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

**REPUBLIC OF MOLDOVA**

**DRAFT LAW**

**ON THE SUPREME COURT OF JUSTICE**

**AND**

**INFORMATION NOTE**

## **PARLIAMENT OF THE REPUBLIC OF MOLDOVA**

### **LAW on the Supreme Court of Justice**

In order to strengthen the integrity and professionalism of the Supreme Court of Justice judges and to strengthen the role of the Supreme Court of Justice, the Parliament adopts this organic law.

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

##### **Article 1.** The object of the law

(1) This law regulates the role and powers of the Supreme Court of Justice, the procedure for selecting and appointing judges and the organisation of the Court.

(2) The activity and organisation of the Supreme Court of Justice shall be regulated by the Constitution of the Republic of Moldova, this Law and other normative acts insofar as they do not contravene to this Law.

##### **Article 2.** Role and powers of the Supreme Court of Justice

(1) The Supreme Court of Justice shall be the supreme judicial court of the Republic of Moldova.

(2) The role of the Court shall be to ensure uniform interpretation and application of legislation in the justice system.

(3) The Supreme Court of Justice:

- a) examines as a first instance the categories of cases established by law;
- b) examines as a court of cassation cases of social and legal importance as well as those which reveal particularly serious violations of law and human rights;
- c) examines applications for review in cases established by law;
- d) submits applications for review of the constitutionality of laws and regulations, resulting from the specific cases;
- e) resolves applications for review of cases following a judgment of conviction of the Republic of Moldova at the European Court of Human Rights or following an amicable settlement of a case pending before the European Court of Human Rights;
- f) requests advisory opinions from the European Court of Human Rights;

g) resolves other types of applications and legal issues provided for by law.

**Article 3.** Competences of the Supreme Court of Justice in ensuring uniform application of the law

(1) For the purpose of ensuring uniform interpretation and application of the law, the Supreme Court of Justice shall:

a) generalise judicial practice;

b) publish guides on the application of procedural law, the individualisation of criminal punishment and of contravention sanctions;

c) issue, at the request of the courts, advisory opinions on the application of legislation;

d) decide on applications in the interest of the law;

(e) take other measures necessary for the uniform application of the law, as provided for in the Regulations of the Supreme Court of Justice.

(2) Recommendations on the generalization of judicial practice and guides on the application of procedural legislation and individualisation of criminal punishment and contravention sanctions shall be drawn up and published on the official website of the Supreme Court of Justice.

**Article 4.** The application in the interest of the law

(1) The President of the Supreme Court of Justice, the Presidents of the Courts of Appeal, the Prosecutor General, the President of the Union of Lawyers or 3 judges of the Court may request the Supreme Court of Justice to rule on the questions of law, which by irrevocable judgments have been resolved differently by the courts.

(2) In the application in the interest of the law shall mention the irrevocable judgments from which it appears that the question of law has been resolved differently.

(3) The admissibility of the application in the interest of the law shall be examined by a panel of 5 judges of the Supreme Court of Justice. The application in the interest of the law shall be declared admissible if the different judgments represent a clear discrepancy in the interpretation or application of the law.

(4) The application in the interest of the law declared admissible shall be examined in a public hearing by a total of 11 judges of the Supreme Court of Justice, other than those who filed the application in the interest of the law. The authors of the application in the interest of the law and, where appropriate, other subjects directly concerned by the question of law examined shall be invited to attend the hearing. If necessary, the issue referred to the legal interest shall be examined by the Scientific Advisory Council.

(5) The total of 11 judges of the Supreme Court of Justice shall issue a reasoned decision explaining how the law is to be interpreted or applied in the future. The judgment shall be signed by the chair of the panel.

(6) From the moment of its pronouncement, the judgment adopted on the application in the interest of the law shall be binding, but shall have no effect on cases decided irrevocably. The judgement adopted on the examination of the application in the interest of the law is published on the official website of the Supreme Court of Justice.

## **Chapter II**

### **JUDGES AND ORGANISATION OF THE SUPREME COURT OF JUSTICE**

**Article 5.** The composition and organisation of the Supreme Court of Justice

(1) The Supreme Court of Justice shall have 20 judges.

(2) The Supreme Court of Justice shall be headed by the President, who shall be assisted by a Vice-President.

(3) The organisation of the Supreme Court of Justice shall be determined by this law and by the Regulations of the Court.

**Article 6.** The judges of the Supreme Court of Justice

(1) The judges of the Supreme Court of Justice shall be appointed:

a) from among judges;

b) from among lawyers, prosecutors or university professors in the field of law.

(2) In the composition of the Supreme Court of Justice, none of the categories referred to in paragraph (1) may hold less than 9 and more than 11 judge positions.

(3) A person may become a judge of the Supreme Court of Justice who:

1. meets the conditions of art. 6 para. (1) with the exception of letter c) of the Law no. 544/1995 on the status of judge;

2. has at least one of the following types of experience:

a) 8 years in effect worked as a judge;

b) 6 years in effect worked as a judge of the Constitutional Court or the European Court of Human Rights;

c) 10 years in effect worked as a lawyer, prosecutor or university lecturer in the field of law;

3. has the professional qualities and abilities required to perform the office of judge of the Supreme Court of Justice, as set out in paragraph (4).

(4) The judge of the Supreme Court of Justice shall be selected by the Superior Council of Magistracy based on merit, following a public contest. Candidates shall be assessed based on their professional qualities and abilities, including:

- a) ability to understand and analyse complex legal situations;
- b) clarity of written and verbal expression;
- c) ability to work as part of a team and to observe the opinions of colleagues, as well as to challenge them constructively;
- d) ability to work in situations involving stress and to carry out tasks with aptitude;
- e) experience relevant to the job;
- f) vision for the role of the Supreme Court of Justice in the development of law.

(5) The procedure for the selection of candidates shall be established by the Superior Council of Magistracy.

(6) The judge of the Supreme Court of Justice shall be nominated for appointment by the Superior Council of Magistracy and appointed by the President of the Republic of Moldova within 30 days of receiving the nomination. If additional examination of the candidate's file or of the information held by a public authority about the candidate is necessary, this period may be extended by 15 days.

