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

**REPUBLIC OF MOLDOVA**

**DRAFT LAW**  
**ON THE EXTERNAL ASSESSMENT OF JUDGES AND PROSECUTORS**  
**OF THE REPUBLIC OF MOLDOVA**  
**AND INFORMATIVE NOTE TO THE DRAFT LAW**

*Translation from Romanian into English*

*Draft*

## **LAW** **on the external assessment of judges and prosecutors**

Aiming to ensure the integrity of judges and prosecutors and to increase society's confidence in justice, The Parliament shall adopt this organic law.

### **Chapter I** **GENERAL PROVISIONS**

#### **Article 1.** Subject matter of the law

This law regulates the legal relationships related to the procedure of assessment of ethical and financial integrity (hereinafter - assessment) of judges, prosecutors and other subjects mentioned in this law.

#### **Article 2.** Purpose and principles of assessment

(1) The assessment is an exceptional exercise, unique and limited in time, carried out to ascertain the integrity of the subjects referred to in art. 3 par. (1).

(2) The external assessment shall be carried out based on this law, according to the following principles:

- a) independence of the Assessment Commission;
- b) fairness of the assessment procedure;
- c) publicity of the acts issued in the assessment process;
- d) exceptional nature of the assessment.
- e) proactive role and full competence of the Assessment Commission.

#### **Article 3.** Subjects of the assessment

(1) Under this law the following are assessed:

a) judges who have served as president and vice-president of the courts, including the interim of these offices, from January 1, 2017 to December 31, 2022

b) judges of courts of appeal in office on the date of entry into force of this law, including those suspended from office

c) The General Prosecutor, his/her deputies, the chief prosecutors of the sections of the General Prosecutor's Office, including those who have held these positions or who have acted as interim prosecutors during the period from January 1, 2017 to December 31, 2022;

d) prosecutors who have held the office of chief prosecutor of a prosecution office and deputy chief prosecutor of a prosecution office, including the interim of these offices, during the period from January 1, 2017 to December 31, 2022.

e) prosecutors of specialised prosecutors' offices;

f) judges and prosecutors who have failed the assessment required by Law no. 26/2022;

(2) The following are not subject to assessment under this law:

a) persons who have passed the assessment provided for by Law no. 26/2022 on some measures related to the selection of candidates for the position of member of the self-administration bodies of judges and prosecutors;

b) persons who have passed the assessment provided for by Law on the assessment of the holders and candidates for the position of the Supreme Court of Justice judge;

c) judges and prosecutors who belong to one of the categories referred to in par. (1) and who, within 20 days from the date of informing about the commencement of the assessment of the respective category of subjects, submit a request for resignation;

d) judges and prosecutors who do not belong to one of the categories referred to in par. (1).

(3) The request for resignation submitted under par. (2) letter c) may be withdrawn only within 20 days. The submission of the request for resignation after the expiry of this period, irrespective of the reason given, shall be deemed not to constitute a failure to pass the assessment. As from the date of submission of the request for resignation, the judge or prosecutor concerned shall not take part in the adoption of judicial acts of provision.

(4) The Superior Council of Magistracy, Superior Council of Prosecutors or, as the case may be, the Prosecutor General shall examine the request for resignation within 10 days of submission. Judges and prosecutors who have resigned in this way may not become judges again or, where appropriate, prosecutors for 7 years.

## **Chapter II**

### **ASSESSMENT COMMISSIONS**

#### **Article 4.** Competence and mandate of the Assessment Commissions

(1) The judges referred to in art. 3 par. (1) shall be assessed by the Assessment Commission of judges.

(2) The prosecutors referred to in art. 3 par. (1) shall be assessed by the Assessment Commission of prosecutors.

(3) The Assessment Commission of judges and the Assessment Commission of prosecutors shall each have 6 members. Each commission shall be assisted by a secretariat.

(4) The Assessment Commissions shall have the following powers:

a) to collect, accumulate and verify by means not prohibited by law any data relevant to the assessment;

b) to access free of charge any information systems containing data relevant to the fulfilment of its mandate, including via the interoperability platform (MConnect);

c) to request information from the subject under assessment, from other natural and legal persons of public or private law, including financial institutions, for the fulfilment of its mandate;

d) to interview the subject under assessment and other persons holding information relevant to the assessment;

e) to carry out the assessment and adopt reports on the assessment results;

f) to have other powers provided for in this law.

(5) The regulation on the organisation and functioning of the Assessment Commission may elaborate on the provisions of this law on assessment.

(6) Information which constitutes a state secret and which has not yet been declassified may not be used for the assessment.

(7) The assessment commissions shall assess all the subjects referred to in par. (1) or (2), including all persons referred to in art. 3 par. (1) letter d) who have won competitions by December 31, 2025.

(8) The work of the Assessment Commission, including the remuneration of its members and the staff of the Assessment Commission secretariat shall be made from the account and within the limits of the financial means approved in the annual budget law and from other sources non prohibited by law.

(9) The national members of the Assessment Commissions shall receive a monthly allowance equivalent to twice the basic salary of the Supreme Court of Justice judge.

(10) The Assessment Commissions shall have legal capacity.

#### **Article 5.** Independence of the Assessment Commissions

(1) The Assessment Commissions shall be independent, functional and accountable to any natural or legal person, regardless of the legal form in which they are organised, including the political factions and development partners that contributed to the appointment of its members.

(2) In their work, the Assessment Commissions shall be guided by the Constitution of the Republic of Moldova, this law and its regulation of organisation and functioning.

(3) Each Assessment Commission shall submit to Parliament annually, by March 31, a report on its work in the previous year.

(4) The Assessment Commission shall draw up and approve its own regulation on the organisation and functioning and its secretariat regulation.

(5) Development partners may not give directions to the Assessment Commission or its secretariat on matters relating to the implementation of the mandate of the Commission.

(6) The member of the Assessment Commission and the secretariat employees may not be detained, arrested, subjected to compulsory arrest or searched without the consent of the Commission, except for flagrant offences. Criminal proceedings against them shall be initiated by the Public Prosecutor. It shall cease if the Commission does not give its consent to its continuation within 10 days. The Assessment Commission's decision on the continuation of the prosecution is published on the Commission's website.

(7) Membership of the Assessment Commission may be withdrawn only by the Assessment Commission in the manner provided for in this law.

#### **Article 6.** Composition of the Assessment Commissions

(1) Each Assessment Commission shall consist of 6 members appointed by a vote of 3/5 of the elected deputies as follows:

a) 3 members citizens of the Republic of Moldova – proposed by the parliamentary factions, respecting the proportional representation of the majority and the opposition;

b) 3 members – proposed by development partners.

(2) With a view to appointing the members referred to in par. (1) letter a), the parliamentary factions shall submit to the Parliamentary Committee on Legal Affairs, Appointments and Immunities information on the identified candidates. The Committee on Legal Affairs, Appointments and Immunities shall examine the proposed candidates and approve, by a majority vote of the members of the committee, reports on each candidate. Draft decisions of Parliament shall be drawn up by the Committee on Legal Affairs, Appointments and Immunities for each individual candidate and shall be submitted to Parliament in plenary for debate and adoption by the majority provided for in par. (1).

(3) If one of the parliamentary factions does not ensure the nomination of the candidate within the prescribed time limit, the Committee on Legal Affairs, Appointments and Immunities shall submit the draft parliamentary resolutions and reports for the candidates nominated in accordance with par. (2) for debate in Parliament's plenary.

(4) If one of the parliamentary factions fails to nominate a candidate, or if the proposed candidate is not approved by the required number of votes, the Assessment Commission shall be set up and shall operate with the number of members confirmed by Parliament's decision in accordance with par. (7).

