupt them, he listens their statements in full, he gives concrete questions) than witnesses of the accused. 	<ul style="list-style-type: none"> - The judge does not accept additional evidence required by the defense; - The judge rejects defense witnesses; - The judge treats accusing party witnesses more benevolently (doesn't interrupt, listens to their statements in full, asks clarifying questions) than defense witnesses.

According to the fundamental principle of contradiction, defense and prosecution have equal rights and are provided with equal means and opportunity to support their positions. The court only admits evidence to which the parties had equal access at the time of the sentence. In turn, the court is not a criminal prosecution body, does not show preferential treatment in favor of the prosecution or defense, and does not express interests other than the interests of the law. The defense and the prosecution choose their position, mode and means of support as self-reliant parties. The court grants assistance to any party, at its request, for the administration of necessary evidence.⁵⁵ The court is obliged, during the trial of the case, to fully and directly investigate the evidence presented by the parties or administered at their request. The court creates the necessary conditions for the prosecution and the defense to conduct multilateral investigation to the full extent of the case's circumstances.⁵⁶

Equality in means among the defense and the prosecution is essential to ensure a fair trial. The prosecutor, the injured party, the civil party, the defender, the defendant, the liable party and their representatives all enjoy equal rights before the court regarding the administration of evidence, participation in their investigation and formulation of applications and requests.⁵⁷

The issue of equality of means in the trial is relevant in the context of studying the phenomenon of selective justice, because the court and the criminal prosecution body are representatives of the state. Despite laws guaranteeing the independence of the judiciary, when there are indications that the court allows an imbalance between the means available to the defense and prosecution and of accepting new evidence, doubts about the independence of judges and justice also arise. In particular, in politically sensitive cases when in the approaches of judges in the process of trial administration are different in similar or related causes, there may be grounds for suspecting presence of unlawful influence of political power in the justice process.

During the monitoring, no situations were identified in which prosecutors requested the provision of additional evidence. Defendants requested the introduction of new evidence for 2 of the 12 monitored cases at the judicial examination stage – the case of Dorin Chirtoaca and in the case of Chiril Lucinschi.

In the **case of Dorin Chirtoaca**, the defense asked for certain materials that would incriminate Deputy Mayor Nistor Grozavu, who also had the status of primary witness of the prosecutor in the case file to be submitted as evidence. This request was rejected. The court's refusal to accept such evidence served as the basis for several requests for the judge and prosecutor's recusal, which were also rejected. Also, during monitoring, it was also observed that the defense was limited in questioning the prosecution witnesses.

⁵⁵ Art.24 CPC

⁵⁶ Art.314 CPC

⁵⁷ Art.315 CPC

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CASE STUDY 21.

Preventing the defense from questioning defense witnesses in the Dorin Chirtoaca case

At the hearing on April 2, 2019, at which the primary witness of the prosecution Deputy Mayor Nistor Grozavu was heard, the court did not offer defense lawyers the opportunity to ask questions to this witness.

During the hearing, defendant Chirtoaca stated: "I submitted a request for recusal on grounds of distrust and that the judge did not allow me to ask questions to Nistor Grozavu. If he continues as to judge this case, we will witness the discreditation of the judicial institution..."

(Source: monitoring sheets, 1 February 2019 – 31 July 2019)

In the **Chiril Lucinschi case**, the defense has repeatedly requested a financial expert analysis (paid even from his own funds) to provide explanations required by the NBM and the Service to Prevent and Fight Money Laundering, for a commission to be summoned, for the hearing of a NAC criminal prosecution officer to offer testimony on the case, and to present the sentencing statement on the Ilan Sor case. These requests were rejected. As in the other case mentioned above, the refusal served as a basis for the defense to request recusal of two out of three judges from the team. One of the judges formulated a separate opinion in this regard.

CASE STUDY 22.

Rejecting defense requests to bring new evidence in the Chiril Lucinschi case

"Chiril Lucinschi is almost completely deprived of his right to defense. This is the opinion of his lawyers after the judges of the Court of Appeals rejected most of the nine applications they filed. Thus, the judges refused to name a financial expert, formulate a commission, or hear a key witness. However, the prosecutor believes that defense lawyers are doing everything to delay the trial.

"Applications regarding the introduction of audio recordings are rejected. The same goes for the request from the Cahul Court of Appeals to bring forward the copy of the sentence in the case regarding the accusation of Ilan Sor. The applications requesting financial and financial expert analysis are rejected. I think that the position of the Court of Appeals is obviously biased, on the prosecution's part," said lawyer Corina Stratan.

I thought that at the Court of Appeals a team of three judges, not one, would want to know the truth. Unfortunately, this desire does not exist," said former MP Chiril Lucinschi.

However, the prosecutor believes that by submitting the applications, the lawyers were seeking to delay the trial. He does not consider it necessary to carry out the financial and banking analysis nor form the commissions, via which he would have access to more international information.

"We consider that the requests given are only meant to delay the respective process. The defense knows very well how long the commissions last," said prosecutor Eugen Rurac.

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“The prosecutor is against all our requests because he does not want to establish the truth. We consider that by denying our requests aimed establishing the truth, the court ruled that Lucinschi is being denied justice in accordance with the law and constitution,” said lawyer Gheorghe Ulianovschi.

(Source: TV8, 15.03.2019, /VIDEO/ Lucinschi, fara dreptul la aparare? Curtea de Apel a respins majoritatea cererilor inaintate de avocatii fostului deputat, Chiril Lucinschi⁵⁸).

IV.8 Ethical issues relating to judges

According to this criterion, the following assumptions of favorable selectivity for government representatives and unfavorable selectivity for their political competitors were verified during the monitoring:

Manifestations of favorable selectivity - mild approach	Manifestations of unfavorable selectivity - tough approach
<ul style="list-style-type: none"> - The judge demonstrates ethical behavior; - The judge has behavior visibly loyal to the defense. 	<ul style="list-style-type: none"> - The judge does not demonstrate ethical behavior; - The judge has visibly hostile behavior towards the defense.

A judge’s conduct during court hearings must comply with the ethical standards established by the Code of Ethics and Professional Conduct of the Judge, adopted by the General Assembly of Judges in 2015. In particular, the ethical behavior of a judge determines impartiality, among other things.

Therefore, unethical behavior of a judge, demonstrating preferential treatment for one of the parties before giving the final judgement, can be an indicator of selective justice, especially if the defendant has political affiliation.

The monitors who attended the court sessions reported ethical issues relating to judges in 11 out of 98 sessions (11 percent).

Thus, in two monitored cases – that of Dorin Chirtoaca and Chiril Lucinschi – the monitors reported that the judges showed biased behavior in relation to the prosecution or that they did not behave ethically for other reasons.

In the **Chiril Lucinschi case**, monitors noticed a bias on the part of judge Silvia Vrabie, based on the fact that she frequently interrupted statements by the defense.

In the **Dorin Chirtoaca case**, the monitors reported several ethical violations, which resulted from a lack of impartiality and a hostile attitude towards the defense.

58 <http://tv8.md/2019/03/15/video-lucinschi-fara-dreptul-la-aparare-curtea-de-apel-a-respins-majoritatea-cererilor-inaintate-de-avocatii-fostului-deputat-chiril-lucinschi>

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CASE STUDY 23.

Indications of unethical behavior by the judge in the Dorin Chirtoaca case

“Even if the defendant participates in the election campaign and requests the postponement of court hearings for this reason, the judge schedules court sessions in a way that forces the defendant to appear in court, thus disrupting his electoral activities.” (For comparison, in the Ilan Sor case this reasons for postponing court sessions were admitted, resulting in a delay of 42 days.)

The judge put the defense lawyer in an unfavorable position when he was permitted to question the Grozavu witnesses.

The judge fined lawyer Gheorghe Malic and rejected his request to study case materials in order to reflect on the request for a judicial fine, which denotes a biased attitude towards the prosecution.

The judge removed the defendant from the court hearing without justification.

(Source: monitoring sheets, 1 February 2019 – 31 July 2019)

IV.9 Intimidation of parties to the trial (the defender, the prosecutor, the judge)

According to this criterion, the following assumptions of favorable selectivity for government representatives and unfavorable selectivity for their political competitors were verified during the monitoring:

Manifestations of favorable selectivity - mild approach	Manifestations of unfavorable selectivity - tough approach
<ul style="list-style-type: none"> - The prosecutor is intimidated (disciplinarily, criminally); - The judge willing to adopt a conviction against a defendant is intimidated (disciplinarily, criminally). 	<ul style="list-style-type: none"> - The defendant's lawyer is intimidated (disciplinarily, criminally); - The judge willing to acquit a defendant is intimidated (disciplinarily, criminally).

The independence of the defender, the prosecutor and the judge is essential in guaranteeing the fundamental rights enjoyed by the defendant, the injured party, and other participants in the trial.

