



Strasbourg, 5 December 2022

CDL-REF(2022)063rev

Opinion No. 1114 / 2022

Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

REPUBLIC OF MOLDOVA

REVISED DRAFT LAW

ON THE SUPREME COURT OF JUSTICE

--

GOVERNMENT OF THE REPUBLIC OF MOLDOVA

DECISION No. _____
of _____ 2022

on the approval of the draft Law on the Supreme Court of Justice

Government DECIDES:

It is approved and submitted to Parliament for examination the draft Law on the Supreme Court of Justice.

PRIME MINISTER

Countersigns:

Minister 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 organization of the Court.

(2) The activity and organization 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 is to ensure the uniform interpretation and application of the law 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) raises objections to the unconstitutionality of normative acts arising from concrete 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) resolves other types of applications and legal issues provided for by law.

Article 3. Powers of the Supreme Court of Justice to ensure uniform application of legislation

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

- a) draw up guidelines on the application of procedural law, the individualization of criminal punishments and contravention sanctions;
- b) issue, at the request of the courts, advisory opinions on the application of legislation;
- c) decide on applications in the interest of the law;
- d) regularly hold meetings with judges, prosecutors and lawyers;
- e) take other measures necessary for the uniformity of the process of application of the legislation, as provided for in the Rules of the Supreme Court of Justice.

(2) Advisory opinions and guidelines on the application of procedural legislation and the individualization of criminal punishments and contravention sanctions shall be 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, Ombudsman 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 chairperson 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 and shall have no effect on cases that are already decided irrevocably.

Chapter II JUDGES AND ORGANISATION OF THE SUPREME COURT OF JUSTICE

Article 5. The composition and organization 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 organization of the Supreme Court of Justice shall be determined by this law and by the Regulations of the Court.

(4) Within the Supreme Court of Justice, a Scientific Advisory Council may be created, which operates in the manner laid down in 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) 11 from among judges;

b) 9 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 ~~(3)~~.

~~(3)~~~~(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 analyses 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 position;
- f) vision for the role of the Supreme Court of Justice in the development of law.

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

(65) 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.

(76) 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.

(87) 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. The President of the Court shall chair meetings of the Plenum of the Supreme Court of Justice.

(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.

(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 organization chart of the Secretariat of the Supreme Court of Justice;
- c) at the proposal of the President of the Court, decides on the specialization 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 individualization of criminal punishments and on contravention sanctions;
- i) requests, if necessary, the European Court of Human Rights to issue an advisory opinion on matters of principle regarding the interpretation or application of rights and freedoms provided for in the Convention for the Protection of Human Rights and Fundamental Freedoms or by the protocols thereto;
- ~~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 Plenum of the Supreme Court of Justice adopts the decision regarding the request to issue an advisory opinion in the case provided for in para. (4) letter i) at the proposal of the trial panel only in relation to a case under examination.

(65) 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.

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

(78) The Judges of the Supreme Court of Justice shall attend the meeting of the Plenum in person or, if this is not possible, by electronic means. The date and manner of the meeting shall be announced on the official website of the Supreme Court of Justice at least 7 days before 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 organizing the contest and selecting candidates shall be determined by the Superior Council of Magistracy. Candidates shall be evaluated by the Superior Council of Magistracy based on 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.

(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 organizational 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 consist of the Registrar's Office and the administrative subdivision. Its structure, method of operation and duties are laid down 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.

(5) The staff status of the Court shall be approved by the Plenum of the Court on a proposal of the President of the Court, in accordance with the budget of the Court.

Article 10. 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 after approval.

Chapter ~~IIIV~~

FINAL AND TRANSITIONAL PROVISIONS

Article 11. Transitional provisions

Judicial assistants, other civil servants and technical staff employed in the Secretariat of the Supreme Court of Justice will be evaluated and, if necessary, reconfirmed in newly created positions within the Supreme Court of Justice after the reorganization, according to the provisions of the Law no.158/2008 on the civil service and the status of civil servants and the Labour Code no. 154/2003.

Article 12. Final provisions

(1) This Law shall enter into force on the date of its publication in the Official Monitor of the Republic of Moldova with the exception of art. 5 para. (1) and art. 6 para. (1) letter a), which will be applied from the date when the current judges of the Supreme Court of Justice will remain in number of 11.

