



Strasbourg, 10 January 2020

CDL-REF(2020)001

Opinion No. 976 / 2019

Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

REPUBLIC OF MOLDOVA

**DRAFT LAW ON AMENDING THE LAW NO 947/1996
ON SUPERIOR COUNCIL OF MAGISTRACY**

LAW**on the amendment of certain legislative acts**

The Parliament adopts the present organic law.

Art. I – Law no. 947/1996 regarding the Superior Council of Magistrates (republished in the Official Journal of the Republic of Moldova no.15-17, 2013, art.65), with the subsequent modifications, is amended as follows:

1. In article 3:

In para (1), the text „12” is substituted with the text „15”;

Paras (3) and (4) shall have the following contents:

„ (3) Five members of the Superior Council of Magistrates shall be appointed by the Parliament among tenured law professors, with the vote of the majority of the elected MPs, on the basis of the proposals of the Legal Committee on Appointments and Immunities of the Parliament. The Legal Committee on Appointments and Immunities shall organise a public contest before the expiry of the mandates of the appointed members or within 30 days from the date of the occurrence of the vacancy. The public contest shall comprise at least the examination of the applications and the hearing of the candidates. The Legal Committee on Appointments and Immunities shall issue reasoned opinions concerning each selected candidate and shall propose to the Parliament to appoint them.

(4) Seven members, as well as seven substitutes, shall be elected among judges to the Superior Council of Magistrates by the General Assembly of Judges by secret vote, as follows: four from lower courts, two from appellate courts and one from the Supreme Court of Justice. The candidate judges who have received more than half of the votes of the Assembly members present in the sitting, in the descending order of the obtained votes, shall be considered elected members and substitute members of the Superior Council of Magistrates. The substitutes shall fill the vacancies of the judge members of the Superior Council of Magistrates in accordance with the court levels for which they have been elected, in descending order of the number of obtained votes.”;

Para (4¹) with the contents below is added:

„ (4¹) The Superior Council of Magistrates shall announce the date of the sitting of the General Assembly of Judges during which its members are to be elected, within at least 60 days before the day of the sitting, but no later than 30 days from the expiry of the mandate of the member of the Superior Council of Magistrates. The candidates to the membership of the Superior Council of Magistrates shall submit their applications to the address of the Council within at least 30 days before the date of the sitting of the General Assembly of Judges. The list of candidates and the submitted applications shall be published on the official web page of the Superior Council of Magistrates on the first day after the expiry of the deadline for the submission of the applications. The candidates to the membership of the Superior Council of Magistrates have the right to carry out promotion campaigns among the judges, in the manner established by the Superior Council of Magistrates.”

In para (7), the text „the suspension of the administrative activity during the discharge period of the mandate of member of the Superior Council of Magistrates” is substituted with the text „the resignation from the administrative office”.

2. Article 5:

In para (1), after the words „elected by secret vote” the words „among the judge members of the Council” are added;

para (4) with the contents below is added:

„ (4) In case of occurrence of the vacancy of the presidency of the Superior Council of Magistrates, before the election of a new president, the interim function shall be discharged by the dean among the judge members.”.

3. Article 8¹:

Para (6) is completed in the end with the phrase „and on the official web page of the Superior Council of Magistrates”;

para (8) with the contents below is added:

„ (8) The normative acts of the Superior Council of Magistrates are drawn up in accordance with the legislation regarding transparency in the decision-making process.”

4. Chapter II is completed with article 8² with the following contents:

„Article 8². Conditions for the election as member of the Superior Council of Magistrates among judges.

(1) The candidate meeting the conditions beneath may be elected to the function of judge member of the Superior Council of Magistrates:

- a) they have effectively served as judges for at least 3 years;
- b) they have not been disciplinarily sanctioned in the past 3 years;

(2) The application of the candidate shall contain the following:

- a) curriculum vitae;
- b) motivation letter;
- c) a draft of the main objectives to be pursued in case of their election as member of the Superior Council of Magistrates.

(3) In case the candidate does not meet the conditions provided for in para (1) or their application is not complete, the Superior Council of Magistrates shall withdraw from the contest the respective candidate.”

5. In para (2) of art. 20, the text „art. 20” is substituted with the text „art. 20¹”;

6. Article 24:

In para (3), the text „, following deliberations,” is removed;

In para (5), the text „in the deliberations” is substituted with the text „in the adoption of the decision”.

7. Article 25 shall have the following contents:

„Article 25. Challenging the decisions of the Superior Council of Magistrates

Challenges against the decisions of the Superior Council of Magistrates may be lodged with the Chişinău Court of Appeals by any interested person, within 30 days from the date of the communication of such decisions.”

Art. II – In para (4) of art. 23² of Law no. 514/1995 on the judiciary organisation (republished in the Official Journal of the Republic of Moldova, 2013, no. 15-17, art. 62), with the subsequent amendments, the words „within at least one month” are substituted with the words „within at least 60 days”.

Art. III – (1) The present law enters into force upon publication in the Official Journal of the Republic of Moldova.

(2) The election of the new members of the Superior Council of Magistrates among judges shall be carried out in accordance with the provisions of the present law, regardless of the date on which the sitting of the General Assembly of Judges is announced.

(3) Within 30 days from the date of the entering into force of the present law:

1) The Legal Committee on Appointments and Immunities shall organise, in the manner established by the present law, the contest for the selection of the members of the Superior Council of Magistrates among tenured law professors for a 4-year mandate;

2) The Superior Council of Magistrates:

– shall announce the date of the sitting of the General Assembly of Judges for the election of the member of the Superior Council of Magistrates among lower court judges;

– shall adjust its normative acts in accordance with the present law.

(3) The General Assembly of Judges shall elect a member to the Superior Council of Magistrates among lower court judges.”

SPEAKER OF THE PARLIAMENT

ZINAIDA GRECEANÎ

Chişinău, 20 December 2019

No.193