(7) If there are circumstances confirming the incompatibility of the candidate with the office of the judge of the Supreme Court of Justice or the violation of the selection procedure, the President of the Republic of Moldova shall refuse the appointment by motivated decision and inform the Superior Council of Magistracy. Upon the repeated proposal of the Superior Council of Magistracy, for which at least 2/3 of the members of the Council in office voted, the President of the Republic of Moldova shall issue the decree on the appointment of the judge of the Supreme Court of Justice.

(8) The Judge of the Supreme Court of Justice shall take up his/her duties on the date specified in the decree of appointment.

#### **Article 7.** The Plenum of the Supreme Court of Justice

(1) The Plenum of the Supreme Court of Justice shall consist of all the judges of the Court of Justice in office. Meetings of the Plenum of the Supreme Court of Justice shall be chaired by the President of the Court.

(2) The Plenum of the Supreme Court of Justice shall be convened as often as necessary, but not less frequently than once every three months, in the manner provided for in the Regulation of the Supreme Court of Justice. Extraordinary meetings of the Plenum shall be convened by the President of the Court on his/her own initiative or at the request of at least 5 judges of the Supreme Court of Justice.

(3) The Plenum of the Supreme Court of Justice shall be deliberative if at least 2/3 of the Judges of the Supreme Court of Justice sitting in office attend the meeting. The Plenum shall adopt decisions by a simple majority of the judges present, which

shall be signed by the President of the meeting and by the Secretary General or Deputy Secretary General of the Court.

(4) The Plenum of the Supreme Court of Justice shall have the following duties:

- a) approves the Regulation of the Supreme Court of Justice;
- b) approves the organisation chart of the Secretariat of the Supreme Court of Justice;
- c) at the proposal of the President of the Court, decides on the specialisation of the judges of the Supreme Court of Justice;
- d) determines annually the composition of the panels of judges;
- e) appoints the Jurisconsult and the Secretary General following a public contest;
- f) approves the draft budget and the activity plan of the Supreme Court of Justice;
- g) confirms the composition of the Scientific Advisory Council;
- h) approves the guides on the application of procedural law, on the individualisation of criminal penalties and on contravention sanctions;
- i) approves the dress-code of the judges of the Court;
- j) approves the annual activity report of the Supreme Court of Justice;
- k) has other duties as provided for by law and by the Regulations of the Court.

(5) The decisions of the Plenum of the Supreme Court of Justice on the administration of the Court shall be binding on all judges and employees of the Court.

(6) Meetings of the Plenum of the Supreme Court of Justice shall be public. The Plenum may decide, motivated, that the sitting, or a part thereof, shall be held in closed meeting.

(7) Meetings of the Plenum of the Supreme Court of Justice shall be held with the participation of the Judges of the Court, including by electronic means. The date and manner of the meeting shall be notified on the official website of the Supreme Court of Justice at least 7 days before the holding of the meeting.

**Article 8.** The President and Vice-President of the Supreme Court of Justice

(1) The Supreme Court of Justice shall be headed by a President selected by the Superior Council of Magistracy based on merit from among its judges.

(2) The Plenum of the Supreme Court of Justice shall propose to the Superior Council of Magistrates candidates for the office of President who, in a secret ballot, have obtained at least three votes.

(3) The manner of organising the contest and selecting candidates shall be determined by the Superior Council of Magistracy. Candidates shall be evaluated by the Superior Council of Magistracy on the basis of the following criteria:

- a) ability to represent the Supreme Court of Justice effectively;
- b) ability to lead the work of the Supreme Court and to coordinate the work of the judges;

- c) vision for improving the work of the Supreme Court of Justice.
- (4) The President shall be appointed for a term of four years. The same person may be President of the Supreme Court of Justice for a maximum of two terms.
- (5) The President of the Supreme Court of Justice shall have the following duties:
  - a) coordinates the work of the judges;
  - b) coordinates the work of the Jurisconsult and the Secretary General of the Supreme Court of Justice;
  - c) represents the Supreme Court of Justice in relations with public authorities and institutions, both in the country and abroad;
  - d) convenes the Plenum of the Supreme Court of Justice in the manner laid down in art.7 para. (2);
  - e) submits the draft annual budget to the Plenum of the Supreme Court of Justice;
  - f) performs other duties provided for in the Regulations of the Supreme Court of Justice.
- (6) The provisions of this Article shall apply accordingly to the Vice-President of the Supreme Court of Justice.
- (7) The Vice-President shall exercise the powers delegated to him/her by the President in the manner set out in the Regulations of the Supreme Court of Justice. If the office of President of the Supreme Court of Justice falls vacant, or if the President is absent with good reason, the duties of the President shall be exercised by the Vice-President of the Supreme Court of Justice.
- (8) In the event of the absence or vacancy of the office of President and Vice-President of the Supreme Court of Justice, the duties of the President of the Supreme Court of Justice shall be exercised by one of the judges of the Supreme Court of Justice, appointed by the Superior Council of Magistracy.

**Article 9.** The Secretariat of the Supreme Court of Justice

- (1) The organisational and administrative activity of the Supreme Court of Justice is ensured by the Secretariat of the Supreme Court of Justice.
- (2) The Secretariat of the Supreme Court of Justice shall have a staff of not more than 150 persons and shall consist of the Registrar and the administrative subdivision. Their structure and method of operation is set out in the Regulations of the Supreme Court of Justice.
- (3) The Registrar of the Supreme Court of Justice shall assist judges in the exercise of their duties and shall include subdivisions of judicial assistants and other subdivisions responsible for the unification of judicial practice. The Registrar shall be staffed by civil servants appointed to office based on professionalism in accordance with Law No. 158/2008 on the public service and the status of civil servants. The work of the Registrar is conducted by the Jurisconsult of the Supreme Court of Justice.