Legislatively, all these categories of participants in the process enjoy the guarantees necessary for the independent exercise of their functions.

However, in the public area there have been several cases of intimidation of defenders. For example, in the case of businessman Veaceslav Platon, criminal records were initiated regarding several lawyers. No cases of intimidation of defenders were detected in the monitored cases. In two of the monitored cases (the Vlad Filat case and the Constantin Tutu case), a former judge who participated in their examination revealed the intimidations to which she was subject by the Chisinau Court of Appeals President, and subsequently by the Prosecutor's Office.

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CASE STUDY 24.

Disclosures regarding the intimidation of a judge examining the Vlad Filat case

Former judge of the Chisinau Court of Appeals, Ludmila Ous, argues that in the last three years she has been subjected to pressure from the President of the Chisinau Court of Appeals, Ion Plesca, to make certain decisions on several case files under his management.

“Most of the pressures and intimidations began to intensify when I was a member of the trial panel in Filat’s case. Initially, we were asked for a closed, urgent sitting, to be examined in time for the 2016 presidential elections,” said Ludmila Ous. She specified that the pressures came from Chisinau CA President Ion Plesca, who was present at the planning of the court sessions.

“When I started examining Filat’s case file and when he saw that I, in fact, do not agree with the directives of the administration, he did not invite me to later sessions; however, pressure and intimidation started flowing until after a meeting on November 2, 2016 I remember being called to his office where he started shouting that ‘You have no idea what you are doing,’ ‘You are going to get into trouble ... would you like to be handcuffed next to Filat?’ The former judge added that after these threats the CA president did not sign her request for a few days personal leave.

According to Ludmila Ous, when she already knew that she did not agree with the decision of the first court in Filat’s case and was going to deliver a separate opinion, the pressures intensified.

“He told me several times that I will sit next to Filat, if I don’t comply,” said the former judge.

“I presented some conditions to my colleagues: that I will never sign a decision to maintain the sentence of the first court, not because I want to defend Filat, but because every person has to answer for the acts they committed, not for those they didn’t,” Ludmila Ous said. She added that after a session on Filat’s case, upon returning to her office she found her desk drawers and bag open, which she considers an additional act of intimidation.

Ludmila Ous stated that during her examination of the Filat case, a criminal file on charges of corruption was initiated against her husband, who works as a doctor. According to the ex-judge, so far, the case has no finality, and her husband was only presented with the order of indictment.

(Source: Ziarul de Garda, 12 July 2019, O fosta magistrata dezvaluie cum s-au facut presiuni pentru adoptarea deciziilor in dosarele Filat si Tutu⁵⁹)

59 <https://www.zdg.md/stiri/stiri-justitie/o-fosta-magistrata-dezvaluie-cum-s-au-facut-presiuni-pentru-adoptarea-deciziilor-in-dosarele-filat-si-tutu>

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CASE STUDY 25.

Disclosures regarding the intimidation of the judge examining the Constantin Tutu case file

A case was also found in which one of the judges on the case was pressured. Chisinau Court of Appeals judge Ludmila Ous said during the TV8 show “Politica” that during the examination of the case file in which Constantin Tutu was criminally investigated, she was under great pressure to support Tutu’s acquittal.

“The biggest issue was the Tutu file. It was known that I would not support acquittal. I was working on this case file until the verbal debate stage, then I was arrested,” the judge said. In October 2018, Ludmila Ous was detained along with four other colleagues because they allegedly demanded and received large amounts of money in order to issue favorable decisions in several criminal cases under examination.

Ludmila Ous claims that throughout this period she was followed and intercepted, and in November 2018, after being placed under criminal charges, she no longer resisted the pressures and left the system.

She states that the criminal case was fabricated by Chisinau Court of Appeals President Ion Plesca, Anti-Corruption Prosecutor’s Office Deputy Chief Adriana Betisor, and former Prosecutor General, Eduard Harunjen.

(Source: TV8, 11 July 2019, Dezvaluirile unor ex-judecatoare despre cum magistratul Plesca si procurora Betisor ar fi implicati in dosarul Tutu si Sor⁶⁰).

60 <http://tv8.md/2019/07/11/dezvaluirile-unor-ex-judecatoare-despre-cum-magistratul-plesca-si-procurora-betisor-ar-fi-fost-implicati-in-dosarul-lui-tutu-si-sor/>

V. CONCLUSIONS AND RECOMMENDATIONS

The present report on monitoring the selectivity of criminal justice (February 1 - July 31, 2019) is the first of its kind in the Republic of Moldova. The first methodology of monitoring selective justice was developed and tested within the project, "Mobilizing Civil Society to Support Judicial Integrity in the Republic of Moldova," implemented by the "Lawyers for Human Rights" Public Association (LHR), and funding from the U.S. Department of State, Bureau of Anti-Narcotics and Law Enforcement Affairs (INL). The current chapter presents conclusions and substantive recommendations regarding the findings of the monitoring for selectivity of justice (sections V.1 and V.2).

V.1 Criminal runagates and political guarantees to avoid liability

These monitoring efforts have confirmed that non-political persons with a certain level of notoriety in various fields (sports, administration, business, etc.) sometimes become interested in political activities when they are investigated and/or prosecuted for an alleged crime. The more serious the risk of criminal liability, the more interested these subjects are in trading their successes (professional or otherwise) to political parties in government in exchange for protection that would exempt them from the most serious legal consequences.

The phenomenon of "criminal runagate" is also at play, referring to people who have a certain political affiliation, hold public functions, become the target of criminal investigations (usually for corruption or related crimes) and during court proceedings adhere to ruling parties. Often, elected officials from the local opposition allege that they are pressured to join the parties in power via criminal cases opened against them. This tactic seems to work, as the record shows that opposition officials do leave their party ranks, either joining the ruling party or remaining politically unaffiliated at the official level but loyal to the ruling party unofficially.

When targeted in corruption cases, it is a common excuse around the world for politicians to argue that they are unfairly targeted by virtue of their party affiliation. Therefore, such explanations must be examined with a certain dose of skepticism. However, this argument would not be credible if the governing party which these politicians are allegedly pressured to join would refuse to accept them. However, from the perspective of public notoriety and respect, no party should attempt to expand its ranks on behalf of new members with a tarnished reputation. Nevertheless, this option is apparently preferable if the persons implicated in the criminal cases hold an elected office or function that the government did not initially obtain in elections. The acceptance of such persons into the party would therefore extend the territorial influence of the party and improve its electoral score.

Even if the situation described above is true, it does not necessarily indicate that the cases of criminal runagates were initiated via a political order, that the incriminating evidence does not exist, or that the criminal responsibility is unfounded. And yet, when ruling parties accept criminal runagates against the natural logic of rejecting individuals with reputational risks for the party, we can assume that the benefit gained from accepting such new members outweighs the risks. The acceptance by the ruling party of political profiteers with criminal problems is, in itself, proof that Politics controls Justice, and that politics can offer political guarantees against the legal solutions of justice.

The report also captures situations in which a politician promises a member of another party that he/she will guarantee him/her a public office or function (currently occupied) in exchange for joining that politician's party. In such cases, the respective office may be freed up via the initiation of a criminal case against its current occupant.

V. Conclusions and recommendations

Considering this, **it is recommended to the political parties in power and/or those who control the functioning of law enforcement bodies to reject the offer of guarantees contrary to the interests of justice, namely by:**

- i. Rejecting criminally investigated persons as new party members;**
- ii. Suspending party membership and/or removing criminally investigated persons from the party in order to avoid harming the organizational image;**
- iii. Avoiding promises that joining the party can be rewarded with public offices that may be freed up via the initiation of criminal cases and sanctioning party members responsible for such promises;**
- iv. Treating the independence of the actors of justice with respect and accepting their solutions without interference, regardless of the political affiliation of the subjects targeted in criminal investigations.**

The monitoring also identified a case in which the subject of a criminal trial established a political party. The party was created during the 2015 local general election campaign, during which the subject of the investigation was under arrest. The registration of the party and the launching of the electoral campaign allowed him to reverse the preventive arrest measure against him, due to the general principle of electoral law that no electoral competitor may be subject to preventive measures that obstruct him from effectively participating in the electoral campaign. Thus, the precarious legal situation of a sufficiently rich subject culminated in the launch of a new party with clear procedural-criminal roots onto the political scene.

V.2 Confirmation of hypotheses on selectivity in public communication

The primary hypothesis of this report on selectivity in public communication is that the political subjects targeted in criminal cases, if affiliated with the opposition, are exposed to increased media coverage by criminal prosecution bodies. The complementary hypothesis is that persons under legal scrutiny and affiliated with ruling parties have a reduced media exposure. Both hypotheses of selectivity are in favor of the government and, therefore, indirectly confirm the influence of Politics on Justice.

