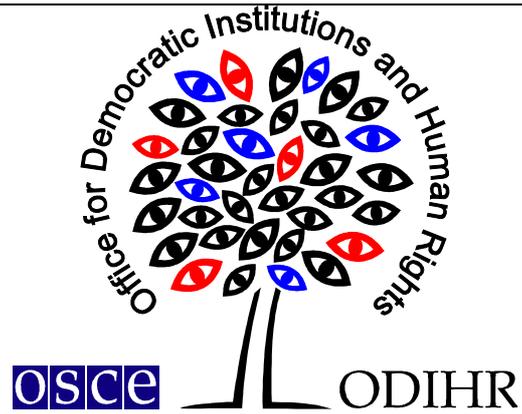


Warsaw, 13 June 2014

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**OPINION**

**ON**

**THE LAW ON THE SELECTION, PERFORMANCE**

**EVALUATION AND CAREER OF JUDGES OF**

**MOLDOVA**

**Based on an unofficial translation of the Law**

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**Annex 1: The Law on the Selection, Performance Evaluation and Career of Judges of Moldova**

## **I. INTRODUCTION**

1. *On 5 July 2012, the Parliament of Moldova passed the Law on the Selection, Performance Evaluation and Career of Judges (the Law is attached to this Opinion under Annex 1).*
2. *On 20 September 2013, the Chair of the Superior Council of Magistracy of Moldova sent a letter to the OSCE Mission to Moldova, requesting an assessment of the framework that governs the process and procedures of judges' performance evaluation in Moldova.*
3. *On 30 September 2013, following internal consultations with OSCE/ODIHR, the OSCE Mission to Moldova responded to this letter, noting that the OSCE/ODIHR, in cooperation with the OSCE Mission to Moldova, was prepared to conduct a legal review of the Law's compliance with OSCE commitments and international human rights standards and to conduct an analysis of the implementation mechanism operating under the relevant legal framework. The analysis was conducted between February and May 2014 and resulted in the report "Assessment of the Performance Evaluation of Judges in Moldova". Both the opinion and the report were completed simultaneously, with a view to presenting them together at a follow-up event in Moldova on 27 June 2014.*
4. *This Opinion was prepared in response to the letter of the Chair of the Superior Council of Magistracy of Moldova of 20 September 2013.*

## **II. SCOPE OF REVIEW**

5. The scope of this Opinion covers only the Law on the selection, performance evaluation and career of judges of Moldova, submitted for review. Thus limited, the Opinion does not constitute a full and comprehensive review of the judicial system of Moldova.
6. The Opinion raises key issues and provides indications of areas of concern. The ensuing recommendations are based on international human rights standards, as found in the international agreements and OSCE commitments ratified and entered into by Moldova.
7. This Opinion is based on an unofficial English translation of the amendments, which can be found in Annex 1 to this document. Errors from translation may result.
8. In view of the above, the OSCE/ODIHR would like to make mention that this Opinion is without prejudice to any written or oral recommendations and comments with regard to related legislation in Moldova that the OSCE/ODIHR may make in the future.

## **III. EXECUTIVE SUMMARY**

9. At the outset, the OSCE/ODIHR welcomes the fact that the Law puts a significant number of safeguards in place to ensure the proper selection and evaluation of judges. It is also welcomed that the processes of selection and evaluation have been placed firmly in the hands of the judiciary, and that civil society will play a significant role in

these processes. A number of general areas of concern remain, however. Notably, the evaluation process may interfere with the principle of irremovability of judges by leaving open the possibility of dismissing judges as an outcome of the evaluation process.

10. In order to ensure that future legal amendments or other laws touching on these or similar topics are in full compliance with international standards and OSCE commitments, the OSCE/ODIHR recommends as follows:

***1. Key Recommendations:***

- A. To remove the possibility of dismissal of judges as an outcome of the evaluation process, and to ensure that such dismissal is only possible under a disciplinary procedure which is itself, substantively and procedurally, in conformity with international standards on fair trial that safeguard the independence of the judiciary; [pars 22-33]
- B. To specify that candidates seeking to challenge selection board decisions should have access to all files and materials used by the selection board to reach its decisions; [par 21]
- C. To reconsider the system of initial five-year appointments of judges, and amend the Law by either significantly shortening the initial period of appointment and ensuring that it is automatically followed by life appointment, or by appointing judges for life immediately; [par 37]

***2. Additional Recommendations:***

- D. To reduce the frequency of regular evaluation of judges, and to consider increasing the number of years during which regular evaluations remain valid for the purposes of transferring to different judicial positions; [par 34]
- E. To consider including a requirement in the law to ensure gender balance in the judiciary; [par 16]
- F. In cases not involving first selection, i.e. in cases of evaluation for promotion or transfer to a lower court or a court of the same level, to consider requiring in the Law that the draft decision of the selection board should be sent to the candidate first; [par 17]
- G. To further specify the qualitative and quantitative criteria for promotion and transfer of judges in the Law so as to exclude the possibility that judges would (not) be granted promotion or transfer simply on the basis of a calculation of reversal rates, or on how they have decided a particular case; [par 18]
- H. To consider extending the possibility of challenge of evaluation or selection board members to the period after examination has started or shortly after it has been completed to allow the evaluation or selection boards to start the procedure afresh within a reasonable timeframe if they find any issues of bias; [par 19 and 35]
- I. To create a mechanism for replacement of both selection board and evaluation board members in cases of recusal or abstention; [par 20 and 35]

- J. To amend the Law to provide that only a limited and specified number of documents may be requested from public and private actors in the evaluation and selection process of judges, and to include a specific reference to applicable data protection provisions; [par 38] and
- K. To consider adding the position of deputy head to the evaluation and selection boards. [par 39]

#### **IV. ANALYSIS AND RECOMMENDATIONS**

##### **1. International Standards**

- 11. The system for the selection, promotion and transfer of judges can have a significant impact on the independence of the judiciary. As such, it may affect the right to a fair trial, which is protected by Article 6 of the European Convention on Human Rights (ECHR)<sup>1</sup> and Article 14 of the International Covenant on Civil and Political Rights (ICCPR), both of which highlight every person's right to have his/her case examined by an independent and impartial tribunal (to this the ICCPR adds the requirement that such tribunal shall be "competent").<sup>2</sup> This right is also protected in OSCE commitments, including in the 1989 Vienna Document, par 13.9, which likewise protects "the right to a fair and public hearing within a reasonable time before an independent and impartial tribunal".<sup>3</sup> In addition, par 5 of the 1990 Copenhagen Document requires OSCE participating States to ensure "the independence of judges and the impartial operation of the public judicial service" (par 5.12).<sup>4</sup> OSCE participating States have also recognized that "an impartial and independent judiciary plays a vital role in ensuring due process and protecting human rights before, during and after trials" (Ljubljana Document 2005).<sup>5</sup>
- 12. The ensuing recommendations will also make reference, as appropriate, to judgments of the European Court of Human Rights (hereinafter, "ECtHR") as well as documents of a non-binding nature such as UN texts<sup>6</sup>, Council of Europe recommendations<sup>7</sup>,

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<sup>1</sup> The Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms, entered into force on 3 September 1953. The Convention was ratified by Moldova on 12 September 1997.

