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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

REPUBLIC OF MOLDOVA

DRAFT LAW

**ON THE EXTERNAL ASSESSMENT OF JUDGES AND PROSECUTORS
OF THE REPUBLIC OF MOLDOVA**

AND INFORMATIVE NOTE TO THE DRAFT LAW

Draft

LAW
on the external assessment of judges and prosecutors

Aiming to ensure the integrity of judges and prosecutors and to increase society's confidence in justice,

The Parliament adopts this Organic Law.

Chapter I
GENERAL PROVISIONS

Article 1. Object of the Law

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

Article 2. Purpose and principles of assessment

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

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

- a) independence of the Assessment Commissions;
- b) fairness of the assessment procedure;
- c) publicity of the acts issued in the assessment process;
- d) exceptional nature of the assessment.

Article 3. Subjects of the assessment

Under this law the following are assessed:

a) judges who have held the office of president and vice-president of courts, including those who provided the interim of these offices, for a period of more than one year, since 1 January 2017, including those who hold them on the date of entry into force of this Law;

b) judges of courts of appeal in office on the date of entry into force of this law;

c) The Prosecutor General, his/her deputies, chief prosecutors of the sections of the General Prosecutor's Office, including those who have held these positions or who have provided interim office for a period of more than one year, since 1 January 2017, including those who hold them on the date of entry into force of this Law.

d) prosecutors who have served as chief prosecutor of a prosecutor's office and deputy chief prosecutor of a prosecutor's office, including the interim of these offices for a period of more than one year, since 1 January 2017, including those serving on the date of entry into force of this Law;

e) prosecutors of specialised prosecutors' offices;

f) judges and prosecutors referred to in letters a) to e) who are suspended from office;

g) the the candidates for vacant positions in the Anticorruption Prosecutor's Office and in the Prosecution office for Combating Organized Crime and for Special Causes.

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

a) persons who have passed the integrity assessment provided for by Law no. 26/2022 on certain measures related to the selection of candidates for membership of self-administrative bodies of judges and prosecutors;

b) persons who have passed the assessment provided for by Law no. 65/2023 on external assessment of judges and candidates for the position of judge of the Supreme Court of Justice;

c) judges and prosecutors who belong to one of the categories referred to in par. (1) and who, within 20 days of the notification of the initiation of the assessment, submit a request for resignation;

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

(3) The subjects referred to in par. (1) letters a), b) and e) shall be assessed in priority.

(4) The request for resignation submitted under par. (2) letter c) may be withdrawn only within 20 days. The submission of the request for resignation after the expiry of this period, irrespective of the reason given, shall be deemed not to constitute a failure to pass the assessment.

(5) Upon receipt of the resignation request, the Superior Council of Magistracy, the Superior Council of Prosecutors or, as the case may be, the Prosecutor General shall inform the appropriate Assessment Commission. The decision on the resignation request shall be taken no later than 10 days after the expiry of the period referred to in par. (3), informing the Assessment Commission of the decision taken.

Chapter II ASSESSMENT COMMISSIONS

Article 4. Powers, mandate and financing of the work of the Assessment Commissions

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

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

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

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

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

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

c) to request information from the subject of the assessment;

d) to request and obtain, free of charge, information from other natural and legal persons governed by public or private law, including financial institutions;

e) to interview the subject of the assessment and other persons holding information relevant to the assessment;

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

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

(5) The assessment commissions shall assess all the subjects referred to in par. (1) or (2), including all persons referred to in art. 3 par. (1) letter d) who have won competitions by December 31, 2025. The Assessment Commissions shall operate until the Supreme Court of Justice has completed its examination of the last appeal lodged under art. 20.

(6) The financing of the work of the Assessment Commissions and their secretariats shall be made from the account and within the limits of the financial means approved in the annual budget law and from other sources not prohibited by law.

(7) The national members of the Assessment Commissions shall receive a monthly allowance equivalent to twice the basic salary of a Supreme Court judge with more than 16 years of service, established at the date of entry into force of this Law.

Article 5. Independence of the Assessment Commissions

(1) The Assessment Commissions shall be functionally and decisionally independent from any natural or legal persons, irrespective of the type of ownership and legal form of organisation, including parliamentary factions and development partners, which have participated in the appointment of their members.

(2) In their work, the Assessment Commissions shall be guided by the Constitution, by this Law and by other regulatory documents governing the areas related to their work. The assessment procedure is laid down in this Law and in their organisational and operational regulations.

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

(4) Each Assessment Commission shall develop and approve its own organisational and operational regulations, which shall be published on the official website of the Assessment Commissions.

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

(6) The members of the Assessment Commissions and the heads of their secretariats shall enjoy functional immunity and may not be held liable for opinions expressed in the exercise of their mandate and duties. Criminal proceedings against them shall be instituted by the Prosecutor General with the consent of the appropriate Assessment Commission. In the case of the crimes specified in art. 324-326 of the Criminal code, as well as in the case of a flagrant offence, such consent is not required.

Article 6. Composition of the Assessment Commissions

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

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

b) 3 members – proposed by development partners.

(2) For the purpose of appointing the members referred to in par. (1) letter a), the parliamentary factions shall submit to Parliament's Committee on Legal Affairs, Appointments and Immunities information on the candidates they propose. The Committee on Legal Affairs, Appointments and Immunities shall examine the proposed candidates and approve, by a majority vote of the members of the committee, reports on each candidate. Draft Parliament resolutions shall be drawn up by the Committee on Legal Affairs, Appointments and Immunities for each candidate and shall be submitted to the plenary of Parliament for debate and adoption by the majority provided for in par. (1).