~~(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.~~

(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 9 positions of judges of the Supreme Court of Justice, in order to select candidates from among lawyers, prosecutors and university professors in the field of law. The candidates' files shall be submitted to the Superior Council of Magistracy within one month from the date of announcement of the contest;

b) within 5 working days from the date when the current judges of the Supreme Court of Justice will be less than 11, will announce a contest within the limits of vacant positions intended for judges according to art. 6 para. (1) letter a);

c) within 15 days of the entry into force of this law, shall adopt the regulation on the selection of judges of the Supreme Court of Justice.

(4) Supreme Court of Justice:

a) within 8 months of the entry into force of this Law, shall propose to the Superior Council of Magistracy the candidates for the position of President and Vice-President of the Supreme Court of Justice, respectively;

b) within 11 months of the entry into force of this law, shall approve the Regulation of the Supreme Court of Justice, the new organization chart of the Supreme Court of Justice and the staffing status and shall appoint the Jurisconsult and the Secretary General of the Court.

~~(42) On the date of entry into force of this Law, the Law No. 789/1996 on the Supreme Court of Justice shall be repealed.~~

PRESIDENT OF THE PARLIAMENT

INFORMATIVE 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 draft

The draft Law on the Supreme Court of Justice was drafted by the Ministry of Justice. To the elaboration of the draft law, *the Working Group for the elaboration of the Concept for the reform of the Supreme Court of Justice and the draft law on the Supreme Court of Justice* has contributed, established by the Order of the Minister of Justice No. 190 of July 25, 2022. The Working Group includes representatives of the Supreme Court of Justice, the Superior Council of Magistracy, the courts of appeal, the Chisinau Court, the Superior Council of Prosecutors, the Union of Lawyers of Moldova, the Legal Commission on Appointments and Immunities, the Parliament, the P.A. "Centre of Legal Resources of Moldova", etc. The Working Group met several times and formulated, including in writing, proposals for improving the Concept of Reform 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.

It should be noted that, to date, the Superior Council of Magistracy (hereafter - SCM) has not taken adequate and sufficient measures to ensure that judges in relation to whom there is evidence of corruption or other abuses are not promoted to the SCJ.

The rationale for reforming the SCJ is as follows:

1. The lack of effective methods of uniformity of judicial practice has led to the existence of uneven judicial practice and many unpredictable rulings on the application of the law in resolving similar disputes. Independent studies and surveys among specialists confirm that the practice of the SCJ is not uniform, even though, by law, ensuring uniform application of the law has been the main task of the SCJ for over 25 years.

2. The SCJ has given numerous solutions that are difficult to understand. Invalidating the 2018 elections in Chisinau, criminal convictions in sensitive cases for politicians, which it itself later reviewed, or upholding manifestly abusive decisions, including those issued against inconvenient judges, are just some examples¹. On the other hand, some judges of the SCJ are currently suspected by prosecutors of committing crimes and the SCM has agreed to prosecute them.

3. The blockage over the last 3 years of the work of the Plenum of the SCJ and its inability to effectively exercise its powers to unify judicial practice. At present, judicial practice in the Republic of Moldova is known to be non-uniform, with the adoption of various divergent decisions in similar circumstances, pronounced even by the panels of the SCJ. Such unpredictable practice is explained by specialists by the large number of judges in the SCJ and

¹ Other examples of controversial decisions on high-profile cases: the *Falun Dafa case*, although the Republic of Moldova was convicted in 2019 for finding a violation of art. 9 and 11 CED, the SCJ postponed the review request for 10 months, the reasons being considered political; the long examination of the case of judge *Domnica Manole*, including for political reasons; the case regarding the *attempted assassination of Vladimir Plahotniuc*, initially sentenced to maximum terms of detention, later acquitted, given that the acquittal rate in the Republic of Moldova is very low; the retrial of the criminal case filed against *Veaceslav Platon*; the transfer of the criminal case examined by the Cahul Court of Appeal filed against *Ilan Sor*, which is in the finalization phase, to another Court of Appeal, for reasons that were previously invoked; recently ECHR condemned the Republic of Moldova, in the case of the National Hotel, where the judges forged a series of documents, and the SCJ ignored the arguments of the parties!