<sup>2</sup> The United Nations International Covenant on Civil and Political Rights, adopted by General Assembly resolution 2200A (XXI) on 16 December 1966 and ratified by the Republic of Moldova on 26 January 1993.

<sup>3</sup> Reiterated in Copenhagen 1990, par 5.16. For an overview of these and other OSCE Human Dimension Commitments, see OSCE/ODIHR, Human Dimension Commitments, 3<sup>rd</sup> Edition, available at <http://www.osce.org/odihr/76894>

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> UN Basic Principles on the Independence of the Judiciary, Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985 (hereinafter "UN Basic Principles"); Human Rights Committee General Comment 32, "Article 14: Right to equality before courts and tribunals and to a fair trial", U.N. Doc. CCPR/C/GC/32 (2007 (hereinafter "General Comment 32"; Report of the UN Special Rapporteur on the independence of judges and lawyers, A/HRC/11/41, 24 March 2009 (hereinafter "Report of the UN Special Rapporteur").

<sup>7</sup> Recommendation No. R (94) 12 of the Committee of Ministers to Member States on the Independence, Efficiency and Role of Judges (adopted by the Committee of Ministers on 13 October 1994 at the 518th meeting of the Ministers' Deputies), subsequently superseded by Recommendation CM/Rec (2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities (adopted by the

opinions of the Consultative Council of European Judges<sup>8</sup> (hereinafter, “CCJE”), the European Charter on the Statute for Judges<sup>9</sup> as well as the OSCE/ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia (hereinafter, “Kyiv Recommendations”).<sup>10</sup>

## **2. Preliminary Remarks**

13. The Law deals with both the selection and career of judges and the evaluation of their performance. It sets out to ensure an “objective, impartial and transparent selection process to ensure the selection of the best candidates for the job” (Article 1 par 1). To carry out these tasks, it creates a selection board and an evaluation board respectively, under the auspices of the Superior Council of Magistracy, and lays out the system for the appointment of members of these two bodies, as well as their decision-making processes and operational modalities.
14. It is noted here that the Law has a significant number of positive aspects. These include the fact that the majority of members of the selection and evaluation boards are selected from within the judiciary, and that civil society is represented on both boards. It is also commendable that under the system established by the Law, the judiciary is in control of the process of selection and evaluation of judges without interference from the executive or legislative branch. Also, the separation of the selection and evaluation process from the process of imposing disciplinary measures is to be welcomed.<sup>11</sup> However, in the interest of brevity, this Opinion will not list all positive aspects of the Law, but instead confine itself to commenting on key issues of concern and areas for improvement.

## **3. The Selection Process**

15. The selection of judges is an extremely important process, considering the key role that they play in the administration of justice and upholding the rule of law, and the fact that international standards normally require judges to be appointed for life, to

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Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies) (hereinafter “Recommendation No. R (94) 12” and “Recommendation CM/Rec (2010)12”); the Magna Carta of Judges, Consultative Council of European Judges, Strasbourg, 17 November 2010, CCJE (2010)3 Final, hereinafter “Magna Carta of Judges”.

<sup>8</sup> Opinion no. 1 of the Consultative Council of European Judges to the attention of the Committee of Ministers of the Council of Europe on Standards concerning the independence of the judiciary and the irremovability of judges (hereinafter “CCJE Opinion No.1”); Opinion no. 3 of the Consultative Council of European Judges to the attention of the Committee of Ministers of the Council of Europe on the principles and rules governing judges’ professional conduct, in particular ethics, incompatible behaviour and impartiality (hereinafter “CCJE Opinion No. 3”).

<sup>9</sup> European Charter on the Statute for Judges (Strasbourg, 8-10 July 1998), adopted by the European Association of Judges, published by the Council of Europe, [DAJ/DOC (98)23] (hereinafter “European Charter on the Statute for Judges”).

<sup>10</sup> The OSCE/ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia (2010), hereinafter “Kyiv Recommendations”, were developed by a group of independent experts under the leadership of ODIHR and the Max Planck Institute for Comparative Public Law and International Law – Minerva Research Group on Judicial Independence. The Kyiv Recommendations are available at <http://www.osce.org/odihr/KyivRec>.

<sup>11</sup> Kyiv Recommendations, par 2.

- preserve their independence from other powers (executive and legislative).<sup>12</sup>
16. There are a number of international standards on the selection of judges that aim to ensure that decisions on the selection of judges are made in a manner which ensures the independence of the judiciary and results in the appointment of competent, impartial and independent judges reflecting the composition of the population as a whole. These include the independence of the selection body<sup>13</sup>, its composition<sup>14</sup> and membership.<sup>15</sup> Transparent and clear selection criteria<sup>16</sup> and decision-making processes<sup>17</sup> are also of relevance in this context, as is the right to challenge decisions.<sup>18</sup> There should also be guarantees against discrimination<sup>19</sup> and the composition of the judiciary should reflect the composition of the population as a whole<sup>20</sup> and be balanced in terms of gender.<sup>21</sup> In light of this last requirement, it is recommended to consider adding to the Law provisions that will ensure that in the process of selecting judges, special regard is paid to ensuring gender balance in the judiciary.
17. In cases not involving first selection, i.e. in cases of evaluation for promotion or transfer to a lower court or a court of the same level, it would be advisable to send the draft decision on promotion of the selection board to the candidate first, to give him /her the chance to comment. This would serve to reduce the number of appeals, as it would allow the candidate a chance to correct inaccuracies and clear errors.
18. Under the Law, in order to be selected for a (higher) position, judges must first be assessed. Article 2 (d) of the Law allows decisions on promotion and transfers, to be taken on the basis of “qualitative and quantitative indicators of work undertaken as judge”. In this context, it is noted that the Kyiv Recommendations state that judges shall not be evaluated under any circumstances for the content of their decisions or verdicts (either directly or through the calculation of rates of reversal).<sup>22</sup> The Kyiv Recommendations also specify that how a judge decides a case must never serve as the basis for a sanction.<sup>23</sup> Thus, although a range of qualitative and quantitative factors may be taken into account in the context of promotion or transfers, it would be inappropriate not to grant a judge a promotion or transfer simply on the basis of a

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<sup>12</sup> In Moldova, judges are appointed for life following an initial five-year appointment in accordance with Article 116 of the Constitution.

<sup>13</sup> European Charter on the Statute for Judges, par 2.1; Recommendation CM/Rec(2010)12, par. 46; Kyiv Recommendations, par 21.

<sup>14</sup> European Charter on the Statute for Judges, par 1.3; Recommendation CM/Rec(2010)12, par. 46.

<sup>15</sup> Recommendation CM/Rec(2010)12, par. 48.