(4) The administrative subdivision ensures the organizational functioning of the Supreme Court of Justice. The Administrative subdivision is staffed by civil servants appointed based on professionalism in accordance with the *Law No. 158/2008 on the civil service and the status of civil servants* and by contractual staff employed under the conditions set by the labour law. The Secretary General of the Court manages the work of the administrative subdivision.

**Article 12.** The budget of the Supreme Court of Justice

The budget of the Supreme Court of Justice shall be an integral part of the budget of the courts and shall be drawn up and managed in accordance with the principles, rules and procedures provided for by the Law on Public finance and budgetary and tax accountability No. 181/2014. The draft budget of the Supreme Court of Justice shall be submitted to the Superior Council of Magistracy for approval.

**Article 13.** The dress code of judges of the Supreme Court of Justice

(1) In the performance of their duties, the judges of the Supreme Court of Justice shall wear robes and badges with the image of the State Coat of Arms. The robes and badges shall be issued free of charge.

## Chapter IV

### FINAL AND TRANSITIONAL PROVISIONS

**Article 14.** Transitional provisions

(1) Judicial assistants, other civil servants and technical staff employed in the Secretariat of the Supreme Court of Justice shall be reconfirmed in their respective offices, or, where appropriate, they shall be proposed for transfer to the newly created offices within the Supreme Court of Justice after the reorganisation, in accordance with the provisions of Law No.158/2008 on the public service and the status of civil servants and Labour Code No. 154/2003.

(2) Until the legislation is brought into line with this Law, the normative acts shall be applied to the extent that they do not contradict this Law.

(3) In article 16 para. (3) of the Law No. 514/1995 on the organization of courts (republished in the Official Monitor of the Republic of Moldova, 2013, No. 15-17, art. 62), with subsequent amendments, the word "successive" is excluded.

(4) The Law No. 544/1995 on the status of judges (republished in the Official Monitor of the Republic of Moldova, 2013, No. 15-17, Art. 63), with subsequent amendments, is amended as follows:



- a) in article 11 para. (3) the words "indisputable evidence of incompatibility of" shall be replaced by the words "circumstances confirming incompatibility";
- b) article 25:

paragraph (1) shall be supplemented by letter (n) with the following content:

"n) failure to pass the ethical and financial integrity assessment, provided for in Law no. 26/2022 on some measures related to the selection of candidates for membership in the self-administrative bodies of judges and prosecutors;"

in paragraph (3<sup>1</sup>), the words "and i)" shall be replaced by the words ", i) and n)".

(5) In Chapter I, Section III, point 1 of the Annex to the Law No. 155/2011 on the approval of the single classification of civil servants (Official Monitor of the Republic of Moldova, 2011, No. 164-165, art. 480), with subsequent amendments, in heading A03, second column, the words "Head/Deputy Head of the Secretariat of the Supreme Court of Justice" shall be replaced by the words "Jurisconsult/Secretary General of the Supreme Court of Justice".

(6) Law No. 270/2018 on the unified salary system in the budgetary sector (Official Monitor of the Republic of Moldova, 2018, No. 441-447, art. 715), with subsequent amendments, shall be amended as follows:

a) Annex No. 3, Table 2, Compartment "Apparatus of the General Prosecutor's Office and Specialised Prosecutor's Offices, Apparatus of the Superior Council of Prosecutors, Secretariat of the Constitutional Court, Secretariat of the Superior Council of Magistracy, Secretariat of the Supreme Court of Justice", at " office code A2003", the office name shall be completed at the end with the phrase "/Jurisconsult/Secretary General";

b) Annex No. 4 Table 1 compartment "Supreme Court of Justice" shall read as follows:

<b>”Supreme Court of Justice</b>			
B1003	President	127	13,94
B1006	Vice-President	124	13,09
B1022	Judge	121	12,29”

4. Law No. 26/2022 on some measures related to the selection of candidates for membership in self-administrative bodies of judges and prosecutors (Official Monitor of the Republic of Moldova, 2022, No. 72, art. 103), shall be amended as follows:

c) the name of the law shall read as follows: "on measures related to the selection and evaluation of candidates for some offices in the justice system";

d) in article 1:

the words "as well as" shall be excluded;

after the words "specialised of their", shall be inserted the words "of judges and candidates for the office of judge of the Supreme Court of Justice,".

e) article 2:

shall be added a paragraph (1<sup>1</sup>) with the following content:

"1<sup>1</sup>) The provisions of this Law shall apply:

a) to judges of the Supreme Court of Justice, in office, including those suspended;

b) to candidates for vacant judicial offices of the Supreme Court of Justice."

in paragraph (2), the words "in paragraph (1)" shall be replaced by "in paragraph(1) and (1<sup>1</sup>)".

f) the title of Chapter II shall read as follows: "EVALUATION OF CANDIDATES FOR MEMBERSHIP IN SELF-ADMINISTRATIVE BODIES OF JUDGES AND PROSECUTORS";

g) Chapter II<sup>1</sup> shall be completed as follows:

## "CHAPTER II<sup>1</sup>

### EVALUATION OF SUPREME COURT JUDGES

#### **Article 14<sup>1</sup>.** Evaluation subjects

- (1) The subjects referred to in art. 2 para. (1<sup>1</sup>) shall be evaluated in accordance with the procedure provided for in Chapter II.
- (2) Judges of the Supreme Court of Justice, who within 20 days after the entry into force of this Law submit a request for resignation, shall not be evaluated. The resignation request may be withdrawn only within the same 20-day period. From the date of submission of the resignation request, the respective judge of the Supreme Court of Justice shall not participate in adjudications.
- (3) The Superior Council of Magistracy shall examine the resignation request and decide on it within 10 days from its submission.

#### **Article 14<sup>2</sup>.** Results of the evaluation of judges of the Supreme Court of Justice

(1) Following the evaluation, the Evaluation Commission shall issue a decision on passing or failing of the integrity evaluation in accordance with art. 13. Failure of the evaluation shall result in the automatic suspension of the judge from office, by law, until the decision of the Superior Council of Magistracy on the evaluation is issued.