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, and one of the *main reasons for the reorganisation of the SCJ is to ensure effective access to justice for all litigants.*

34. The existence of many categories of cases in which the SCJ examines not only the legal aspects but also the factual aspects, sometimes intervening arbitrarily (a fact confirmed by the convictions of the Republic of Moldova at the ECtHR, including for violation of the principle of security of legal relations).

45. The increased risk of influencing judges of the SCJ due to lack of integrity, confirmed also by the promotions and appointments to the SCJ of persons with integrity problems, a fact known to the general public, including through several journalistic investigations carried out in this regard. Over the last 10 years, there have been strong suspicions about the promotion of judges to the SCJ for reasons other than professionalism and independence. Out of the 19 judges of the SCJ appointed from 2013 to 2020, 5 were selected through contests in which there were no counter-candidates. It is believed that in those 5 contests other candidates were not allowed to participate. Another 6 judges were promoted to the SCJ for unclear reasons, although they did not have the highest score in the contest.

6. The inefficiency of the current regulatory framework regulating the mechanism for assessing the integrity of the judges of the SCJ, but at the moment the streamlining of integrity verification procedures is part of the Justice Reform Strategy and of the fields of support offered by development partners.

7. The impossibility of access to the SCJ for judges with less than 10 years of service and for representatives of other legal professions (lawyers, prosecutors, university professors). The reform of the SCJ is also necessary in the context of the constitutional amendments that entered into force on April 1, 2022, which excluded the requirement for judges of the SCJ to be career judges. The new SCJ will be composed of both career judges and former prosecutors, lawyers and university professors in the field of law, which is the model most common in European countries.

8. 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 integrity of SCJ judges, in the legality and fairness of their decisions and in the justice system in general. In 2021, public confidence in the justice system was very low at just over 19%².

9. The inefficiency of the evaluation procedure of the judges 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.

10. The inefficiency of the disciplinary procedure, which was started “on command”, only against judges who were not loyal to the SCM, or who criticized the management of the judicial system.

11. The SCJ reform is necessary in the context of the strategy for assessing the integrity of the actors in justice, including the SCJ judges, who later will have the mandate to verify the legality of the decisions regarding the results of the extraordinary evaluation, including internal of the judges and prosecutors.

Based on the above, the Government proposes a profound 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 is not possible to promote at the level of the other courts in the judicial system.

For these reasons, the draft aims at reorganising the SCJ, which will allow it to become a court of cassation. Together with this law, a draft has also been drawn up for a complex amendment to the procedure for the examination of cases by the SCJ. As a result, the SCJ will have more restricted powers to act as a new court of appeal, as it is at present. This will have the effect of reducing the number of cases examined by the SCJ, with a focus on ordering the interpretation and application of the law in the justice system.

² "White Book of Justice: Recommendations for an independent and integer justice", page 11, link: http://ipre.md/wp-content/uploads/2021/08/Cartea-Alba-a-Justitiei_FINAL_20_09_2021_RO_web_final.pdf

The procedure for examining cases is also made less bureaucratic. The draft law will radically change the internal organisation of the SCJ. The internal organisation of the SCJ is no longer laid down by law, but will be described in the Regulations of the SCJ, adopted by the Plenum of the SCJ. This aims to ensure greater flexibility in the work and administration of the SCJ, a model inspired by the ECtHR.

The reform of the SCJ is necessary in the context of the intended evaluation of the judicial system, including the judges of the SCJ, which will then have the role of verifying the legality of decisions on the results of the evaluation of judges and prosecutors.

~~The call for this exercise of extraordinary evaluation of the judiciary in a phased manner (at the moment in the Republic of Moldova, members of the SCM and the SCP are being evaluated extraordinarily, with the judges of the SCJ to be evaluated next) is justified by the fact that internal mechanisms have failed time and again, and systemic corruption and lack of integrity have chronically affected the justice system. At the same time, repeated calls for this exercise without the support and endorsement of the Venice Commission and development partners will not be possible, and it is also ensured that a similar exercise cannot be repeated.~~

We note that the reform of the SCJ is vital in the context of the commitment made by the current Government through the vote of confidence offered by the citizens, regarding the resetting of the judicial system, but also in the context of the status of candidate state in the process of accession to the European Union, and the fulfilment of the conditionalities in the justice sector.