<sup>16</sup> General Comment 32, par 19; Magna Carta of judges, par 5; Recommendation CM/Rec(2010)12, par. 44; European Charter on the Statute for Judges, par 2.1 and 2.2; Kyiv Recommendations, par 21.

<sup>17</sup> Recommendation CM/Rec(2010)12, par. 48; UN Basic Principles, principle 10.

<sup>18</sup> Recommendation CM/Rec(2010)12, par. 48.

<sup>19</sup> Recommendation CM/Rec(2010)12, par. 45; cf. Basic Principles on the Independence of the Judiciary, principle 10.

<sup>20</sup> Kyiv Recommendations, par 24.

<sup>21</sup> See par 190 under Strategic Objective G.1: “Take measures to ensure women's equal access to and full participation in power structures and decision-making” of the Beijing Platform for Action, Chapter I of the Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995 (A/CONF.177/20 and Add.1), available at <http://www.un.org/esa/gopher-data/conf/fwcw/off/a--20.en>; OSCE Ministerial Council Decision 7/09 on Women’s Participation in Political and Public Life; see also par 81 on the “Adequate Representation of Women in the Judiciary” of the 2011 Annual Report of the Special Rapporteur on the Independence of Judges and Lawyers, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/130/15/PDF/G1113015.pdf?OpenElement>.

<sup>22</sup> Kyiv Recommendations, par 28.

<sup>23</sup> Kyiv Recommendations, par 28.

calculation of reversal rates, or on how the judge has decided a particular case. It is recommended to further specify the qualitative and quantitative criteria for promotion and transfer in the Law so as to exclude this possibility.

19. As to the recusal and abstention of members of the selection board (Article 8), the fairness of the procedures described in the Law does not give rise to comment. However, as a practical matter, it is noted here that concerns may also be raised about the impartiality of a board member after an examination begins or is completed.<sup>24</sup> It is recommended that consideration be given to extending the possibility of challenging a particular board member or members after an examination has started, or directly after its completion, to allow the selection board to start the procedure afresh within a reasonable timeframe if they find any issues of bias.
20. In addition, it should be noted that there does not appear to be a procedure in place to replace board members who have recused themselves, or who have been removed from the selection board under the process of recusal and abstention described in Article 8. If multiple board members are so removed, this can give rise to practical problems in light of Article 9 (c), which provide that the board is no longer able to take decisions with fewer than five members. It is therefore recommended to create a mechanism for replacement of the selection board members in cases of recusal or abstention.
21. Article 11 on challenging the decisions of the selection board limits such challenges to the “procedure of issuing and adoption” of the decisions. In this context, it is important that the unsuccessful candidate be able to access all relevant documents used by the selection board in its decision-making process, to allow him/her to meaningfully challenge the board’s decision.<sup>25</sup> It is thus recommended to specify, in the Law, that candidates seeking to challenge selection board decisions should have access to all files and materials used by the selection board to reach its decisions.

#### **4. The Evaluation System**

22. In accordance with the Law, judges are subject to regular evaluation, which takes place every three years. In addition, they are subject to extraordinary evaluation if they wish to be transferred to a lower court or a court of the same level, or to be promoted to a higher judicial position, including management positions within the courts (court chair or deputy chair).
23. In the process of performance evaluation, there are effectively three different marks: 1) “sufficient” (which can be “good”, “very good” or “excellent”); 2) “insufficient”, or 3) “failure to pass”. Under Article 23 (1) (b) and 23 (2) (a) and (b), where a judge obtains the mark “failure to pass” in regular or extraordinary examination, a dismissal procedure before the Superior Council of Magistracy is immediately triggered. Under Article 13 (2), where a judge obtains the mark “insufficient” twice in a row in extraordinary evaluation (such an extraordinary evaluation would be triggered by an insufficient mark in a regular evaluation) the dismissal procedure before the Superior Council of Magistracy is also initiated automatically.
24. The system foreseen by the Law for dismissing judges who do not pass evaluations

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<sup>24</sup> Recommendation CM/Rec(2010)12, par 48; Kyiv recommendations, par 21; CCJE Opinion No. 1: paras 24-25.

<sup>25</sup> Kyiv Recommendations, par 22.

constitutes a significant exception to the principle of irremovability of judges, which is one of the main pillars underpinning the independence of the judiciary and is also guaranteed by Article 116 of the Constitution of Moldova.<sup>26</sup> International standards provide that tenure should be guaranteed by law until a fixed retirement age (in cases of life tenure) or until the expiry of the term of office of judges, if applicable.<sup>27</sup> Only in exceptional circumstances, such as in the case of very serious disciplinary violations (see also par 25 *infra*), may the principle of irremovability be transgressed.<sup>28</sup> International standards thus require the fulfilment of a number of grounds before a judge may be removed from office.

25. First, judges may only be dismissed for very serious reasons. The UN Basic Principles speak of “behaviour that renders [judges] unfit to discharge their duties”<sup>29</sup>, while recommendation CM/Rec(2010)12 requires “serious breaches of disciplinary or criminal provisions established by law”.<sup>30</sup> The UN Human Rights Committee’s General Comment 32 mentions “serious grounds of misconduct or incompetence”.<sup>31</sup> The Kyiv Recommendations specify that disciplinary proceedings should deal only with “instances of professional misconduct that are gross and inexcusable and that also bring the judiciary into disrepute.”<sup>32</sup> This also means that judges should not be removed from office for reasons not rising to this standard, for example because of errors in judicial decisions or because their decisions have been overturned on appeal or review by a higher judicial body.<sup>33</sup>
26. Second, a procedure leading to dismissal must be fair.<sup>34</sup> Such proceedings should be conducted by an independent authority or a court with all the guarantees of a fair trial and provide the judge with the right to challenge the decision and sanction.<sup>35</sup> Hearings should be open unless requested otherwise by the judge in question.<sup>36</sup> Reasons should be given for the decisions of the body dealing with dismissal; these decisions should be published.<sup>37</sup>
27. Third, the standard by which judges are removed from office must be clear and foreseeable.<sup>38</sup> As the UN Basic Principles put it, “[a]ll disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.”<sup>39</sup> The law must give detailed guidance, stating which infractions by

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<sup>26</sup> Report of the UN Special Rapporteur, par 57.

<sup>27</sup> UN Basic Principles, principle 11 and 12; Recommendation CM/Rec (2010)12, par 49; Human Rights Committee General Comment 32, par 19; Magna Carta of Judges, par 4; Report of the UN Special Rapporteur, par 57.

<sup>28</sup> Report of the UN Special Rapporteur, par 57.

<sup>29</sup> UN Basic Principles, principle 18.

<sup>30</sup> Recommendation CM/Rec (2010)12, par 50.

<sup>31</sup> General Comment 32, par 20.

<sup>32</sup> Kyiv Recommendations, par 25.

<sup>33</sup> Report of the UN Special Rapporteur, par 58; UN Human Rights Committee, CCPR/CO/75/VNM, para. 10; CCPR/CO/71/UZB, para. 14; Kyiv Recommendations, par 25.