Monitoring confirmed that **the press learns about criminal files** against political opponents of government not only from official press releases by law enforcement bodies and leaks in media affiliated with political parties in power (online news platforms, personal blogs of government supporters), but also from statements by political dignitaries who anticipate procedural actions. Unofficial methods of public communication offer the advantages of disclosing personal data and allowing statements that do not respect the principle of the presumption of innocence of subjects investigated, without the criminal prosecution being held responsible for violating fundamental rights. To avoid suspicions and accusations of selective justice, **the following is recommended to law enforcement bodies:**

- v. To communicate in a balanced manner, via official methods, in all cases involving political subjects regardless of their affiliation with opposition or government, given that the occurrence of leaks in government-affiliated media and in cases politically convenient to government feeds the perception of political control over criminal prosecution;**
- vi. To not to communicate to persons outside of established procedure, especially dignitaries with political functions, regarding the criminal investigations that have not been announced publicly, given that the announcement of plans to start a criminal investigation or details of the investigation that are not known to the public denotes political control and lack of independence by the criminal prosecution body;**

V. Conclusions and recommendations

- vii. ***To internally investigate incidents of information leakage and communication to political decision makers on procedural case details, given that these are facts that jeopardize the investigation and create the impression that the criminal prosecution body is not independent in its actions.***

Monitoring also confirmed that in half of the selected cases, **infringements that were investigated were previously publicized by journalists**. The criminal prosecution body, however, did not initiate cases immediately, but with considerable delays. Under these circumstances, the moment of initiating the criminal prosecution was often associated with the political convenience of the government in the given moment. To avoid suspicions and accusations of selective justice, ***the following is recommended to law enforcement bodies:***

- viii. ***To undertake self-notification of offenses as soon as the information about their violation is made public, and to inform the public of the initiation of criminal investigations.***

Another finding of the monitoring is that in some situations, **the criminal prosecution body keeps criminal files under investigation secret for several years, without carrying out procedural actions, and makes them public in contexts convenient to the ruling party**, either to denigrate an electoral competitor on the eve of election campaigns, or to cause a party/politician to exhibit a certain behavior favorable to the government. Thus, ***the following is recommended to law enforcement bodies:***

- ix. ***To investigate criminal cases involving corruption regarding the political actors in an expedited and transparent manner, in accordance with the reasonable period needed to accumulate evidence,***
- x. ***To avoid long periods of delay in the accumulation of evidence, followed by the public announcement of the case file after it has been kept secret, as this may be perceived as opportunistic behavior in favor of the government.***

In most of the monitored cases, it was confirmed that the press is usually informed about the place and **time of the detention of certain politically affiliated subjects**, who are representatives of the political opposition. Not all media is aware of such detentions, rather the press affiliated with the government gains privileged access to this information. Subsequently, if detained persons are brought before a judge for their arrest, the press is informed (in this case - the entire press). A clear signal of political control over the investigative body identified the monitoring, is the advance "anticipation" of detentions and arrests of representatives of allied competitors in government by bloggers who constantly defended the political interests of the government in their writing. Given the political sensitivity of events that occurred in the same period, there was an impression that bloggers were used to make public warnings to government targets to pressure them into adopting a desired behavior. In this case, even if the subjects committed the alleged incriminating acts, the very existence of these leaks leads to questions on the independence of the criminal prosecution body, which knows how to "open the drawer" at the "right" moment. To avoid suspicions and accusations of selective justice, ***the following is recommended to law enforcement bodies:***

- xi. ***To avoid leaking information about case files regarding both ongoing and anticipated developments, including detainments and arrests, especially at times of political sensitivity;***
- xii. ***To communicate in a balanced manner, through official methods, in all cases involving political subjects, regardless of their affiliation with opposition or government, about arrests made. The approach should be uniform for all subjects to avoid speculation on possible politically-biased preferential treatment;***
- xiii. ***To internally investigate cases when leaks occur and to hold the responsible persons accountable.***

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Criminal prosecution is the secret phase of the criminal trial. For this reason the **communication of prosecutors and investigators** is traditionally carried out through official communiques, statements and comments to the press, with press conferences organized only in rare cases. There have also been cases of broadcasting video images that are part of the evidence accumulated against the subject.

Another important aspect monitored **was communication with the press of the subject investigated, tried, or detained**, as his/her volume of public communication is directly influenced by state representatives. During the monitoring, except for one case, the defendants were tried while at liberty. However, in the only monitored case in which the defendant was under arrest and tried in an open trial, his right to communicate with the press was restricted by the escort. The defendant was a political opponent of the party in power during the monitoring period (PDM).

The **attitude of the court towards journalists** during the monitoring was generally positive. In cases in which the competitors/allies from the government were targeted, the escort intervened to block the press from recording and communicating with the defendant. In this regard, ***the following is recommended to law enforcement bodies and courts of law:***

xiv. To ensure equal opportunities for communication between defendants and the press.

V.3 Confirmation of hypotheses on selectivity in the criminal process

The primary hypothesis of the report is that some subjects of criminal investigations with political affiliations with ruling parties enjoy certain procedural-criminal privileges in comparison to those subjects affiliated with the opposition. Although every situation examined in the report may be explained and legally justified based on the Code of Criminal Procedure, the seemingly gentler legal approaches to some and harsher approaches to others provide evidence of selectivity in justice.

In general, several **cases with similar circumstances yet varying procedural approaches** were identified. During the monitoring, four of 14 such case files were identified (29 percent), as well as an additional case that was examined before monitoring. The differences in approaches refer to several factors: preventive arrest and conditions of provisional detention, delay of the examination of the case file, fulfillment of electoral requests by defendants, application of confiscation of assets or suspension from office during investigation and examination of the case file in the court of law, the putative measures requested by the prosecutor and the sentence applied by the court. All these differentiated approaches betrayed a gentler attitude towards those considered to be affiliated with the PDM (ruling party at time of monitoring). Accused of committing similar and related criminal acts, which caused much greater harm than other defendants with whom he was compared, the subject affiliated with the government was preventively arrested under the best conditions of provisional detention (NAC isolation ward), but his arrest was also the shortest. The same person:

- Was primarily detained under house arrest,
- Had the opportunity to participate in elections and even postponed court hearings due to his participation in the election campaign,
- Was not suspended from office during investigation and examination of the case in court, and had the longest trial period,
- Benefited from the longest period of translating court documents into Russian in the first court judgment (over 6 months), although this translation was not necessary, given that the subject filed two denunciations in Romanian which he claims to have written personally. This delay led to the late submission of the case file to the Court of Appeals,

V. Conclusions and recommendations

- Benefited from not insuring the repair of the damage alleged by the prosecutors, thus evading the application of the preventive legal measure of asset seizure,
- Benefited from the request of the prosecutor to be given a lower sentence for committing offenses with the same legal qualification, despite the fact that the damage caused was at least 6 times greater than other defendants/indicted persons,
- Benefited from the application of lower penalties by the court.

By virtue of the discretion accorded to judges, prosecutors and officers of criminal prosecution through the criminal codes and criminal procedure, the differentiated legal approaches could be justifiable. However, the fact that these discrepancies are advantageous to those politically affiliated with the government induces the same well-founded perception of selective justice. In this regard, ***the following is recommended to law enforcement bodies and courts of law:***

- xv. Avoid differentiated legal approaches to subjects implicated in similar and/or related actions, especially if the subjects with government affiliations enjoy more beneficial approaches compared to subjects seen as political competitors of the government;***
- xvi. Provide public explanations for approaches taken towards subjects involved in committing similar and/or related actions, especially if subjects affiliated with government enjoy procedural advantages compared to subjects considered political competitors of the government.***

During the monitoring, accomplices to the alleged criminal acts were identified. Criminal prosecution of these accomplices lagged behind the primary cases, and they were assigned a different procedural status (e.g., a witness on the side of the accusation).

At the stage of the examination in court, in 12 of the 14 cases monitored, incidents were identified of **limiting public access to court hearings**, either **by carrying out sessions in judges' offices**, which lack sufficient space for the public to participate, by the **failure to provide accurate information to the public regarding the trial session**, or **by closing the process/trial session to the public**. Thus, even if there are courts that are unable to examine all cases in courtrooms due to the high workload and insufficient space, files of high public resonance should always have priority for examination in a courtroom. The fact that they are publically resonant automatically implies the public's interest to attend; this is a legitimate interest that the justice cannot neglect, as doing so would feed society's distrust of justice and its connections with political decision makers. On the other hand, political interference can be rightly suspected when, in one of two monitored cases in which the criminal case file under examination targeted a subject affiliated with the government - information about several court hearings was simply not publicized, so that the access of interested members of society who wanted to attend the trial was restricted. Thus, ***the following is recommended to the courts of law:***

- xvii. Scheduling the examination of cases of high public resonance with publically-affiliated subjects in courtrooms rather than judges' offices, especially when the subject holds a public office or function.***
- xviii. The accurate publication of information about the date, time and place of the hearing, in all cases, and especially in cases of high public interest.***

In 25 percent of monitored cases, defenders' (all representatives of the PDM government political competition) **continuous requests for the recusal of the judge, prosecutor or both**, were rejected under the pretext that the defense was attempting to delay the examination. Among other things, the recusal requests were justified on the basis of the refusal to allow the defense to bring new evidence, the obviously hostile attitude of the judge towards the defense, and the political control over the court.

