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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**

**LAW No. 252  
of 17.08.2023  
on the external assessment of judges and prosecutors and the amendment of some  
normative acts**

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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 para. (1).

(2) The 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

(1) Under this law are assessed the following:

a) judges who from January 1, 2017 and to up to the date of entry into force of the present Law have held the position of president and/or vice-president of courts, including those who provided the interim of these offices, for a period of more than one year;

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

c) prosecutors who from January 1, 2017 and to the date of entry into force of the present Law have exercised the function of the General Prosecutor, deputy General Prosecutor, chief prosecutors of the departments of the General Prosecutor's Office, including those who have held these positions or who have been interim prosecutors for more than one year;

d) prosecutors who from January 1, 2017 and to the date of entry into force of this Law have held the position of chief prosecutor of a prosecutor's office and deputy chief prosecutor of a prosecutor's office, including those who have held these positions or who have been interim prosecutors for more than one year;

e) prosecutors of specialised prosecutors' offices including those delegated within these offices for a period of more than 1 year, from January 1, 2017 and up to the date of entry into force of this law;

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

(1) candidates for the posts referred to in points a)-f) who win the competitions for those posts by 31 December 2025.

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

a) persons who have passed the integrity assessment according to the 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 external assessment according to the 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 para. (1) and who, within 20 days of the notification related to initiation of the assessment, submit a request for resignation, except for those who have withdrawn their resignation within that period of time;

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

(3) Subjects referred to in para. (1), letters a), b) and e) shall be evaluated on a priority basis.

(4) The request for resignation submitted under para. (2) letter c) may be withdrawn only within 20 days. Submission of the resignation request after the expiry of this period, irrespective of the reason given, shall be considered as a failure to pass the evaluation.

(5) On receipt of the request for resignation, the Superior Council of Magistrates, the Superior Council of Prosecutors or, as the case may be, the Prosecutor General shall inform the appropriate evaluation committee. The request for resignation shall be examined and decided upon within 10 days of the expiry of the time limit provided in paragraph (4), informing the evaluation commission of the adopted decision.

## **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 para. (1) shall be assessed by the Assessment Commission of judges.

(2) The prosecutors referred to in art. 3 para. (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 consist of 6 members each. Each commission is assisted by a secretariat.

(4) Evaluation commissions are not public authorities in the meaning of the provisions of the Administrative Code. Their activity is not public, with the exceptions set out in this law and their organizational and operational regulations.

(5) The Assessment Commissions shall have the following duties:

a) to collect, accumulate and verify by means not prohibited by law all information 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 entities governed by public or private law, including from 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 approves reports on the assessment results;

g) other powers provided for in this law.

(6) The assessment commissions shall assess all the subjects referred to in article 3 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. 19.

(7) 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.

(8) The national members of the Assessment Commissions shall benefit from a monthly allowance equivalent to twice the basic salary of the judge of the Supreme Court of Justice.

#### **Article 5. Independence of the Assessment Commissions**

(1) The Assessment Commissions shall be functionally and decision independent from any natural or legal persons, irrespective of the type of ownership and legal form of organization, 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 organizational and operational regulations.

(3) The Assessment Commissions shall submit to the Parliament by 31 March, each year a report on their activities of the previous year, which shall be published on the official webpage of the assessment commissions.

(4) Each Assessment Commissions shall develop and approve its own organizational 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 Commissions or their secretariats on matters relating to the implementation of the Commissions' mandates.

(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. 243, 324-326 and 330<sup>2</sup> of the Criminal code nr. 985/2002, 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 para. (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 reports on each candidate by a majority vote of the committee's members. Draft resolutions of the Parliament shall be drawn up for each candidate by the Committee on Legal Affairs, Appointments and Immunities and shall be submitted to the plenary of Parliament for debate and adoption by the majority provided for in para. (1).

(3) If one of the parliamentary factions does not ensure 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 para. (2) for debate in Parliament's plenary. The candidate can be rejected by the Parliament if he or she does not meet the legal requirements set out in art. 7 para (1). The rejection decision can be appealed, as according to 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 para. (7).