(3) If one of the parliamentary factions does not ensure the nomination of the candidate within the prescribed time limit, the Committee on Legal Affairs, Appointments and Immunities shall submit the draft parliamentary resolutions and reports for the candidates proposed in accordance with par. (2) for debate in Parliament's plenary. The candidate can only be rejected if he or she does not meet the legal requirements set out in art. 7 para (1). The rejection decision can be appealed, as per the Administrative Code.

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

(5) For the purpose of appointing the members referred to in par. (1) letter b), the development partners shall submit to Parliament, by joint letter, a list of not more than 6 eligible persons for each Assessment Commission. The Committee on Legal Affairs, Appointments and Immunities shall examine the proposed candidates and elect the three persons who obtained

the highest number of votes in the meeting of that Commission. They are then presented to Parliament's plenary for appointment as members of the Assessment Commissions. The Committee on Legal Affairs, Appointments and Immunities shall draw up a draft decision of Parliament, accompanied by a report, which shall be debated in plenary and adopted by the majority provided for in par. (1).

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

(7) The nominal composition of the Assessment Commission shall be confirmed by Parliament's decision.

Article 7. Membership of the Assessment Commission

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

- a) has higher education;
- b) has an outstanding reputation;
- c) has at least 10 years' experience in one or more of the following areas: legal, economic, tax, financial;
- d) does not hold and has not held office as a Member of Parliament or member of the Government within the last 3 years;
- e) has not been a member of a political party in the last 3 years;
- f) has not been a judge or prosecutor in the Republic of Moldova for the last 3 years;
- g) has sufficient knowledge of English to carry out the duties of the Assessment Commission.

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

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

- 1) resignation;
- 2) removal of a member for:
 - a) occurrence of circumstances of incompatibility or non-compliance with the requirements laid down in par. (1);
 - b) a serious intentional breach of this Law or of the organisational and operational regulations of the Assessment Commission of which he/she is a member;
 - c) committing a flagrant offence;
 - d) failure to attend at least three meetings of the Assessment Commission over a period of two months without good reason;
 - e) inability to serve as a member of the Assessment Commission, including for health reasons, for more than 30 days.
- 3) death;
- 4) termination of the work of the Assessment Commission.

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

(5) In the event of termination of membership of the Assessment Commission on the grounds set out in par. (3) points 1) to 3), the chairperson of the Assessment Commission or, where appropriate, the head of its secretariat shall immediately refer the matter to Parliament for the selection and appointment of a new member in accordance with the procedure laid down for the member whose term of office has expired.

(6) The members of the Assessment Commissions referred to in art. 6 par. (1) letter a) shall complete annually the declaration of assets and personal interests within the meaning of

the Law no. 133/2016 on the declaration of assets and personal interests. The declarations of assets and personal interests of the members referred to in art. 6 par. (1) letter a) and curricula vitae of all members shall be published on the official website of the Assessment Commissions.

Article 8. Chairs of the Assessment Commissions

(1) Each Assessment Commission shall be chaired by a chairperson elected from among its members by secret ballot of a majority of the members of that Commission. In the absence of the chairperson of the Assessment Commission, his/her duties shall be carried out by a member designated by the chairperson of the Assessment Commission.

(2) The chairperson of the Assessment Commission shall have the following duties:

a) to coordinate the work of the Assessment Commission and its secretariat;

b) to convene meetings of the Assessment Commission;

c) to chair the meetings of the Assessment Commission;

d) to represent the Assessment Commission in dealings with other natural and legal persons governed by public or private law and to conclude acts on behalf of the Commission which he/she represents;

c) other duties provided for in this Law and in the regulations governing the organisation and operation of the respective Assessment Commission.

(3) The specific duties of each chairperson shall be determined by the Assessment Commission, whose work he/she coordinates.

(4) The office of chairperson of the Assessment Commission shall cease in the event of:

a) termination in accordance with art. 7 par. (3) of membership of the Assessment Commission;

b) resignation or removal from that office, approved by a vote of 2/3 of the members of the Assessment Commission.

Article 9. Assessment Commission Secretariat

(1) Each assessment commission has its own secretariat. Each Secretariat of the Assessment Commission (hereinafter – the secretariat) shall be independent of any public authority and shall function solely for the purpose of assisting the Commission in the performance of its duties. The functioning and staffing of the secretariat shall be laid down in the Regulation on the organisation and operation of the Assessment Commission.

(2) The recruitment of the employees of the two secretariats shall be carried out by the development partners.

(3) The work of each secretariat shall be coordinated by the head of that secretariat.

(4) At the request of the chairperson of the Assessment Commission or the head of the secretariat, public authorities and institutions shall be obliged to delegate or temporarily second employees to assist the Assessment Commission in the performance of its duties, including by way of derogation from the provisions of the laws governing the functioning of those public authorities and institutions and from the laws governing the status of certain categories of civil servants.

(5) The secretariat shall be subordinate exclusively to the Assessment Commission to which it is attached.

Article 10. Obligations of members of the Assessment Commissions

(1) The Assessment Commission members have the following obligations:

a) to participate, in person or by videoconference, in the meetings of the Assessment Commission;

b) to use only for the purposes of the assessment and to ensure the confidentiality of personal data which become known to them in the exercise of their mandate as a member of the Assessment Commission;

c) not to engage in activities, which may give rise to a conflict of interest, and actions incompatible with membership of the Assessment Commission and to declare them in the manner laid down in the Regulation on the organisation and operation of the Assessment Commission;

d) not to commit any act which might discredit the Assessment Commission or cast doubt on its objectivity;

e) to perform their duties professionally, diligently and promptly.

(2) The obligations referred to in par. (1) letters b) to e) shall also apply to the employees of the secretariats of the Assessment Commissions.

