



Strasbourg, 4 May 2022

**CDL-REF(2022)017**

**Opinion No. 1082 / 2022**

Engl. only

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**REPUBLIC OF MOLDOVA**

**DRAFT LAW  
ON AMENDING SOME  
NORMATIVE ACTS (JUDICIARY)**

**Draft LAW**  
**on amending some normative acts**

The Parliament enacts the present organic law.

**Art. I. - Law no. 514/1995 regarding the judicial organization** (republished in the Official Gazette of the Republic of Moldova, 2012, no. 185, art. 620), is amended as follows:

1. To the Article 16:

paragraph (3) shall have the following content:

"(3) The presidents and vice-presidents of the courts and of the courts of appeal are selected and appointed by the Superior Council of Magistracy, for a term of 4 years, according to art. 9 of Law no. 544-XIII of July 20, 1995 on the status of the judge and Law no. 154/2012 on the selection, evaluation of the performance and career of judges. They may be appointed repeatedly to their respective position, but not more than two consecutive terms.";

paragraph (4) shall have the following content:

"(4) The Superior Council of Magistracy may reject the candidature for appointment as president or vice-president of the court or court of appeal only in case of the candidate's incompatibility with that position, the existence of one or more unextinguished disciplinary sanctions, or violation of legal selection and promotion procedures of the candidate.";

paragraph (5) is repealed.

2. Article 22 shall be supplemented by paragraph (3) with the following content:

"(3) In the process of elaboration, approval and amendment of the budget of the courts, the consultative opinion of the Superior Council of Magistracy is requested."

**Art. II. – Law no. 544/1995 on the status of judge** (republished in the Official Gazette of the Republic of Moldova, 2012, no. 185, art. 620), with further amendments, is amended as follows:

1. Article 9:

in paragraph (1), the words "for the first time" shall be excluded;

paragraph (6) letter e) shall have the following content:

"e) documents

confirming seniority;"

in paragraph (9) after the words "of the court" shall be supplemented by the words "as well as candidates for promotion to a higher court or transfer to a court of the same or lower level", and the words "for the first time" shall be excluded;

in paragraph (10) the words "as appropriate to Parliament" shall be excluded;

2. Article 11:

paragraph (1) shall have the following content:

"(1) The judges of the courts, of the courts of appeal are appointed from the number of candidates selected by competition, by the President of the Republic of Moldova, at the proposal of the Superior Council of Magistracy. Judges are appointed until they reach the 65-year-old age limit.";

paragraph (2) is repealed;

in paragraph (3), the words "for 5 years or until the age limit is reached" shall be excluded;

in paragraph (4), the words "or reconfirmation in office" shall be excluded;

in paragraph (5) after the word "appointment" shall be supplemented by the word "of the candidate" and the words "for 5 years or until the age limit is reached" shall be excluded.

3. Article 13 paragraph (3) letter a) is repealed;

4. To the Article 19 paragraph (3), the following sentence shall be added at the beginning:

"The judge enjoys only functional immunity."

5. Article 20:

in paragraph (3), the words "5 years" are replaced by the words "3 years actually worked";

in paragraph (4) the words "the appointment of the president or vice-president of the court" and the words "or, as the case may be, of Parliament" shall be excluded.

shall be supplemented by paragraph (4<sup>1</sup>) with the following contents:

(4<sup>1</sup>) "The appointment of the judge in the position of president or vice-president of the court is made only with his consent, by decision of the Superior Council of Magistracy, based on the results of the competition organized by it.";

in paragraph (6), the words "of the Parliament" shall be replaced by the words "of the Superior Council of Magistracy".

6. Article 24 paragraph (11) letter c) is repealed.

7. Article 25:

in paragraph (1), the letter k) shall have the following content:

"k) reaching the age limit";

paragraph (2) shall have the following content:

"(2) The proposal to dismiss the judge from office is submitted by the Superior Council of Magistracy to the President of the Republic of Moldova. If, within the period from the issuance of the decision to dismiss the judge and the submission of the proposal of the President of the Republic of Moldova until the issuance of the decree of the President of the Republic of Moldova in this regard, the grounds for dismissal of the judge have changed, the Superior Council of Magistracy is obliged to amend that decision."

8. To the Article 26 paragraph (7), the words "or, as the case may be, Parliament's decision" shall be excluded.

9. To the Article 34 paragraph (1), the words "or, as the case may be, by the Parliament" shall be excluded.

**Art. III. – Law no. 947/1996 regarding the Superior Council of Magistracy** (republished in the Official Gazette of the Republic of Moldova, 2012, no. 185, art. 620), with further amendments, is amended as follows:

1. To the Article 3:

paragraphs (2) and (3) shall have the following content:

"(2) The Superior Council of Magistracy includes judges and persons who have a high professional reputation and personal integrity, with experience in the area of law or in another relevant field, who do not work within the bodies of legislative, executive or judicial power, and are not politically affiliated.

