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REPUBLIC OF MOLDOVA

**DRAFT LAW ON THE AMENDMENT OF LAW No. 26/2022 ON SOME
MEASURES RELATED TO THE SELECTION OF CANDIDATES FOR
MEMBERSHIP IN THE SELF-ADMINISTRATIVE BODIES OF JUDGES
AND PROSECUTORS AND INFORMATION NOTE**

DECISION No. _____
OF _____ 2022

**ON THE APPROVAL OF THE DRAFT ON THE AMENDMENT OF LAW No. 26/2022 ON
SOME MEASURES RELATED TO THE SELECTION OF CANDIDATES FOR MEMBERSHIP
IN THE SELF-ADMINISTRATIVE BODIES OF JUDGES AND PROSECUTORS**

PARLIAMENT OF THE REPUBLIC OF MOLDOVA

LAW

In order to strengthen the integrity and professionalism of the Supreme Court of Justice judges, to adjust the normative framework to the amendments to the Constitution operated by Law no. 120/2021 to amend the Constitution of the Republic of Moldova and to strengthen the role of the Supreme Court of Justice,
The Parliament adopts this organic law.

Art. I

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

1. The name of the law shall read as follows: "on measures related to the selection and evaluation of holders and candidates for certain positions in the justice system";
2. In Article 1:
the words "as well as" are excluded;
after the words " specialized of them," shall be supplemented with the words "of judges and candidates for the position of judge of the Supreme Court of Justice"
3. Article 2:
shall be supplemented by paragraph (11) with the following content:
"(11) The provisions of this Law shall apply:
a) to the judges of the Supreme Court of Justice, in office, including those suspended;
b) to the candidates for the vacant positions of judge of the Supreme Court of Justice."
in paragraph (2) the text "in para. (1)" is replaced by "in para. (1) and (11)".
4. In Article 3:
the title shall read as follows: "Independent Evaluation Commission on the integrity of holders and candidates for certain positions in the justice system".
in paragraph (1), the words "candidates for membership of the self-administrative bodies of judges and prosecutors" shall be replaced by the words "holders and candidates for certain positions in the justice system".
5. The title of Chapter II shall read as follows: "EVALUATION OF CANDIDATES FOR MEMBERSHIP IN THE SELF-ADMINISTRATIVE BODIES OF JUDGES AND PROSECUTORS".

6. In Article 6 letter b), after the words "adopt decisions", shall be supplemented with the words ", or, where appropriate, reports".
7. It is supplemented with Chapter II with the following content:

"CHAPTER II"
EVALUATION OF JUDGES OF THE SUPREME COURT OF JUSTICE

Article 14¹. Subject of evaluation

- (1) The subjects referred to in art. 2 para. (11) shall be evaluated in accordance with the procedure provided for in this Chapter.
- (2) Judges of the Supreme Court of Justice, who within 20 days from the entry into force of this Law submit a dismissal application, shall not be evaluated. The dismissal application may be withdrawn only within the 20-day period. From the date of submission of the dismissal application, the respective judge of the Supreme Court of Justice shall not participate in the adoption of judicial acts of disposition.
- (3) The Superior Council of Magistracy shall examine the dismissal application and decide on it within 10 days of the expiry of the period referred to in paragraph (2). The judges who have dismissed in this way may not become judges again for 7 years.

Article 14².

Results of the evaluation of Supreme Court of Justice judges

- (1) Following the evaluation, the Evaluation Commission shall issue a reasoned report containing the proposal on the passing or non-passing of the integrity evaluation. The non-passing of the evaluation shall result in the automatic dismissal of the judge until the decision of the Superior Council of Magistracy on the evaluation is issued. The provisions of art. 13 para. (2) - (5) shall also apply correspondingly to the report of the Evaluation Commission.
- (2) The report of the Evaluation Commission shall be submitted within 3 days to the Superior Council of Magistracy with a copy of the evaluation file.

Article 14³.