V. Conclusions and recommendations

As monitoring also covers the beginning of the period of political power transfer from the PDM government to the ACUM Bloc and Socialist Party coalition (June-July 2019), cases were also monitored in which a recusal was requested by the monitored defendant affiliated with the former government. Apparently, until the change of government, he entrusted his case to team of judges of the Cahul Court of Appeals; after the change of government, he publically accused that same team of having executed the orders of the new politicians in power. In this regard, the following is **recommended to the court of law and prosecutor's office**:

xix. More detailed examination of recusal requests submitted by the defense, especially in politically resonant case files.

During monitoring, only two cases were observed when **judges who were initially entrusted with the examination of monitored cases were transferred or replaced**. Both cases are aimed at subjects affiliated with the PDM government. Both cases were examined in the Court of Appeals by teams of three judges. In one of the cases, the entire file was moved from Chisinau to Cahul, thus allowing him to change the team of judges. In the second case, the judge-rapporteur was changed because he apparently did not have a "loyal" attitude towards the defendant. Such approaches create the appearance of political interference in justice by the government and the acceptance of these interferences by the judiciary system. Thus, the following is **recommended to the courts of law**:

xx. Avoiding changes in the judge/court team, especially on cases of political resonance, for reasons other than incompatibility.

It was established that 69 percent of all monitored court sessions were postponed, which led to **delays in procedural examination**. Monitoring confirmed the hypothesis that examination of files with an optimistic anticipated verdict for the defendant was carried out quickly, if he/she was affiliated with the government, regardless of the plurality of participants on the case file and the change of judges. When the anticipated verdict was positive for defendants not affiliated with the former PDM government, the examination was delayed for reasons attributable to the court. The monitoring also confirmed the reverse hypothesis: regarding defendants with pessimistic anticipated verdicts, if the defendants were affiliated with the former PDM government, the examination was delayed, including for reasons attributable to the defendant, but the court did not increase the frequency of the hearings either. In contrast, in cases of defendants with a negative anticipated verdict, but who were electoral contenders for the government and who were equally interested in postponing and delaying the trial, the judge and prosecutor were very proactive in holding the hearings very often – once every few days. Therefore, based on this criterion, the assumptions regarding justice that acts in ways surprisingly convenient to the government has been confirmed. In two of 12 monitored cases (17 percent), the defense requested the administration of additional evidence - the appointment of expertise and the hearing of witnesses, in both cases such requests were rejected, which can be treated as a form of **inequality of arms in trial**. In both cases, the defendants were considered political competitors of the PDM government. In exactly the same two cases, the monitors observed **ethical deficiencies of the judge**, by exposing an apparently biased attitude towards the defendants. At the same time, in another case with similar charges, the defendant considered to be affiliated with the government was allowed to request exactly the same expert analysis that was refused to a defendant considered a political competitor of the government.

In the 14 cases monitored, **situations of intimidation** of defense lawyers were not observed. In contrast, a judge from the appellate court who participated in the examination of the cases of two of the monitored subjects made disclosures in the public space during the monitoring period, regarding the intimidations to which she was subjected by the president of the court, and subsequently by the prosecution, in relation to her position on these files which was considered inconvenient to the ruling party. It is interesting to note that a judge was accused of corruption after examining the cases of two defendants from the monitored sample

V. Conclusions and recommendations

– 1) in the case of a political competitor of the government, the judge did not agree with the harsh approach requested by the government or the president of the court, and 2) in the case relating to a defendant affiliated with the government accused of complicity in a murder, the judge did not want to adopt a gentler legal attitude as the president requested. The situation demonstrated by this judge confirms the hypothesis of the political influence on justice and its transformation from impartial to selective. The judge was targeted in a corruption case, after which she left the system and decided to make public disclosures. However, if the disclosures are true, it would be good for such disclosures to be made by judges when they are still in office and not when they are targeted in corruption cases. It is not only case files initiated by the Prosecutor's Office that can be considered levers to intimidate judges (such corruption charges could be perfectly well founded); more serious are the acts of intimidation from the presidents of courts, to whom judges are subordinate and about which they do not offer public disclosure. In this regard the following is **recommended to courts of law**:

- xxi. Examination of corruption files and/or those involving famous political party representatives, given the increased public interest towards them, while ensuring respect for the procedural rights and guarantees of all defendants, regardless of affiliation with governing parties.***
- xxii. Unifying approaches to ensuring equality of means in trials related to representatives of political interests, regardless of their association with ruling parties (e.g.: not to refuse a request to bring new evidence by the representative of a competing political party, while the same evidence is allowed by the representative of the party affiliated to the government).***
- xxiii. Accepting the demands of judges' recusals that express a hostile attitude towards representatives of political parties, especially if these trials are publicly monitored, and media sources have repeatedly covered the seeming impartial attitude of the judges.***
- xxiv. Exposure in public and/or at the Superior Council of the Magistracy of attempts by court presidents to influence judges in relation to adjudicating specific cases, especially those related to the representatives of political parties.***
- xxv. Application of disciplinary sanction resulting in the resignation of the presidents of the courts that exert influence on the judges in relation to the interests of politicians, as well as the disciplinary sanction of judges who accept such influences from the president of the court.***

ANNEX 1: CRITERIA TO MEASURE CRIMINAL JUSTICE SELECTIVITY

Selective criminal justice based on political affiliation criteria

Selectivity favorable to the political subject:

- Subject has political affiliation with ruling parties,
- Subject changes political affiliation in favor of ruling parties,
- Unaffiliated subject becomes member of ruling parties.

Selectivity unfavorable to the political subject:

- Subject has political affiliation to parties competing with governing ones,
- Subject left ranks of ruling party,
- Subject changed political affiliation of government in favor of competing parties.

Selectivity of justice in public communication: enhanced public attention to cases involving political competitors

Criteria of selectivity in political communication:

Favorable selectivity – reduced resonance

Unfavorable selectivity – increased resonance

1 **The means by which the press learns about a case of high public interest**

- through official communiques, respecting the protection of personal data and presumption of innocence;
- by disseminating certain evidence by law enforcement, while respecting the protection of personal data.

- on sources, before publication of an official statement, without respecting the protection of personal data and presumption of innocence;
- on sources, with dissemination of evidence, without respecting the protection of personal data, before/in absence of an official statement;
- from statements of political leaders who "anticipate" the reaction of law enforcement bodies.

2 **Reaction of authorities to journalist investigations**

- apathetic and delayed self-notice/ investigation of the violations by persons affiliated to ruling parties.

- immediate self- notification/ investigation of violations of persons considered political competitors;
- delayed self-notification / investigation of violations of political competitors, but at politically convenient times for ruling parties.

Annex 1: Criteria to measure criminal justice selectivity

Criteria of selectivity in political communication:	Favorable selectivity – reduced resonance	Unfavorable selectivity – increased resonance
<p>3 Information about arrest or enforcement of arrest</p>	<ul style="list-style-type: none"> - the law enforcement body does not communicate to journalists about the time and place of the detention; - the law enforcement body does not communicate to the journalists about escorting the detained subject to the investigating judge for applying the arrest. 	<ul style="list-style-type: none"> - the law enforcement body communicates to journalists (possibly those affiliated with the government) about the time and place of detainment of persons considered political competitors; - the law enforcement body communicates to the journalists about escorting the detained subject to the investigating judge for applying the arrest measure.
<p>4 Openness of the criminal investigation/prosecution body towards the press</p>	<ul style="list-style-type: none"> - law enforcement body/state accuser refuses to provide information and make statements; - law enforcement body/state prosecutor provides limited information and makes brief statements; - law enforcement body/state accuser organizes press conferences at which he provides information that is apparently favorable to the subject of the investigation, refuses to answer questions or only answers questions of journalists affiliated with the government. 	<ul style="list-style-type: none"> - law enforcement body/state accuser organizes press conferences for journalists, answers all questions; - law enforcement body/state accuser provides detailed information and statements on the case.
<p>5 Communication of the person under investigation, defendant or detainee with the press</p>	<ul style="list-style-type: none"> - The person under investigation, under arrest, offers comments to journalists when brought to hearings/confrontations; - The defendant or detainee is not prevented by the escort from communicating with the journalists. 	<ul style="list-style-type: none"> - The person under investigation, who is under arrest, does not communicate with the press, either because the journalists are not informed when the subject is brought for hearings/confrontations, or because the journalists do not have the authorized access in the building/near the office where the procedural actions take place; - The defendant or detainee is prevented by the escort from communicating with the journalists (he is taken very quickly, the guards get between the defendant and the journalists, the guards dismiss the journalists, so they cannot reach the defendant).