Chapter III ASSESSMENT PROCEDURE

Article 11. Assessment criteria

(1) For the purposes of this Law, the assessment shall consist in verifying the ethical and financial integrity of the subjects referred to in art. 3 par. (1).

(2) The subject shall be deemed not to meet the requirements of ethical integrity if the Commission determined that:

a) in the last 5 years he or she has severely violated the rules of ethics and professional conduct of judges, prosecutors or, where applicable, other professions, as well as whether he/she has behaved arbitrarily or issued arbitrary acts, which refers to situations where the European Court of Human Rights has previously established that the judge or, as the case may be, the prosecutor acted arbitrarily with intention or gross negligence;

b) in the last 10 years he/she has admitted in his/her work incompatibilities and conflicts of interest incompatible with the position held.

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

a) the difference between assets, expenses and income over the last 12 years exceeds 20 average salaries per economy, in the amount established by the Government for the year in which the assessment began;

b) in the last 10 years he/she has committed tax irregularities as a result of which the total amount of unpaid tax has exceeded 5 average salaries per economy, in the amount established by the Government for the year in which the assessment began.

(4) In the process of the assessment of the judge's financial integrity, the Assessment Commission shall verify:

a) compliance by the subject of the assessment with the tax regime as regards the payment of taxes on the use of means and income derived from the property held, taxable income and the payment of import and export duties;

b) compliance by the subject of the assessment with the legal regime for the declaration of assets and personal interests;

c) the manner of acquisition of assets owned or possessed by the subject of the assessment or by the persons referred to in par. (5) and the expenses relating to the maintenance of those assets;

d) the sources of income of the subject of the assessment and, where applicable, of the persons referred to in par. (5);

e) whether or not there are any loan, credit, leasing, insurance or other contracts that may provide financial benefits, in which the subject of the assessment, the person referred to in par. (5) or the legal entity of which they are the beneficial owner is a contracting party;

f) whether or not there are any donations in which the subject of the assessment or the person specified in par. (5) has the status of donee or donor;

g) other aspects relevant to the identification of the origin of the subject's wealth and its justification.

(5) In assessing compliance with the criteria laid down in par. (3), the Assessment Commission shall also take into account the wealth, expenses, income of close persons, as defined in the Law no. 133/2016 on the declaration of assets and personal interests, as well as of the persons referred to in art. 33 par. (4) and (5) of Law no. 132/2016 on the National Integrity Authority.

(6) When assessing against criteria provided in lines (2)-(3), the Commission will take into account the legal provisions which were in force at the time of committing the respective actions.

(7) In assessing the criteria referred to in par. (2) and (3), the documents or findings of other entities with competence in the areas concerned shall not be binding on the Assessment Commission. The Assessment Commission must take into account the findings of final judgments.

Article 12. Initiation of the assessment procedure

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

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

(3) The Assessment Commission shall notify the subject of the assessment of the initiation of the assessment and request him to submit:

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

b) the ethics questionnaire;

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

(4) The statements and the questionnaire referred to in par. (3) shall be submitted within the time limit set by the Assessment Commission, which may not be less than 10 days from the date of the request, and shall be signed with an electronic signature. The absence of a reasonable justification for the refusal to submit or the failure to submit the statements or the ethics questionnaire on time shall be grounds for the Assessment Commission to find that the assessment was not passed.

(5) By submitting the statements and the questionnaire provided for in par. (3), the subject of the assessment declares on his/her own responsibility that the data submitted are true and complete and consents to the processing of personal data. The sample statements and questionnaire are approved by the Assessment Commissions.

Article 13. The panel carrying out the assessment

(1) To assess the subjects set forth in art. 3 par. (1), assessment panels shall be formed within each Assessment Commission, consisting each of 3 members of the Assessment Commission, representing both categories of members referred to in art. 6 par. (1).

(2) The assessment files are randomly assigned to the panels for examination.

(3) The assessment file shall be prepared for assessment by a member-rapporteur, who shall be assisted by the secretariat of the respective Commission. The method of distributing files among panels of the same Assessment Commission, as well as the methods of appointing member-rapporteur shall be laid down in the regulation on the organisation and functioning of the Assessment Commission.

(4) Member-rapporteur shall submit beforehand the draft report to the other panel members.

Article 14. Gathering information

(1) The Assessment Commissions and their secretariats shall have real-time access to information systems containing the necessary information for the fulfilment of the mandate, subject to the conditions of the legislation on data exchange and interoperability. Assessment Commissions may receive from any person only information which is relevant information for the assessment of the subject and may gather on their own such information.

(2) The information requested from the persons set forth in art. 11 par. (5) shall be submitted to the Assessment Commission free of charge, including in electronic format, no later than 10 days from the date of the request.

(3) Natural and legal persons under public or private law, including financial institutions, may not refuse to provide information invoking protection of personal data, banking secrecy or other data with limited access, except for:

a) information that falls under the provisions of Law no. 245/2008 on state secrecy and has not been declassified;

b) information that refers to medical confidential data;

c) information which is subject to lawyer-client confidentiality

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

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

(6) At any stage of the assessment procedure, in order to clarify any uncertainties identified, the Assessment Commission may request additional data and information from the assessment subject or other persons, indicating the submission deadline. The subject under evaluation can submit any evidence he or she considers relevant for the clarification of concerns raised by the Assessment Commission.

(7) Communication with the evaluated judge takes place electronically, using the court's e-mail system. If the e-mail address is not in the system, the judge's personal e-mail address is used.

(8) Failure by the subject of the assessment to submit the additional information requested by the Assessment Commission within the time limit set, without justifiable reasons, may constitute grounds for refusing to include the information submitted late in the assessment file. In this case, the Assessment Commission shall assess the subject based on the information gathered.