(2) The decision of the Evaluation Commission shall be submitted to the Superior Council of Magistracy together with a copy of the evaluation file.

#### **Article 14<sup>3</sup>.** Examination by the Superior Council of Magistracy of the evaluation results

(1) The Superior Council of Magistracy shall examine the results of the evaluation carried out by the Evaluation Commission ex officio or based on the appeal of the evaluated judge.

(2) The decision of the Evaluation Commission on the failure of the evaluation may be appealed to the Superior Council of Magistracy by the evaluated judge within 5 days from the date of the reasoned decision without prior procedure. The appeal shall be lodged with the Evaluation Commission.

(3) The Superior Council of Magistracy shall examine the results of the judge's evaluation in a public meeting, no later than 15 days after receiving the decision of the Evaluation Commission. The representative of the Evaluation Commission and the evaluated judge, in person, shall be entitled to present their position.

(4) The Superior Council of Magistracy shall, by reasoned decision:

a) annul the decision of the Evaluation Commission on failure and order the resumption of the evaluation procedure, if it finds circumstances that could have led to the passing of the evaluation;

b) ascertain the failure of the evaluation;

c) confirm the Evaluation Commission's decision on promotion.

(5) The decision of the Superior Council of Magistracy on the failure of the evaluation shall result in the dismissal of the judge, in accordance with art. 25 para. (1) letter n) of the Law no. 544/1995 on the status of the judge and its consequences.

(6) The judge dismissed from office under para. (5) shall not have the right to be a judge, to be admitted to and to practice the professions of: prosecutor, attorney, notary, insolvency administrator, bailiff, as well as to be employed in the public service for 10 years from the date of the final decision of the Superior Council of Magistracy.

(7) The decision of the Superior Council of Magistracy referred to in para. (4) lett. a) shall be considered adopted if 2/3 of the members of the Council in office voted for it. If such a decision is not adopted, the decision referred to in para. (4) lett. (b) shall be deemed adopted.

(8) The decision of the Superior Council of Magistracy referred to in para. (4) lett. c) shall be adopted by a majority vote of the members present at the meeting.

#### **Article 14<sup>4</sup>.** Appeals against decisions of the Superior Council of Magistracy

(1) In derogation from the provisions of the Administrative Code, the decisions of the Superior Council of Magistracy referred to in art. 143 para. (4) may be appealed to the Supreme Court of Justice. The appeal shall be submitted to the Superior Council of Magistracy, which within 3 days shall be sent to the Supreme Court of Justice.

(2) The appeal shall be examined by an appeal board composed of three judges of the Supreme Court of Justice who have passed the evaluation and have not served in the Supreme Court of Justice until December 31, 2022.

(3) The Supreme Court of Justice shall admit the appeal only if it finds the existence of circumstances which could have led to the passing of the evaluation and shall order the evaluation procedure to be resumed.

(4) With respect to the appeal against the decision of the Evaluation Committee, filed under this article, the provisions of art.14 para. (6) shall apply.

**Article 14<sup>5</sup>.** Transfer of judges of the Supreme Court of Justice who passed the evaluation

(1) If the number of judges of the Supreme Court of Justice who have passed the evaluation exceeds 11, the Superior Council of Magistracy shall identify at random (by drawing lots) the judges who will continue to work in the Supreme Court of Justice. The other judges who have passed the evaluation are entitled to transfer to other courts to the vacant positions of their choice.

(2) A judge transferred in accordance with paragraph (1) shall retain the salary of a judge of the Supreme Court of Justice.

**Article 14<sup>6</sup>.** Evaluation of candidates for the position of judge of the Supreme Court of Justice

(1) Candidates for the position of judge of the Supreme Court of Justice shall be subject to the evaluation procedure established for judges in office.

(2) Candidates' files for participation in the contest for the vacant position of judge of the Supreme Court of Justice shall be submitted to the Superior Council of Magistracy within one month from the date of announcement of the contest and shall be submitted to the Evaluation Commission within 5 working days of receipt."

(3) The Superior Council of Magistracy shall organise the contest for filling the vacant position of judge after the Evaluation Commission has evaluated at least 3 candidates. "

**Article 15.** Final provisions

(1) This Law shall enter into force on the date of its publication in the Official Monitor of the Republic of Moldova, except for the provisions of art. 2, which shall enter into force on March 1, 2023.

(2) On the date of entry into force of this Law, the Law No. 789/1996 on the Supreme Court of Justice shall be repealed, with the exception of art. 2, which shall apply until March 1, 2023.

(3) The Superior Council of Magistracy:

a) within 15 days from the date of entry into force of this Law, shall announce a contest for the filling of the positions of judge of the Supreme Court of Justice, with a view to selecting candidates from the ranks of attorneys, prosecutors and university professors in the field of law;

b) shall announce a contest for the filling of vacancies for judges of the Supreme Court of Justice, with a view to selecting candidates from among the judges, within 5 days from the date of the vacancy of the respective positions;

c) within 1 month from the date of entry into force of this Law, shall bring its regulatory acts into conformity with this Law.

(4) Evaluation Commission:

a) starting from February 1, 2023, shall start the evaluation procedure of the judges of the Supreme Court of Justice, who have not submitted a request for dismissal in accordance with art. 141 para. (2) of Law No. 26/2022;

b) starting from March 1, 2023, shall start the evaluation procedure of candidates for the office of judge of the Supreme Court of Justice from among lawyers, prosecutors and university professors of law in the field of law;

c) by June 1, 2023, shall evaluate all candidates for the positions of judge of the Supreme Court of Justice, to the extent that these positions become vacant.

(5) The Supreme Court of Justice until July 31, 2023:

a) shall propose to the Superior Council of Magistracy the candidates for the office of President and Vice-President of the Supreme Court of Justice respectively;

b) shall approve the Regulations of the Supreme Court of Justice and the new organisation chart of the Court, and shall appoint the Jurisconsult and the Secretary General of the Supreme Court of Justice.