(5) For the purpose of appointing the members referred to in para. (1) letter b), the development partners shall submit, to Parliament, by joint letter a list of no more than 6 eligible persons for each Assessment Commission. The Committee on Legal Affairs, Appointments and Immunities shall examine the proposed candidates and elect three persons who obtained the highest number of votes in the meeting of that Commission. They are submitted to Parliament's plenary for appointment as members of the evaluation committees. 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 Parliament and adopted by the majority vote provided for in para. 1.

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

(7) The nominal composition of each 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) holds a university degree;
- 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 the position of member of the Parliament of the Republic of Moldova or member of the Government of the Republic of Moldova;
- 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 para. (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 an offence with intention;

- d) failure to attend, without reasonable grounds, at least three consecutive meetings of the Assessment Commission;
  - e) inability to serve as a member of the Assessment Commission, including for health reasons, for more than 30 days.
- 3) death;
  - 4) end of the activity of the Assessment Commission.

(4) A member of the Assessment Commission is 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 para. (3) points 1) - 3), the chairperson of the Assessment Commission or, where appropriate, the head of its secretariat shall immediately refer the matter for the selection and appointment of a new member by Parliament in accordance with the procedure provided for commission's member whose term of office has ended.

(6) The members of the Assessment Commissions referred to in art. 6 para. (1) letter a) shall complete, upon appointment, annually and upon termination of membership of the evaluation commission, 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 para. (1) letter a) and curriculum vitae of all members shall be published on the official website of the Assessment Commission of which they are members.

#### **Article 8.** Chairpersons 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 relations 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;
- e) other duties provided for in this law and in the regulations governing the organization and operation of the respective Assessment Commission.

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

- a) termination of membership of the Assessment Commission in accordance with art. 7 para. (3);
- 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's Secretariat

(1) Each assessment commission has its own secretariat, which is an entity without legal personality. The Secretariat of the Assessment Commission (*hereinafter* – the secretariat) is independent of any public authority and functions solely for the purpose of assisting the Assessment Commission in the performance of its duties. The functioning and staffing of the secretariat are laid down in the Regulation on the organization and operation of the corresponding Assessment Commission.

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

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

(4) At the request of the chairperson of the Assessment Commission or the headperson 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 the laws governing the status of certain categories of civil servants.

(5) The Secretariat is subordinate exclusively to the Assessment Commission for the performance of whose activities it has been instituted.

#### **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 purpose of the assessment evaluation and to ensure the confidentiality of personal data that 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 if they do so, to declare them in the manner laid down in the Regulation governing the organization and operation of the Assessment Commission;

d) not to commit acts that might discredit the Assessment Commission or raise doubts about its objectivity;

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

(2) The obligations referred to in para. (1) letters b) - 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 indicated in art. 3 para. (1).

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

a) in the last 5 years, has seriously violated the rules of ethics and professional conduct of judges or, as the case may be, prosecutors, as well as if it has behaved arbitrarily or has issued arbitrary acts, in the last 10 years, contrary to mandatory rules of law, and the European Court of Human Rights had determined, prior to the adoption of the act, that a similar decision was contrary to the European Convention on Human Rights;

b) in the last 10 years, has admitted incompatibilities and conflicts of interest in his/her activity affecting the position held;

(3) An assessment subject is deemed not to meet the criteria of financial integrity, if the assessment 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 wages per economy, in the amount established by the Government for the year 2023;

b) over the last 10 years, has admitted tax irregularities as a result of which the amount of unpaid tax exceeded, in total, 5 average wages per economy, in the amount set by the Government for 2023.

(4) In the process of assessing financial integrity, the assessment commission may verify:

(a) compliance by the subject of the assessment with the tax regime in respect of the payment of taxes on the use of assets 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 para. (5), and the expenses relating to the maintenance of those assets;

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

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

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

(g) other criteria relevant to the criteria referred to in paragraphs (2) and (3).