(9) Information that has no relevance for the assessment, constitutes a state secret and that has not been declassified, as well as anonymous information, not confirmed by other sources, cannot be used in the evaluation process.

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

Article 15. Meetings of the Assessment Commissions

(1) The Assessment Commissions shall conduct their work in closed meetings, with the exceptions laid down in this law.

(2) The meetings of the Assessment Commission shall be attended by at least 4 members.

(3) Meetings are convened by the Chair of the Assessment Commission or at the request of at least 3 members of the Commission.

(4) If a member of the Assessment Commission is unable to attend a meeting, he or she shall notify the chairperson of that Assessment Commission.

(5) The rapporteur member presents the draft report on the assessment to the other members of the Assessment Commission.

Article 16. Hearing

(1) After analysing the information gathered, the Assessment Panel shall communicate to the subject of the assessment, in written form, any doubts it has about him or her which are to be discussed at the hearing, giving the subject of the assessment access to the materials in the assessment file relating to those doubts.

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

(3) The hearing shall take place in a public meeting, which shall be recorded by audio and video means. The video recording is attached to the dossier and shall not be placed on-line, except with the consent of the assessed subject. Upon reasoned request by the assessed subject if this is absolutely necessary for the protection of public order, privacy or morality, the hearing or parts of it can take place in closed session. In case the subject of the assessment expressly refuses to participate in the hearing, the assessment continues based on the information gathered by the Assessment Panel, without a hearing.

(4) The video recordings of hearings held in public meetings shall be placed on the official website of the Assessment Commission no later than 3 days after the date of the hearing.

(5) The subject of the assessment has the following rights:

a) to provide explanations at the hearing regarding the doubts communicated in accordance with par. (1);

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

c) to become acquainted with the materials in the assessment file before the hearing;

d) to submit, in written form, additional data and information which he/she considers relevant, if he/she has previously been unable to do so;

e) to request to be heard in closed session;

f) not to testify against himself/herself

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

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

(8) The simultaneous recusal of all members of the Assessment Panel is prohibited.

Article 17. Report on the assessment

(1) Following the assessment, the Assessment Panel shall draw up a reasoned report on the assessment, which shall include the relevant facts, the reasons and the proposal to pass or fail the assessment.

(2) The report on the assessment is approved by the unanimous vote of the members of the Assessment Panel and is signed by the president of the Assessment Commission.

(3) In case the Assessment Panel fails to reach unanimity, the assessment report will be examined by the Assessment Commission. The report of the Assessment Panel shall be approved by the Assessment Commission by a majority vote of its members and signed by its president

(4) The subject of the assessment shall be deemed not to have passed the assessment if one or more grounds for non-compliance with the criteria set out in art. 11.

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

(6) The assessment report shall be sent to the subject of the assessment, to his/her e-mail address and to the Superior Council of Magistracy or, as the case may be, to the Superior Council of Prosecutors. On the same day, the Assessment Commission shall publish on its official website the information on the outcome of the assessment. The report on the assessment shall be published, taking the necessary measures to protect the privacy of the subject of the assessment and other persons, on the official website of the Assessment Commissions no later than 3 days after the adoption of the decision referred to in art. 18 par. (2).

(7) Within 3 days from the adoption, the assessment report shall be submitted to the Superior Council of Magistrates or, as the case may be, to the Superior Council of Prosecutors on paper, together with an electronic copy of the assessment file containing all the assessment materials accumulated in the assessment process.

(8) If the Assessment Commission, or, as appropriate, the Assessment Panel, finds that the information provided by the subject of the assessment or by other natural or legal persons does not correspond to the reality or finds violations of the law, it shall refer the matter to the state competent bodies in order to document the facts and, where appropriate, to hold them liable in accordance with the law.

Article 18. Examination by the Superior Council of Magistracy, or the Superior Council of Prosecutors of the assessment results

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

(2) When examining the assessment results, the Supreme Council of Magistracy, or, where appropriate, the Supreme Council of Prosecutors, shall take into account the existence of evidences with regard to committing, by the assessed subject, of actions set out in art. 11, lines (2) and (3).

(3) By a reasoned decision adopted within 30 days of receiving the documents referred to in art. 17 par. (7), this Council shall:

a) accept the report on the assessment and decide whether the assessment is passed or not;

b) reject the report on the assessment and order, once only, the assessment procedure to be reopened, if it finds factual circumstances or procedural errors which could have led to the assessment being passed or, as the case may be, not passed;

c) after receiving the report on the assessment, drawn up as a result of the re-assessment referred to in letter b), shall accept the report according to letter a) or reject it and shall decide whether or not the assessment has been passed.

(4) The reasoned decision of the respective Council shall be published on its official website and sent to the e-mail address of the subject of the assessment and the Assessment Commission on the day of its adoption.

(5) The decision of the respective Council on the failure to pass the assessment shall result in the dismissal of the judge or, as the case may be, the prosecutor.

(6) The judge or, as the case may be, the prosecutor dismissed pursuant to par. (4) of this Article:

a) shall not be entitled to serve as a judge or, as the case may be, a prosecutor for 7 years, from the date of the final decision of the respective Council, of the order of the Prosecutor General or, as the case may be, of the decree of the President of the Republic of Moldova;

b) shall not be entitled to the one-off severance payment provided for in art. 26 par. (3) of Law No 544/1995 on the Status of Judges, or, as the case may be, provided for in art. 62 par. (2) of Law no. 3/2016 on the Prosecutor's Office;

c) shall be deprived of the right to the special pension provided for in art. 32 of the Law no. 544/1995 on the Status of Judges, while retaining the general retirement pension in accordance with the general conditions established by Law no. 156/1998 on the Public Pension System.