<sup>34</sup> General Comment 32, par 20; Report of the UN Special Rapporteur, par. 61.

<sup>35</sup> Recommendation CM/Rec (2010)12, par 69.

<sup>36</sup> Kyiv Recommendations, par 26.

<sup>37</sup> *Ibid.*

<sup>38</sup> *Oleksandr Volkov v. Ukraine*, judgment of the European Court of Human Rights of 9 January 2013, appl. no. 21722/11, par 173-185.

<sup>39</sup> UN Basic Principles, principle 19; cf. General Comment 32, par 19: “States should take specific measures guaranteeing the independence of the judiciary,[...] through the [...] adoption of laws establishing clear procedures and objective criteria for the [...] tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them.”

- judges will trigger such measures, including the gravity of the infraction which determines the kind of measure to be applied in the case at hand.<sup>40</sup> Disciplinary sanctions, including dismissal, should be proportionate.<sup>41</sup> To achieve this, there should be a well-defined scheme of available disciplinary measures.<sup>42</sup>
28. Fourth, decisions in removal proceedings should be subject to an independent review by a competent court.<sup>43</sup>
  29. The system for evaluation contained in the Law has a number of safeguards in place. These include the fact that the evaluation system is run by the judiciary, that its members are judges or civil society representatives elected by a body composed of judges, and the possibility of appeal on procedural grounds to the Superior Council of Magistracy.
  30. However, the evaluation process lacks a number of the features mentioned above (see pars 25-28 *supra*) that would be required in order for the system for dismissal of judges to be compliant with international standards. First, it is not clear whether dismissal for failure to pass the evaluation constitutes a serious enough ground to dismiss judges. Second, the procedure before the evaluation board itself clearly does not provide all the guarantees of a fair trial, since it lacks basic safeguards associated with this right, such as the right to be represented by counsel, or the right to have witnesses examined. The possibility of appeal to the Superior Council of Magistracy (Article 25) does not resolve this issue, as an appeal to this body is only possible on procedural grounds and the case would not be heard on the merits.
  31. More generally, periodic exams for judges (also known as ‘attestations’) that may lead to dismissal or other sanctions are not appropriate for judges with life tenure.<sup>44</sup> The same applies to similar performance evaluation measures outside the scope of disciplinary sanctions. The evaluation of judges’ performance should be primarily qualitative and focus upon their skills, including professional competence (knowledge of the law, ability to conduct trials, capacity to write reasoned decisions), personal competence (ability to cope with their work-load, ability to decide, openness to new technologies), social competence (ability to mediate, respect for the parties) and, for possible promotion to an administrative position, competence to lead.<sup>45</sup> Evaluations should be aimed at identifying necessary improvements in these areas and seeking constructive ways to support judges in implementing any recommendations by the evaluating body.
  32. To allow for the possibility of dismissal as a result of an evaluation procedure significantly undermines the rule that judges should maintain their tenure until a mandatory retirement age or the expiry of their term of office<sup>46</sup>, which is vital for the purposes of both the internal and external independence of the judiciary. Ensuring the removal of judges who engage in gross professional misconduct which brings the

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<sup>40</sup> Report of the UN Special Rapporteur, par 57; Magna Carta of judges, par 19; cf. European Charter for the Status of Judges, par 5.1: “the only valid reason for imposing sanctions is the failure to perform one of the duties *explicitly defined* in the Judges’ Statute and that the scale of applicable sanctions must be set out in the judges’ statute” (emphasis added).

<sup>41</sup> Recommendation CM/Rec (2010)12, par 69.

<sup>42</sup> Report of the UN Special Rapporteur, par. 58.

<sup>43</sup> Kyiv Recommendations, par 26 ; cf. UN Basic Principles, Principle 19; Report of the UN Special Rapporteur, par. 61.

<sup>44</sup> Kyiv Recommendations, par 28.

<sup>45</sup> Kyiv Recommendations, par 27.

<sup>46</sup> General Comment 32, par 19.

- judiciary into disrepute, which is in itself a laudable aim, is best achieved through a fair and effective disciplinary process. Where genuine grounds for disciplinary action arise, a disciplinary process which meets international standards offers appropriate substantive and procedural guarantees to avoid unnecessary removals and to ensure that the guarantee of tenure is maintained. Such process also has the advantage of being capable of reacting immediately and proportionately to instances of gross misconduct.
33. It is therefore recommended to remove the possibility of dismissal of judges as an outcome of the evaluation process, and to ensure that such dismissal is only possible under a disciplinary procedure which is itself, substantively and procedurally, in conformity with international standards on fair trial and the independence of the judiciary.<sup>47</sup>
  34. In addition, although the regular evaluation of judges is clearly useful for the purposes of monitoring progress in areas of improvement, it is noted that the Law does appear to require a very frequent evaluation of judges. Judges are evaluated every three years and, in addition, whenever they are promoted or wish to move to another court. Although Article 13 par 5 provides that extraordinary evaluation is not necessary if the judge in question has been evaluated in the past two years, this system allows for the possibility that over a 30-year career, a judge would be evaluated at least 9 times, and if they chose to seek various promotions, possibly over a dozen times. This seems excessive, both in terms of the functioning of the judge themselves, as well as with regard to the workload imposed by the evaluation system.<sup>48</sup> It is therefore recommended to reduce the frequency of regular evaluation of judges, and to consider increasing the number of years during which regular evaluations remain valid for the purposes of moving to different judicial positions.
  35. As to the recusal and abstention of members of the evaluation board (Article 20), it is noted that also, here, as with selection boards (see par 19 supra), it is not possible to raise concerns about the impartiality of board members after an examination begins or is completed.<sup>49</sup> This should be introduced, as should a procedure to replace board members who have recused themselves, or who have been removed from the evaluation board.
  36. Article 21 par 2 states that meetings of the evaluation board are public, and par 4 of this provision requires the publication of its decisions. This has presumably been done for purposes of transparency, as is required by international standards.<sup>50</sup> However, 'transparent' and 'public' are not necessarily synonymous in matters of judicial performance evaluation. Although it is in and of itself commendable that the legislature has sought to ensure maximum publicity by making the meetings and decisions on the evaluation of judges public, it is noted here that public evaluations may also reduce confidence in judges that get lower marks, which may in turn affect the authority of those judges and by extension the authority of the wider judicial

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<sup>47</sup> Reference is made in this context to the recent Joint Opinion on the Draft Law on Disciplinary Liability of Judges of the Republic of Moldova, adopted by the Venice Commission at its 98<sup>th</sup> Plenary Session (Venice, 21-22 March 2014), CDL-AD(2014)006.

<sup>48</sup> Cf. Venice Commission-DHR/ODIHR Joint Opinion on the Draft Law Amending and Supplementing the Judicial Code (Evaluation System for Judges) of Armenia adopted by the Venice Commission at its 98<sup>th</sup> Plenary Session, (Venice, 21-22 March 2014) CDL-AD(2014)007, par 35.

<sup>49</sup> Recommendation CM/Rec(2010)12, par 48; Kyiv recommendations, par 21; CCJE Opinion No. 1: paras 24-25.