Examination by the Superior Council of Magistracy of the results of the evaluation

- (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 report 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 adoption of the report, without observing the prior procedure. The appeal shall be submitted to the Evaluation Commission, which shall immediately submit it to the Superior Council of Magistracy.
- (3) The Superior Council of Magistracy shall examine the results of the judge's evaluation in a public meeting within 15 days of receiving the report 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) accept the report of the Evaluation Commission and decide on the passing or non-passing of the evaluation;

b) reject the report of the Evaluation Commission and orders once the evaluation procedure to be resumed, if it finds circumstances that could lead to the passing or non-passing of the evaluation;

c) upon receipt of the report of the Evaluation Commission, following the resumption of the evaluation procedure provided for in letter b), accept the report in accordance with letter a) or reject it and find that the evaluation was passed or not passed.

(5) The decision of the Superior Council of Magistracy on the non-passing 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 exercise the position of judge for 7 years, to be admitted and to exercise the positions and professions of: prosecutor, lawyer, notary, authorized administrator, bailiff as well as public dignity for 5 years from the date of the final decision of the Superior Council of Magistracy.

Article 14⁴.

The appeal against the decision of the Superior Council of Magistracy

(1) Notwithstanding the provisions of the Administrative Code, the Decisions of the Superior Council of Magistracy provided for in art.143 para. (4) may be appealed to the Supreme Court of Justice within 5 days of receiving the reasoned decision of the SCM. The appeal shall be submitted to the Superior Council of Magistracy, which within 3 days shall be delivered to the Supreme Court of Justice.

(2) The appeal shall be examined by a panel consisting of 3 judges of the Supreme Court of Justice who have passed the evaluation and have not worked 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 that could have led to the passing of the evaluation and, in this case, shall order the evaluation procedure to be resumed.

Article 14⁵.

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 evaluated in accordance with this Law. Only candidates who have passed the evaluation shall be admitted to the contest.

(2) The consequences of failure to pass the evaluation shall apply accordingly to candidates for the position of judge of the Supreme Court of Justice."

8. In Article 9 para. (2), the words "Upon initiation of the evaluation procedure" shall be replaced by the words "On the basis of the information received pursuant to para. (1)".

9. In Article 10:
paragraph (1) is excluded;
paragraph (5) shall be supplemented at the end by the sentence "The candidate is obliged to keep confidential the personal data in the evaluation material submitted by the Evaluation Commission."
paragraph (8) is excluded;
paragraph (10) shall read as follows:

"(10) If the Evaluation Commission finds that the information provided by candidates or by other natural or legal persons in accordance with paragraph (3) does not correspond to the reality, it shall refer the matter to the competent bodies with a view to establishing and sanctioning the alleged illegal facts."

10. Article 12:

shall be supplemented with paragraph (21) with the following content:

"(21) The video recording of the public part of the hearing shall be placed on the Commission's official website.";

paragraph 4 letter d) after the words "its integrity" shall be supplemented with the words ", if he/she was previously unable to present them".

11. In Article 13:

in paragraph (5), the word "serious" shall be replaced by the word "reasonable";
paragraph (7) shall read as follows:

"(7) The decision of the Evaluation Commission drafted in Romanian language shall be delivered to the candidate at his/her e-mail address and to the institution responsible for the organization of the elections or, as the case may be, of the contest. On the same day, the Evaluation Commission shall publish on its official website the information whether the candidate has passed or failed the evaluation."

12. Article 14 paragraph (8) letter b) shall read as follows:

"b) admitting the application for appeal, if it finds that there are circumstances that could have led to the evaluation passing and ordering the Evaluation Commission to resume the evaluation procedure of the candidate."