(5) For appointing the members referred to in par. (1) letter b), the development partners shall submit to Parliament, by joint letter, a list of no more than 6 eligible persons for each Commission. The Parliamentary Committee on Legal Affairs, Appointments and Immunities shall examine the proposed candidates and elect 3 persons who obtained the highest number of votes at the meeting of the parliamentary committee. They are proposed to Parliament's plenary for appointment as members of the Assessment Commission. The parliamentary committee shall draw up a Parliament's draft decision, accompanied by a report, which shall be debated in Parliament's plenary and adopted by the majority vote provided for in par. (1).

(6) For the purposes of this law, development partners shall mean international donors (international organisations, diplomatic missions and their representations in the Republic of Moldova) active in the areas of justice reform and the fight against corruption in the last 2 years. Their list shall be approved by Government order.

(7) The nominal composition of the Assessment Commission shall be confirmed by

Parliament's decision.

**Article 7.** Membership of the Assessment Commission

(1) The member of the Assessment Commission must meet the following requirements:

- a) has higher education;
- b) has an outstanding reputation;
- c) has at least 10 years' experience in one or more of the following areas: legal, economic, tax, financial, corruption investigation or integrity verification;
- d) has not been a member of Parliament or a member of the Government in the last 3 years;
- e) has not been a member of a political party in the last 3 years;
- f) has not been a judge or prosecutor in the Republic of Moldova for the last 3 years;
- g) has a sufficient knowledge of English language.

(2) Membership of the Assessment Commission is incompatible with any public office in the Republic of Moldova. Incompatibility of members of the Assessment Commission must be declared immediately and resolved within 10 days of the declaration.

(3) Membership of the Assessment Commission shall cease in the following cases:

- 1) resignation;
- 2) revocation of member for:
  - a) occurrence of circumstances of incompatibility or non-compliance with the requirements laid down in par. (1);
  - b) intentional infringement of this law or of the regulation on the organisation and functioning of the Assessment Commission;
  - c) committing a flagrant offence;
  - d) failure to attend during 2 months at least 3 meetings of the Assessment Commission without good reason;
  - e) inability to serve as a member of the Assessment Commission, including for health reasons, for more than 2 months.
- 3) death;
- 4) termination of the work of the Assessment Commission.

(4) The member of the Assessment Commission may be dismissed by a reasoned decision of the commission, adopted by secret vote of 2/3 of its members, which shall be forwarded to Parliament for information. The member concerned shall not vote.

(5) In the event of termination of membership of the Assessment Commission on the grounds set out in par. (3) points 1)-3), the chairperson of the Assessment Commission or, where appropriate, the head of the Assessment Commission secretariat shall immediately refer the matter to Parliament with a view to organising the selection and appointment of a new member in accordance with the procedure laid down for the member of the commission whose mandate is terminated.

**Article 8.** Co-chairs of the Assessment Commission

(1) Each Assessment Commission shall be managed by two co-chairs elected from among the members of the commission, by secret vote of majority of its members. A chairperson shall be elected from among the members referred to in art. 6 par. (1) letter a) and one from among the members referred to in art. 6 par.

(1) letter b).

(2) Co-chairs of the Commission have the following tasks:

- a) coordinate the work of the Commission;
- b) represent the Commission in relations with other natural and legal persons of public or private law;
- c) have duties provided for in this law and in the regulation on the organisation and functioning of the Commission;

- (3) The specific duties of each co-chair are determined by the Assessment Commission.
- (4) The status of co-chair of the Assessment Commission shall cease in case:
  - a) termination under the terms of art. 7 par. (3) of the membership of the Assessment Commission;
  - b) resignation or removal from office as co-chair, approved by a majority of the members of the Assessment Commission.

#### **Article 9. Assessment Commission Secretariat**

- (1) Each assessment commission has its own secretariat. The Assessment Commission Secretariat (hereinafter – the secretariat) shall be independent of any public authority and shall function solely for assisting the Commission in the performance of its duties. The functioning and staffing of the secretariat shall be approved by the Assessment Commission.
- (2) The secretariat shall be subordinate exclusively to the Assessment Commission.
- (3) The work of the secretariat shall be coordinated by the Head of the secretariat.
- (4) At the request of the co-chair of the Assessment Commission or the Head of the secretariat, public authorities and institutions shall be obliged to delegate or temporarily second employees to assist the Assessment Commission in the performance of its duties, including by way of derogation from the provisions of the laws governing the functioning of the public authorities and institutions concerned and from the laws governing the status of certain categories of civil servants.

#### **Article 10. Obligations of the Assessment Commission members**

- (1) The Assessment Commission members have the following obligations:
  - a) to attend, in person or by videoconference, the meetings of the Assessment Commission;
  - b) to use only for the purposes of the assessment and to ensure the confidentiality of personal data which become known to them during the exercise of their mandate as a member of the Assessment Commission;
  - c) to refrain from any activity, which might give rise to a conflict of interest, and to declare them in the manner laid down in the regulation on the organisation and functioning of the Assessment Commission;
  - d) to refrain from any action that might discredit the Assessment Commission or cast doubt on its objectivity;
  - e) to exercise their duties professionally, diligently and promptly.
- (2) The obligations laid down in par. (1) letters b)-e) shall also apply to employees of the secretariat.

#### **Article 11. Meetings of the Assessment Commission**

- (1) The Assessment Commission shall conduct its work in closed meetings, with the exceptions laid down in this law.
- (2) The meetings of the Assessment Commission shall be attended by at least 4 members.
- (3) The members of the Assessment Commission are obliged to attend the meetings in person or by videoconference. If a member of the Assessment Commission is unable to attend the meeting, the member shall inform the Commission of this fact.

## **Chapter III ASSESSMENT PROCEDURE**

#### **Article 12. Assessment criteria**

- (1) For the purposes of this law, the assessment consists in verifying the ethical and

financial integrity of the subjects.

(2) The subject shall be deemed not to meet the requirements of ethical integrity if the Commission has serious doubts that he/she:

a) has seriously violated the rules of ethics and professional conduct of judges, prosecutors or, as the case may be, other professions, as well as whether he/she has behaved arbitrarily or issued arbitrary acts;

b) there are reasonable suspicions that he/she has committed acts of corruption, acts related to corruption or acts of corruption within the meaning of the Integrity Law no. 82/2017;

c) has admitted incompatibilities and conflicts of interest in his/her work that are incompatible with his/her position.

(3) A candidate shall be deemed not to meet the criterion of financial integrity if the Commission has serious doubts that:

a) since 2016, the candidate has not declared donations or the right of use of assets that had to be declared according to the law, and the benefit thus obtained exceeds 10 average salaries on the economy on the assessment day;

b) the difference between assets, expenses and income over the last 15 years does not exceed 20 average salaries per economy in the amount fixed by the Government for the year in which evaluation takes place;

c) in the last 10 years, he/she has admitted tax irregularities as a result of which the unpaid tax exceeded 3 average salaries per economy in the amount fixed by the Government for the year in which evaluation takes place .

(4) In assessing the criteria referred to in par. (3), the Assessment Commission shall also take into account the wealth, expenses, income and behaviour of close persons, as defined in the Law no. 133/2016 on the declaration of wealth and personal interests, as well as the wealth of the assessed subject and his/her close persons registered in the names of other persons.

(5) In assessing the criteria referred to in par. (2)-(3), the Assessment Commission shall in no way depend on the acts or findings of other bodies.

### **Article 13.** Consistency of assessment

(1) The Assessment Commission shall announce on its website and inform candidates by email about the start of the assessment of the respective category of subjects.

(2) Subjects referred to in art. 3 par. (1) letters a), b), e), f) shall be assessed in priority.

### **Article 14.** Initiation of the assessment procedure

(1) Within 5 days of the Commission's request, the Superior Council of Magistracy or, as the case may be, the Superior Council of Prosecutors, shall forward to the Assessment Commission a list of the subjects to be assessed and their contact details (home address, telephone, email).