<sup>50</sup> Kyiv recommendations, par 31.

system.<sup>51</sup> It is recommended to reconsider whether the decisions and meetings of the evaluation board should indeed be public in nature, or whether evaluations, and the reports of evaluations, should be a matter concerning only the judge themselves and specific relevant individuals in the judiciary.

37. Article 13 par 4 a) refers to the situation where a judge shall be subject to extraordinary evaluation prior to being appointed until the retirement age. This refers to life tenure after a 5 year initial period, as foreseen in the current Law on the Status of Judges, which reflects Article 116 of the Constitution of Moldova. While this Opinion does not comment on the Moldovan judicial system as such, it is noted that such a system may violate judicial independence, as judges may feel under pressure to decide in a certain way during this period, to ensure that they are appointed for life afterwards.<sup>52</sup> For this reason, it is recommended to reconsider the system of initial five-year appointments of judges, and to either significantly shorten the initial period of appointment and ensure that it is followed, in the absence of substantiated disciplinary complaints, by automatic life appointment, or preferably to appoint judges for life immediately.

## **5. Issues Common to the Evaluation and Selection Processes**

38. Article 25 of the Law, which deals with documents and information needed for the work of both the evaluation and selection boards, appears to be drafted overly broadly, as it allows both the selection and the evaluation boards to request such information from not only the respective judges, but also from “court chairs, the Ministry of Justice, other public authorities, legal persons under public or private law”. There thus does not appear to be any limit set as to the types of documents which can be requested by the respective boards in respect of judges or candidates under consideration for judicial positions. This may lead to a situation where the evaluation and selection boards conduct wide-ranging investigations into judges and judge candidates, which arguably goes beyond the actual roles of such boards.<sup>53</sup> Rather, their tasks should be to select and evaluate candidates/judges based on the documentation provided to them by the latter, and on exams taken by candidates. The types of documents to be provided should be established in advance and should be the same for all candidates in comparable situations.<sup>54</sup> It is therefore recommended to include in the

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<sup>51</sup> For similar considerations, see the recent Venice Commission-DHR/ODIHR Joint Opinion on the Draft Law Amending and Supplementing the Judicial Code (Evaluation System for Judges) of Armenia adopted by the Venice Commission at its 98th Plenary Session, (Venice, 21-22 March 2014) CDL-AD(2014)007, par 89.

<sup>52</sup> Specific safeguards need to be established in order to prevent that such short initial appointments turn into a risk for the independence of the judiciary. In the UN Special Rapporteur’s view, “a short, non-extendable, probationary period may be employed, provided that life appointment or fixed tenure is automatically granted afterwards, except for probationary judges who were dismissed as a consequence of disciplinary measures or the decision of an independent body following a specialized procedure that determined that a certain individual is not capable of fulfilling the role of a judge” (Report of the UN Special Rapporteur, par 56). In any case, the Special Rapporteur is concerned that the requirement of re-appointment following a probationary period runs counter to the principle of the independence of judges. See also the Venice Commission’s opinions on similar legislation in Ukraine (CDL-AD(2013)034 and CDL-AD(2013)014).

<sup>53</sup> Venice Commission Opinion on the Draft Law on the Council for the Selection of Judges of Kyrgyzstan, adopted by the Venice Commission at its 87th Plenary Session, (Venice, 17-18 June 2011), KYG CDL-AD(2011)019, par 19-20, where the Venice Commission noted that “[t]he process of competitive selection of judges cannot be transformed into an investigation of documents and facts.”

<sup>54</sup> *Ibid.*, par 20; Kyiv recommendations, par 22.

Law a limited and specified number of documents which may be requested from certain public and private actors in the evaluation and selection process; specific reference to applicable data protection provisions should also be added.

39. Article 6 par 3 on the selection board and Article 18 par 3 on the evaluation board provide that in case of vacancies or temporary absences of the heads of these boards, the powers of the heads are exercised by the eldest member of the respective boards. This process is somewhat random in nature and may not lead to the best person for the position serving as temporary head. To ensure the smooth functioning of both the selection and evaluation boards, consideration should be given to appointing respective deputy heads for both the evaluation and selection boards.

*[END OF TEXT]*

# **Annex 1: Law on the Selection, Performance Evaluation and Career of Judges of Moldova**

LAW

on the selection, performance evaluation and career of judges

no. 154 of 05.07.2012

Official Gazette no.190-192/636 of 14.09.2012

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CANDIDATE SELECTION AND CAREER OF JUDGES

Chapter 1

GENERAL PROVISIONS

Article 1. Selection of candidates for judge position and career of judges

Article 2. Criteria of selection, transfer and appointment as court chair or deputy chair and promotion in positions

Parliament adopts this organic law.

## Title I

### CANDIDATE SELECTION AND CAREER OF JUDGES

#### Chapter 1

##### GENERAL PROVISIONS

###### Article 1. Selection of candidates for judge position and career of judges

- (1) Regulation of the procedure for selection of candidates for judge position aims at ensuring an objective, impartial and transparent selection process to ensure the selection of the best candidates for the job.
- (2) Career of judge involves his/her promotion to judge office in a superior court, his/her appointment as court chair or deputy chair, as well as judge's transfer to a court of the same level or a lower court.

###### Article 2. Criteria of selection, transfer and appointment as court chair or deputy chair and promotion in positions

(1) Selection of candidates for the position of judge, promotion to the judge position in superior court judge, appointed as court chair or deputy chair, as well as judge's transfer to a court of the same level or a lower court is carried out by the Board for the selection and career of judges (hereinafter – Selection Board), on the basis of clear, transparent, objective criteria that are based on merit.

(2) During the process of selection of candidates for judge position, for promotion in judge position in superior court, for appointment as court chair or deputy chair and judge's transfer to a court of the same level or a lower court, the following basic criteria will be taken into account:

- a) the knowledge level and professional skills;
- b) ability to apply knowledge into practice;
- c) length of experience as judge or other legal professions;
- d) qualitative and quantitative indicators of work undertaken as judge or, where appropriate, other legal professions;
- e) ethical standards;
- f) teaching and scientific activity.

(3) The regulations of the Superior Council of Magistracy set out in detail the procedure and criteria:

- a) for selection of candidates for judge position;
- b) for promotion in judge position in superior court;
- c) for appointment as court chair or deputy chair;
- d) for judge's transfer to a court of the same level or a lower court.

(4) Regulations of the Superior Council of Magistracy referred to in para. (3) shall be published in the Official Gazette of the Republic of Moldova and on the website of the Superior Council of Magistracy.

## Chapter 2

### SELECTION BOARD

#### Article 3. Composition and length of the term of office

(1) Selection Board is established in subordination to the Superior Council of Magistracy and aims to ensure the selection of candidates for judge position, promotion of judges to higher courts, appointment of judges as court chair or deputy chair, as well as the judge's transfer to courts of the same level or lower courts.