(5) Assessing compliance with the criteria laid down in para. (3), the Assessment Commission takes into account the assets, 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 para. (4) and (5) of Law no. 132/2016 on the National Integrity Authority.

(6) When assessing the criteria provided for in para. (2) and (3) the acts or findings of other entities with competences in the areas of concern have no predetermined value for the assessment commission. Findings from irrevocable court decisions are taken into account, obligatorily, by the evaluation commission, with the exception of decisions that the evaluation committee considers arbitrary or manifestly unreasonable. The evaluation commission can only rule on violations of the rules of ethics and professional conduct, without ruling on the legality of the respective decisions.

## **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 transmit 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 para. (1).

(3) The Assessment Commission shall notify the subject of the assessment of the initiation of the assessment and request him/her 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 assets and personal interests, who work or have worked in the last 5 years in the judicial system, prosecution and public service.

(4) The statements and the questionnaire referred to in para. (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. Failure to provide a



reasonable justification for the refusal to submit or failure to submit the statements or the questionnaire in due time constitutes grounds for the Assessment Commission to find that the assessment has not been passed.

(5) By submitting the statements and the questionnaire provided for in para. (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.** Meetings of the Assessment Commissions

(1) The Assessment Commissions shall conduct their activities 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 shall be convened by the Chairperson 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 reporting member presents the draft report on the assessment to the other members of the Assessment Commission.

#### **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 relevant information about the assessed subject and may gather on their own such information.

(2) The information requested from the persons set forth in art. 11 para. (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) Individuals 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 has to be assured 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) In order to clarify any uncertainties identified, the assessment Commission may request, at any stage of the assessment procedure, additional data and information from the assessment subject or other persons, indicating the submission deadline, which cannot be less than 5 working days. At the motivated request of the subject of evaluation, the commission may extend only once, the deadline for submitting the requested information. If the information cannot be submitted, because it is not accessible, the subject of the evaluation informs the commission of this fact. The Evaluation commission assesses, in each individual case, the merits of the ground stated.

(7) The subject under evaluation can submit any evidence he or she considers relevant for the clarification of concerns raised by the Commission.

(8) Communication with the evaluated subject takes place electronically, using the court's e-mail system, or where appropriate, the public prosecutor's office. If the e-mail address is not in the system, the assessed subject's personal e-mail address is used.

(9) 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.

(10) Information that is no relevant to the assessment file under examination, that constitutes a state secrecy and that has not been declassified, as well as anonymous information that has not been confirmed by other official sources, may not be used in the assessment process.

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

(12) In the evaluation process, the Assessment Commissions may use the information on the evaluation subjects provided by the commission established under Law No 26/2022 on certain measures related to the selection of candidates for membership in the self-administrative bodies of judges and prosecutors.

#### **Article 15.** The panel carrying out the assessment

(1) For the assessment of the subjects referred to in art. 3 para. (1), in each assessment commission shall be formed assessment panels, consisting each of 3 members of the assessment commission, representing both categories of members referred to in art. 6 para. (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 is assisted by the secretariat of the respective Commission. The procedure for appointing the member-rapporteur is set out in the Regulation governing the organisation and functioning of the evaluation commission.

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

#### **Article 16.** The 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 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. If necessary hearing may continue in an additional meeting. At the justified request of the assessed subject if this is absolutely necessary for the protection of public order, privacy or morality, the hearing or parts of it may take place in a closed session. The Commission may refuse a request to hold the hearing or part of it in closed session only if there are reasonable grounds for doing it.

(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 para. (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;
- e) to request a closed hearing;
- f) not to testify against himself/herself in the case of committing of a crime or misdemeanor;
- g) request the recusation of the member of the Evaluation.

(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 address 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 contains the relevant facts, the reasons and the conclusion to pass or fail the assessment. Rejection of some evidence presented by the assessed subject must be justified in the report.