Article 19. Appealing the decision of the Superior Council of Magistracy or the Superior Council of Prosecutors

(1) By way of derogation from the provisions of the Administrative Code, the decision of the Superior Council of Magistracy or, as the case may be, of the Superior Council of Prosecutors may be challenged by the subject of the assessment within 15 days of receipt by email of the respective document.

(2) The appeal shall be lodged with the Supreme Court of Justice and shall be examined within a maximum of 30 days by a panel of 3 judges who have passed the assessment and have not served in the Supreme Court of Justice until 31 December 2022.

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

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

(5) The Supreme Court of Justice shall:

1) dismiss the appeal;

2) allow the appeal and:

a) orders, just once, the assessment procedure to be reopened by the Assessment Commission;

b) orders, just once, the assessment procedure to be reopened by the Council concerned.

(6) The Supreme Court of Justice shall allow the appeal only if it finds that serious procedural errors affecting the fairness of the assessment procedure have been admitted by the Assessment Commission during the assessment procedure or that there are factual circumstances which could have led to the assessment being passed.

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

Article 20. Resumption of the assessment procedure

(1) The reopening of the assessment procedure shall be carried out by the Assessment Commission or, as the case may be, by the Council concerned.

(2) When the assessment procedure is reopened, the Assessment Commission concerned shall confine itself to examining the issues referred to it by the Council or, as the case may be, by the Supreme Court of Justice and shall hold repeated hearings.

(3) The report on the reassessment of the subject of the assessment shall be approved by the Assessment Commission in accordance with the rules laid down in art. 17.

(4) When reopening the assessment procedure, the Council concerned shall confine itself to examining the aspects mentioned by the Supreme Court of Justice.

Chapter IV FINAL AND TRANSITORY PROVISIONS

Article 22. Final and transitional provisions

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

(2) The Parliament of the Republic of Moldova shall, within 15 working days from the date of entry into force of this Law, shall confirm the nominal composition of the Assessment Commission for prosecutors.

(3) The duties of the Assessment Commission for judges shall be exercised by the Assessment Commission, established by Law no. 65/2023 on the external assessment of judges and candidates for the position of judge of the Supreme Court of Justice.

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

(5) Ministry of Justice:

a) no later than 5 working days after the confirmation of the nominal composition of the Assessment Commission for prosecutors, shall organise its first meeting;

b) shall ensure the payment of the monthly allowance for the members of the Assessment Commission referred to in art. 6 par. (1) letter a), from the financial means approved in the budget for the external/extraordinary assessment of judges and prosecutors.

(6) The Assessment Commission for prosecutors shall:

a) within 10 working days after confirmation of the nominal composition, elect its chairpersons;

b) not later than 20 working days after confirmation of the nominal composition, approve its own regulation on the organisation and functioning and the regulation of the secretariat;

c) within 15 working days after receipt of the lists referred to in art. 12 par. (1), initiate the assessment procedure for the prosecutors who have not submitted a request for resignation;

d) within 10 working days of receipt of the file of the subject of the assessment, initiate the assessment procedure.

(7) The judges and prosecutors in office on the date of entry into force of this Law who have passed the assessment shall continue to work as judges or, as the case may be, prosecutors.

(8) By way of derogation from the provisions of the Law no. 158/2008 on Public Position and Status of Public Official, as well as from the provisions of the laws regulating the special status of certain categories of public officials, it is allowed to second public officials from public authorities and institutions to the secretariats of the Assessment Commissions.

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

SPEAKER OF THE PARLIAMENT

INFORMATION NOTE
to the draft Law on the external assessment of judges and prosecutors

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

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

The initial version of the draft law is based on the Concept on integrity assessment of judges and prosecutors, approved by Order of the Minister of Justice no. 49/2023¹.

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

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

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

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

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

3. Extended evaluation process of judges from the courts of appeal and from courts and of prosecutors, divided into 2 sub-stages:

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

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

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

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

¹ The Concept is available at the following link: https://justice.gov.md/sites/default/files/document/concept_final_vetting_23.02.2023.pdf

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

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

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

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

We also present the information from the Report De asemenea, prezentăm informația din Raportul "*Disrupting Dysfunctionality: Resetting Republic of Moldova's Anti-Corruption Institutions*"² regarding the critical situation in the system from previous years:

„Several unfortunate examples of cases of judicial corruption were brought to the public's attention in 2016, revealing that allegedly 16 judges were complicit in money laundering activities of about USD 70 billion in the Russian Laundromat scheme³. The role of the courts in this conspiracy was significant given the fact that it is the courts that have issued the orders for obviously suspicious transfers of funds. The cases against the judges are still pending. Although the SCM has been aware of the involvement of judges in these cases from 2012, they reportedly did not take action until 2016, long after the damage to the Moldovan banking system had been done.

Several judges involved in such cases were either evaluated “very good” in their performance reviews by the relevant SCM bodies, promoted to administrative positions in district courts or Courts of Appeal during 2014-2016⁴. The Anticorruption Prosecutor's Office did not disclose that it had discontinued the criminal investigation in respect of these judges.⁵ On October 27, 2020, the SCM accepted the request of five of these judges investigated in the “Russian Laundromat” case to have their suspensions from office quashed and to return to work. Subsequently, two other judges were found guilty of knowingly issuing a court decision contrary to law but exempted from criminal liability due to the prescription of criminal liability; another was acquitted. Eleven cases are pending in court and multiple recusal requests in respect of judges who are examining the cases are being put forward by lawyers, which leads to postponements.⁶

As to other allegations of corruption in respect of judges, although criminal investigations have been initiated, only one judge was found guilty of taking bribes (“passive corruption”) and sentenced to seven years of imprisonment. Another judge was found guilty of the same offence in the first instance court but acquitted subsequently by the Supreme Court of Justice.⁷

² The Report is available at the following link: <https://ccia.md/reports/ruptura-cercului-vicios/>

³ The information from the Press Conference of the Anti-Corruption Prosecutor's Office and the National Anti-Corruption Center of September 21, 2016 is available at the following link: <https://anticoruptie.md/ro/dosare-de-coruptie/doc-cum-a-functionat-spalatoria-ruseasca-scheme-prezentate-de-procuratura-anticoruptie>

⁴ «Only an empty shell» - The undelivered promise of an independent judiciary in Moldova, The International Commission of Jurists, 2019, <https://www.icj.org/wp-content/uploads/2019/03/Moldova-Only-an-empty-shell-Publications-Reports-Mission-reports-2019-ENG.pdf>.