(2) Selection Board shall work in the following composition:

a) 4 judges from the courts of all levels, as follows: 2 judges from the Supreme Court, 1 judge from the courts of appeal and 1 judge from courts;

b) 3 representatives of civil society.

(3) Member judges of the Selection Board maintain their salary at their work place, but having a reduced workload depending on work tasks within the Selection Board. Board members from among civil society benefit, for each meeting attended, of an allowance equivalent to one twentieth (1/20) of the salary of a judge from the Supreme Court.

(4) The term of office of members of the Selection Board is 4 years. A member of the Board cannot be elected or appointed for 2 consecutive terms.

#### Article 4. Election and appointment of members of the Selection Board

(1) Members of the Selection Board from among judges are elected by the General Assembly of Judges.

(2) Members of the Selection Board from among civil society representatives are appointed by the Superior Council of Magistracy, being selected through public competition, organized by the Council.

(3) Members of the Selection Board from among civil society must have an impeccable reputation and good standing in society. To verify these qualities, the information about the candidates proposed for appointment will be published on the website of the Superior Council of Magistracy.

(4) Members of the Selection Board from among civil society representatives are obliged to comply with the restrictions specified in Article 8 para. (1) let. b) and c) and para. (3) of the Law on the Status of Judges.

(5) If a member of the Selection Board is not able to exercise his/her functions, the body that elected or appointed him/her shall ensure, within 30 days, the election or appointment of a new member of the Board for the remaining term.

(6) Members of the Superior Council of Magistracy, members of the Disciplinary Board, members of the Judicial Evaluation Board and inspection-judges may not be elected in the composition of the Selection Board.

## Article 5. Competence of the Selection Board

(1) Selection Board shall:

- a) examine the dossiers of candidates for judge position, documents submitted by candidates and those concerning the candidates;
- b) examine the dossiers and documents submitted by judges seeking promotion to higher court, appointment as court chair or deputy chair, transfer to a court of the same level or a lower court, as well as documents relating to judges concerned;
- c) organize and conduct interviews with the candidates for judge position, with judges seeking promotion to a higher court, with those seeking appointment as court chair or deputy chair, as well as with those seeking transfer to a court of the same level or a lower court;
- d) provide scoring to candidates for judge position according to selection criteria;
- e) provide scoring to judges seeking promotion to a higher court, according to appropriate criteria for promotion;
- f) provide scoring to judges seeking appointment as court chair or deputy chair, according to the appropriate criteria for appointment;
- g) provide scoring to judges seeking transfer to a court of the same level or a lower court, according to the appropriate transfer criteria;
- h) adopt reasoned decisions on acceptance or rejection of candidates for the position of judge, on the promotion of judges to superior court, on appointment of judges as court chair or deputy chair, as well as on transfer of judges to a court of the same level or a lower court and shall submit them to the Superior Council of Magistracy for examination on the day after the deadline for appealing the decisions.

(2) In process of selecting the candidates for the appointment, for the first time, as judges, the Selection Board will necessarily consider the results of the exam taken before the Graduation Commission of the National Institute of Justice.

(3) In process of selecting the judges for promotion to a higher court, appointment as court chair or deputy chair or transfer to a court of the same level or to a lower court, the Selection Board will necessarily consider decisions taken by the Board on judges' performance evaluation.

## Article 6. Chairperson of the Selection Board

(1) The Chair of the Selection Board shall be elected by open vote at the first meeting of the Board. The candidate who accumulated the majority of votes of the elected / appointed Board members shall be considered as elected.

(2) The Chairperson of the Selection Board shall:

- a) organize the Board's activity, distribute duties among its members;
- b) preside over meetings of the Board;
- c) convene meetings of the Board;
- d) sign the decisions and minutes of Board meetings;

e) reads the decisions of the Board;

f) resolve other issues related to the Board's activity.

(3) In case of vacancy of the Chairperson position or in the temporary absence of the Chairperson, his/her powers are exercised by the eldest member of the Selection Board.

#### Article 7. Rights and obligations of members of the Selection Board

(1) Members of the Selection Board are entitled to receive beforehand the material submitted to the Board for examination and study.

(2) Members of the Selection Board are obliged:

a) to exercise their powers under the law;

b) at the request of the Board Chair, to prepare the necessary materials for the meeting;

c) to vote for or against on the issues included on the meeting agenda and to motivate their option;

d) in case of disagreement with the Board decision, to motivate their option.

#### Article 8. Recusal and abstention

(1) A member of the Selection Board must state that s/he refrains from participation in Board's activity where this may cause doubts on the objectivity and impartiality of his/her decisions. For the same reasons, the person whose case is examined may request recusal of a member of the Selection Board.

(2) The recusal or abstention shall be grounded and exposed in writing prior to the examination of the candidate.

(3) Decision on recusal or abstention shall be adopted by the majority vote of the Board members present at the meeting and in the absence of the member whose recusal or abstention is being settled.

#### Article 9. Meetings of the Selection Board

(1) Selection Board shall be convened in meetings whenever is needed.

(2) Meetings of the Selection Board are public, they are deliberative if attended by at least 5 members.

(3) Selection Board shall examine within a month the materials submitted by the Secretariat of the Superior Council of Magistracy.

(4) Selection Board shall be governed by a Regulation approved by the Superior Council of Magistracy.

(5) Proceedings of the meetings of the Selection Board shall be registered in the minutes and audio recorded. Audio recording of the meeting shall be attached to the minutes. The minutes shall be made within 3 working days and signed by the meeting's chair and secretary.

## Article 10. Adoption of decisions

- (1) Decisions of the Selection Board shall be adopted by open vote of the majority of elected / appointed Board members, in the absence of those invited to the meeting, as well as in the absence of the person whose candidacy is examined .
- (2) If the Selection Board examines in a sitting the candidacy of a Board member in order to appoint to the office of judge, to promote to a higher court, to appoint as court chair or deputy chair or to transfer to a court of the same level or a lower court, that person shall not attend the examination.
- (3) Decisions of the Selection Board shall be issued in writing and must be motivated. If a member of the Board has a dissenting opinion to the decision issued, s/he expresses it in writing, stating the reasons, the document being attached to the dossier. Decisions shall be signed by the Board chairperson and members who attended the meeting. Board's decision shall be published on the website of the Superior Council of Magistracy within 5 working days from the date of adoption.
- (4) The scanned copy of the original decision shall be sent by electronic mail to the person whose candidacy was examined the day after the adoption of decision.

## Article 11. Challenging the decisions of the Selection Board

Decisions of the Selection Board can be appealed with the Superior Council of Magistracy, through the Board, within 10 working days from the date of their adoption, by the people on whom the Board adopted the decisions and only referring to the procedure of issuing and adoption.