## **PRESIDENT OF PARLIAMENT**

## INFORMATION NOTE

### to the draft Law on the Supreme Court of Justice

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

*The draft Law on the Supreme Court of Justice* was developed by the Ministry of Justice.

The Working Group for the development of the Concept for the reform of the Supreme Court of Justice (hereinafter – SCJ) and the Draft Law on the Supreme Court of Justice, established by the Order of the Minister of Justice No. 190 of July 25, 2022, contributed to the development of the Draft Law. The Working Group includes representatives of the SCJ, SCM, courts of appeal, the Chisinau Court, the Superior Council of Prosecutors, the Union of Lawyers of Moldova, the Legal Commission, appointments and immunities Commission, the Parliament, the P.O. "Legal Resources Centre of Moldova", etc. The Working Group met in several meetings and formulated, including in writing, proposals for the improvement of the Reform Concept and the Draft normative act.

#### **2. The conditions that led to the development of the draft normative act and the aims pursued**

In recent years, the credibility of the judicial process has been seriously undermined by influences from within and outside the judicial system and the questionable integrity of some actors in the system.

The Supreme Court of Justice (hereafter - SCJ) should be the ultimate forum to remedy the illegalities admitted by lower courts. At present, it has not been possible to ensure a uniform and stable judicial practice that inspires confidence in the judicial system, a fact confirmed also by the judgments of the European Court versus the Republic of Moldova.

Over the years, the SCJ has issued numerous controversial decisions and there have been many well-founded suspicions about the lack of integrity of some judges who have been promoted to the SCJ. Similarly, the adoption of new decisions on the merits of the case, without objective justification and for reasons that do not appear to be persuasive, has led to a violation of the security of legal relations.

To date, the Superior Council of Magistracy (hereafter - SCM) has not taken adequate and sufficient measures to ensure that judges in respect of whom there was evidence of corruption or other abuses were not promoted to the SCJ.

By way of generalisation, the following problems with the work of the SCJ can be highlighted:

1. Lack of effective methods of standardising judicial practice.
2. The existence of uneven judicial practice and many unpredictable decisions on the application of the law in the resolution of similar disputes.

3. The existence of many categories of cases in which the SCJ examines not only questions of law but also questions of fact.
4. Increased risk of influence of SCJ judges.
5. Promotion/appointment of persons with integrity problems to the SCJ.
6. Inefficiency of the current regulatory framework governing the mechanism for verifying the integrity of SCJ judges.
7. Inability of accession to the SCJ for judges with less than 10 years of service.
8. The impossibility of access to the SCJ for representatives of other legal professions (lawyers, prosecutors, university professors).
9. The low level of confidence of society in the integrity of SCJ judges, in the legality and fairness of their decisions and in the justice system in general.
10. Lack of security for citizens to be protected from possible abuses and violations of their rights.

In the light of the above, the Government proposes a deep reform of both the judicial system in general and the SCJ in particular. The reform aims at strengthening the independence and individual accountability of judges and the judicial system as a whole. However, without essential changes at the level of the SCJ, this cannot be promoted at the level of the other courts in the judicial system.

For these reasons, the draft aims to reorganise the SCJ, which will allow it to become a court of cassation. However, at present, judicial practice in the Republic of Moldova is very non-uniform, with divergent decisions, in similar circumstances, handed down even by the panels of the SCJ. Such unpredictable practice is explained by specialists by the large number of judges in the SCJ and by the widespread phenomenon of corruption, up to the highest level of the courts. Access to justice is an illusory right in such a system, one of the main reasons for the reorganisation of the SCJ being to ensure effective access to justice for all litigants.

The reform of the SCJ is also necessary in the context of the constitutional amendments that entered into force on April 1, 2022, which removed the requirement for judges of the SCJ to be career judges. The reform of the SCJ is also necessary in the context of the intended evaluation of the judiciary, in which the SCJ will have the role of verifying the legality of decisions on the results of the evaluation of judges and prosecutors. It was developed following the analysis of the organisation and functioning of supreme courts in other countries (Estonia, Finland, United Kingdom), as well as the European Court of Human Rights (ECtHR). Similarly, the World Bank Report "Reform of the Supreme Court of Justice of the Republic of Moldova - Analysis of the judicial organisation in the Republic of Moldova in relation to comparable jurisdictions" was a solid information support.

With reference to relevant policy documents, we note:

- action 3.4.1 *"Reform of the Supreme Court of Justice, reduction of the number of judges, revision of competences and transformation of the Supreme Court of Justice into a court of cassation that would*

*ensure uniformity of judicial practice" of the Government Action Plan for 2021-2022, approved by Government Decision No. 235/2021;*

- objective 1.2.2, action "a) Elaboration of the regulatory 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;*
- objective 2.2.2. "Improvement and development of mechanisms for ensuring uniform judicial practice" 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.*

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

- 1) to enhance the quality of the judicial process;
- 2) to create the conditions for the effective standardisation of judicial practice;
- 3) to strengthen the powers of the SCJ and transform it into a court of cassation which would ensure the qualitative uniformity of judicial practice;
- 4) to create the mechanism for carrying out an evaluation of the integrity of the current judges of the SCJ and of the candidates for the judge office of the SCJ;
- 5) to conduct by July 1, 2023 the review of integrity, of all judges and candidates for the offices of judges of the SCJ;
- 6) to ensure that impartial and upright judges are appointed to the SCJ;
- 7) to increase, by the end of 2024, the confidence in the judicial system of at least 20% of citizens.

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

Effective implementation of the proposed reform involves both the adoption of a new law on the SCJ and changes to the procedural codes and a number of other laws. Given the importance of the proposed reform for the court system, it was considered necessary to include in the draft law the provisions relating to:

- the status, powers, composition, organisation and structure of the SCJ;
- the procedure for the evaluation of the integrity of the current judges of the SCJ and of the candidates for vacant office in the SCJ;

**Thus, the draft law has the following structure:**

- the new wording of the Law on the Supreme Court of Justice;
- regulating in transitional provisions of amendments to other related normative acts;
- inclusion of final provisions of tasks for all subjects involved in the evaluation process of SCJ judges and candidates for vacant office in the



SCJ (Evaluation Commission, Superior Council of Magistracy, Supreme Court of Justice).