(2) The Assessment Commission shall initiate the assessment upon receipt of the list referred to in par. (1).

(3) The Assessment Commission shall request the subject to submit:

a) the statement of assets and personal interests with updated data for the last 5 years, including expenses during that period;

b) the ethics questionnaire;

c) the statement of the list of close persons, as defined in the Law no. 133/2016 on the declaration of wealth and personal interests, who work or have worked in the last 5 years in the judiciary, prosecution and public service.

(4) The template of statements and questionnaire shall be approved by the Assessment Commission.

(5) The statements and the questionnaire referred to in par. (3) shall be submitted to the Assessment Commission within the time limit set by the Commission, but not less than 7 days after the request. Refusal to submit or failure to submit the statements or the ethics questionnaire within the time limit is deemed to failing the assessment.

(6) By submitting the statements and the questionnaire provided for in par. (3), the assessed

subject shall declare on his/her own responsibility the truthfulness and completeness of the data submitted.

**Article 15.** The panel carrying out the assessment

(1) The subjects of the assessment shall be assessed by a panel of three members of the assessment commission, representing both categories of members referred to in art. 6 par. (1).

(2) The assessment file shall be prepared for assessment by a member- rapporteur, who shall be assisted by the Commission secretariat. The method of appointment of the member-rapporteur shall be laid down in the regulation on the organisation and functioning of the Assessment Commission.

(3) The member-rapporteur shall submit the draft report to the other members of the panel.

**Article 16.** Gathering information

(1) The Assessment Commission and its secretariat shall have real-time access to information systems containing data necessary for the fulfilment of the mandate, subject to the conditions of the legislation on data exchange and interoperability. The Assessment Commission may receive from any person relevant information on the subject under assessment, including the ability to gather such information itself.

(2) The information requested from the persons referred to in art. 4 par. (4) letter c) shall be submitted to the Commission free of charge, including in electronic form, within a maximum of 10 days from the date of the request.

(3) Natural and legal persons under public or private law, including financial institutions, may not refuse to provide information on the grounds of protection of personal data, banking secrecy or other data with limited access, except for information that falls under the provisions of Law no. 245/2008 on state secrecy and has not been declassified.

(4) Failure to submit the requested information within the set deadline shall be sanctioned according to the legislation in force.

(5) By way of derogation from the provisions of Law no. 133/2011 on the protection of personal data, the processing of personal data is allowed during the activity of the Assessment Commission and its secretariat. The right of access of the assessment subject to these data is ensured by the secretariat. The assessed subject is bound to maintain the confidentiality of the personal data in the assessment material submitted by the Assessment Commission.

(6) At any stage of the assessment procedure, in order to clarify any uncertainties identified, the Assessment Commission may request additional data and information from the assessed subject or other persons.

(7) Failure by the assessed subject to submit the information requested by the Assessment Commission within the prescribed time limit, without compelling reasons, may constitute grounds for refusing to admit to the assessment file the information submitted out of time.

(8) The information gathered by the Assessment Commission on the subjects of the assessment shall be kept, archived, deleted, and destroyed in the manner laid down in the regulation on the organisation and functioning of the Assessment Commission.

**Article 17.** Hearing

(1) After analysing the gathered information, the Assessment Panel shall inform the candidate of any doubts it may have about him/her and give him/her access to the materials in the assessment file.

(2) At least 7 days after the submission of the doubts, the Assessment Panel shall hear the subject of assessment. If the subject of assessment refuses to attend the hearing, the Panel shall not organise a hearing and shall assess the candidate based on the gathered information.

(3) The assessed subject has the following rights:

a) to attend the hearing and to give oral explanations;

b) to be assisted by a lawyer or a trainee lawyer during the assessment procedure;

c) with the agreement of the Assessment Panel, to submit, in written form, additional data



and information which he/she considers relevant, if he/she was unable to submit it previously.

(4) The hearing shall take place in open meeting, which shall be audio/video recorded. The Assessment Panel may decide to hold the hearings or part of them in closed meeting if this is absolutely necessary for the protection of public order, privacy or morality. Video recordings of the hearings in public meetings are placed on the official website of the Assessment Commission.

(5) The subject under assessment is obliged to comply with the order in the hearing and to answer the questions of the Assessment Panel.

(6) Any member of the Assessment Panel may put questions to the assessed subject.

#### **Article 18. Assessment report**

(1) Following the assessment, the Assessment Panel shall issue a report in Romanian which is approved by vote of at least 2 members of the panel. The Assessment report signed by the Chairperson of the Assessment Panel shall contain the relevant facts, reasons and the proposal to pass or fail the assessment. Members of the panel may not hold from voting.

(2) The report of the Panel is approved by the Assessment Commission by vote of the majority of its members.

(4) The subject shall be deemed not to have promoted the assessment if it is established that there are serious doubts as to his/her compliance with one or more of the criteria set out in art. 12, which have not been removed by the assessed subject.

(5) The subject of assessment in respect of whom a report has been approved the Assessment report does not take part in the adoption of the acts of provision until the decision of the Superior Council of Magistracy or the order of the General Prosecutor or as the case may be, of the decree of the President of the Republic of Moldova to dismiss him/her has been issued.

(6) The report shall be sent to the assessed subject, to his/her e-mail address. On the same day, the report shall be published on the official website of the Assessment Commission, taking the necessary measures to protect the privacy of the assessed subject and other persons.

(7) Within 3 days of adoption, the report signed by the Assessment Commission shall be sent to the Superior Council of Magistracy or, as the case may be, the Superior Council of Prosecutors, together with a copy of the assessment file.

(8) In case if breaches of law or that the information provided by the assessed subject or by other natural or legal persons does not correspond to the truth are found, the Assessment Commission shall refer the matter to the competent bodies for documentation of the facts in question and, where appropriate, for the application of sanctions.

#### **Article 19. Examination by the Superior Council of Magistracy, or the Superior Council of Prosecutors of the assessment results**

(1) The Superior Council of Magistracy or, as the case may be, the Superior Council of Prosecutors shall examine in a public meeting the results of the assessment according to the assessment file received from the Assessment Commission. The assessed subject may submit additional information that he/she considers relevant only if he/she confirms that he/she was unable to submit it previously. The representative of the Assessment Commission and the assessed subject, in person, shall be entitled to present their position.

(2) By a reasoned decision adopted within 30 days of receiving the documents referred to in art. 18 par. (7), this Council shall:

a) accept the report of the Assessment Commission and decide whether or not to pass the assessment;

b) reject the report of the Assessment Commission, once only, the reopening of the assessment procedure, if it finds circumstances which could have led to promotion or, as the case may be, non-promotion of the assessment;

c) after receiving the report of the Assessment Commission drawn up following the repeated assessment referred to in letter b), accept the report under letter a) or reject it and decide whether or not to pass the assessment.

(3) The reasoned decision of this Council shall be published on its official website and sent by email to the assessed subject and the Assessment Commission on the day of its adoption.

(4) The decision of the Council on the non-promotion of the assessment has the effect of:

a) dismissal of the judge in accordance with art. 25 par. (1) letter n) of the Law no. 544/1995 on the status of judge and its consequences;

b) the dismissal of the prosecutor, with the effects resulting from letter a);

c) the non-admission to the competition of a candidate who is not a judge or prosecutor.

(5) The judge or prosecutor who failed the assessment shall not have the right to exercise the office of judge, or the case may be, prosecutor for 7 years, to be admitted and to exercise the following professions: prosecutor or judge, lawyer, notary, authorized administrator, bailiff and public office for 5 years from the date of the final decision of this Council, the order of the General Prosecutor, or as the case may be, of the decree of the President of the Republic of Moldova.