Annex 1: Criteria to measure criminal justice selectivity

Criteria of selectivity in political communication:	Favorable selectivity – reduced resonance	Unfavorable selectivity – increased resonance
6 The court's attitude towards journalists	<ul style="list-style-type: none"> - Depending on the interest of the defendant, it adopts an attitude of openness towards journalists or, on the contrary, is reluctant. 	<ul style="list-style-type: none"> - Depending on the interest of the government in the case of the defendant, it adopts an attitude of openness towards journalists or, on the contrary, is reluctant.

Selectivity of justice in the criminal process: a gentle approach for those in power

Selectiveness criteria in the criminal trial:	Favorable selectivity - mild approach	Unfavorable selectivity - tough approach
1 Similar cases with different legal approaches	<p>In a different, but similar, publicly known case, the criminal prosecution body/judge adopts a milder position towards the subject, for example:</p> <ul style="list-style-type: none"> - arrest is not requested/applied, arrest is requested/applied at home or through other non-privative preventive measures; - placing in the "more comfortable" NAC preventive detention confinement cells; - delaying the transmission of the case in court (including with the risk of intervention of the prescription) and/or delaying the examination of the case in court; - failure to apply suspension from office during the instrumentation and trial of the case; - the request by the prosecutor to apply a milder punishment for the deed/damage caused, as opposed to similar/related cases, where the requested penalty is harsher, although the facts are more serious, and the damages caused - higher; - termination of the trial (in criminal prosecution or in court), payment or conviction with suspension and/or with the application of insignificant fines and/or without deprivation of the right to hold positions or with deprivation for insignificant periods, etc. 	<p>In a different, but similar, publicly known case, the criminal prosecution body / judge adopts a milder position towards the subject, for example:</p> <ul style="list-style-type: none"> - arrest is requested/applied, - arrest is not requested/not applied at home or other non-preventive measures; - placement in preventive confinement cell with poor conditions (penitentiary no. 13); - speedy transmission of case in court and/or rapid examination of case in court; - suspension from office during the instrumentation and trial of the file; - request by the prosecutor to apply a harsher punishment for the deed/damage caused, as opposed to similar/related cases, in which the requested sentence is milder, although facts are equally or less serious, and damages caused - smaller; - conviction with application of the prison sentence and/or with the application of higher fines and/or with the deprivation of the right to hold office or with imprisonment for longer periods, etc.

Annex 1: Criteria to measure criminal justice selectivity

Selectiveness criteria in the criminal trial:	Favorable selectivity - mild approach	Unfavorable selectivity - tough approach
2 Accomplices with different procedural status	<ul style="list-style-type: none"> - Within the same file of the subject investigated/prosecuted, his accomplice who is affiliated with the ruling party is not recognized as being a suspect, accused, indicted, but as a witness, victim, injured party or with no status. 	<ul style="list-style-type: none"> - In the same criminal file, the accomplice affiliated with the competing parties or the non-political party is recognized in the same procedural capacity as the subject investigated/judged, suspect, accused, indicted.
3 Public access to court hearings	<ul style="list-style-type: none"> - Court hearings take place in the meeting room; - Trial is open to the public; - Information about court hearings was published correctly on the court portal. <p>Note: depending on defendant's interest, situation may be diametrically opposed, and access - limited.</p>	<ul style="list-style-type: none"> - Court hearings take place in judge's office; - Closed process for public; - Information about court hearings was published incorrectly on court portal. <p>Note: depending on government interest, situation may be diametrically opposed, and access - limited.</p>
4 Recusals of judge/ prosecutor	<ul style="list-style-type: none"> - Defense submits unfounded Appeals to judge/prosecutor, which are accepted. 	<ul style="list-style-type: none"> - Defense submits well-founded accusations (obviously hostile attitude, existence of political connections with government, etc.) to judge/prosecutor, which are rejected.
5 Changing or replacing judge/ prosecutor during trial	<ul style="list-style-type: none"> - In the perspective of a possible conviction, the judge/prosecutor with objective attitude is transferred, promoted or otherwise removed from case examination, being replaced by a judge/prosecutor with a loyal attitude. 	<ul style="list-style-type: none"> - In the perspective of a possible acquittal, the judge / prosecutor with an objective attitude is transferred, promoted or otherwise removed from the examination of the case, being replaced by a judge/prosecutor with a loyal attitude.
6 Delaying the trial	<ul style="list-style-type: none"> - Trial is delayed because of participants in the trial, in interest of the defendant; - Judge appoints court hearings at very large intervals of time. 	<ul style="list-style-type: none"> - Trial is delayed due to the defense, but admonished by judge; the prosecutor who cannot be present at hearing is replaced by another prosecutor; - Court hearings are scheduled at sort intervals.

Annex 1: Criteria to measure criminal justice selectivity

Selectiveness criteria in the criminal trial:	Favorable selectivity - mild approach	Unfavorable selectivity - tough approach
<p>7 Inequality of arms in trial</p>	<ul style="list-style-type: none"> - Judge does not accept additional evidence requested by prosecution; - Judge rejects the prosecution witnesses; - Judge treats the witnesses of the defense more favorably (he does not interrupt them, he listens their thoughts to the end, gives concrete questions) than witnesses of the accusation. 	<ul style="list-style-type: none"> - Judge does not accept additional evidence required by defense; - Judge rejects defense witnesses; - Judge treats accusing party witnesses more benevolently (doesn't interrupt, listens to their thoughts until the end, asks specifying questions) than defense witnesses.
<p>8 Ethical issues relating to judge</p>	<ul style="list-style-type: none"> - Judge has ethical behavior; - Judge has behavior visibly loyal to defense. 	<ul style="list-style-type: none"> - Judge doesn't have ethical behavior; - Judge has visibly hostile behavior towards defense.
<p>9 Intimidation of parties to the trial (the defender, the prosecutor, the judge)</p>	<ul style="list-style-type: none"> - Prosecutor is intimidated (disciplinarily, contravenitionally, criminally); - The judge willing to adopt a conviction against defendant is intimidated (disciplinarily, contravenitionally, criminally). 	<ul style="list-style-type: none"> - Defendant's lawyer is intimidated (disciplinarily, contravenitionally, criminally); - The judge willing to acquit defendant is intimidated (disciplinarily, contravenitionally, criminally).

ANNEX 2: FACTS AND SUMMARY OF THE CASES MONITORED

List of criminal causes monitored in the Centru region:

- 1) File of Chisinau general mayor, Dorin Chirtoaca (the parking file)
- 2) File of MP Chiril Lucinschi (bank fraud)
- 3) File no. 2 of former Prime Minister Vlad Filat (bank fraud)
- 4) File of Minister of Transport and Road Infrastructure Iurie Chirinciuc
- 5) File of sportsman and MP Constantin Tutu
- 6) File of judge Domnica Manole
- 7) File of Academy Member Couple Gheorghe and Maria Duca

List of criminal causes monitored in the North region:

- 8) File of Parcova, Edinet mayor, Marcel Snegur
- 9) File of Riscani mayor Victor Bogatico, and local councilmen Alexandr Poneatovschi and Lilian Salagor
- 10) File of Balti Road Repair and Construction Department Municipal Enterprise, Serghei Pcela

List of criminal causes monitored in the South region:

- 11) File of BEM administrator and Orhei Mayor Ilan Sor (bank fraud)
- 12) File of Comrat Mayor Serghei Anastasov
- 13) File of Ruskaiia Kiselia Mayor Gheorghe Gospodinov
- 14) File of Cimislia Mayor, Gheorghe Raileanu

List of criminal cases monitored in the central region (Chisinau)

1. File of Chisinau general mayor, Dorin Chirtoaca (the parking file) (C2-021/JUD)

Facts: Former mayor of Chisinau Dorin Chirtoaca was blamed for giving indications to the deputy mayor of the Capital, who was chairman of the Commission for selecting companies to implement the parking project in Chisinau, to sign the contract with EME PARKLEITSYSTEM GmbH without the approval of the Chisinau Municipal Council. At the same time, the mayor allegedly did not positively endorse the town planning certificates for the design of the works, according to the public-private partnership contract between the Chisinau City Hall and non-resident company EME PARKLEITSYSTEM GmbH. In turn, this company would have won after concerted actions between officials of the capital's City Hall, economic agents and the businessman that led EME PARKLEITSYSTEM GmbH from the shadows. During the investigation, several meetings were documented between the shadow manager of the winning company and head of Public Transport and Communications Department of the City Hall - meetings during which the tendering scheme, as well as the participation of the general mayor in the procedure to expedite the signing of the contract, and also a "bonus" for the services provided were discussed.