13. In Article 15 paragraph (1) the words "December 31, 2022" shall be replaced by "June 30, 2023".

Art. II

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

(2) The Superior Council of Magistracy:

a) within 15 days from the date of entry into force of this Law shall notify a contest for the filling of 6 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) shall notify a contest for the filling of the other vacant positions of judge of the Supreme Court of Justice within 5 working days from the date of occurrence of the vacancy;

c) shall submit to the Evaluation Commission within 5 working days of receipt the files of the candidates for the position of judge of the Supreme Court of Justice;

d) within a maximum of two weeks after the evaluation of at least 3 candidates has been passed, shall conduct the contest for the position of judge of the Supreme Court of Justice;

e) within 15 days of the entry into force of the law, shall adopt the regulations on the selection of judges of the Supreme Court of Justice;

f) within 1 month from the date of entry into force of this Law, shall bring its normative acts in line with this Law.

(3) Evaluation Commission:

- a) one month after the entry into force of this Law, shall start the evaluation procedure of the judges of the Supreme Court of Justice who have not submitted an application for resignation in accordance with art. 141 para. (2) of Law No. 26/2022;
- b) within 5 working days from the receipt of the file of the candidate for the position of judge of the Supreme Court of Justice, shall start the evaluation procedure of the candidate;
- c) within 6 months from the entry into force of this Law, shall evaluate all candidates for the position of judge 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 Regulations of the Supreme Court of Justice, the new organization chart of the Court and the staffing status and shall appoint the Jurisconsult and the Secretary General of the Court.

(5) The judges of the Supreme Court of Justice in office on the day of the entry into force of this Law, who have passed the evaluation, shall continue their activity within the Court.

PRESIDENT OF THE PARLIAMENT

INFORMATIVE NOTE

to the draft Law on the amendment of the Law no. 26/2022 on some measures related to the selection of candidates for membership in self-administrative bodies of judges and prosecutors

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

The draft law on the amendment of the Law no. 26/2022 on some measures related to the selection of candidates for membership in the self-administration bodies of judges and prosecutors 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, 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.

This draft law has been developed in the context of the reform of the Supreme Court of Justice (hereinafter - SCJ), which stems from the commitment made by the current Government following the vote of confidence given by the citizens in the July 11, 2021 elections regarding the reset of the judicial system, the implementation of the Strategy on ensuring the independence and integrity of the justice sector for the years 2022-2025 and the Action Plan for its implementation¹, as well as in the context of candidate status in the EU accession process, through the fulfilment of conditionality in the justice sector.

It should be noted that initially this draft law was an integral part of the draft law on the Supreme Court of Justice, forming part of the transitional provisions of that law. Following the recommendations received in the process of public consultation, the initial draft was divided into 2 separate draft laws, according to their subject matter:

- 1) the draft Law on the SCJ;
- 2) the draft Law on the amendment of the Law no. 26/2022 on some measures related to the selection of candidates for membership in self-administrative bodies of judges and prosecutors.

In this context, we will reiterate the rationale for carrying out the reform of the SCJ and drafting a new law on the SCJ, which are equally applicable to this draft law:

1. The lack of effective methods of standardising judicial practice has led to non-uniform judicial practice and many unpredictable rulings on the application of the law to the resolution of similar disputes. Independent studies and surveys among specialists confirm that the

¹ https://www.legis.md/cautare/getResults?doc_id=129241&lang=ro, adopted by the Parliament of the Republic of Moldova, Law No. 211 of 06.12.2021

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.

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 examples. On the other hand, some judges of the SCJ are currently suspected by prosecutors of committing offences and the SCM has agreed to prosecute them.

2. The blockage over the last 3 years of the activity of the Plenum of the SCJ and its inability to effectively exercise its powers relating to the unification of 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 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.*

3. 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).

4. The increased risk of influencing judges of the SCJ due to lack of integrity, confirmed 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. In 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.

5. The inefficiency of the current regulatory framework regulating the mechanism for evaluating the integrity of judges of the SCJ, yet at the moment, the streamlining of integrity verification procedures is part of the Reform Strategy for Justice and the areas of support offered by development partners.

6. 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, a model that is the most common in European countries.