(3) Six members of the Superior Council of Magistracy, who are non-judges, shall be openly and transparently selected by the Legal Committee on Appointments and Immunities based on a public competition and shall be appointed by a decision of the Parliament with the vote of three-fifths of the elected members. The competition is organized until the expiration of the term of office of the previously appointed members and consists of examining the files and hearing the candidates. The Legal Committee on Appointments and Immunities shall draw up reasoned opinions for each successful candidate and shall propose that Parliament appoint them.";

shall be supplemented with paragraphs(3<sup>1</sup>) (3<sup>2</sup>) and (3<sup>3</sup>) with the following content:

"(3<sup>1</sup>) If the appointment by the Parliament of the members provided in paragraph (3) failed, the matter shall be included, after consultation of the parliamentary factions, in the agenda of a sitting of Parliament in the same sitting after 15 working days, those members shall be appointed by a vote of three-fifths of elected MPs.

(3<sup>2</sup>) If the procedure provided in par. (3<sup>1</sup>) fails, the respective members of the Superior Council of Magistracy are appointed in the same sitting of the Parliament, with the vote of the majority of elected MPs.

(3<sup>3</sup>) If the procedure provided in par. (3<sup>2</sup>) fails, the Legal Committee on Appointments and Immunities shall, within a maximum period of two months, hold a new public competition in which candidates rejected by Parliament may not participate. When organizing a new competition, the provisions of par. (3<sup>1</sup>) and (3<sup>2</sup>) shall apply accordingly.

2. To the Article 3<sup>1</sup>:

the name shall have the following content:

"Article 3<sup>1</sup>. Conditions to be elected a member of the Superior Council of Magistracy";

shall be supplemented by paragraph (1<sup>1</sup>) with the following content:

"(1<sup>1</sup>) The person may be elected as a member of the Superior Council of Magistracy who is not part of the judges, if this person meets the following conditions:

- a) has a high professional reputation;
- b) has personal integrity;
- c) has at least 10 years of experience in the area of law or in another relevant field;
- d) does not act at the time of submitting the application within the bodies of the legislative, executive or judicial power;
- e) is not politically affiliated."

in paragraph (3), the words "paragraph (1), "is replaced by the words" paragraph (1) and (1<sup>1</sup>), and after the words "Superior Council of Magistracy" shall be supplemented with the words "or, respectively, the Legal Committee on Appointments and Immunities".

3. Article 4:

paragraph (1) letter a) shall have the following content:

"a) makes proposals to the President of the Republic of Moldova for appointment, promotion to a higher court, transfer to a court of the same level or to a lower court or dismissal of the judges of the courts";

is supplemented with paragraph a<sup>1</sup>) with the following content:

"a<sup>1</sup>) appoints the president or vice-president of the court";

in letters c) and d), the words "or vice-president of the court" shall be replaced by the words "vice-president of the court or vice-president of the board within the Supreme Court of Justice" in paragraph (3):

letter c) shall have the following content:

"c) based on the decision of the disciplinary board, submits to the President of the Republic of Moldova the proposal concerning the dismissal from the office of judge;"

shall be amended with letter c<sup>1</sup>) with the following content:

"c<sup>1</sup>) based on the decision of the disciplinary board decides on the dismissal from the office of president or vice-president of the court".

4. To the Article 5:

in paragraph (1), the words "during the term of office" shall be replaced by "for a period of three years" and shall be supplemented by the words: "the President of the Superior Council of Magistracy may not hold more than two consecutive terms."

paragraph (3) shall be excluded.

5. To the Article 7<sup>1</sup> paragraph (6) letter d), the words "or by the Parliament" and the words "or for the appointment of a vice-president or a president of the court" shall be excluded.

6. Article 9:

paragraph (1) shall have the following content: "1. The term of office of a member of the Superior Council of Magistracy shall be 6 years, without the possibility to hold two consecutive terms of office";

shall be supplemented by paragraph (1<sup>1</sup>) with the following content:

"(1<sup>1</sup>) In case of termination of the term of office of more than 5 of the members of the Superior Council of Magistracy and there are no substitutes to continue their term of office in the manner established in art. 13, the Superior Council of Magistracy continues to operate, having restricted competences only in the part referring to art. 3 par. (5), art. 4 par. (1) letter e), par. (2) letter c<sup>2</sup>), par. (4) letter d), d<sup>1</sup>) and f).

paragraph (2) is repealed.

7. To the Article 11 paragraph (2), the words "from among the tenured professors" are replaced by the words "which are not from among the judges".