⁵ Report on Monitoring the Selectivity of Criminal Justice, Freedom House Moldova, 2021, https://freedomhouse.org/sites/default/files/2021-11/fh-Moldova_Report-Selective-Justice-2021_v2-Eng.pdf

⁶ “Laundromat” judges’ files. Some have called for the recusal of the judges, others are demanding compensation from the state, Ziarul de Garda, 27 June 2021, www.zdg.md/stiri/stiri-justitie/dosarele-judecatorilor-din-laundromat-unii-au-cerut-recuzarea-judecatorilor-altii-cer-despagubiri-de-la-stat/.

⁷ Three convicted judges for corruption for the last two years, Anticoruptie.md, 2016, <https://anticoruptie.md/ro/stiri/trei-judecatori-condamnati-pentru-acte-de-coruptie-in-ultimii-doi-ani>

The Article 307 of the Criminal Code of the Republic of Moldova on “wilfully rendering a judgment, sentence, decision or ruling in breach of the law” is seen as a mechanism which endangers judicial independence⁸. Several judges have been subjected to criminal investigation under this provision, the constitutionality of which was confirmed by the Constitutional Court in 2018. That decision stated that a judge can be prosecuted “only on the basis of indisputable evidence that would prove the intention of the judge in issuing a judicial act in breach of the law”⁹.

A 2019 Freedom House Report monitoring the selectivity of criminal justice in the Republic of Moldova¹⁰ highlighted uneven treatment across similar criminal cases which, according to prosecutors are related to the Bank Fraud case. Now fugitive politician and entrepreneur Ilan Shor received preferential treatment from the relevant investigative and court bodies. Delays in court proceedings were also a symptom of selective justice in the Shor case: out of the 98 court hearings monitored, 68 were postponed¹¹. The assessment indicated that selective justice resulted from undue cooperation between politicians and judges, and the selectivity of justice has two main manifestations: favorable or unfavorable to subjects with political affiliation, depending on how close the subjects are to the political forces that control justice

A subsequent 2021 Freedom House Report on the same topic was conducted in 2021¹². It revealed several criminal cases with similar characteristics but with different procedural approaches, notably differing and inconsistent assessments of NIA’s fact-finding documents when starting criminal prosecution for illicit enrichment; different judicial outcomes in similar cases with identical criminal typologies, etc. Fiftysix percent of all monitored court hearings were postponed, leading to delays. The monitoring also confirmed clear favouritism: in one high profile example of a complex set of criminal allegations with respect to defendants in the Platon group cases likely to have had a positive outcome¹³ were carried out quickly, despite the multitude of participants in the case and the change of judges.

A recent LCRM report on the application of criminal sanctions in the Republic of Moldova¹⁴ found that courts in Moldova appear to be conscious of the importance of the specific circumstances of the defendant in the sentencing but apply a formalistic approach with respect to the criteria for individualization. Although courts do pay attention to the issue of proportionality in sentencing, the mechanisms provided for in the legislation to ensure the balance between the impact of the deed and the perpetrator, on the one hand,

⁸ «Only an empty shell» - The undelivered promise of an independent judiciary in Moldova, International Commission of Jurists, 2019, www.icj.org/wp-content/uploads/2019/03/Moldova-Only-an-empty-shell-Publications-Reports-Mission-reports-2019-ENG.pdf

⁹ Constitutional Court Decision no. 12 of 28 March 2017, available at <https://constcourt.md/ccdocview.php?tip=hotariri&docid=612&l=ro?tip=hotariri&docid=612&l=ro>. The press release in English available at <https://constcourt.md/libview.php?l=en&idc=7&id=985&t=/Media/News/Criminal-Liability-of-Judges-Arising-from-a-Wilful-Rendering-of-an-Illegal-Decision-Constitutional?l=en&idc=7&id=985&t=/Media/News/Criminal-Liability-of-Judges-Arising-from-a-Wilful-Rendering-of-an-Illegal-Decision-Constitutional>.

¹⁰ Report on Monitoring the Selectivity of Criminal Justice, Freedom House Moldova, 2019 https://freedomhouse.org/sites/default/files/2020-02/Judicial_Integrity_Selective-Criminal_Justice_ENGLISH_FINAL.pdf.

¹¹ In cases involving opposition subjects that seemed likely to be convicted, court proceedings moved with remarkable alacrity, while those with a chance of being acquitted were subject to extensive delays. This phenomenon was reversed in cases involving subjects close to the ruling party.

¹² Report on Monitoring the Selectivity of Criminal Justice, Freedom House Moldova, 2021, https://freedomhouse.org/sites/default/files/2021-11/fh-Moldova_Report-Selective-Justice-2021_v2-Eng.pdf.

¹³ Veaceslav Platon, who gained ownership in various Moldovan banks and insurance companies in the post-Soviet economy and maintained strong ties to Russian bankers involved in money laundering <https://ccia.md/wp-content/uploads/2022/07/CCIARaport-ENG.pdf>.