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 reform of the SCJ was developed following an analysis of the organisation and functioning of supreme courts in other countries (Estonia, Finland, and UK) and the European Court of Human Rights (ECtHR). The World Bank, at the request of the Ministry of Justice, also prepared a comparative law study on the structure, powers and workload of supreme courts in Europe.

Thus, the following studies were used as background material in the drafting process:

- a) World Bank report "Reform of the Supreme Court of Justice of the Republic of Moldova - Analysis of the judicial organization in the Republic of Moldova in relation to comparable jurisdictions";
- b) CEPEJ study "European Judicial Systems - Efficiency and Quality of Justice - CEPEJ Studies No. 26"³.

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 that will ensure the qualitative uniformity of judicial practice;

~~4) to diversify the composition of the SCJ, by offering the possibility of access to the~~

³ <https://www.coe.int/en/web/cepej/documentation/cepej-studies>

position of SCJ judge not only for career ones, but also for professionals from the field of lawyers, the prosecutor's office and the academic environment;

- 5)4) ensuring the appointment of impartial and integer judges to the SCJ;
- 6)5) to enhance citizens' confidence in the judicial system.

3. Main provisions of the draft and highlighting new elements

The effective implementation of the proposed reform implies both the adoption of a new law on the SCJ, which will be the main act regulating the organisation and work of the SCJ, and 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 courts.

It is proposed that the internal organisation of the SCJ be regulated in the Regulation of the SCJ, which will be adopted by the Plenary 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 Rules of the SJC 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 changes with major impact:

- reducing the number of judges in the SCJ;
- changing the composition of the SCJ by ensuring access to the posts of SCJ judge for representatives of other legal professions, such as lawyers, prosecutors, university professors in the field of law;
- reviewing the powers of the SCJ, emphasising its basic role of unifying judicial practice.

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

Powers of the SCJ

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

- to ensure uniform interpretation and application of legislation in the justice system;
- to examine as first instance the categories of cases established by law;
- to examine, as an appeal court, cases of social and legal importance, as well as those which reveal particularly serious violations of the law and human rights;
- to examine applications for review in cases established by law;
- to raise the objection of unconstitutionality of normative acts resulting from concrete cases;
- to settle applications for the review of cases following a judgment of the European Court of Human Rights against the Republic of Moldova or following the amicable settlement of a case pending before the European Court of Human Rights;
- to request advisory opinions of the European Court of Human Rights on matters of principle regarding the interpretation or application of rights and freedoms provided for in the Convention for the Protection of Human Rights and Fundamental Freedoms or by the protocols thereto;
- to settle, in cases provided for by law, other types of applications and legal issues.

As mentioned, one of the objectives of the draft law is to make the SCJ 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:

- it will develop guidelines on the application of procedural law, the individualisation of criminal penalties and misdemeanour sanctions (similar to the ECtHR, the Romanian High Court of Cassation and Justice);
- at the request of the courts, issue advisory opinions on the application of legislation (similar to the European Court of Justice and the ECtHR);
- decide on applications in the interest of the law;

- meet regularly with judges, prosecutors and lawyers;
- take other measures necessary for the uniform application of the law, as provided for in the Rules of the Supreme Court of Justice. We emphasise that "taking other measures" is of a limited nature. In other words, they can only be undertaken for the purpose of uniformity of the law enforcement process. This category includes any conferences, exchanges of experience including with colleagues from other states, visits to the territory, round tables, debates and any other actions, which the Plenum of the SCJ shall consider useful and necessary. We consider it necessary to give the Plenary of the SCJ a certain discretion in identifying and using the most appropriate means to unify judicial practice.

The SCJ will examine as first instance the categories of cases established by law (e.g. offences committed by the President of the country). The SCJ will also examine as first instance the 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 evaluating the importance of the justice dispute and the seriousness of the violations will be reflected in the procedural legislation. Thus, the procedural codes are to be amended by a separate draft law 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 hear only those cases where there are distinct issues of law, thus becoming a genuine court of cassation.

Please note that statistical reports on the workload of all courts are regularly published on the website of the Courts Administration Agency, including the [Report on the workload of the SCJ in the first 6 months of 2022](#).⁴

At the same time, given the imperative need to ensure respect for human rights, it is proposed that the SCJ retains the power to examine cases, which reveal particularly serious violations of the law and of 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 evaluation of the evidence.