**Article 20.** Appealing the decision of the Superior Council of Magistracy or the Superior Council of Prosecutors

(1) Notwithstanding the provisions of the Administrative Code, the decision of the Superior Council of Magistracy and if relevant of the Superior Council of Prosecutors may be appealed within 15 days of receipt by email of the decision by:

a) the assessed person, in case of the decision referred to in art. 19 par. (4);

b) the Assessment Commission, in case of a decision referred to in art. 19 par. (2) letter c).

(2) The appeal shall be lodged with the Supreme Court of Justice and shall be examined within a maximum of 30 days by a panel composed of 3 judges.

(3) The lodging of an appeal shall suspend the execution of the decision of the Superior Council of Magistracy as the case may be, of the Superior Council of Prosecutors.

(4) The appeal shall be examined in a public session, to which the subject of the assessment, the representative of the Council and the Assessment Commission shall be invited to present their position

(5) the Supreme Court of Justice shall:

a) dismiss the appeal;

b) allow the appeal and:

(a) order the assessment procedure to be resumed by the Assessment Commission only if it finds the existence of factual circumstances that could have led to the assessment being passed;

(b) order the Council to resume the assessment procedure only if it finds that there are factual circumstances which could lead to the assessment not being passed.

(6) The decision of the Supreme Court of Justice shall be irrevocable from the moment of its issuance. The decision shall be deemed to have been issued when it is placed on the official website of the Supreme Court of Justice.

**Article 21.** Resumption of the assessment procedure

(1) The reassessment shall be carried out by the Assessment Commission.

(2) The reassessment shall be limited to the examination of the matters referred to it by this Council or, as the case may be, by the Supreme Court of Justice and the holding of repeated hearings.

(3) The provisions of art. 18 shall apply accordingly to the report adopted by the Commission following the reassessment.

**Chapter IV**  
**FINAL AND TRANSITIONAL PROVISIONS**

**Article 21.** Final and transitional provisions

(1) This Law shall enter into force on the date of its publication in the Official Monitor of the Republic of Moldova.

(2) The Superior Council of Magistracy and the Superior Council of Prosecutors shall within 5 working days of the entry into force of the law, announce the competition for vacant positions in both councils and colleges.

(3) The Parliament of the Republic of Moldova shall, within 15 working days from the date of entry into force of this law, confirm the nominal composition of the Assessment Commission of judges and the Assessment Commission of prosecutors.

(4) The Government shall take the necessary measures to ensure the functioning of this law, including contacting, within 5 working days of the date of entry into force of this law, the development partners and the Parliament with a view to their nomination of the members of the Assessment Commissions.

(5) The Ministry of Justice will, no later than 5 working days after confirmation of the nominal composition of the Assessment Commissions, hold their first meeting.

(6) The Assessment Commissions shall:

a) not later than 15 working days after confirmation of the nominal composition, elect their co-chairs;

b) not later than 30 working days after confirmation of the nominal composition, approve its own regulation on the organisation and functioning and the regulation of the secretariat;

(7) By way of derogation from the provisions of Law no.158/2008 on the public office and the status of civil servant, as well as from the provisions of the laws regulating the special status of certain categories of civil servants, it is allowed to second civil servants from public authorities and institutions to the secretariat.

(8) This Law shall cease to have effect on the date of rejection by the Supreme Court of Justice of the last appeal lodged against the decision of the Superior Council of Magistracy or the Superior Council of Prosecutors provided for in art. 20, or at the expiry of the time limit for appealing against the last decision of that Council.

**PRESIDENT OF THE PARLIAMENT  
INFORMATIVE NOTE**

**to the draft Law on the external assessment of judges and prosecutors**

**1. Name of the author and, where appropriate, of the participants in the development of the draft**

*The draft Law on the external assessment of judges and prosecutors was drafted by the Ministry of Justice.*

The initial version of the draft law is based on the Concept on integrity assessment of judges and prosecutors.

**2. Condițiile ce au impus elaborarea proiectului de act normativ și finalitățile urmărite**

The justice reform initiated in 2021 started with the initiation of the process of drafting the law on the assessment of ethical and financial integrity of judges and prosecutors, called the vetting process.

Based on the requirements of the Constitution and international standards in this field, as well as to allow the implementation of this reform in a more organized and focused way, the process of external evaluation was divided in three consecutive stages:

1. The evaluation process of the Superior Council of the Magistracy (SCM), the Superior Council of Prosecutors (SCP), and the Boards within the self-administration bodies (disciplinary board, selection and career boards, and evaluation of the performances board, both within the judiciary and the prosecution).

2. The process of reforming the Supreme Court of Justice (SCJ) and evaluation of the judges and candidates for the position of SCJ judge.

3. Extended evaluation process of judges and prosecutors (divided into 2 sub-phases:

- a) evaluation of judges and prosecutors in key functions and key institutions;

- b) evaluation of other judges and prosecutors.

Assessing the integrity of the SCJ judges is in direct connection with the process of reorganisation of the SCJ and is **an obligation assumed by the Republic of Moldova nationally and internationally**. This reform is one of the basic conditionalities resulting from the RM-EU Association Agreement. Considering the aspirations to join the European Union, this reform cannot in any case be postponed for a long time, otherwise it will irremediably jeopardize the reform of the legal system and the cleaning of the judiciary.

We remark the fact that in the process of elaboration of the regulations on the assessment of the integrity of judges and prosecutors, the recommendations from the Venice Commission from 2019, 2021, 2022 on the draft law on evaluation of SCJ judges were taken into consideration. The mechanism of external assessment of judges and prosecutors is largely similar to the mechanism of assessment of SCJ judges.

We are mentioning that in the 2019 Opinion (p. 18-19, 37-40, 84) as well as the 2021 one, the Venice Commission has already found the extraordinary situation in which the Republic of Moldova finds itself, in regard to the severe state of justice. From 2019, the state has aggravated, and a whole blockage in the justice system was created. Moreover, it has been reiterated that in the principle the state authorities decide that in extraordinary cases, when internal mechanisms fail, urgent and radical mechanism can be applied, e.g.: the evaluation mechanism from Ukraine, Albania and the pre-vetting in Moldova.

In contrast to the case of 2019, although the majority of the judges and prosecutors are the same, a qualitative improvement of their work has not occurred, on the contrary, it has worsened and other internal mechanisms of the self-administration bodies have not functioned. In addition, credibility in the act of justice has decreased significantly.

That being said, we present a short information about the most recent convictions cases in the system:

- on 02.02.2023, the Supreme Court of Justice definitively sentenced a lawyer to **3 years** in prison for alleged influence peddling on prosecutors and judges;
- on 03.02.2023, The Edineț Court sentenced a criminal prosecution officer to **3 years** in prison for alleged influence peddling on judges.

At the moment, the Anticorruption Prosecutor's Office represents the state prosecution in court regarding - **12 judges, 15 prosecutors, 24 lawyers**, and other intermediaries.

We also present the information from the Report De asemenea, prezentăm informația din Raportul "*Disrupting Dysfunctionalit*y: *Resetting Republic of Moldova's Anti-Corruption Institutions*"<sup>1</sup> regarding the critical situation in the system from previous years:

„Several unfortunate examples of cases of judicial corruption were brought to the public's attention in 2016, revealing that allegedly 16 judges were complicit in money laundering activities of about USD 70 billion in the Russian Laundromat scheme<sup>2</sup>. The role of the courts in this conspiracy was significant given the fact that it is the courts that have issued the orders for obviously suspicious transfers of funds. The cases against the judges are still pending. Although the SCM has been aware of the involvement of judges in these cases from 2012, they reportedly did not take action until 2016, long after the damage to the Moldovan banking system had been done.