The Law on the SCJ (in new wording) shall be the main act regulating the organisation and work of the SCJ. Additionally the work and organisation of the SCJ will also be regulated by other laws, such as the Procedural Codes, the Law on the status of judges or the Law on the organisation of the court system.

It is proposed that the internal organisation of the SCJ be regulated in the Regulation of the SCJ, which will be adopted by the Plenum of the SCJ. The regulation of the internal organisation of the SCJ by the Regulation of the SCJ aims to ensure greater flexibility in the work and administration of the SCJ, a model inspired by the ECtHR. We stress that the Regulation of the SCJ cannot contradict laws adopted by the Parliament. Some aspects mentioned in the Law on the Supreme Court of Justice will be developed in it.

In the context of the review of the competences of the SCJ, the implementation of this draft law will require changes to the procedure for the examination of cases by the SCJ, as well as a narrowing of the grounds for appeal.

**Overall, the draft provides for the following major impact amendments:**

- reduction of the number of judges in the SCJ;
- modification of the composition of the SCJ, by ensuring access to the offices of SCJ judge for representatives of other legal professions, such as lawyers, prosecutors, university professors of law;
- establishment of a new mandatory condition for persons wishing to serve as a judge of the SCJ after its reform, to be positively evaluated by the Evaluation Commission;
- creation of a mechanism for the verification of the integrity of the current judges of the SCJ and of the candidates for the office of judge of the SCJ;
- creation of a mechanism for appealing the evaluation results.

In the following, the above issues will be set out in detail.

### **Powers of the SCJ**

The draft law proposed for consideration establishes the following powers for the SCJ:

- ensuring uniform interpretation and application of legislation in the justice system;
- examining as first instance the categories of cases established by law;
- examining as a court of appeal cases of social and legal importance as well as those which reveal particularly serious violations of the law and human rights;
- examination of applications for review in cases established by law
- raising the exception of unconstitutionality of normative acts resulting

from concrete cases;

- resolving applications for review of cases following a judgment of conviction of the Republic of Moldova at the European Court of Human Rights or following the amicable settlement of a case pending before the European Court of Human Rights;
- requests advisory opinions from the European Court of Human Rights;
- resolving, in cases provided for by law, other types of applications and juridical issues.

As mentioned, one of the objectives of the draft law is to transform the SCJ into the main authority that will focus **on ensuring uniform interpretation and application of legislation** in the judicial system. To this end, the SCJ will be able to undertake a number of measures:

- will generalise judicial practice;
- will develop, approve and publish guidelines on the application of the law (similar to the ECtHR, the Romanian High Court of Cassation and Justice);
- at the request of the courts, will issue advisory opinions (similar to the European Court of Justice and the ECtHR);
- will issue binding judgments on applications in the interest of the law.
- will undertake other measures necessary for the uniform application of the law, as provided for in the Rules of the Supreme Court of Justice, such as the organisation of conferences, exchanges of experience, visits to the territory, etc.

The SCJ will examine as a first instance the categories of cases established by law. The SCJ will also examine **as first instance** appeals against decisions of the SCM and the Supreme Council of Prosecutors (SCP). The decision on these disputes will be irrevocable.

As a **court of appeal**, the SCJ will examine cases of social and legal importance. The criteria for assessing the importance of the dispute concerning justice and the seriousness of the violations will be reflected in procedural legislation. Thus, the procedural codes are to be amended by a separate draft amending the related normative framework to narrow the grounds for appeal. This change will allow the SCJ to focus on examining the merits of a limited number of cases - about 3 times fewer than at present and to consider for examination only those disputes in which questions of law are distinguished, thus becoming a genuine court of cassation.

At the same time, arising from the compelling need for ensuring compliance with human rights, it is proposed that the SCJ retains the power to examine cases, which reveal particularly serious violations of the law and human rights. The Procedural Codes will be amended by a related draft law to allow for the examination of evidence in cases where decisions challenged on appeal are arbitrary or based on a manifestly unreasonable assessment of the evidences.

### **Application in the interest of the law**

It is proposed to regulate in detail in the SCJ law the examination of the **application in the interest of the law**, which will be able to be filed in criminal, civil and administrative proceedings. It should be noted that the application in the interest of the law has no effect on cases that have been irrevocably decided and does not affect the text and effects of decisions that are already irrevocable. The main purpose of an action in the interest of the law is to avoid contradictory practices in the future.

Given that the application in the interest of the law does not examine a specific case, but only legal issues arising from contradictory court decisions, and the aim being the unification of practice; it is not justified to keep this institution in the Criminal Procedure Code, being sufficient only to regulate it in the SCJ law.

The application in the interest of the law will be filed and examined under the Law on the SCJ and will be filed by the President of the SCJ, the Presidents of the Courts of Appeal, the Prosecutor General, the President of the Lawyers' Union or 3 judges of the Court.

### **Judges of SCJ**

Experience in other countries (Estonia, Finland, etc.) confirms that supreme courts with a large number of judges are not effective in standardising judicial practice. Currently, *de jure* 33 judge offices are foreseen for the SCJ, in fact only 25 offices are filled (of which one judge is detached to the SCM and other judges are members of the specialised colleges of the SCM).

The present draft law proposes a new composition of the SCJ, which will start work on the date of entry into force of the law. After the reorganisation, it is to start its work with 20 judges, i.e. 13 fewer than at present.

According to the **CEPEJ study "European Judicial Systems - Efficiency and Quality of Justice - CEPEJ Studies No. 26"**<sup>1</sup> in most countries with three tiers of jurisdiction, the number of judges in the supreme courts of justice is 4% - 6% of the total number of judges in the state, taking into account the specificity of the court. Given that there are currently 489 established judgeships, 4% of 489 would constitute approximately 20 judge offices for the supreme court.