Application ~~Approach~~ in the interest of the law

It is proposed to regulate in detail in the SCJ law the examination of the ~~application approach~~ in the interest of the law and to exclude these provisions from the Criminal Procedure Code. As an argument for this amendment, it should be noted that the purpose of the examination of the ~~application approach~~ in the interest of the law is not to take decisions on specific cases, but to examine "ad abstractum" the judicial practice already established. Thus, the "~~application approach~~ in the interest of the law" has no effect on cases that have been settled irrevocably, nor on those under examination, and does not involve any intervention in the text and effects of decisions that are irrevocable. The main purpose of the "~~application approach~~ in the interest of the law" is to avoid unpredictable and contradictory practices in the future.

It should be pointed out that an action in the interest of the law is not of a contentious nature, since it does not examine a dispute in progress (for example, as in an appeal) and there are no parties with conflicting interests in the process of examining it. In essence, it is a notification to the Supreme Court of conflicting practices in order to clarify the differences that have arisen.

Thus, in view of the non-contentious nature of the ~~application action~~ in the interest of the law and the fact that it is not aimed at resolving a specific dispute but at examining a legal problem in the abstract, there is no justification for retaining this institution in the Criminal Procedure Code; it is sufficient merely to regulate it in the Law of the SCJ as a special instrument for standardising practice. In the same context, the draft proposes to extend the scope of the application in the interest of the law, which may be filed in criminal, civil and administrative proceedings.

The ~~application approach~~ in the interest of the law will be filed and examined under the Law on the SCJ and 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.

⁴ https://aaij.justice.md/files/document/attachments/3.Curtea_Suprem_de_Justiie%206%20luni%202022.pdf

Judges of the 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, *de facto* 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).

According to the CEPEJ study "*European Judicial Systems - Efficiency and Quality of Justice - CEPEJ Studies No. 26*"⁵ 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.

This draft law proposes that the SCJ be composed of 20 judges. 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. In the Swedish Supreme Court, there are 16 judges.

In the context of reducing the number of judges in the SCJ from 33 to 20 offices, we must make it clear that this reduction will take place gradually.

It should be noted that the current judges of the SCJ will be assessed for integrity. In this regard, amendments are to be made to Law No. 26/2022 on certain measures related to the selection of candidates for membership of self-administrative bodies of judges and prosecutors.

As a result, the current judges of the SCJ will continue their activity only if they will promote this evaluation. Thus, the reduction in the number of judges will take place in stages, as and when grounds for dismissal of SCJ judges who have promoted the integrity assessment arise.

Respectively, the provisions relating to the reduced number of judges (art. 5 para. (1) and art. 6 para. (1) letter a) of the draft-law) will not enter into force on the date of publication of the Law due to the maintenance in the SCJ of all positively evaluated judges. They will be applied starting from the date when the current judges of the Supreme Court of Justice will remain in number of 11 (art. 12 para. (1) of the draft-law). Details on this subject have already been included in a separate draft law amending Law No. 26/2022.

The mixed model of the SCJ, composed of career judges and specialists from other legal professions, is the most widespread in Europe and in line with European standards. We underline that the Venice Commission has recognised that only the appointment of Supreme Court judges is the only exception to the requirement of having only judicial experience.⁶ In many European countries, you do not necessarily have to be a member of the judiciary to become a Supreme Court judge. Positions on the Supreme Courts are open mainly to university professors, in most cases also to lawyers, prosecutors and members of the administrative service. In Finland, Supreme Court judges have experience from various legal fields, most often from the courts, but also from law-making, academic posts and legal practitioners.

According to the draft, candidates for the position of judge of the SCJ will be selected by the SCM through a public contest on the basis of merit. With reference to the composition of the SCJ, it is proposed to distribute the positions of judge of the SCJ: 9 from among judges and 11 from among non-judges in such a way that neither of the two categories of candidates (judges and non-judges) can hold less than 9 and more than 11 offices of judge of the SCJ.