7. 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.

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

Based on the above, the Government is proposing a profound reform of both the judicial system in general and the SCJ in particular.

The draft of the new law on the SCJ aims at reorganising the SCJ, which will allow it to become a court of cassation. In this context, the finalities pursued by the promotion of this draft law are to:

1) to increase the quality of the act of justice

2) to create a mechanism for the evaluation of the integrity of the current judges of the SCJ and of the candidates for the position of judge of the SCJ

3) to ensure the appointment of impartial judges of integrity to the SCJ.

The call for the exercise of extraordinary evaluation of the judicial system in a phased manner (at the moment in the Republic of Moldova, members of the SCM and the SCP are being evaluated extraordinarily, and the judges of the SCJ are to be evaluated as well) is justified by the fact that internal mechanisms have failed many times, 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 assured that a similar exercise cannot be repeated.

We underline that the evaluation of the integrity of the judges of the SCJ is a first step in the evaluation of the judicial system. Thus, the role of the SCJ in its new composition will be to verify the legality of decisions on the results of the evaluation of judges and prosecutors.

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 uniform 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 normative framework on the extraordinary (external) evaluation of judges and prosecutors in accordance with the recommendations of the Venice Commission" of the Action Plan for the implementation of the Strategy on ensuring the independence and integrity of the justice sector for the years 2022-2025, approved by Law No. 211/2021;
- 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.

3. Main provisions of the draft and highlighting new elements

Evaluation of SCJ judges and candidates for vacancies of SCJ judges

The draft regulates the evaluation procedure for current judges of the SCJ, as well as for candidates for non-judges. 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 the Law no. 26/2021 (hereinafter referred to as the Evaluation Commission), which will operate according to the procedure regulated by the said law.

The Evaluation Commission will collect and analyse information on the ethical and financial integrity of both the current judges of the SCJ and the candidates for vacant positions in the SCJ.

As a result, 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 positions of judges of the SCJ. Consequently, it became necessary to change the name of the law concerned to "Law on measures related to the selection and evaluation of candidates for certain positions in the justice system".

Following the evaluation, the Evaluation Commission will draw up a report on the promotion or non-promotion of the evaluation of ethical and financial integrity, which will be sent to the SCM, together with a copy of the evaluation file. The 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 take a decision based on the following options:

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

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

The decision of the SCM on the non-promotion of the evaluation will result in the dismissal of the judge.

To this end, art 25 para. (1) of Law No. 544/1995 on the status of judges should be supplemented with a new ground for dismissal - "n) failure to promote the evaluation of ethical and financial integrity, provided for in Law No. 26/2022". Currently, art. 25 para. (1) of the Law on the Status of Judges already contains 15 grounds for dismissal from office, of which only 1 concerns the commission of disciplinary offences, the others being grounds for dismissal from office.

It should be noted that the amendment of the Law on the Status of Judges will be carried out through a draft law amending the related regulatory framework. This will create the legal prerequisites for the SCM to adopt a decision on the dismissal from office of SCJ judges who will not promote the integrity evaluation without going through a disciplinary procedure.

Dismissal from office on the grounds of failure to promote the integrity assessment will have the effect of deprivation of the right to exercise the office of judge for 7 years, to be admitted and to exercise the functions and professions of: prosecutor, lawyer, notary, authorized administrator, bailiff as well as public dignity for 5 years from the date of the final decision of the Superior Council of Magistracy.

We admit that it is possible that several of the current judges of the SCJ will pass the integrity evaluation. In this case, the situation will arise where the number of SCJ judges who have promoted the evaluation will be higher than the number of positions for career judges.

In order to respect the principle of irremovability of judges, it is proposed that all current judges of the SCJ who will promote the integrity evaluation will continue their activity within the SCJ, without the need to be reconfirmed in office, until they reach the age limit, or until the occurrence of one of the grounds for their dismissal. In this context, we note that the reduction of the number of judges in the SCJ from 33 to 20 positions will take place gradually.