## Title II

### PERFORMANCE EVALUATION OF JUDGES

#### Chapter 1

#### MAIN PROVISIONS

#### Article 12. The purpose and results of judicial performance evaluation

- (1) The performance of judges shall be evaluated by the Board for judges' performance evaluation (hereinafter – Evaluation Board), the evaluation aiming at determining the knowledge and professional skills of judges, as well as the ability to apply theoretical knowledge and necessary skills in practice of the profession of judge, determining weak and strong aspects in the work of judges, boosting the trend of improving professional skills and increasing the efficiency of individual judges and at court level.
- (2) Judicial performance evaluation results are used to:
  - a) organize appropriate professional training of judges (setting directions for professional training, development and improvement of continuous training programs for judges, selection of the training forms);
  - b) determine objectively the degree of judges' compliance to the position they hold or apply during their career;
  - c) ensure an objective comparison between several judges for promotion;

- d) stimulate judges to improve their level of training and professional skills;
- e) improve court administration;
- f) formulate proposals for granting the qualification degree for judges.

#### Article 13. Forms of judicial performance evaluation

(1) The evaluation of judges' performance shall be conducted in two forms:

- a) regular evaluation;
- b) extraordinary evaluation.

(2) A judge is subject to regular performance evaluation every 3 years. If s/he is granted the qualificative "insufficient", the judge shall be subject to extraordinary evaluation within the deadline set by Evaluation Board. Granting the qualificative "insufficient" in two consecutive extraordinary evaluations constitute a ground for the Superior Council of Magistracy to initiate the procedure for dismissing the judge.

(3) A judge shall be subject to extraordinary performance evaluation either on his/her own initiative or when s/he gets the qualificative "insufficient" in regular evaluation.

(4) A judge shall be subject to extraordinary evaluation also in the case when s/he is:

- a) appointed till age-limit;
- b) promoted to a higher court;
- c) appointed as court chair or deputy chair;
- d) transferred to a court of the same level or a lower court.

(5) In the cases under par. (4) let.b)-d), the extraordinary evaluation shall not be carried out if during the last 2 years the judge was subject to regular evaluation.

(6) The judge's performance evaluation is initiated:

- a) by the chair of the court in which the judge who is to undergo evaluation works - in the cases under para. (2);
- b) by the judge requesting the performance evaluation, or by members of the Superior Council of Magistracy, ex officio or at the proposal of the judicial inspector, or by the court chair - in cases under para. (3);
- c) by members of the Superior Council of Magistracy or by the chair of the court in which the judge works, indicating the reasons why the evaluation is necessary - in the cases under para. (4).

#### Article 14. Judicial performance evaluation procedure

(1) The purpose of the judicial performance evaluation is to make a complex analysis of professional activity and personal qualities of judges, to improve their professional performance, to increase efficiency of courts and public confidence in the judiciary, to maintain and strengthen the qualities of judicial system.

(2) The procedure and detailed criteria for judicial performance evaluation are established by the regulation of the Superior Council of Magistracy, which shall be published in the Official Gazette of the Republic of Moldova and on Council's website.

(3) The procedure of judicial performance evaluation must observe the principle of legal correctness, the principle of legitimate expectations and other fundamental principles, to create conditions for an objective and multidimensional evaluation of judges' professional activity. The legal framework on performance evaluation of judges shall provide expressly and in details:

- a) limits of extending the judicial performance evaluation process;
- b) methodology, procedure and duration of judicial performance evaluation;
- c) evaluation criteria and performance indicators of judges; activity;
- d) sources of information and means of collecting information needed for judicial performance evaluation.

## Chapter 2

### EVALUATION BOARD

#### Article 15. Composition and length of the term of office

(1) Evaluation Board is established under the Superior Council of Magistracy and aims to ensure the performance evaluation of judges.

(2) Evaluation Board operates in the following composition:

- a) 5 judges of the courts of all levels, as follows: 2 judges from the Supreme Court, 2 judges of the courts of appeal and 1 from courts;
- b) 2 representatives of civil society.

(3) Member judges of the Evaluation Board maintain their salary at their work place, but having a reduced workload depending on work tasks within the Board. Board members from among civil society benefit, for each meeting attended, of an allowance equivalent to one twentieth (1/20) of the salary of a judge from the Supreme Court.

(4) The term of office of members of the Evaluation Board is 4 years. A member of the Board cannot be appointed for 2 consecutive terms.

#### Article 16. Election and appointment of members of the Evaluation Board

(1) Members of the Evaluation Board from among judges are elected / appointed as follows:

- a) 3 are elected by the General Assembly of Judges;
  - b) 2 are appointed by the Superior Council of Magistracy.
- (2) Members of the Evaluation Board from among civil society representatives are appointed by the Superior Council of Magistracy, being selected through public competition, organized by the Council.

(3) Members of the Evaluation Board from among civil society must have an impeccable reputation and good standing in society. To verify these qualities, the information about the candidates proposed for appointment will be published on the website of the Superior Council of Magistracy.

(4) Members of the Evaluation Board from among civil society representatives are obliged to comply with the restrictions specified in Article 8 para. (1) let. b) and c) and para. (3) of the Law on the Status of Judges.

(5) If a member of the Evaluation Board is not able to exercise his/her functions, the body that elected or appointed him/her shall ensure, within 30 days, the election or appointment of a new member of the Board for the remaining term.

(6) Members of the Superior Council of Magistracy, members of the Disciplinary Board, members of the Judicial Evaluation Board and inspection-judges may not be elected in the composition of the Evaluation Board.

#### Article 17. Competence of the Evaluation Board

(1) Evaluation Board shall:

- a) examine the dossiers of judges subjected to evaluation, documents submitted by candidates and those concerning the candidates;
- b) organize and conduct interviews with the judges subjected to evaluation;
- c) adopt decisions on judges subjected to evaluation;
- d) nominate the Board members responsible for observation over the activity of evaluated judges in the court hearings;
- e) provide the Selection Board with the decisions on judges subjected to evaluation in the cases provided for in Article 5 para. (3).

(2) In the process of judicial performance evaluation, the Evaluation Board should be objective, to observe the principles of fairness and reasonableness and take grounded decisions.

#### Article 18. Chairperson of the Evaluation Board

(1) The Chair of the Evaluation Board shall be elected by open vote at the first meeting of the Board. The candidate who accumulated the majority of votes of the elected / appointed Board members shall be considered as elected.

(2) The Chairperson of the Evaluation Board shall:

- a) organize the Board's activity, distribute duties among its members;
- b) preside over meetings of the Board;
- c) convene meetings of the Board;
- d) sign the decisions and minutes of Board meetings;
- e) reads the decisions of the Board;

f) resolve other issues related to the Board's activity.

(3) In case of vacancy of the Chairperson position or in the temporary absence of the Chairperson, his/her powers are exercised by the eldest member of the Evaluation Board.

#### Article 19. Rights and obligations of members of the Evaluation Board

(1) Members of the Evaluation Board are entitled to receive beforehand the material submitted to the Board for examination and study.

(2) Members of the Evaluation Board are obliged:

a) to exercise their powers under the law;

b) at the request of the Board Chair, to prepare the necessary materials for the meeting;

c) to vote for or against on the issues included on the meeting agenda and to motivate their option;

d) in case of disagreement with the Board decision, to motivate their option.