The following aspects have been taken into account in establishing this report:

- on the one hand, the desire to ensure access to the SCJ for the best professionals, regardless of the category of lawyers to which they belong, without giving priority to one category over another;
- on the other hand, the desire to avoid creating corporatism within the SCJ in the future. Thus, a formula has been identified which, from a numerical point of view, ensures

⁵ <https://www.coe.int/en/web/cepej/documentation/cepej-studies>

⁶ CDL-AD(2014)038, Opinion on the draft laws on courts and on rights and duties of judges and on the Judicial Council of Montenegro, §53, link: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2014\)038-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)038-e)

minimum and maximum limits, without singling out a particular category of jurists, and without limiting the SCM's discretion to an express number established by law. In the process of establishing this report, the opinion of the Venice Commission was taken into account (§ 38 of CDL-AD(2022)024), as well as the recommendations of the Directorate General for Justice and Consumers of the European Commission (DG JUST), according to which a significant part of the composition of the SCJ must be ensured from among career judges.

In order to ensure that the future SCJ will be filled by the best legal professionals, the draft law regulates demanding criteria for access to the position of SCJ and establishes the experience required for this position:

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

The details of the procedure for the selection of candidates will be determined 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 will be able to reject the candidate with reasons, in the presence of circumstances confirming incompatibility with the position of judge. The SCM may overcome this refusal if at least 2/3 of the members of the Council in office vote for the decision.

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 SCJ, after consultation with the judge, and will be mentioned in the proposal for the appointment of the SCJ. This is particularly beneficial for career judges who will be promoted to the SCJ, allowing them to complete their assigned cases.

Internal organisation of the SCJ

The SJC 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 of serving only 2 terms. 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 positions. When determining the length of the term of office, account was taken of §44 of Opinion No. 19 of the Consultative Council of European Judges (hereafter - CCEJ), which stressed that the term of office of a court president should be long enough to gain sufficient experience and to allow for the realisation of ideas to provide better service to court users. However, the CCEJ also emphasised that the term of office should not be too long, as this may lead to routine and prevent the development of new ideas, so that, depending on the specific institutional framework of each country, an appropriate balance should be found between these two perspectives.

The candidates for this position will be identified by the judges of the SCJ by secret ballot. This procedure will ensure that the future President will enjoy the support of his colleagues and will encourage the democratic work of the President of the SCJ. We underline that the involvement of the Plenum in the process of identifying candidates for the position of President of the SCJ is in line with CCEJ Opinion No 19, according to which judges could be involved in the process of electing the President of the Court in the form of a compulsory or advisory vote⁷.

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 SJC 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

⁷ Opinion of CCEJ no. 19, § 40, link: <https://rm.coe.int/1680748232>.

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 the Plenum of the SCJ deems it necessary. The Plenum will also determine the composition of the panels of the SCJ on an annual basis. Details will be laid down in the Rules of the Court.

Judges will be assisted by the Registrar of the Court Secretariat. The activity of the Registrar of the SCJ will consist in supporting the drafting of judicial orders and the standardisation of judicial practice, coordinated by the **Jurisconsult of the SCJ**. The activity of the administrative subdivision will be coordinated by the **Secretary General of the SCJ**. It is proposed that their term of office and the detailed selection procedure be set out in the Regulations of the SCJ.

It is also proposed that the establishment plan of the SCJ be approved by the Plenum of the SCJ, on the proposal of the President of the Court. This amendment will give greater flexibility to the Court in determining not only the internal structure of the Secretariat, but also in assessing the number of civil servants and contractual staff required for the proper functioning of the activity, based on the budget of the SCJ. It should be noted that a similar model for the approval of the establishment plan is currently applied at the Constitutional Court.

4. Economic and financial regulatory

Regarding the financial impact of the project, we would like to point out that the draft budget of the SCJ for the year 2023 was drawn up on the basis of the number of 33 judges and 220 staff units for the Secretariat of the SCJ.

We underline the fact that the number of positions of judges of the SCJ proposed by this draft does not exceed the current number of judges of the SCJ. Also, even if all judges of the SCJ currently in office pass the integrity assessment, the number of judges will not exceed the figure of 33.

As a result, the implementation of the draft does not involve any additional expenses from the state budget.

The implementation of the proposed reform will take place as a result of the gradual reduction of the number of judges in the SCJ. Thus, additional expenditure from the state budget could occur in the part related to the resignation of judges of the SCJ, who will not want to undergo the evaluation by paying the dismissal indemnity.

It will also be necessary to exclude the differentiation of salaries of judges of the SCJ according to their seniority in order to ensure equality between career judges and judges appointed from other legal professions. These changes will be included in a draft amendment to the related normative framework.