Procedure for appeals

As regards the appeal procedure, the person who did not promote the integrity evaluation will be able to appeal the decision of the SCM to promote / not promote the integrity evaluation to the SCJ.

For this purpose, a panel of 3 judges who have promoted the evaluation and 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 submitted by their colleagues.

The panel will be of a temporary nature and once the evaluation process is completed, the judges in the panel will continue their activity within the SCJ.

For the proper functioning of the panel, including in the context of possible recusals, it is proposed that the SCM, within 15 days from the date of entry into force of the draft law, will announce the contest for the replacement of six judges of the Supreme Court of Justice, with a view to selecting candidates from among lawyers, prosecutors and university professors in the field of law.

Guarantees for judges of the SCJ

We would like to point out that the term of office of the current judges will not automatically end once the new law on the Supreme Court of Justice enters into force. The terms of office of the current judges of the SCJ may be terminated on their own initiative, if they submit a resignation application to that effect; or in circumstances beyond the judge's control, if there is compelling evidence of a lack of integrity following a negative result in the integrity evaluation.

We emphasise that judges of the SCJ who pass the assessment will continue their work.

We point out that the grounds for dismissal are listed in art. 25 of the Law no.544/1995 on the status of the judge and are not only related to disciplinary liability.

The Constitution of the Republic of Moldova, in its current wording, does not contain any express requirements regarding the dismissal of judges. We emphasize that even in the previous drafts, the Constitution did not contain express provisions on the body or procedure for dismissal of judges

The basic guarantee for judges not to be arbitrarily removed from office lies in the principle of irremovability, which is regulated in art. 116 para. (1) of the Constitution of the Republic of Moldova: "The judges of the courts shall be independent, impartial and irremovable, according to the law."

As a result, the details of the judge's irremovability, including the grounds and conditions for the judge's dismissal, are regulated in Law No. 544/1995 on the Status of Judges and Law No. 947/1996 on the Superior Council of Magistracy. We emphasise that these laws are organic laws, which develop the fields expressly set out in art. 72 para. (3) of the Constitution.

As a result, the Constitution itself, in letter e) of the aforementioned article, establishes the legal basis for regulating by law several aspects of the judicial system, including those related to the dismissal of judges.

As mentioned above, the strongest guarantee of the independence of judges is their irremovability. This consists in the fact that they cannot be moved by transfer, delegation, secondment or promotion without their free consent and that they can only be suspended or released from office under the conditions laid down by the law governing their status. Non-removability should not be regarded as a privilege for judges, but rather as a guarantee for the judiciary. The Council of Europe, in point 3.4 of the 1998 European Charter of the Statute for Judges, provides for three exceptions to the application of the principle of irremovability, when:

1. it is permissible to move a judge without his or her consent as a disciplinary sanction;

2. if it has been pronounced in the case of a legal amendment of the judicial organisation;
and
3. in the case of temporary assignment to assist a neighbouring court, in which case the maximum duration of such assignment is strictly limited by statute.

Regarding the dissolution or restructuring of a court, in order not to be a reason for dismissal of judges, p. 29 of the Beijing Declaration provides that all current members of the court must be reinstated in their original position or appointed to another court of equivalent status and duration. Court members for whom no alternative position can be found must be fully indemnified.

According to the recent amendments to the Law of the SCM (amendments in force from July 29, 2022), the dismissal of judges is made by a decision of the SCM, which confirms the basis for dismissal provided by law in each case.

If this competence of the SCM is to be related to the constitutional provisions, then we note that the powers of the SCM, neither previously nor currently, are limited to the provisions of art. 123 para. (1) of the Constitution. Other categories of powers are also set out in Law No. 947/1996 on the Superior Council of Magistracy.

We reiterate that, according to the proposed draft, the final decision on the result of the evaluation of judges (or candidates for judges) will be taken by the SCM.