Monitoring summary: The criminal case regarding Dorin Chirtoaca was started on September 25, 2015, and on May 26, 2017, the mayor was detained by prosecutors. He is accused of influence trafficking. The file was sent to trial on July 21, 2017 and is still being examined in the court of first instance. During the

Annex 2: Facts and summary of the cases monitored

monitoring period, 25 sessions were set, of which 19 were postponed, the vast majority - for reasons of non-presentation, leave, illness, etc. of the defendant and one or both of his lawyers. There were also deferred hearings at the request of the prosecutor and the judge. During the examination of the file, Dorin Chirtoaca was suspended from the position of Chisinau municipality mayor.

From the observations of the *legal monitor*, the examination in the first instance of the file is obviously delayed by the defense side. However, the position of the defense is a natural one since the hostilities between the judge and the prosecutor, on the one hand, and the defendant and defenders, on the other, have reached very high levels, and a possible solution given in the first instance would be obviously convicted. In such circumstances, the monitor considers that the trial cannot continue in the judge's procedure, regarding which the defendants' claims of rejection have been rejected numerous times. Among other things, the monitor mentioned the defendant's misconduct at court hearings.

From the observations of the *journalist monitor*, the press has access to court hearings, the defendant is free to make statements, the defenders provide information whenever requested, less cooperative being the prosecutor, who collaborates more actively with the press in the criminal prosecution phase. The journalist believes that it is far from a fair trial. The judge appears to have a hostile position towards the defendant and his two lawyers. On the other hand, it creates the impression that the defense does everything possible to delay the proceedings.

2. File of MP Chiril Lucinschi (bank fraud) (C2-022/JUD)

Facts: The PLDM MP was accused that between 2012-2014 he allegedly laundered large sums of money through three companies belonging to him, but also through a few offshore companies and persons involved. Namely, several offshore companies, under fictitious contracts for the provision of consulting services, transferred USD 440 000 to the non-resident company IPA International Project Agency, with accounts opened in Liechtenstein. Analyzing the money route, the prosecutors claim they found that the money comes from non-performing loans, stolen during 2012-2014 from BEM, Unibank and "Banca Sociala" Bank, through off-shores. At the same time, in 2013, the Toast Delux SRL company, the beneficiary of which is the former MP, allegedly received another loan from Unibank, without collateral, worth MDL 5 000 000. Subsequently, the financial means were converted and transferred through a group of companies to a non-resident company. Finally, USD 401 650 reach Rousseau Alliance LP accounts, which, in turn, transfers this money to the BEM, for the purpose of assigning non-performing loans. The former PLDM MP pleads innocent and claims the money represent the return of a loan previously offered to Ilan Sor.

Monitoring summary: Chiril Lucinschi was detained on May 25, 2017, and 2 months later, on August 1, 2017, the case was brought to court. Lucinschi was under house arrest for 10 months. On April 4, 2018 he was sentenced by the court of first instance to 5 years and 6 months of imprisonment, with the execution of the punishment in a semi-closed penitentiary, with the deprivation of the right to hold public functions for a period of 4 years. For more than a year, the file is at the Court of Appeals. Court hearings are rarely called and there are many delays. The defense has repeatedly requested an economic-financial expert appraisal, judges having rejected the request. The defendant offered to pay the appraisal on his own, but the request was denied.

From observations of the *legal monitor*, the criminal case is examined for an exaggeratedly long time by the Appeals court. One, maximum two, sessions per month. Likewise, the delay in the trial is determined by the numerous demands of the defense, submitted on the grounds that in the acceptance of the lawyers, in the substantive court, the defendant was not respected the right to a fair criminal trial. In this respect, all the applications that were submitted in the first instance and rejected, were repeatedly submitted to the court of Appeals.

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From the observations of the *journalist monitor*, the case is pending at the Chisinau Court of Appeals. Only one session was scheduled for February 2019. The defense filed several requests, including: hearing of a NAC officer who participated in the investigation of the case, presenting the conviction sentence of Ilan Sor, conducting a financial banking expert appraisal. Judges rejected the requests every time.

3. File no. 2 of former Prime Minister Vlad Filat (bank fraud) (C1-011/JUD)

Facts: Vladimir Filat is accused by the Anti-corruption Prosecutor's Office of committing the crime of money laundering in particularly large proportions (art. 243 para. (3) CP). The former prime minister is accused of having signed a PLDM assistance contract with a consulting company in Washington, USA, in the November 2014 parliamentary election campaign. For the contracted services, the former Prime-Minister would have paid the non-resident company the total amount of MDL 12 847 902, periodically carrying out transfers from accounts of companies managed through an intermediary, in which financial means obtained through corruption offenses from the BEM were deposited.

Monitoring summary: The file regarding Vlad Filat was initiated by the prosecutors in October 2015. However, it was only sent to trial in January 2019. For 6 months, several court hearings were held, set at sort intervals by time one from another. Although the file is public, Vlad Filat has no opportunity to communicate with the press. The access of the press to the accused is restricted by his escort, even though the court explicitly stated that Filat has the right to communicate with journalists. During the trial, the defense filed several requests. Most of these were accepted. The file is under examination at the Chisinau District Court, in the opening stage and the preparatory part.

4. File of Minister of Transport and Road Infrastructure Iurie Chirinciuc (C1-012/JUD)

Facts: The Anti-corruption Prosecutor's Office blamed Iurie Chirinciuc, at that time Minister of Transport and Road Infrastructure, on two charges: trafficking in influence and abuse of service (326, 327 Criminal Code). Two businessmen, accused of complicity in trafficking of influence: Nicolae Ciobanu and Marin Sarbu were on the bench of the accused together with the former minister. According to the indictment drafted by prosecutors, the former Minister of Transport, together with the heads of two construction companies, have allegedly organized a criminal scheme for the purpose of acquiring financial means in particularly large proportions. The defendants allegedly exerted pressure on a tender winning company financed by the European Investment Bank (EIB) in order to force it to cede some of the work to certain companies affiliated to the minister. Between 2016-2017, the minister, through the decision-makers of the State Road Administration, allegedly created impediments to the winning economic agent, by not approving some documents for the execution of the works, by delaying the approvals, as well as by summoning them to conclude subcontracts with companies close to the officials. The ex-minister is also facing charges on another count - abuse in service, expressed through the organization of repair and capital construction works in amount of MDL 8 404 785.44 on the Floreni village, Ungheni district road access sector where the Fortina Labis SRL company is located, whose effective beneficiary is the former minister. Moreover, the asphaltting of the territory of the respective company was carried out from funds allocated by the Road Fund. The mass-media, both politically affiliated and independent, publicized the case. According to the independent media and the defendant, the file has a political connotation, being initiated in order to exert pressure on the Liberal Party (PL), the member of which is Iurie Chirinciuc, in order to vote for the mixed electoral system. We mention that the file was made public, and Chirinciuc was arrested practically during the same period as the mayor of Chisinau, Dorin Chirtoaca, who is also a member of the PL.

Monitoring summary: The criminal case against Iurie Chirinciuc was started in 2017, when he held the Minister of Transport and Road Infrastructure position. The minister was accused on two counts: trafficking

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in influence and abuse of service (326, 327 Penal Code). During the criminal prosecution, several preventive measures were applied to Chirinciuc and two other businessmen accused in the file - arrest in an isolation ward (60 days), house arrest (15 days), seizure of goods, suspension from office. Chirinciuc was sentenced by the court of Appeals to 1.4 years in prison, with the suspension of the punishment for a probationary term of one year and with a fine of 750 conventional units. Another businessman accused in the case (Nicolae Ciobanu) was sentenced to 1.4 years in prison with suspension, while the third businessman (Marin Sirbu) was sentenced to a fine of 2250 conventional units. Ciobanu and Sirbu were tried on the same counts - trafficking in influence.

On May 15, 2019, the Chisinau Court of Appeals sentenced Chirinciuc to 3.6 years in prison, with the execution of the sentence in a semi-closed penitentiary and with the deprivation of the right to hold public office for a period of 5 years. According to the decision of the Court of Appeals, the prosecutor in the case requested in jail Appeals with suspension for Chirinciuc, but the judges applied him prison with execution. Ciobanu was sentenced to 2 years in prison, with the execution of the sentence in a semi-closed penitentiary and without the right to hold public functions for 2 years. The sentence regarding Marin Sirbu was not Appealed, neither by the accused nor by the prosecutors. The file of Chirinciuc and Ciobanu is examined by the Supreme Court of Justice. Chirinciuc is at large, having fled the country. In the initial phase, Veaceslav Teleman, then interim head of the State Road Administration, was arrested in the same file. Subsequently, his case has been dismantled and is still under investigation.

From the observations of the *journalist monitor*, Chirinciuc is at large, probably in Romania. The file is at the SCJ. The circumstances under which the Court of Appeals accepted a sentence issued over two years earlier are not clear. At the same time, in the decision of the Chisinau Court of Appeals of May 2019, it is mentioned that in her application for Appeals prosecutor Victoria Furtuna requested a suspended jail sentence for Chirinciuc, but the judges sentenced him to prison with execution of the sentence⁶¹.