<sup>1</sup> The Report is available at the following link: <https://ccia.md/reports/ruperea-cercului-vicios/>

<sup>2</sup> The information from the Press Conference of the Anti-Corruption Prosecutor's Office and the National Anti-Corruption Center of September 21, 2016 is available at the following link: <https://anticoruptie.md/ro/dosare-de-coruptie/doc-cum-a-functionat-spalatoria-ruseasca-scheme-prezentate-de-procuratura-anticoruptie>

Several judges involved in such cases were either evaluated “very good” in their performance reviews by the relevant SCM bodies, promoted to administrative positions in district courts or Courts of Appeal during 2014- 2016<sup>3</sup>. The Anticorruption Prosecutor’s Office did not disclose that it had discontinued the criminal investigation in respect of these judges.<sup>4</sup> On October 27, 2020, the SCM accepted the request of five of these judges investigated in the “Russian Laundromat” case to have their suspensions from office quashed and to return to work. Subsequently, two other judges were found guilty of knowingly issuing a court decision contrary to law but exempted from criminal liability due to the prescription of criminal liability; another was acquitted. Eleven cases are pending in court and multiple recusal requests in respect of judges who are examining the cases are being put forward by lawyers, which leads to postponements.<sup>5</sup>

As to other allegations of corruption in respect of judges, although criminal investigations have been initiated, only one judge was found guilty of taking bribes (“passive corruption”) and sentenced to seven years of imprisonment. Another judge was found guilty of the same offence in the first instance court but acquitted subsequently by the Supreme Court of Justice.<sup>6</sup>

The Article 307 of the Criminal Code of the Republic of Moldova on “wilfully rendering a judgment, sentence, decision or ruling in breach of the law” is seen as a mechanism which endangers judicial independence<sup>7</sup>. Several judges have been subjected to criminal investigation under this provision, the constitutionality of which was confirmed by the Constitutional Court in 2018. That decision stated that a judge can be prosecuted “only on the basis of indisputable evidence that would prove the intention of the judge in issuing a judicial act in breach of the law”<sup>8</sup>.

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<sup>3</sup> «Only an empty shell» - The undelivered promise of an independent judiciary in Moldova, The International Commission of Jurists, 2019, <https://www.icj.org/wp-content/uploads/2019/03/Moldova-Only-an-empty-shell-Publications-Reports-Mission-reports-2019-ENG.pdf>.

<sup>4</sup> Report on Monitoring the Selectivity of Criminal Justice, Freedom House Moldova, 2021, [https://freedomhouse.org/sites/default/files/2021-11/fh-Moldova\\_Report-Selective-Justice-2021\\_v2-Eng.pdf](https://freedomhouse.org/sites/default/files/2021-11/fh-Moldova_Report-Selective-Justice-2021_v2-Eng.pdf)

<sup>5</sup> “Laundromat” judges’ files. Some have called for the recusal of the judges, others are demanding compensation from the state, Ziarul de Garda, 27 June 2021, [www.zdg.md/stiri/stiri-justitie/dosarele-judecatorilor-din-laundromat-unii-au-cerut-recuzarea-judecatorilor-altii-cer-despagubiri-de-la-stat/](http://www.zdg.md/stiri/stiri-justitie/dosarele-judecatorilor-din-laundromat-unii-au-cerut-recuzarea-judecatorilor-altii-cer-despagubiri-de-la-stat/).

<sup>6</sup> Three convicted judges for corruption for the last two years, Anticoruptie.md, 2016, <https://anticoruptie.md/ro/stiri/trei-judecatori-condamnati-pentru-acte-de-coruptie-in-ultimii-doi-ani>

<sup>7</sup> «Only an empty shell» - The undelivered promise of an independent judiciary in Moldova, International Commission of Jurists, 2019, [www.icj.org/wp-content/uploads/2019/03/Moldova-Only-an-empty-shell-Publications-Reports-Mission-reports-2019-ENG.pdf](http://www.icj.org/wp-content/uploads/2019/03/Moldova-Only-an-empty-shell-Publications-Reports-Mission-reports-2019-ENG.pdf)

<sup>8</sup> Constitutional Court Decision no. 12 of 28 March 2017, available at <https://constcourt.md/ccdocview.php?tip=hotariri&docid=612&l=ro?tip=hotariri&docid=612&l=ro>. The press release in English available at <https://constcourt.md/libview.php?!=en&idc=7&id=985&t=/Media/News/Criminal-Liability-of-Judges-Arising-from-a-Wilful-Rendering-of-an-Illegal-Decision-Constitutional?!=en&idc=7&id=985&t=/Media/News/Criminal-Liability-of-Judges-Arising-from-a-Wilful-Rendering-of-an-Illegal-Decision-Constitutional> .

A 2019 Freedom House Report monitoring the selectivity of criminal justice in the Republic of Moldova<sup>9</sup> highlighted uneven treatment across similar criminal cases which, according to prosecutors are related to the Bank Fraud case. Now fugitive politician and entrepreneur Ilan Shor received preferential treatment from the relevant investigative and court bodies. Delays in court proceedings were also a symptom of selective justice in the Shor case: out of the 98 court hearings monitored, 68 were postponed<sup>10</sup>. The assessment indicated that selective justice resulted from undue cooperation between politicians and judges, and the selectivity of justice has two main manifestations: favorable or unfavorable to subjects with political affiliation, depending on how close the subjects are to the political forces that control justice.

A subsequent 2021 Freedom House Report on the same topic was conducted in 2021<sup>11</sup>. It revealed several criminal cases with similar characteristics but with different procedural approaches, notably differing and inconsistent assessments of NIA's fact-finding documents when starting criminal prosecution for illicit enrichment; different judicial outcomes in similar cases with identical criminal typologies, etc. Fiftysix percent of all monitored court hearings were postponed, leading to delays. The monitoring also confirmed clear favoritism: in one high profile example of a complex set of criminal allegations with respect to defendants in the Platon group cases likely to have had a positive outcome<sup>12</sup> were carried out quickly, despite the multitude of participants in the case and the change of judges.

A recent LCRM report on the application of criminal sanctions in the Republic of Moldova<sup>13</sup> found that courts in Moldova appear to be conscious of the importance of the specific circumstances of the defendant in the sentencing but apply a formalistic approach with respect to the criteria for individualization. Although courts do pay attention to the issue of proportionality in sentencing, the mechanisms provided for in the legislation to ensure the balance between the impact of the deed and the perpetrator, on the

<sup>9</sup> Report on Monitoring the Selectivity of Criminal Justice, Freedom House Moldova, 2019 [https://freedomhouse.org/sites/default/files/2020-02/Judicial\\_Integrity\\_Selective-Criminal\\_Justice\\_ENGLISH\\_FINAL.pdf](https://freedomhouse.org/sites/default/files/2020-02/Judicial_Integrity_Selective-Criminal_Justice_ENGLISH_FINAL.pdf).

<sup>10</sup> In cases involving opposition subjects that seemed likely to be convicted, court proceedings moved with remarkable alacrity, while those with a chance of being acquitted were subject to extensive delays. This phenomenon was reversed in cases involving subjects close to the ruling party.

<sup>11</sup> Report on Monitoring the Selectivity of Criminal Justice, Freedom House Moldova, 2021, [https://freedomhouse.org/sites/default/files/2021-11/fh-Moldova\\_Report-Selective-Justice-2021\\_v2-Eng.pdf](https://freedomhouse.org/sites/default/files/2021-11/fh-Moldova_Report-Selective-Justice-2021_v2-Eng.pdf).

<sup>12</sup> Veaceslav Platon, who gained ownership in various Moldovan banks and insurance companies in the post-Soviet economy and maintained strong ties to Russian bankers involved in money laundering <https://ccia.md/wp-content/uploads/2022/07/CCIARaport-ENG.pdf>.