#### Article 20. Recusal and abstention

(1) A member of the Evaluation Board must state that s/he refrains from participation in Board's activity where this may cause doubts on the objectivity and impartiality of his/her decisions. For the same reasons, the judges subjected to evaluation may request recusal of a member of the Evaluation Board.

(2) The recusal or abstention shall be grounded and exposed in writing prior to the examination of the candidate's dossier.

(3) Decision on recusal or abstention shall be adopted by the majority vote of the Board members present at the meeting and in the absence of the member whose recusal or abstention is being settled.

#### Article 21. Meetings of the Evaluation Board

(1) Evaluation Board shall be convened in meetings whenever is needed.

(2) Meetings of the Evaluation Board are public, they are deliberative if attended by at least 5 members. The Board meetings shall be obligatory attended by judges to be evaluated, and they also may be attended by the persons who requested the initiation of the judicial performance evaluation procedure.

(3) Evaluation Board shall examine within a month the materials submitted by the Secretariat of the Superior Council of Magistracy.

(4) Evaluation Board shall be governed by a Regulation approved by the Superior Council of Magistracy.

(5) Proceedings of the meetings of the Evaluation Board shall be registered in the minutes and audio recorded. Audio recording of the meeting shall be attached to the minutes. The minutes shall be made within 3 working days and signed by the meeting's chair and secretary.

## Article 22. Adoption of decisions

- (1) Decisions of the Evaluation Board shall be adopted by open vote of the majority of elected / appointed Board members, in the absence of those invited to the meeting, as well as in the absence of the evaluated judge.
- (2) If the Evaluation Board subjects to evaluation a Board member, s/he shall not participate in examination of that issue on the meeting's agenda.
- (3) Decisions of the Evaluation Board should include:
  - a) description of the judge's work during the period under evaluation;
  - b) professional, administrative or organizational shortcomings in the activity of the judge if they exist, and Board's recommendations on avoiding or excluding these deficiencies;
  - c) any other information that is important in the opinion of the Board.
- (4) Decisions of the Evaluation Board shall be issued in writing and must be motivated. If a member of the Board has a dissenting opinion to the decision issued, s/he expresses it in writing, stating the reasons, the document being attached to the dossier. Decisions shall be signed by the Board chairperson and members who attended the meeting. Evaluation Board's decision shall be transmitted to the Superior Council of Magistracy and, where appropriate, to the Selection Board the day after the expiry of the decisions' contestation deadline. Board's decision shall be published on the website of the Superior Council of Magistracy within 5 working days from the date of adoption.
- (5) The scanned copy of the original decision shall be sent by electronic mail to the person who was subjected to evaluation the day after the adoption of decision.

## Article 23. Decision on performance evaluation

- (1) Following the judge's performance evaluation, the Evaluation Board shall take, as appropriate, one of the following decisions:
  - a) decision on passing the performance evaluation, granting one of the qualificatives: "insufficient", "good", "very good" or "excellent";
  - b) the decision on the failure of performance evaluation.
- (2) The decision of the failure of judge's performance evaluation or, as appropriate, of the court' chair / deputy chair shall be adopted by the Evaluation Board when:
  - a) an obvious judge's mismatch with the position held is found;
  - b) court's chair / deputy chair fulfils improperly the management functions.
- (3) If circumstances under para. (2) let. a) and b) are found, the decisions of Evaluation Board constitute a ground for the Superior Council of Magistracy to initiate the procedure of dismissing the person for judge office or from the office or court; chair / deputy chair.
- (4) When certain grounds for disciplinary sanctions against judge evaluated are identified, the Evaluation Board shall postpone the evaluation procedure of the judge concerned and notify the Superior Council of Magistracy to examine the opportunity of initiating the disciplinary proceedings. Judge's performance evaluation procedure

shall be resumed after receiving a response from the Superior Council of Magistracy on refusal to initiate disciplinary proceedings or, where appropriate, after completion of disciplinary proceedings against the evaluated judge, except for the case when the judge concerned is dismissed from office.

#### Article 24. Challenging the decisions of Evaluation Board

Decisions of the Evaluation Board can be appealed with the Superior Council of Magistracy, through the Board, within 10 working days from the date of their adoption, by the judges on whom the Board adopted the decisions and only referring to the procedure of issuing and adoption.

### Title III

#### ENSURING THE ACTIVITY OF BOTH

#### THE SELECTION BOARD AND THE EVALUATION BOARD

#### Article 25. Ensuring the activity of both the Selection Board and the Evaluation Board

- (1) In order to exercise their duties, the Selection Board and the Evaluation Board have the right to request from the court chairs, the Ministry of Justice, other public authorities, legal persons under public or private law any necessary documents and information.
- (2) Court chairs, Ministry of Justice, public authorities, legal persons under public or private law are obliged to provide the selection and evaluation boards, within the deadline set by them, with the documents and information requested. Selection and evaluation boards are obliged to observe the confidentiality of documents and information, under the law.
- (3) The material and technical basis of the selection and evaluation boards shall be provided by the Superior Council of Magistracy.

#### Article 26. The secretarial activity

- (1) The work of the Secretariat of both the Selection Board and the Evaluation Board shall be accomplished by employees of the Secretariat of the Superior Council of Magistracy.
- (2) The Secretaries of both the Selection Board and the Evaluation Board shall be appointed from among the employees of the Secretariat of the Superior Council of Magistracy by the Head of the Secretariat.

#### Article 27. Information on the activity of both the Selection Board and the Evaluation Board

Selection Board and Evaluation Board shall present annually to the Council of Magistrates the information on activities fulfilled, that are subsequently published on its website.

Title IV

FINAL PROVISIONS

Article 28.

This Law shall enter into force on the expiry of 3 months from the date of publication.

Article 29.

Upon entry into force of this Law, the following shall be repealed:

Law no.949-XIII of 19 July 1996 on the Board for qualification and attestation of judges (republished in the Official Gazette of the Republic of Moldova, 2003, no.170-172, art.693);

Article IV of the Law no.247-XVI of 21 July 2006 on amending and supplementing some legislative acts (Official Gazette of the Republic of Moldova, 2006, no.174-177, art.796);

Article V of the Law no.306-XVI of 25 December 2008 on amending and supplementing some legislative acts (Official Gazette of the Republic of Moldova, 2009, no.30-33, Article 77).

Article 30.

(1) Before the entry into force of this law, the Superior Council of Magistracy shall:

a) adopt the legal acts provided for in this Law;

b) bring its legal acts in conformity with this Law.

(2) The Board for selection and career of judges and the Judicial Performance Evaluation Board shall be established within 3 months from the date of publication of this Law.

(3) Upon entry into force of this Law, the Qualification Board shall terminate its activity and shall be de jure dissolved.

(4) Within 2 years of the entry into force of this Law, judges of all courts shall be subject to performance evaluation under this Law, according to a schedule approved by the Superior Council of Magistracy.

SPEAKER OF PARLIAMENT Marian LUPU

Chişinău, July 5, 2012.

No.154.