8. Article 12:

in paragraph (1), letter d), the words "termination of office" shall be replaced by the words "revocation";

in paragraph (2):

the word "Termination" is replaced by the word "Revocation";

in letter c) after the words "established by this law," shall be supplemented with the words "in case of unjustified absence at more than three consecutive meetings,".

9. To the Article 13 paragraph (2), shall be excluded, and the paragraph (1) becomes a single paragraph.

10. To the Article 15 paragraph (4), after the words "shall be examined" shall be supplemented with the text "except when examined:

a) the proposals provided in art. 23;

b) the dismissal from the office of the judge in connection with the initiation of criminal proceedings;

c) the application of the special measures of investigation in the criminal case in which the judges in office appear."

11. To the Article 18 paragraph (5) after the words "by the alternate members," shall be supplemented with the text "according to the representativeness provided in art. 13 par. (3) and (4)".

12. Article 19:

in paragraph (1), the words "or, as the case may be, Parliament" and the words "and the appointment of the president or vice-president of the court" shall be excluded;

in paragraph (2) in the second sentence, after the words "for the office of judge," shall be supplemented by the words "and the decision on the selection of candidates and the appointment of";

in paragraph (3), the words "of the President or Vice-President of the Court" shall be excluded;

in paragraph (4) the words "or, as the case may be, the Parliament" and the words "art. 16 of the Law regarding the judicial organization and art. 9 of the Law on the Supreme Court of Justice" are excluded.

13. Article 20:

in paragraph 4, the words "or decision" and the words "or, as the case may be, to the Parliament" shall be excluded; in paragraph (7), the words "or, as the case may be, to the Parliament" shall be excluded.

14. To the Article 23 paragraph (3) is repealed.

15. To the Article 24 paragraph (1), "Members of the Superior Council of Magistracy shall participate in the adoption of judgments concerning the career of judges, their disciplinary liability, the sanctioning and dismissal of judges, without the right to vote." shall be excluded.

15. To the Article 25 paragraph (1) shall have the following content:

"(1) The decisions of the Superior Council of Magistracy can be challenged in accordance with the provisions of the Administrative Code no. 116/2018."

**Art. IV. – Law no. 789/1996 on the Supreme Court of Justice** (republished in the Official Gazette of the Republic of Moldova, 2012, no. 185, art. 620), with further amendments, is amended as follows:

1. Article 9 shall have the following content:

"Article 9. Appointment of judges of the Supreme Court of Justice

(1) The judges of the Supreme Court of Justice are appointed by the President of the Republic of Moldova, at the proposal of the Superior Council of Magistracy, within 30 days from the date of receipt of the corresponding proposal.

(2) In case of finding the incompatibility of the candidate for the position of judge of the Supreme Court of Justice with that position, the existence of one or more unextinguished disciplinary sanctions or violation of the legal procedures for selecting and promoting the candidate, the Superior Council of Magistracy, within the term indicated in par. (1), is informed by the President of the Republic of Moldova. In the event of circumstances that require further

examination, the President of the Republic of Moldova shall notify the Superior Council of Magistracy of the extension of the term indicated in par. (1) by 15 days.

(3) The President of the Republic of Moldova shall examine the repeated proposal of the Superior Council of Magistracy within 30 days from the date of its receipt.”;

2. To the Article 9<sup>1</sup>, the paragraph (1) shall have the following content:

”(1) The president, the vice-presidents of the Supreme Court of Justice, the presidents of the boards and the vice-presidents of the boards are selected by the Superior Council of Magistracy on the basis of the competition organized according to art. 9 of Law no. 544-XIII of July 20, 1995 on the status of judge”.

**Art. V. – Law no. 178/2014 on the disciplinary liability of judges** (published in the Official Gazette of the Republic of Moldova, 2014, no. 238-246, art. 557), with further amendments, is amended as follows:

to the Article 6 paragraph (7), the sentence "The proposal to dismissal from office the president or vice-president of the Court shall be submitted by the Superior Council of Magistracy, in the manner prescribed by law." is replaced by the sentence "The decision to dismissal from the office of president or vice-president of the court is approved by the Superior Council of Magistracy.”

to the Article 38, the paragraph (1) shall have the following content:

”(1) The decision of the disciplinary board regarding the application of the sanction of dismissal from the office of president or vice-president of the court is approved by the Superior Council of Magistracy, after the expiration of the term of appeal. The decision of the disciplinary board regarding the application of the sanction of dismissal from the office of judge is sent to the Superior Council of Magistracy for submitting the proposal of the President of the Republic of Moldova after the expiration of the term of appeal.”

**Art. VI. – (1)** This law shall enter into force on April 1, 2022.

(2) Within two months of the entry into force of this law, the Superior Council of Magistracy shall bring its normative acts in accordance with this law.

**SPEAKER OF PARLIAMENT**