<sup>13</sup> Report on the application of criminal sanctions in the Republic of Moldova, Legal Resources Centre from Moldova, 2022, <https://crjm.org/wp-content/uploads/2022/05/Report-on-application-of-criminal-sanctions-in-RM.pdf>.



one hand, and the liability and punishment merited, on the other, do not seem to have the desired effect<sup>14</sup>. This tendency is observed in the reasoning of decisions in general, and also in the reasoning of the criteria for individualization, especially in regard to proportionality, and mitigating or aggravating circumstances. The SCJ and first instance courts outside Chisinau seem to be the most problematic in this regard.

On the matter of sanctions applied in corruption cases of over 400<sup>15</sup> analyzed judgments issued by the SCJ between January 2017 and December 2020, a 2022 LRCM report<sup>16</sup> established that in over 90% of corruption cases the subjects were engaged in or the acts themselves were of petty corruption. Seven percent of the cases relate to subjects or cases of grand corruption. Justice in corruption cases has been served within an average of 3.5 years. Every second examined case was re-examined at least once.

From the total sanctions imposed by judges, eight out of ten cases the convicted did not spend a day in jail. Fifty-five percent of district court judgements are quashed. The solutions of the Court of Appeal's judges are different in 48% of cases (the rate of acquittals in corruption cases is at least four times higher than in other criminal cases).

The publication of court decisions provides insight on how a judge applies the law. In 2020<sup>17</sup>, based on analysis of 1,340 judicial decisions adopted from 1 January 2018 to 31 March 2019, LCRM found that the anonymization of court decisions in the Republic of Moldova is inconsistent. Such inconsistencies were found across 55% of corruption cases. In 149 decisions related to corruption cases (28% of the total of 530 decisions analysed), the judges (with the exception of the SCJ) abused the practice in such areas as naming the perpetrators or instigators of a crime. In 118 decisions (22%), the name of the judge, prosecutor, police officer, mediator, bailiff, notary or lawyer were undisclosed. There are several cases in which the amount of the bribe was kept secret in court decisions in high profile cases. These examples

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<sup>14</sup> In the paper "From Judgments to Justice—How Can We Achieve Better Judicial Reasoning in Moldova?" drafted by the Legal Resources Centre from Moldova, the authors identified the main causes of adopting poorly reasoned judgments, and analysed the legal shortcomings and practical constraints that weaken the efforts of the Moldovan judiciary to ensure proper quality of reasoning. These deficiencies stem from inconsistent judicial practice and the limited impact of the efforts to standardize judicial practice; judges' workload and its uneven distribution; flawed, superficial reasoning in court judgments; pre-established deficient behaviour of current judges inculcated in new judges; shortage of personnel that assists judges; and compliance with statutory time limitations, often to the detriment of other requirements, including those concerning the reasoning of judgments. The paper is available at [https://crjm.org/wp-content/uploads/2021/11/2021-22-10-De-la-hotarari-judecatoresti-la-justitie\\_2021-RO\\_FINAL.pdf](https://crjm.org/wp-content/uploads/2021/11/2021-22-10-De-la-hotarari-judecatoresti-la-justitie_2021-RO_FINAL.pdf).<sup>15</sup>

Represented 95% of the total number of judgements publicly available on the website of the SCJ at that time.  
<sup>16</sup> Judgments and sanctions applied in corruption cases – how uniform is the legal practice?, Legal Resources Centre from Moldova, 2022, <https://old.crjm.org/wp-content/uploads/2022/01/2022-01-25-studiu-sanctiuni-coruptie-versiunea-pre-machetata-site.pdf>.

<sup>17</sup> Transparency of the Judiciary versus Data Protection. An Analysis on the Publication of Court Decisions in the Republic of Moldova, Legal Resource Centre from Moldova, 2020, <https://crjm.org/en/transparency-of-the-judiciary-versus-data-protection-an-analysis-on-the-publication-of-court-decisions-in-the-republic-of-moldova/>



show the excessive and improper anonymization from public view of key elements of such court decisions, which reduces the impact of corruption prevention through well-reasoned court judgments, deterrence and transparency to civil society.

There have been cases in which courts of first instance and at the appeal level, including in high profile criminal cases, have examined cases completely hidden from public view. For example, the case of former Prime-Minister Vladimir Filat, who was convicted of passive corruption and traffic of influence, was entirely examined in closed hearings, despite the defendant's request for an open trial. Two other cases related to the Bank Fraud, were reportedly examined entirely behind closed doors. Although courts can exclude the public from all or part of a trial, this is to be done only under exceptional circumstances, strictly justified on a case-by-case basis and be subject to ongoing judicial supervision and review. The International Commission of Jurists has expressed concern at the use of closed hearings particularly in criminal cases in which there is a public interest.<sup>18</sup>

In this context, we mention **the factors that determined the external evaluation:**

- The increased risk of influencing judges/prosecutors due to lack of integrity.
- The inefficiency of the current regulatory framework regulating the mechanism for evaluating the integrity of judges/prosecutors.
- The lack of security for citizens to be protected from possible abuses and infringements of their rights and the low level of confidence of society in the justice system in general.
- The inefficiency of the evaluation procedure of the judges/prosecutors is already determined, as over the last couple of years, they were automatically rated the qualification "very good", without them being subjected to real and credible verification.
- The inefficiency of the disciplinary procedure, which was started "on command", only against judges/prosecutors who were not loyal to the SCM or SCP.

**The finalities pursued by the promotion of this draft law are to:**

- 1) to increase the quality of the act of justice;
- 2) to create the mechanism for the external assessment of judges and prosecutors;
- 3) to ensure the appointment of impartial and honest judges and prosecutors;
- 4) the removal from the system of judges and prosecutors with integrity problems.

<sup>18</sup> «Only an empty shell» - The undelivered promise of an independent judiciary in Moldova, International Commission of Jurists, 2019, <https://www.icj.org/wp-content/uploads/2019/03/Moldova-Only-an-empty-shell-Publications-Reports-Mission-reports-2019-ENG.pdf>.

The call for the exercise of extraordinary evaluation of the judicial system in a phased manner is justifiable because internal mechanisms have failed repeatedly, with self-administration bodies unable to reform the system from within, and systemic corruption and lack of integrity have chronically damaged the justice system.

It is important to specify that the evaluation exercise proposed by this draft law will be an unrepeatable one. This fact is expressly provided for in the draft law. An additional argument in support of this thesis is that without the support and positive approval from the Venice Commission and the support from development partners it will not be possible to call for a similar exercise.

With reference to relevant policy documents, we mention that the drafting and promotion of this project results from the objective 1.2.2, action "a) Elaboration of the normative framework on the extraordinary (external) evaluation of judges and prosecutors in accordance with the recommendations of the Venice Commission" of the Action Plan for the implementation of the *Strategy on ensuring the independence and integrity of the justice sector for the years 2022-2025, approved by Law No. 211/2021*; as well as from the international commitments assumed by the Republic of Moldova in the context of obtaining the status of a candidate state for accession to the European Union.

### 3. Main provisions of the draft and highlighting new elements

This draft law includes details about: the subjects of the evaluation, the institutions that will be involved in the respective process, the evaluation procedure, the effects of passing and failing the evaluation process, the appeal procedure, etc.

#### **THE OBJECT OF THE EXTERNAL ASSESSMENT**

The object of the vetting or extraordinary assessment is the ethical and financial integrity of the subject of the assessment. The assessment criteria will be the same as for the SCJ judges.

During the integrity assessment, the person's assets and expenses are checked in relation to their reported and available legal income. In the eventuality of finding discrepancies that clearly exceed a permissible margin established by law between available assets and expenses supported and legally available income, the subject is considered to have failed the integrity assessment.