5. Case of professional athlete and MP Constantin Tutu (C1-013/JUD)

Facts: Constantin Tutu was accused that, together with several people, he participated in the murder of Alexei Veretca, in the Codrii Orheiului woods, near the "Doi Haiduci" restaurant. On April 28, 2012, near the "Doi Haiduci" restaurant in Codrii Orheiului woods, a group of people, among them Constantin Tutu, who later became an MP, participated in an altercation resulting in guns being shot and one death. Alexei Veretca, alias "Krasavcik", was killed on the spot and former policeman Iurie Matcovschi, who was with the victim, was injured. Following the incident, arrest warrants were issued on the names of several participants, including former PDM MP Constantin Tutu. They were all wanted by law enforcement, however, Tutu could not be found. He only turned up after the judges of the Chisinau Centru Court changed their arrest measure. Tutu was first placed under house arrest and later released, under judicial control. In July 2012, the investigators gave up the murder charges against Vasile Cojocar, who was working as a police officer, after accepting his version, that he did not coordinate his actions with Ion Corcodel, the person who shot the victim. Shortly after, on August 9, the investigators gave up the murder charges against Constantin Tutu and Oleg Pruteanu, after accepting their version of what had happened, as they fired shots into the air and not into the victim. On August 28, 2012, a senior prosecutor overturned these decisions, finding that they were based on an "arbitrary assessment of the facts." The three Appealed the order to the investigating judge, who, during a 17 October, 2012 session, accepted the Appeals filed and ordered the termination of the criminal prosecution for murder in respect to them. The court decision was final, so Tutu, Cojocar and Pruteanu were only accused and tried for hooliganism. Tatiana Veretca, the victim's wife, has sued the state at the European Court of Human Rights,

61 Details: <https://www.zdg.md/editia-print/justitie/un-dosar-si-multe-intrebari-primul-ministru-condamnat-la-inchisoare-cu-executare>
<https://www.zdg.md/stiri/stiri-politice/fostul-ministru-chirinciuc-condamnat-la-inchisoare-cu-executare-nu-a-fost-gasit-la-domiciliu-pentru-a-fi-retinut>

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alleging inadequate actions of the authorities in investigating the case. In June 2018, however, the ECHR rejected the request as “manifestly unfounded and inadmissible”. The court considered that the defendant State had fulfilled its obligations, according to Article 2 (the Right to Life) of the European Convention on Human Rights, regarding the investigation of the circumstances of the plaintiff’s husband’s death.

Monitoring summary: Constantin Tutu is tried for hooliganism, even though the prosecutors initially accused him of murder, and the prosecutor’s order was challenged in court and annulled. Orhei court, and then Chisinau Court of Appeals acquitted Tutu. For almost the entire period of the file examination, Constantin Tutu was a member of the Moldovan Parliament on behalf of the PDM. During the examination of the file, both in the first instance and at the Chisinau Court of Appeals, two judges from the team were replaced. Even criminal records were initiated against two judges. Another judge’s office was set on fire. Recently, a judge who participated in the examination of the case stated that the judge team was allegedly influenced in this case. By 2019, court hearings were postponed very often. According to personal observations, in the meeting of April 17, 2019, in which the decision was taken, the panel of judges consisting of Silvia Vrabii, Stelian Teleuca and Mihail Diaconu heard some of the witnesses, analyzed the evidence, listened to the parties, deliberated and pronounced the decision. Everything took an hour and a half. Prior to this session, most of the monitored sessions were either postponed or lasted very briefly.

6. Case of judge Domnica Manole (C1-014/JUD)

Facts: Former judge Domnica Manole was tried for a decision contrary to the law, precisely, the ruling, on April 14, 2016, from her position as judge at the Chisinau Court of Appeals, a resolution annulling the pronouncement of the Central Election Commission (CEC) of March 30, 2016 to reject the organization of a referendum proposed by the “Dignity and Truth” Platform. The decision of Mrs. Manole forced the CEC to initiate that republican referendum (art.307 CP).

Monitoring summary: On May 31, 2016, Eduard Harunjen, at that time the interim prosecutor general, obtained the SCM’s agreement to start the criminal prosecution of Judge Domnica Manole, suspected of making an illegal decision (**see decision summary above**). Although the criminal case started quickly, the case only reached the court in January 2019. After the change of government in Chisinau, the case prosecutor dropped the charges, and the Chisinau Court decided to acquit Domnica Manole, on the ground that the deed imputed is not a crime.

7. Case of Academy Member Couple Gheorghe and Maria Duca (C2-023/JUD)

Facts: Academy of Sciences Chairman, Gheorghe Duca, and his wife, Academy of Sciences University rector, academy member Maria Duca, are accused of receiving illegal salaries from the institutions they run - the Academy of Sciences and the Academy of Sciences University (art.328 CP).

Monitoring summary: The Duca spouses were denounced by Ilie Donica, a former Academy of Sciences employee. Initially, the Anticorruption Prosecutor’s Office refused to start the criminal prosecution of the Duca spouses, finding financial violations, that do not fall under the criminal law incidence. The Chisinau court, Buiucani section, forced the Anticorruption Prosecutor’s Office to resume the criminal prosecution of the Duca spouses, annulling the decision of December 29, 2016 regarding the non-commencement of the criminal prosecution. The Ministry of Finance ordered the Financial Inspection Service to carry out a check, which found that Gheorghe Duca illegally attributed 275 thousand lei to himself, while Maria Duca illicitly attributed 245 thousand lei in salaries and prizes. The total amount of dilapidations found allegedly exceeded 700 thousand lei. More than half of the court hearings scheduled in this case were postponed, mostly due to illness, but also due to work trips of the defendants.

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From the observations of the *legal monitor*, most of the adjournments of the court hearings are due to the defense part, especially to the defendants. Due to this, many witnesses of the accusation are heard, however, from the statements of the witnesses so far, there are no circumstances that would prove the guilt of the defendants in committing the criminal offenses. We can specify that in the indictment act, the state prosecutor did not indicate clearly which crime was committed by the defendants: excess of power or overriding of the duties of service, these crimes being distinct, even if they are found in the same article.

The respective issue was mentioned by the defendants' lawyers, from the perspective of the unclear accusation.

From the observations of the *journalist monitor*, the court hearings have been repeatedly postponed, most of the times the illness of one of the defendants being indicated as the reason⁶².

List of criminal cases monitored in the northern region

8. File of Parcova, Edinet mayor, Marcel Snegur (N-001/JUD)

Facts: Parcova, Edinet Mayor Marcel Snegur is accused that, on February 10, 2012, in absence of decisions by the Parcova village Council and in absence of a public auction, he transferred a plot of 2 ha. in lease to the "Linavan" company, causing considerable damage to public interests (art.328 CP).

Monitoring summary: In November 2014, the NAC filed a criminal case against Parcova, Edinet Mayor Marcel Snegur, based on art.328 CP (abuse of office). Marcel Snegur did not admit guilt in committing the criminal offense. In the summer of 2015, the criminal case was brought to court. On 2 March 2016, the Edinet court acquitted him, arguing that his actions did not meet the elements of the crime. Later, this decision was Appealed to the Balti Court of Appeals. The civil actions brought in this case by the injured parties were not satisfied. During the monitoring of the case, at the Balti Court of Appeals there were only two sessions of the total planned, the rest being postponed for various reasons.

9. File of Riscani mayor Victor Bogatico, and local councilmen Alexandr Poneatovschi and Lilian Salagor (N-002/JUD)

Facts: Riscani Mayor Victor Bogatico was accused of committing several crimes, as president of the working group for public procurement, namely: abuse of service (art.327 CP) - because in November 2011 he bought an automobile worth MDL 112 000 from public funds, in violation of the tender procedure; forgery of public documents (art.332 CP) - because in November 2011 he included manifestly false data in the minutes of the tender procedures, by which the vehicle was purchased; dilapidation of foreign assets (art.191 CP) - because in September-October 2011 he organized the dismantling of 2 iron boilers from the building of the town hall in complicity with other people, in order to personally gain MDL 2400; abuse of office (art.328 CP) - because in October 2011, and subsequently in April 2012 he leased several tens of hectares of land with the violation of the legislation, causing damage to the mayor's office and public interests amounting to MDL 79 288.18. Bogatico was also accused of violating traffic rules (art. 264 CP), in January 2012 causing bodily harm to a passenger. Similarly, Bogatico was accused of giving false statements (art.312 CP) as a witness in a criminal case filed in October 2012 on the basis of his complaint against the mayoralty's lawyer. Bogatico was accused of forgery in public documents (art.352

62 Details: <https://anticoruptie.md/ro/dosare-de-coruptie/examinarea-dosarului-savantilor-gheorghe-si-maria-duca-a-inceput-cu-stangul-sedinta-preliminara-a-fost-amanata>
<https://anticoruptie.md/ro/dosare-de-coruptie/dosarul-savantilor-gheorghe-si-maria-duca-avocatii-solicita-scoaterea-celor-doi-de-sub-urmarire-penala>
<https://anticoruptie.md/ro/dosare-de-coruptie/fostul-presedinte-al-academiei-de-stiinte-si-sotia-acestuia-trimisi-pe-banca-acuzatilor>

Annex 2: Facts and summary of the cases monitored

/ 1 CP), because between 2011 and 2012 false entries were made in the mayor's book of decrees. He was accused of committing the crime of abuse in office (art. 326 CP), because during the August-September 2011 period, together with two other persons, he intermediated the sending of 5000 US dollars to the local councilors for the urgent sale of a building from LPA property. The offenses of abuse of office (art.327 CP) and forgery of public acts (art.332 CP) related to the MDL 112 000 vehicle purchase episode are also imputed to Riscani city councilman Lilian Salagor, who also holds the position of procurement working group member. Riscani city councilman, Alexandr Poneatovschi is also facing charges of abuse in office (art.326 CP) for speeding up the sale of a building for an illicit remuneration of USD 5000.