¹⁴ Report on the application of criminal sanctions in the Republic of Moldova, Legal Resources Centre from Moldova, 2022, <https://crim.org/wp-content/uploads/2022/05/Report-on-application-of-criminal-sanctions-in-RM.pdf>.

and the liability and punishment merited, on the other, do not seem to have the desired effect¹⁵. This tendency is observed in the reasoning of decisions in general, and also in the reasoning of the criteria for individualization, especially in regard to proportionality, and mitigating or aggravating circumstances. The SCJ and first instance courts outside Chisinau seem to be the most problematic in this regard.

On the matter of sanctions applied in corruption cases of over 400¹⁶ analyzed judgments issued by the SCJ between January 2017 and December 2020, a 2022 LRCM report¹⁷ established that in over 90% of corruption cases the subjects were engaged in or the acts themselves were of petty corruption. Seven percent of the cases relate to subjects or cases of grand corruption. Justice in corruption cases has been served within an average of 3.5 years. Every second examined case was re-examined at least once.

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

The publication of court decisions provides insight on how a judge applies the law. In 2020¹⁸, based on analysis of 1,340 judicial decisions adopted from 1 January 2018 to 31 March 2019, LCRM found that the anonymization of court decisions in the Republic of Moldova is inconsistent. Such inconsistencies were found across 55% of corruption cases. In 149 decisions related to corruption cases (28% of the total of 530 decisions analysed), the judges (with the exception of the SCJ) abused the practice in such areas as naming the perpetrators or instigators of a crime. In 118 decisions (22%), the name of the judge, prosecutor, police officer, mediator, bailiff, notary or lawyer were undisclosed. There are several cases in which the amount of the bribe was kept secret in court decisions in high profile cases. These examples show the excessive and improper anonymization from public view of key elements of such court decisions, which reduces the impact of corruption prevention through well-reasoned court judgments, deterrence and transparency to civil society.

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

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

¹⁶ Represented 95% of the total number of judgements publicly available on the website of the SCJ at that time.

¹⁷ Judgments and sanctions applied in corruption cases – how uniform is the legal practice?, Legal Resources Centre from Moldova, 2022, https://old.crjm.org/wp-content/uploads/2022/01/2022-01-25-studiu-sanctiuni-coruptie-versiunea_pre-machetata-site.pdf.

¹⁸ Transparency of the Judiciary versus Data Protection. An Analysis on the Publication of Court Decisions in the Republic of Moldova, Legal Resource Centre from Moldova, 2020, <https://crjm.org/en/transparency-of-the-judiciary-versus-data-protection-an-analysis-on-the-publication-of-court-decisions-in-the-republic-of-moldova/>

at the use of closed hearings particularly in criminal cases in which there is a public interest.¹⁹

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

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

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

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

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

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

With reference to **relevant policy documents**, we mention that the drafting and promotion of this project results from the international commitments assumed by the Republic of Moldova in the context of obtaining the status of a candidate state for accession to the European Union, as well as from:

- the objective 1.2.2, action "a) Elaboration of the normative framework on the extraordinary (external) evaluation of judges and prosecutors in accordance with the recommendations of the Venice Commission" of the Action Plan for the implementation of the *Strategy on ensuring the independence and integrity of the justice sector for the years 2022-2025, approved by Law No. 211/2021*;
- the act. 8.14 of the Government Action Plan for 2023, approved by Government Decision no. 90/2023 "The elaboration of the draft law on the external evaluation of judges and prosecutors in accordance with the recommendations of the Venice Commission".

We emphasize that, in order to achieve the objectives outlined by the mentioned policy documents, for the beginning was drafted the Concept regarding the extraordinary evaluation of judges and prosecutors, which contains the key elements of the entire external evaluation

¹⁹ «Only an empty shell» - The undelivered promise of an independent judiciary in Moldova, International Commission of Jurists, 2019, <https://www.icj.org/wp-content/uploads/2019/03/Moldova-Only-an-empty-shell-Publications-Reports-Mission-reports-2019-ENG.pdf>.

process. This document was publicly consulted several times both in 2021 and during 2022 (after the start of the pre-vetting process). Judges and prosecutors from the main institutions, SCM and SCP representatives, as well as development partners were involved in the consultation process.

3. Main provisions of the draft and highlighting new elements

This draft law represents the last stage of the external evaluation process of judges and prosecutors from the main institutions in the field.

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

THE OBJECT OF THE EXTERNAL ASSESSMENT

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

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

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

The integrity aspect also involves checking cases where judges and prosecutors have not settled conflicts of interest in their activity.

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

THE SUBJECTS OF THE EXTERNAL ASSESSMENT

The proposed evaluation will concern:

1. Judges (approximately 160 persons):

a) all presidents of the 15 courts and vice-presidents of courts, including *ad interim* presidents, who have held the respective positions for a period of more than one year, from January 1, 2017 to date (about 60 persons);

b) all judges of the Courts of Appeal: Chisinau, Balti, Comrat, Cahul (about 80 judges).

2. Prosecutors (approximately 230 persons):

a) from within the General Prosecutor's Office - the interim General Prosecutor, deputies of the General Prosecutor, prosecutors for special missions and heads/deputies of sections/directorates (about 22 persons);

b) all anti-corruption prosecutors and PCCOCS prosecutors (about 102 persons);

c) all chief prosecutors and their deputies from 2017 to date, including interim prosecutors for a period of more than one year, in the 42 offices, (about 100 prosecutors).

d) the candidates for vacant positions in the Anticorruption Prosecutor's Office and in the Prosecution office for Combating Organized Crime and for Special Causes.

Please note that the mentioned categories of subjects refer only to judges and prosecutors in key positions in judges and prosecutors' offices. With regard to the people who provided the interim management positions within the courts and prosecutors' offices, we specify

that only the people who provided the interim for the vacation period of the respective management position are to be evaluated. Thus, the persons who provided the interim in connection with the temporary impossibility of the manager to execute his duties (eg his being on medical leave), will not fall under the scope of this law.