Respectively, the number of 20 judges of the SCJ was decided also based on the modified competence of the SCJ, which is proposed to be restricted. Thus, it will decide on admissible appeals in a total of 3, 5 and 9 judges, and on actions in the interest of the law in a total of 11 judges.

For example, the SCJ in Estonia has 19 judges, except that in Estonia the SCJ also acts as a constitutional court. A similar number (18 judges) are also in the SCJ from Finland.

The SCJ model composed of career judges and of specialists from other legal

<sup>1</sup> <https://www.coe.int/en/web/cepej/documentation/cepej-studies>

professions is the most widespread in Europe. The SCJ judges will be selected by the SCM.

Candidates will be selected by public competition based on merit. With reference to the composition of the SCJ, it is proposed to allocate the offices of judge of the SCJ so that none of the two categories of candidates (among the judges and non-judges) cannot hold less than 9 and more than 11 offices of SCJ judge.

In order to ensure that the best legal professionals will be appointed to the future SCJ, the draft law regulates demanding criteria for the appointment of SCJ judges and establishes the experience required for this office:

- at least 8 years of effective service as a judge - for persons who have served as a judge in judicial courts;
- at least 6 years of effective service - for persons who have served as a judge of the Constitutional Court or the European Court of Human Rights;
- at least 10 years of effective service for candidates selected from among non-judges.

The details of the selection procedure of the candidates will be established by the SCM.

The appointment of the judges of the SCJ will be made on the proposal of the SCM by the President of the country. The President may reject the candidate on grounds of circumstances confirming the incompatibility with the judge office. The SCM may overcome this refusal if at least 2/3 of the members of the Council in office vote for the decision.

In this context, we point out that amendments have also been made to art. 11 para. (3) of the Law no. 544/1995 on the status of the judge, substituting "indisputable evidences" with "circumstances confirming the incompatibility of the candidate with the judge office". The rationale for this amendment is that the President of the country does not have "indisputable evidences". However, the notion of "evidence" is specific to a judicial process, with specific rules for gathering and administering it.

The judge of the SCJ will begin his/her term of office on the date indicated in the decree of appointment. This date will be set by the CSM, after consultation with the judge, and will be mentioned in the proposal for the appointment of the SCJ judge. This is particularly beneficial for career judges, which will be promoted to the SCJ, allowing them to complete the cases assigned to them.

### **Internal organisation of the SCJ**

The SCJ will be headed by a President selected by the SCM from among the judges of the SCJ and appointed for a 4-year term, with the possibility to exercise only 2 mandates. This rule has been extended to the terms of office of presidents of courts at all levels to ensure a rotation of persons holding managerial offices (see art. 14 para. (2) of the draft law in the chapter Final and transitional

provisions).

Candidates for this office will be identified by the judges of the SCJ by secret ballot. This procedure will ensure that the future President enjoys the support of his colleagues and will encourage the democratic activity of the President of the SCJ.

The role of the President of the SCJ will be much reduced than at present. It will mainly be limited to representing the SCJ and coordinating the work of the judges. The President of the SCJ will be assisted by a Vice-President of the SCJ, appointed in a similar way to the appointment procedure of the President of the SCJ. The Vice-President will replace the President in case of vacancy or absence of the President and will perform the office of President. He/she may also perform other tasks delegated by the President or set out in the Regulations of the SCJ.

In the event of the absence or vacancy of the office of President and Vice-President of the SCJ, the duties of the President of the SCJ shall be exercised by one of the judges of the SCJ appointed by the SCM. This rule is necessary, including for the situation where, after the reorganisation of the SCJ and, implicitly, the evaluation of the judges, for a certain period the SCJ will not have a President/Vice-President elected according to the law.

The most important decisions concerning the organisation and administration of the court will be taken by the Plenum of the SCJ, with a majority vote of the judges present. The Scientific Advisory Council will also be maintained within the SCJ. The composition of the Council will include, as at present, theoreticians and practitioners in the field of law, and its powers will be laid down in the Rules of the SCJ.

The new law will not require the creation of specialised colleges within the SCJ. This is intended to provide greater flexibility for the SCJ. However, colleges may be created if deemed necessary by the Plenum of the SCJ. The Plenum will also determine the composition of the SCJ's panels on an annual basis. Details will be set out in the Regulations of the Court.

The judges will be assisted by the Registrar within the Court Secretariat. The activity of the SCJ Registrar will consist in supporting the drafting of judicial acts of disposition and the uniformity of judicial practice, being coordinated by the **SCJ Jurisconsult**.

The activity of the administrative division will be coordinated by the **Secretary General of the SCJ**. It is proposed that the term of office of the Secretary General and the detailed selection procedure will be set out in the Regulations of the SCJ. The draft law will only establish the staff limit of the Secretariat of the SCJ and its internal structure will be set out in the Regulations of the SCJ.

Now the Secretariat of the SCJ has about 220 staff, including both civil servants and contractual staff. In view of the reduction in the number of judges of the SCJ and the revision of the powers of the SCJ, there is no justification for maintaining such a large team in order to provide support in the fulfilment of the mission of the Supreme Court.

By way of example, a judge of the SCJ is currently assisted by 3 judicial assistants. This formula could be maintained, but given that only 20 judges will be active from the date of entry into force of this law, the number of judicial assistants could be reduced by 39.

At the same time, in order to ensure a greater margin of discretion for the SCJ in identifying and determining staffing needs, the draft proposes only to set a limit of 150 staff, with the possibility of distribution as needed in the subdivisions of the Secretariat of the SCJ.

The number of 150 staff has been estimated in relation to the number of judges of the SCJ, so if the number of judges is proposed to be reduced by approximately 30%, the number of auxiliary staff will also be reduced accordingly.

### **Evaluation of SCJ judges and candidates for vacant offices of SCJ judges**

The draft regulates the procedure for the evaluation of current judges of the SCJ as well as candidates for non-judge offices. This will consist of the evaluation of ethical and financial integrity and will be carried out by the Independent Commission for the evaluation of integrity of candidates for membership in the self-administrative bodies of judges and prosecutors, established on the basis of Law No. 26/2021 (hereinafter - the Evaluation Commission), which will operate according to the procedure regulated by the aforementioned law.