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

With reference to the guarantees for judges covered by the draft law proposed for examination, we mention:

- the draft expressly regulates the decisive role of the SCM in relation to the decision of the Evaluation Commission: it can confirm or annul it, returning the file for re-examination;
- the draft also provides for adding a new ground to the list of legal grounds for dismissal "failure to promote the evaluation of ethical and financial integrity, provided for in Law No. 26/2022"; it is difficult to imagine how a judge who has not promoted the evaluation of financial and ethical integrity can continue to work in the judicial system. This will inevitably affect the image and credibility of the entire judicial system and, directly, the decisions taken in private.
- access to justice for the negatively evaluated judge is ensured by regulating the procedure for challenging the SCM's decision in court;
- judges who promote the evaluation, but exceed the number of places available for career judges, will continue their activity in the SCJ.

In addition, we point out that the Constitutional Court, through its jurisprudence, has found that "judges of the courts are independent, impartial and irremovable, according to the law", and has enshrined the independence of the judge to ensure the exclusion of any influence from other authorities. However, this guarantee cannot be interpreted as meaning that the judge is not responsible. The fundamental law, according to art. 116 para. (1), does not only confer prerogatives, which are the basis of the concept of "independence", but also sets certain limits, which are circumscribed by the phrase "according to law" (Decision of the Constitutional Court No. 22/2013, §68).

As a result, the mechanism for terminating the mandate of judges who fail to promote the evaluation would not be in conflict with the provisions of the Constitution.

We are aware that there is a risk that some of the current SCJ judges will not promote the integrity evaluation. Keeping them in the SCJ after the results of the evaluation become public will denigrate the image of the judicial system, will reduce citizens' trust in the judicial system and will reduce to zero all the efforts made to unblock the system and clean it from corruptible elements.

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

Other amendments to Law No. 26/2022

Besides the necessary amendments for the evaluation of the integrity of judges and candidates for the positions of judges of the SCJ, the draft includes several changes concerning the work of the Evaluation Commission.

Thus, it is proposed to extend the mandate of the Evaluation Commission for another 6 months (amendment of art. 15). This extension is necessary in order to finalise the evaluation procedure of the subjects of the evaluation established in art. 2 para. (1) of the Law no. 26/2022 and for the evaluation of the judges of the SCJ.

Other amendments concern the working process of the Evaluation Commission. The need to make them derives from the current practice of the Commission, as well as from the fact that at the time of adoption of Law No. 26/2022 it was practically impossible to prevent all the difficulties detected in practice. These amendments concern articles 9, 10, 12, 13 and 14 of the law.

4. Economic and financial regulatory

In the part concerning the evaluation of the integrity of the judges of the SCJ, additional expenses from the state budget will be necessary for the remuneration of the national members of the Evaluation Commission for the period of their extended mandate.

As regards the expenses that may occur in connection with the change in the number of judges of the SCJ and the composition of the court, we reiterate what was explained in the Information Note of the Draft of the new law on the SCJ:

"Regarding the financial impact of the project, we emphasize that the draft budget of the SCJ for the year 2023 has been prepared on the basis of the number of 33 judges and 220 staff units for the Secretariat of the SCJ.

We stress 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 promote the integrity evaluation, the number will not exceed 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 expenses from the state budget could occur in the part related to the dismissal of judges of the SCJ, who will not want to be subject to the evaluation by the payment of the dismissal indemnity."

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

For the proper implementation of the evaluation process of SCJ judges, it is necessary to amend art. 25 para. (1) of the Law no. 544/1995 on the Status of Judges. It should be noted that these amendments have already been included in the draft law on amending the normative framework related to the law on the SCJ.

6. Approval and public consultation of the draft

Following from the fact that this draft law was originally an integral part of the draft law on the Supreme Court of Justice, the information on the compliance with the stages of preparation of the draft law on the Supreme Court of Justice (included in the similar section of the informative note of that draft) is equally applicable to this draft law.

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