(2) The report on the assessment is approved by the unanimous vote of the members of the assessment panel and is signed by the Chair 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 is approved with the majority of member's votes, of which two are in the category referred to in Article 6 para. (1) letter (b), and shall be signed by its chairperson. Members of the Evaluation Commission may not abstain from voting.

(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 Article 11 were found.

(5) The assessment report shall be sent to the subject of the assessment within no more than 3 days from the date of approval, 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 Article 18 para. (3).

(6) Within 3 days from the approval, the assessment report shall be submitted to the Superior Council of Magistracy 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 gathered in the assessment process.

(7) 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 Magistracy or, as the case may be, Superior Council of Prosecutors shall examine in a 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 Superior Council of Magistracy, or where appropriate, the Superior Council of Prosecutors, shall take into account the existence of evidence with regards to committing by the assessed subject, of actions set out in art. 11 para. (2) and (3).

(3) By a reasoned decision adopted within 30 days of receiving the documents referred to in art. 17 para. (6), the 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 para. (5) of this article:

a) shall not be entitled to serve as a judge or, a prosecutor, as well as other positions of public dignity for 5-7 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 para. (3) Law No 544/1995 on the Status of Judges, or, as the case may be, art. 62 para. (2) 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 passed the assessment. The recusation of the whole panel and lodging the application for recusation with bad faith, repeatedly and improperly, in order to delay the examination of the appeal, are not admitted.

(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 hearing, to which are invited to present their position, the subject of assessment, the representative of the council concerned, and where appropriate, of the assessment commission.

(5) The Supreme Court of Justice shall:

1) Dismiss the appeal;

2) Admit 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 admit 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 or not.

(7) The decision of the Supreme Court of Justice shall be irrevocable from the moment of its issuance. The decision, is considered to have been issued when it is placed on the official website of the Supreme Court of Justice and shall be notified to the participants within 5 days from the date of issue.

**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 re-opened, 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 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 Superior Council of Magistracy or, the Superior Council of Prosecutors concerned, is limited to examining the aspects mentioned by the Supreme Court of Justice.

#### **Chapter IV FINAL AND TRANSITORY PROVISIONS**

##### **Article 21.** Amendments of some normative acts

I. Article 10 of the Law no. 26/2022 on some measures related to the selection of candidates for membership in the self-administrative bodies of judges and prosecutors (Official Monitor of the Republic of Moldova, 2022, no. 72, art. 103), with the following amendments, is amended with paragraphs (12) and (13) with the following content:

„(12) The information on the assessed subjects referred to in Article 2 (1) letters a) - d) from the present Law according to its provisions shall be forwarded to the Evaluation Commission, established on the basis of the Law no. 65/2023 on external evaluation of judges and candidates for the position of judge of the Supreme Court of Justice.

(13) Information on the subjects referred to in Article 2 para. (1) letters (e) - (h) from the present Law according to its provisions shall be forwarded to the Commission for the Evaluation of Prosecutors, created on the basis of Law no. 252/2023 on the external evaluation of judges and prosecutors.”

II. Law no. 65/2023 regarding the external evaluation of judges and candidates for the position of judge of the Supreme Court of Justice (Official Gazette of the Republic of Moldova, 2023, no. 117–118, art. 192), with the following amendments, is amended as follows:

1. Article 11 paragraph (2), letter a) will have the following content:

"a) in the last 5 years, he/she has seriously violated the rules of ethics and professional conduct of judges, prosecutors or, as the case may be, other professions, as well as if he/she has behaved arbitrarily or issued arbitrary acts, in the last 10 years, contrary to the imperative norms of the law, and the European Court of Human Rights had established, before the adoption of the act, that a similar decision was contrary to the European Convention for Human Rights;"

2. Article 18:

in paragraph (1), after the words "may be challenged by the concerned judge" the words "or by the Evaluation Commission" are inserted;

paragraph (2) will have the following content:

"(2) The appeal is submitted to the Supreme Court of Justice and is examined within 30 days by a panel consisting of the first 3 judges who passed the evaluation and did not work in the Supreme Court of Justice until December 31, 2022. The Supreme Court of Justice admits the appeal only if it finds that, in the evaluation procedure, serious procedural errors have been admitted that affect the fairness of the evaluation procedure or that there are factual circumstances that could lead to the promotion or non-promotion of the evaluation and, in these cases, orders, only once, the resumption of the evaluation procedure by the Evaluation Commission or by the Superior Council of Magistracy."

in paragraph (3), after the words "the concerned judge" the text ", the representative of the Evaluation Commission" is inserted.