The investigation of assets and expenses is not limited to the subject of the assessment, but also involves members of his family. Thus, if family members are unable to justify their assets and expenses and the source of their donations to the assessed person, if any, it will not promote the integrity assessment.

The integrity aspect also involves checking cases where judges and

prosecutors have not settled conflicts of interest in their activity.

Failure to pass the assessment will result in the dismissal of the judge/prosecutor concerned. The law will provide for a permissible margin of difference between declared and confirmed income/lifestyle, so that minor differences or issues that cannot be justified will not lead to removal from the system.

## THE SUBJECTS OF THE EXTERNAL ASSESSMENT

The proposed evaluation will concern:

### 1. Judges (approximately 160 persons):

- a) all presidents of the 15 courts and vice-presidents of courts, including *ad interim* presidents, who have held the respective positions from January 1, 2017 to date (about 60 persons);
- b) all judges of the Courts of Appeal: Chisinau, Balti, Comrat, Cahul (about 80 judges);
- c) judges who have failed the assessment provided by the Law no. 26/2022.

### 2. Prosecutors (approximately 230 persons):

- a) from within the General Prosecutor's Office - the interim General Prosecutor, deputies of the General Prosecutor, prosecutors for special missions and heads/deputies of sections/directorates (*about 22 persons*);
- b) all anti-corruption prosecutors and PCCOCS prosecutors (*about 102 persons*);
- c) all chief prosecutors and their deputies from 2017 to date, including interim prosecutors in the 42 offices, (*about 100 prosecutors*).
- d) prosecutors who have failed the assessment provided by the Law no. 26/2022.

The numbers above include all persons, including those who may resign. It is estimated that 30-40% of the above judges and prosecutors will resign. Thus, in total about 160 persons will be assessed by the commission for judges and about 230 persons by the commission for prosecutors.

With regard to the categories of subjects in sub-phase 2 (Chisinau Court, judges applying for promotion to leading positions or higher courts, Chisinau Prosecutor's Office, prosecutors applying for promotion to leading positions or higher prosecutors' offices) - is analyzed the opportunity to have them extraordinarily evaluated through evaluated internal mechanisms, strengthened and capacitated with the appropriate instruments (CSM/CSP boards).

Given that some judges and prosecutors are currently assessed under the evaluation provided by the Law no. 26/2022, if they pass the integrity assessment they will not be the subject to the assessment provided by this draft law. If they do not pass the integrity assessment provided by the Law no. 26/2022, they will be the subject to the assessment provided by this draft law.

## INSTITUTIONAL FRAMEWORK

The following institutions will be involved in the process of assessing the integrity of judges and prosecutors:

### **1. The Judges evaluation Commission and the Prosecutor evaluation Commission**

Resulting from the fact that the number of subjects to be evaluated is much higher than in the case of the evaluation provided for by Law no. 26/2022 and than in the case provided by the Law on the evaluation of SCJ judges, in this draft it is proposed to create two evaluation commissions. They will have the same structure and the same mode of organization and operation, with the difference that one will be specialized in the external evaluation of judges, and another - in the external evaluation of prosecutors.

Each evaluation committee will consist of 6 members: 3 members will be national and 3 will be international, appointed at the proposal of the development partners. In the same way, it is proposed to select alternate members (1 national and 1 international). The conditions to be met by the members, as well as the method of selection will be similar to those provided for in the Law no. 26/2022 and in the Law on the evaluation of SCJ judges.

It is proposed that the Commission's work will be divided in the initial stage into two assessment panels (3 members each), but all the final report will be approved with the participation of all 6 members.

The advantages of this method of setting up and operating assessment panels are:

- rapid examination of assessment files;
- speeding up the assessment process;
- the constitution of mixed panels in the event of recusal/absence of members of the assessment panels, etc.

The members of evaluation Commissions must be experts of proven experience, integrity and professionalism. For the identification and selection of national and international members, the model applied for the evaluation Commission created by Law no. 26/2022 will be used:

a) 3 members who are citizens of the Republic of Moldova - at the proposal of the parliamentary factions, respecting the proportional representation of the majority and the opposition, approved by a vote of 3/5 of the elected MPs;

b) 3 members - at the proposal of the development partners, approved by a vote of 3/5 of the elected MPs.

Each evaluation commission will have a secretariat.

Both the evaluation Commissions and their secretariats will have access to any data resources held by public institutions in the country, and to information

systems containing data relevant to the fulfilment of its mandate, i.e. for the assessment of the ethical and financial integrity of applicants and holders, including through the MConnect interoperability platform.

## **2. Superior Council of Magistracy and Superior Council of Prosecutors**

The CSM and CSP will have a decisive role, similar to the mechanism proposed for the evaluation process of SCJ judges, where the CSM has the last word in confirming the report of the Evaluation Commission.

Thus, the Assessment Commission will issue a report, on the promotion or non-promotion of the ethical and financial integrity assessment, which will be forwarded to the SCM or the SCP for confirmation or rejection of the results and adoption of the final decision on the assessed persons. Within 30 days of receiving the respective materials, the CSM/CSP will take a decision based on the following options:

- a) accepts the report of the Evaluation Commission and decides to promote or not to promote the evaluation;
- b) rejects the report of the Evaluation Commission and orders a one-off reopening of the evaluation procedure, if it finds circumstances that could have led to the promotion or non-promotion of the evaluation.

After the evaluation has been repeated, the Evaluation Commission shall send the report again to the SCJ, which shall either accept the report or reject it and find that the evaluation was promoted or not.

We emphasize that the project regulates the right of both the evaluation Commission representative and the evaluated person to present their position/opinion before the SCM./SCP.

### **The effects of the CSM/CSP decisions regarding the non-promotion of the evaluation:**

Through the proposed mechanism, the SCM/SCP will be able to fully intervene in order to ensure the avoidance of possible shortcomings or abuses that could affect the independence of judges, which will be in line with the rigours of the relevant constitutional provisions.

Decisions of the SCM and the SCP may be challenged directly in the Supreme Court of Justice.

Judges who did not pass the integrity assessment will be dismissed by the decision of the SCM. In the case of prosecutors, the CSP's decision regarding non-promotion of the evaluation will be forwarded to the General Prosecutor, who will approve by order their dismissal. The eventual non-promotion of the integrity assessment by the General Prosecutor will be decided by the CSP, who will be dismissed by the President of the Republic of Moldova.

### **3. Supreme Court of Justice**

A special panel will be set up within the SCJ to examine appeals lodged against decisions of the SCM/SCP on their careers of judges and prosecutors.

The SCJ will only be able to cancel the decision of the SCM/SCP if it finds that there are circumstances that could have led to the candidate passing the assessment (similar to Law no. 26/2022).

To this end, the panel set up to examine appeals under the mechanism for assessing the integrity of judges of the SCJ could be useful. By that time, the panel will already have experience in examining this type of dispute.

We remind that the draft law on evaluation of SCJ states: *"The appeal shall be examined by a panel consisting of 3 judges of the Supreme Court of Justice who have passed the assessment and did not work in the Supreme Court of Justice until December 31, 2022."*

The composition of this panel could be increased in the future to 7 or 9 judges. This will avoid possible deadlocks due to recusals/autocratic appeals. The panel could be assisted by a separate subdivision within the SCJ secretariat.

### **ASSESSMENT PROCEDURE**

The assessment procedure will involve the following main steps:

1. Announcement of the competition by the SCJ;
2. Drawing up the lists of persons to be assessed;
3. Collection of data on the assessed persons;
4. Analysis of the data, and their examination process with the participation of the assessed person and issuing of the Assessment Commission report;
5. The SCM/SCP will examine the report of the Assessment Commission, having the options to approve or reject the Evaluation Commission's report;
6. Appeal of the decision of the SCM/SCP to the SCJ (if applicable);
7. Enforcement of the decision of the SCM/SCP.