Please note that the draft does not foresee any intervention in the number of staff units of the Secretariat of the SCJ nor in the amount of salaries of current positions in the Secretariat.

It is only proposed to rename the position of Head of the SCJ Secretariat to Jurisconsult and the position of Deputy Head of the SCJ Secretariat - to Secretary General of the SCJ; with the reduction of one position of Deputy Head of the SCJ Secretariat (currently there are 2 deputy positions).

5. Method of incorporating the project into the system of normative acts in force

Given that the revision of the competences of the SCJ implies changes 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 legal framework, ~~which will enter into force at the same time as the draft new law on the SCJ~~. As a result, the draft law amending the related legal framework will amend the following legal acts:

- Law No. 514/1995 on the organisation of the courts;
- Law No. 544/1995 on the status of judges;

- Law No. 789/1996 on the Supreme Court of Justice;
- Criminal Procedure Code of the Republic of Moldova No. 122/2003;
- Civil Procedure Code of the Republic of Moldova No. 225/2003;
- Law No. 155/2011 on the approval of the Single Classification of Civil Servants;
- Administrative Code of the Republic of Moldova No. 116/2018;
- Law No. 270/2018 on the unitary system of salaries in the budgetary sector.

In order to regulate the process of integrity evaluation of current judges of the SCJ, as well as candidates for vacant positions in the SCJ, a distinct draft law -was elaborated in order will be necessary to amend ~~through a separate draft law the~~ Law No. 26/2022 on some measures related to the selection of candidates for membership in the self-administrative bodies of judges and prosecutors, which is promoted simultaneously with the present draft-law.

It will also be necessary to bring the internal regulatory 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, under the Directorate of *Decision-making transparency*, has been 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: <https://www.justice.gov.md/ro/content/anunt-privind-initierea-procesului-de-elaborare-proiectului-legii-privind-modificarea-unor-4>

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

In order to comply with all the procedures of legislative creation established by Law No. 100/2017 on normative acts, the draft was registered at the State Chancellery under the unique number 609/MJ/2022 and submitted to the endorsement procedure with all the institutions interested in the field. The draft was sent for endorsement and public consultation to all interested parties, and was also placed on the official website of the Ministry of Justice, under the heading *Decision-making transparency*, section *Draft normative acts submitted for coordination*, draft No. 662.

In the process of endorsement and public consultation, proposals were received from: the Evaluation Commission, the Superior Council of Magistracy, the Supreme Court of Justice, the Court of Appeal of Balti, Balti county, Prosecutor General's Office, Superior Council of Prosecutors, National Integrity Authority, Ministry of Finance, National Institute of Justice, People's Advocate, Centre for Analysis and Prevention of Corruption, Institute for European Policies and Reforms, Joint Opinion (Chirinciu G., Lazari C., Gladis O., Arseni Al.).

It should be noted that the Union of Lawyers of Moldova, P.A. "Centre of Legal Resources of Moldova" and the representatives of the courts of appeal and the Chisinau court presented their proposals in the process of drafting the draft law, during the meetings of the working group, established by the Order of the Minister of Justice No. 190 of July 25, 2022.

The following did not submit proposals: the Comrat Court of Appeal, the Ministry of Labour and Social Protection.

The following did not submit proposals: the majority of courts, the Union of Lawyers of the Republic of Moldova, the State University of Moldova, the Free International University of Moldova, the Academy of Economic Studies, P.A. Voice of Justice.

In addition, the draft law was submitted to the Venice Commission for consultation. Thus, based on the recommendations of the Joint Opinion of the Venice Commission and the Directorate General for Human Rights and the Rule of Law of the Council of Europe (CDL-AD(2022)024 no. 1100/2022)⁸ the draft has been amended and will be subject to a repeated

⁸ Opinion CDL-AD(2022)024 can be viewed at the following link: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2022\)024-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)024-e)

endorsement and public consultation process.

7. Findings of the anti-corruption expertise

In order to comply with the provisions of art. 34 para. (1) of *the Law no. 100/2017 on normative acts* (hereinafter - *Law no. 100/2017*), the State Chancellery, by letter no. 18-23-8152 of August 18, 2022, concurrently with the public consultations, submitted the draft normative act to the National Anti-Corruption Centre for expertise.

State Secretary

/Electronically signed/

Veronica MIHAILOV-MORARU