## Article 22

(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 40 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 65/2023 on the external assessment of judges and candidates for the position of judge of the Supreme Court of Justice. The provisions of this Law, concerning the competences, organisation and functioning of the Judges' assessment Commission shall apply accordingly.

(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 Prosecutors' Assessment Commission.

(5) The 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 Commissions referred to in art. 6 para. (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) no later than 20 working days after confirmation of the nominal composition, approve its own regulation on the organisation and functioning, including the manner of the organisation and functioning of the secretariat.

(7) During the period of application of this law, in addition to the conditions for accession to the positions set out in Article 3, judges and prosecutors may hold the positions in question on condition that they pass the external assessment.

(8) Judges and prosecutors in office on the date of entry into force of this Law who have passed the assessment shall continue their activity as judges or, where appropriate, prosecutors.

(9) If the proper functioning of one or more courts of appeal is seriously affected due to the number of vacancies, the Superior Council of Magistracy may transfer, on a temporary basis, by way of derogation from the provisions of Law No 544/1995 on the status of judges, judges who meet the legal criteria for holding the position of judge of the court of appeal from the lower courts. The temporary transfer will end when at least ½ of the positions of judge are filled, and the temporary transferred judges return to the positions they held before the transfer. During the period of the transfer, the transferred judges shall receive the salary of the judge of the court of appeal in relation to their corresponding years of service.

(10) By way of derogation from the provisions of Law no.158/2008 on the public service and the status of civil servants, as well as from the provisions of the laws regulating the special status of certain categories of civil servants, it is permitted the detachment of civil servants from public authorities and institutions to the secretariats of evaluation commissions.

(11) The Independent Evaluation Commission established by Law No 26/2022 on certain measures related to the selection of candidates for membership in the self-administrative bodies

of judges and prosecutors ("Law No 26/2022") shall complete the evaluation of the applications submitted by 1 September 2023 of the subjects referred to in Article 2 para. (1) letters (a) and (e) of the Law. This Commission will continue its activity until the examination of appeals against its decisions is finalized.

(12) The duties of the commission referred to in paragraph. (11), which derive from Law No 26/2022, shall be exercised as follows:

a) the subjects referred to in Article 2 para. (1) letter (a) of Law No 26/2022, for applications submitted after 1 September 2023, and the subjects referred to in Article 2 para. (1) letter (b) - (d) of Law No 26/2022, regardless of the date of submission of the application, will be evaluated by the Judges' Evaluation Commission;

b) the subjects referred to in Article 2 para. (1) letter (e) of Law No 26/2022, for applications submitted after 1 September 2023, and the subjects referred to in Article 2 para. (1) letter (f) - (h) of Law No 26/2022, regardless of the date of submission of the application, will be evaluated by the Prosecutors' Evaluation Commission.

(13) The assessment commissions will assess the subjects referred to in paragraph. (12) in accordance with the procedure and criteria regulated by Law No 26/2022, if the positions for which they apply become vacant by 31 August 2025.

(14) This Law shall cease to have effect upon the latest of the following circumstances:

a) finalization of the examination 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 Article 20;

b) the expiry of the time limit for appealing of the last decision of the Council concerned;

c) expiry of the time limit for appealing against the decision issued in respect of the subjects referred to in paragraph (12).

## **PRESIDENT OF THE PARLIAMENT**

**IGOR GROSU**

**Chisinau, August 17, 2023.  
No 252.**