Monitoring summary: Following the examination of the case in public hearings, the court: a) acquitted Bogatico and Salagor on art.327 CP and art.332 CP (episode of a motor vehicle procurement with violations) due to the lack of the constituent elements of the crime; b) terminated the criminal trial regarding Bogatico based on art.191 and art.328 CP (episode with the illegal alienation of the mayoralty cast iron boilers and an episode with the lease of several tens of hectares with infringement of procedure) due to the existence of the circumstances that exclude or condition the initiation of the criminal prosecution and holding him criminally responsible, c) he admitted guilt, but stopped the trial on art. 264 CP (the episode with the violation of the traffic rules and the provocation of the road accident), d) the court found him guilty on counts based on article 352/1 and 312 CP, but stopped the trial in relation to the intervention of prescription (the episode with the forgery in statements and the forgery in the book of mayoral decrees) e) sentenced Bogatico and Poneatovschi based on art.326 CP (the episode with the intermediation of an illicit remuneration with USD 5 000 to favor the decision of the local council for the sale of a building from Riscani), fining each of them MDL 60 000.

10. File of Balti Road Repair and Construction Department Municipal Enterprise Director, Serghei Pcela (N-003/JUD)

Facts: The head of the Balti Repair and Road Construction Department Municipal Enterprise, Serghei Pcela, was accused of abuse of office, exceeding the office attributions and air pollution in the Balti municipality, for the illegal storage and burning of waste on the territory of the company he runs, after a company in the city filed a complaint against him (art.328 and 230 CP).

Monitoring summary: The criminal case was opened in August 2016 and sent to court a year later. In this time, Serghei Pcela was detained for a total of 3 days, under preventive arrest for 13 days and under house arrest for 17 days. After the case was sent to court, many hearings were postponed due to different causes, from illness and/or judge's, lawyer's, prosecutor's, defendant's, departure on leave, to witnesses not being present in due time. At the session on 26.06.2018, for example, the reason for the postponement was the absence of the lawyer, who was participating in a protest. For two years, only some witnesses were heard on file. An important aspect: at the end of 2017, Serghei Pcela, formerly an Our Party member, joined the PDM, appearing several times at press conferences, where PN leader Renato Usatii was criticized.

List of criminal cases monitored in the southern region

11. File of BEM administrator and Orhei Mayor, Ilan Sor (bank fraud) (S-031/JUD)

Facts: Ilan Sor is suspected of fraud in particularly large proportions and money laundering in particularly large proportions while holding the position of BEM Board of Directors chairman (it is alleged that Sor obtained over USD 5 billion fraudulently). On April 13, 2017, NBM published information on the progress of the Kroll 2 report, which confirms the involvement in the banking fraud of companies affiliated with the Sor

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group. Obtained documents demonstrate the involvement in the bank fraud of a large group of companies from the Republic of Moldova that acted in concert and were related to Ilan Sor ("Sor Group"). At least 75 companies were part of this coordinated group, according to the report.

Monitoring summary: The criminal case regarding Ilan Sor was initiated in 2016, and in the same year (August 2016) it was sent to court. Three years after the examination of the file in court there is no final decision on the case. In June 2017 Ilan Sor was sentenced to imprisonment for a term of 7 and a half years for causing damages by deception or abuse of trust in particularly large proportions (re-qualified from fraud) and money laundering in particularly large proportions. The prosecutors demanded a 19-year prison term for Sor, with the deprivation of the right to hold certain positions in the banking system for a 5-year term, for fraud and money laundering. The reason why the judges re-qualified the sentence is not known, because the reasoned decision of the substantive court is secreted. For more than half a year, the case was suspended on the grounds that the court of origin did not find a translator to translate the reasoned judgment. The examination of the file on Appeals was moved to Cahul on the grounds that at the Chisinau Court of Appeals all the judges declared that they are in incompatibility to examine the file. Due to the great distance from Chisinau, very little press attends the court hearings. Instead, every time Ilan Sor attends the meeting, he is accompanied by supporters brought in an organized way. For more than 8 months, the file has been blocked at the Court of Appeals due to a financial-accounting expert appraisal, which was requested by Ilan Sor's lawyers and accepted by the court. During the examination of the file in court, Ilan Sor managed to pursue a political career: he won local elections, created his own party and he became an MP. Even though he was sentenced to 7 and a half years in prison for causing damages in particularly large proportions (2.5 billion lei), no confiscation was applied to Ilan Sor's wealth. In recent months, he managed to dispose of most of his assets.

From the observations of the *journalist monitor*, Ilan Sor's file raises multiple question marks, starting from the secrecy of the case by closing court sessions, delaying the file through requests of postponements, translations, expert appraisals. Also, the case suggests a privileged attitude towards the defendant from the prosecutors and judges, while the defendant was able to make a political career, become mayor of Orhei, party leader and MP during the criminal investigation and court examination.

12. File of Comrat Mayor Serghei Anastasov (S-032/UP)

Facts: Comrat Mayor Serghei Anastasov has been heard regarding the execution of a decision of the Comrat Municipal Council regarding the payment of salary increases for Comrat Mayoralty apparatus and technical department employees.

Monitoring summary: In December 2018, Comrat mayor, Sergei Anastasov, was summoned to the Anticorruption Prosecutor's Office (South region) to be heard regarding the execution of a decision by Comrat Municipal Council regarding the payment of salary increases for Mayoralty apparatus employees and technical employees. The mayor denies being guilty. During the monitoring period, the monitors were not able to find out on what fact was the criminal case started, nor what procedural quality the mayor has. The actions of the municipal councilors from Comrat who decided to pay the salary increases are not criminally investigated.

From the *journalist monitor* observations, and in regard to the mayor's son, a criminal case for pandering was initiated. The mayor's son was detained in October 2016.

13. File of Ruskaia Kiselia Mayor Gheorghe Gospodinov (S-034/UP)

Facts: The mayor is suspected of organizing a criminal scheme regarding the misappropriation and subtraction of money from the State Ecological Fund (art. 328, para. 1 CP), allocated for the construction of

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the sewerage network in the locality, worth MDL 7.23 million. According to prosecutors, the members of the criminal group allegedly forged documents for receiving and delivering works that were not executed or had an overestimated price. According to the press, the file is a political one, in fact it is intended to prevent the mayor of Ruskaia Kiselia to run for the third term.

Monitoring summary: On May 28, 2018, the mayor of Ruskaia Kiselia, Gospodinov, was detained by PCCOCS prosecutors, suspected of creating a criminal group that plans to seize money from the Ecological Fund. After the arrest, the suspect was applied the house arrest measure, which was later changed to a ban to leave the country. In the same criminal case, two other persons were detained - the director of a company executing engineering works and a construction manager. The file has not yet been sent to court.

14. File of Cimislia Mayor, Gheorghe Raileanu (S-033/JUD)

Facts: In October 2016, the Cimislia mayor, together with other officials within the town hall, allegedly forged a public procurement competition for asphaltting of a street in town in an abuse of office. The company that executed the works was contracted without organizing a competition. Also, after the works execution, their value was increased by MDL 200 000. The prosecutors initiated a criminal case for damage to the state budget in particularly large proportions, based on art. 328 (3), letter b) and letter d) CP.

Monitoring summary: The file regarding the mayor of Cimislia and four employees of the town hall was sent to court in November 2017. Since then, 20 court sessions have been set, many of which have been postponed. Both the defense and the accusation behave passively in court. The interest of the media and society in this case has dropped considerably. Raileanu continues to exercise his mandate.

From the observations of the *journalist monitor*, the case enjoyed great interest from the press and society at first, but due to the continuous delays of the court hearings the interest decreased. This summer, no representative of the press or society came to the court proceedings.



Freedom house is a nonprofit, nonpartisan organization that supports democratic change, monitors freedom, and advocates for democracy and human rights.

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