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

We reiterate the fact that the 3rd stage of the extraordinary evaluation process is divided into 2 sub-stages:

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

With regard to the categories of subjects in sub-stage 2 (Chisinau Court, judges applying for promotion to leading positions or higher courts, Chisinau Prosecutor's Office, prosecutors applying for promotion to leading positions or higher prosecutors' offices) we mention that they will be evaluated through evaluated internal mechanisms, strengthened and capacitated with the appropriate instruments (SCM/SCP boards). In this context, two draft laws²⁰, which aim to reorganize the selection and evaluation colleges within the SCM and SCP, have already been registered in the Parliament. Thus, after finishing the "pre-vetting" process and the process of external evaluation of judges and prosecutors, the mentioned colleges will resume their activity, going to evaluate the judges and prosecutors in office.

INSTITUTIONAL FRAMEWORK

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

1. The Judges evaluation Commission and the Prosecutor evaluation Commission

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

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

It is proposed that the Commission's work will be divided in the initial stage into two assessment panels (3 members each). The approval of the evaluation report will be done with the unanimous vote of the panel members. If there is no unanimity, the report will be examined by the Assessment Commission, with the participation of all members.

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

- rapid examination of assessment files;
- speeding up the assessment process;

²⁰ The draft law are available at:

<https://www.parlament.md/ProcesullLegislativ/Proiectedeacteleislative/tabid/61/LegislativId/6419/language/ro-RO/Default.aspx>

- the constitution of mixed panels in the event of recusal/absence of members of the assessment panels, etc.

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

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

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

Each evaluation commission will have a secretariat.

Both the evaluation Commissions and their secretariats will have access to any data resources held by public institutions in the country, and to information systems containing data relevant to the fulfilment of its mandate, i.e. for the assessment of the ethical and financial integrity of applicants and holders, including through the MConnect interoperability platform.

2. Superior Council of Magistracy and Superior Council of Prosecutors

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

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

a) accepts the evaluation report and decides to promote or not to promote the evaluation;

b) rejects the evaluation report and orders a one-off reopening of the evaluation procedure, if it finds factual circumstances or procedural errors that could have led to the promotion or non-promotion of the evaluation.

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

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

The effects of the SCM/SCP decisions regarding the non-promotion of the evaluation:

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

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

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

3. Supreme Court of Justice

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

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

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

We remind that the art. 18 para. (3) from Law no. 65/2023 regarding the external evaluation of judges and candidates for the position of judge of the Supreme Court of Justice states: *"The appeal shall be examined by a panel consisting of first 3 judges of the Supreme Court of Justice who have passed the assessment and did not work in the Supreme Court of Justice until December 31, 2022."*

ASSESSMENT PROCEDURE

The assessment procedure will involve the following main steps:

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

CONSTITUTIONALITY ASPECTS

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

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

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

EFFECTS OF NON-PROMOTING EXTERNAL EVALUATION

Persons who will not pass the external evaluation will be released from their positions. Also, the respective persons will be deprived of the right to exercise the function of judge/prosecutor for 7 years, from the date of finality of the CSM (in the case of judges), the order of the Prosecutor General (in the case of prosecutors), or the decree of the President of the Republic of Moldova (in the case of the Prosecutor General).

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

It should be noted that the dismissal from office of judges/prosecutors who will not promote the integrity evaluation will be done without going through a disciplinary procedure. **This is in accordance with p. 50 of Opinion CDL-AD(2022)024 of the Venice Commission**, which emphasized that "*The evaluation/vetting process described in the drafts may by no means be equalled with the disciplinary proceedings. As the Venice Commission has noted previously, "[e]valuation and disciplinary liability are (or should be) two very different things." Disciplinary liability requires a disciplinary offence. A negative performance, which leads to a negative overall result of an evaluation, can also originate from other factors than a disciplinary offence. Therefore, a proposal that negative overall evaluation results should lead to the instigation of disciplinary proceedings raises problems.*"

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

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

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

4. Economic and financial regulatory

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

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

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

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

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

- **Remuneration of national members;**

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

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

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

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

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

$(63\,910 \text{ lei} * 9 \text{ months}) * 6 \text{ people} = 2\,300\,760 \text{ lei}$

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

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

- **Allowances related to possible resignations**

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

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

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

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

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

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

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

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

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

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

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

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

1. Own Regulation of organisation and functioning;
2. Regulation of the Assessment Commission Secretariats.

We emphasize that the related normative framework, necessary for the proper performance of the activity of the evaluation Commission of Judges, is elaborated pursuant to Law no. 65/2023 regarding the external evaluation of judges and candidates for the position of judge of the Supreme Court of Justice.

6. Approval and public consultation of the draft

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

The development of this draft law was preceded by **the development of the Concept** on the evaluation of the integrity of judges and prosecutors, which was transmitted to consultations in the established manner. The initial version of the Concept was publicly consulted in 2021, and the final version was publicly consulted in February 2023, being approved by the Order of the Minister of Justice no. 49/2023

With regard to **the initial version of the draft law**, we note that it was also publicly consulted in February 2023, being later sent for examination to the Venice Commission, which issued Opinion no. CDL-AD(2023)005 on it.²¹

The adjusted version of the draft law was publicly consulted on May 10, 2023, with the participation of representatives of judges, prosecutors, CSM, CSP. It is expected to continue the public consultation of the project in order to improve it after its repeated consultation with the Venice Commission.

Minister

Veronica MIHAILOV-MORARU

²¹ Opinion of the Venice Commission, link [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2023\)005-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2023)005-e)