### **CONSTITUTIONALITY ASPECTS**

This reform does not propose to amend the Constitution, but will fully involve the SCM and SCP as key actors with a constitutional mandate to decide on the careers of judges and prosecutors.

The reasonable suspicion regarding the illicit nature of the goods will be placed on the Assessment Commission. Subsequently, the assessed person will have to counter this suspicion.

On the subject of the verification of compliance with the regime of interests in the work of judges and prosecutors, the Assessment Commission could come up with preliminary assessments of the subject under assessment, after which the latter would have the opportunity to explain the reasoning behind the issued decisions or

the taken actions.

## EFFECTS OF NON-PROMOTING EXTERNAL EVALUATION

Persons who will not pass the external evaluation will be released from their positions. Also, the respective persons will be deprived of the right to exercise the function of judge/prosecutor for 7 years, to be admitted and to exercise the functions and professions of: judge/prosecutor, lawyer, notary, authorized administrator, bailiff such as and public dignity for 5 years from the date of finality of the CSM (in the case of judges), the order of the Prosecutor General (in the case of prosecutors), or the decree of the President of the Republic of Moldova (in the case of the Prosecutor General).

We emphasize that the draft law contains provisions to avoid the dismissal of the judge/prosecutor for minor financial irregularities – a margin of several average salaries per economy was introduced as the allowed difference between the property/income and expenses of the subject of the assessment.

It should be noted that the amendment of *the Law no.544/1995 on the Status of Judges* and the *Law no 3/2016 regarding the Prosecutor's Office* will be carried out through a draft law amending the related regulatory framework. This will create the legal prerequisites for the SCM/CSP/GP to adopt a decision/order on the dismissal from office of SCJ judges who will not promote the integrity evaluation without going through a disciplinary procedure. **This regulation is in accordance with p. 50 of Opinion CDL-AD(2022)024 of the Venice Commission**, which emphasized that "*The evaluation/vetting process described in the drafts may by no means be equalled with the disciplinary proceedings. As the Venice Commission has noted previously, "[e]valuation and disciplinary liability are (or should be) two very different things." Disciplinary liability requires a disciplinary offence. A negative performance, which leads to a negative overall result of an evaluation, can also originate from other factors than a disciplinary offence. Therefore, a proposal that negative overall evaluation results should lead to the instigation of disciplinary proceedings raises problems.*"

We admit that it is possible that several of the current judges/prosecutors will pass the integrity evaluation. Keeping them in the SCJ after the results of the evaluation become public will denigrate the image of the judicial system, will reduce citizens' trust in the judicial system and will reduce to zero all the efforts made to unblock the system and clean it from corruptible elements.

As a result, we strongly support the idea of termination of mandate only for judges/prosecutors who will not promote integrity evaluation.

It is planned that the Evaluation Commission will complete the process of verifying the integrity of judges and prosecutors by the end of 2025.

## 4. Economic and financial regulatory

The activity of the two Evaluation Commissions will be ensured from the state budget (from the financial means provided in the budget of the Ministry of Justice for 2023), as well as from the development partners. However, the project provides for the possibility of financing the activity of the Evaluation Commissions from other sources not prohibited by law.

The management of the evaluation commission's financial resources will be done by the Ministry of Justice. We mention as a similar example of managing the financial resources of the Evaluation Commission created on the basis of Law no. 26/2022.

The implementation of the project will involve expenses from the state budget in the part related to:

- **Identification of the office and its maintenance** (e.g.: communal services, security, etc.);

It is proposed that the headquarters necessary for carrying out the activity of the Evaluation Commissions be identified by the Government of the Republic of Moldova.

- **Remuneration of national members;**

The project provides for the payment for each member, designated by internal actors, from the state budget, of monthly allowances equivalent to twice the official salary of the Judge of the Supreme Court of Justice with more than 16 years of service.

According to Table no. 1 of Annex no. 4 to Law no. 270/2018 regarding the unitary salary system in the budgetary sector, for judges of the Supreme Court of Justice with up to 16 years of service as a judge, salary class 119 and salary coefficient 12.29 is established.

We also specify that for the year 2023, the reference value of 2600 lei was established for the judges of the Supreme Court of Justice. As a result, the monthly allowance of a national member will be:

$$12,29 * 2\ 600\ lei * 2 = 63\ 910\ lei$$

For a period of 9 months (if the project will enter into force at the end of March this year), the allowance to be paid to the 6 national members from the two evaluation Commissions will be approximately:

$$(63\ 910\ lei * 9\ months) * 6\ people = 3\ 451\ 140\ lei$$

In this context, we must emphasize the fact that within the state budget for 2023, the Ministry of Justice was allocated financial resources in the amount of **13978,5 thousand lei** for the implementation of reforms related to the extraordinary external evaluation of judges and prosecutors.



Regarding the remuneration of the employees in the secretariat, we note that the people who will be employed in the secretariat will not have the status of civil servants. As in the case above, the expenses related to their employment and remuneration will be assumed by the development partners

- **Allowances related to possible resignations**

Both judges and prosecutors who do not want to be subject to external evaluation will be able to submit a resignation request within 20 days of the entry into force of the law.

The existence of such requests will demand the payment of severance allowances equal to:

**a)** 50% of the product of multiplying the average monthly salary of the judge by the number of years fully worked **as a judge** (art. 26 paragraph (3) of the Law no. 544/1995 regarding the status of the judge).

In the absence of exact data regarding the concrete judges who will decide to resign and regarding the seniority in the position of judge relevant for the calculation of the allowance, a precise calculation regarding the cost of this option cannot be provided.

As an example, if a judge with an average of 20 years of service, will decide to honorably leave the system, the amount required to pay the single severance allowance for him will be around:

$30\,000 \text{ lei monthly salary} * 50 \% * 20 \text{ years} = 300\,000 \text{ lei.}$

**b)** 50% of the product of multiplying the last monthly salary by the number of years fully worked **as a prosecutor** (art. 62 alin. (2) din Legea nr. 3/2016 cu privire la Procuratură)

Thus, in the case of a prosecutor from the General Prosecutor's Office with 20 years of service, the allowance for him will be around:

$30\,000 \text{ lei the last monthly salary} * 50 \% * 20 \text{ years} = 300\,000 \text{ lei}$

Considering that, at the moment, it is not possible to accurately estimate the financial means necessary to cover the expenses conditioned by the resignation of the judges/prosecutors and, respectively, the payment of allowances, they will be requested in the subsequent rectification of the state budget.

## **5. Method of incorporating the draft into the system of normative acts in force**

For the proper implementation of the assessment process of judges and prosecutors, the evaluation Commissions will have to approve within the deadline set in the draft:

1. Own Regulation of organisation and functioning;

2. Regulation of the Assessment Commission Secretariats.

Also, it will be necessary to amend the *Law no. 544/1995 on the status of judge* and the *Law no. 3/2016 regarding the Prosecutor's Office* with a new ground for dismissal – the failure of external evaluation.

## 6. Approval and public consultation of the draft

In accordance with the provisions of art. 20 of Law no. 100/2017 on normative acts, the drafting of this draft law was initiated with the publication on the official website of the Ministry of Justice in the department Transparency in decision-making, "Announcements on the initiation of the drafting of normative acts", of the announcement of the initiation of the drafting process, which can be accessed at the link: <https://justice.gov.md/ro/content/anunt-privind-initierea-procesului-de-elaborare-conceptului-de-evaluare-externa-0>.

The development of this draft law was preceded by the development of the Concept on the evaluation of the integrity of judges and prosecutors, which was transmitted to consultations in the established manner.

State Secretary /Electronically signed/

Veronica MIHAILOV-MORARU