The Evaluation Commission will examine the ethical and financial integrity of the current judges of the SCJ, as well as the candidates for the vacant offices in the SCJ, according to the procedure provided for by the mentioned law.

Considering that the draft proposes that the evaluation be carried out by the Evaluation Commission, which is also responsible for the evaluation of candidates for vacant offices in the self-administrative bodies of judges and prosecutors, it was proposed to supplement the Law No. 26/2022 with a separate chapter dedicated to the manner and consequences of the evaluation of judges of the SCJ and candidates for the office of judge of the SCJ. Accordingly, it was also proposed to amend the name to "Law on measures related to the selection and evaluation of candidates for certain offices in the justice system".

Following the evaluation, the Evaluation Commission will issue a decision on whether or not to promote the ethical and financial integrity evaluation, which will be submitted to the SCM. Failure of the evaluation will result in the automatic suspension of the evaluated judge, which will last no longer than 15 days, during which time the SCM will make a decision based on the following options:

- in case of passing the evaluation - the SCM will confirm the decision of the Evaluation Commission;
- if the evaluation fails:
  - a) the SCM will find that the evaluation was not passed and will order the

judge's dismissal;

b) the SCM will cancel the decision of the Evaluation Commission on the non-promotion and will order the evaluation procedure to be resumed, if it finds circumstances that could have led to the promotion of the evaluation.

Dismissal on the grounds of failure to promote ethical and financial integrity evaluation will result in:

- loss of the one-off severance payment provided for in art. 26 para. (3) of the Law no. 544/1995, which is offered only in the case of honourable dismissal of the judge;
- loss of entitlement to the special pension for length of service, established under the terms of art. 32 of Law No. 544/1995 on the status of judges, with maintenance only of the general pension for age limit, under the terms of Law No. 156/1998 on state social security pensions;
- deprivation of the right to exercise certain professions for 10 years (public prosecutor, lawyer, notary, authorised administrator, bailiff, and to be employed in the public service).

In order to ensure the clarity of the rule and the predictability of the effects of non-promotion of the evaluation, it is proposed adding art. 25 para. (2) of the Law no. 544/1995 with a new subject of dismissal of the judge - failure to promote the evaluation of ethical and financial integrity, and to make the consequences listed above more concrete by adding para. (3<sup>1</sup>) of the same article.

The current judges of the SCJ who have passed the integrity evaluation will continue their work within the SCJ, without the need to be reappointed.

### **Appeal procedure**

As regards the appeals procedure, the decision of the Evaluation Committee on the non-promotion of the evaluation may be appealed to the SCM, which will give the judge all the guarantees of a fair trial. Similarly, the SCM will be able, ex officio, to examine the results of the evaluation in the absence of an appeal.

The person who has not passed the evaluation may appeal against the SCM's decision confirming/not confirming the SCJ. In this respect, a panel of 3 judges who have passed the evaluation and who have not served in the SCJ until December 31, 2022 will be formed within the SCJ. This approach was generated by the need to avoid corporatism and subjectivism of the judges who are to examine the appeals filed by their colleagues.

The complex will have a temporary character, and once the evaluation process is completed judges will continue to work within the SCJ.

## **4. Economic and financial regulatory**

The draft provides for the exclusion of salary differentiation of judges of the SCJ according to seniority in order to ensure equality between career judges and judges appointed from other legal professions. The Law No. 270/2018 on the unitary system of salaries in the budgetary sector will include three offices related to the salary of the President, the Vice-President and the judge of the SCJ.

In perspective, the salaries of the judges of the SCJ will be increased by increasing the reference value, set annually in the Law on the State Budget.

Another amendment concerns the inclusion of the office of Jurisconsult both in Law no. 155/2011 for the approval of the Single classification of civil servants and in Law no. 270/2018 to ensure its salary. Please note that the draft does not propose the creation of new offices, but only the renaming of the current office of Head of the Secretariat of the SCJ to Jurisconsult and the office of Deputy Head of the Secretariat of the SCJ - to Secretary General of the SCJ, with the reduction of one office of Deputy Head of the Secretariat of the SCJ.

In addition, the 30% reduction in the number of auxiliary staff within the Secretariat of the SCJ will result in savings for the state budget.

#### **5. Method of incorporating the project into the system of existing normative acts**

Given that the review of the competences of the SCJ implies amendments in the procedural codes, the working group set up on the platform of the Ministry of Justice is already working on a draft law amending the related normative framework, which will enter into force at the same time as the draft new law on the SCJ.

As a result, amendments will be made to the following normative acts:

- Criminal Procedure Code of the Republic of Moldova No. 122/2003;
- Civil Procedure Code of the Republic of Moldova No. 225/2003;
- Administrative Code of the Republic of Moldova No. 116/2018;

It will also be necessary to bring the internal normative framework of the SCJ and SCM in line with the new provisions of the legislation.

#### **6. Approval and public consultation of the draft**

In order to comply with the provisions of the *Law no. 239/2008 on transparency in the decision-making process*, on the official website of the Ministry of Justice [www.justice.gov.md](http://www.justice.gov.md), under the *Directorate of decision-making transparency*, was placed the *Notice on the initiation of the process of drafting the Law on the amendment of some normative acts (implementation of constitutional amendments on the judicial system)*, which can be accessed at the following link: <http://justice.gov.md/libview.php?l=ro&idc=184&id=5374>.

In addition, the Analysis of the Regulatory Impact of the draft as well as a first version of the draft has been consulted with the Ministry of Finance. Some of the proposals made by the Ministry (on public finance responsibilities and the reduction of the staffing limit of the SCJ Secretariat) have been reflected in the



draft text.

In addition, the draft law was submitted to the Venice Commission for consultation and possible proposals to be analysed and integrated into the text, and will then be subject to re-approval to ensure that the final version of the draftlaw will be considered by all stakeholders.

**State Secretary** /Electronically signed/ **Veronica MIHAILOV-**  
**MORARU**