

DEMOCRACY AND HUMAN RIGHTS

# JUDICIAL INTEGRITY AS KEY ISSUE OF THE MOLDOVAN JUSTICE SYSTEM REFORM

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Currently, professional integrity weighs the least among the judicial evaluation criteria. Personal integrity should become an essential criterion in the process of recruiting, promoting and dismissing judges.



The Superior Council of Magistracy as the judicial self-governing body that decides on the career of judges should be absolutely independent of the other two powers in the state.



An open and transparent judiciary is another important condition for establishing and maintaining public confidence in justice, which is the basis for the legitimacy of the judiciary.



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## INTRODUCTION

Integrity is an attribute of justice and fairness. The honesty and morality of judges form part of integrity. A judge should always behave in a dignified manner, appropriate to his profession, even in circumstances outside professional activity. **Integrity in justice system is more than a virtue, it is a mandatory condition.** Any behaviour that could reduce the respect of reasonable observers in the community should be avoided by judges and condemned by society.

This paper is a multi-aspectual analysis of the judicial integrity concept, both in terms of morality and legality, rather known to society as incorruptibility. This refers to the compliance of the declared income with the disposable legal income, the observance of the fiscal regime for the obtained income, the compliance of the standard of living with the legal income, the compliance of the declared income and assets with the income and goods owned and used. It is also about the public image and information available in the press regarding the judges.

Integrity is a consistent concept of certain actions, values, methods, measures, principles, expectations and morality. Integrity is a personal choice, an uncompromising and consistently predictable commitment to honour moral, ethical, spiritual, and artistic values and principles. The concept of integrity implies a plenitude, a comprehensive set of beliefs, often referred to as a healthy view of the world. This concept

of integrity emphasizes honesty and authenticity, requires that the act performed at all times be in accordance with the individual's vision of the world. **Certainly, integrity is the main quality that defines a judge and is essential for the candidates for judge, its absence being a criterion of total disqualification.** That is why it is important to define the integrity concept and extract from it the modalities of testing integrity, so that the personal integrity becomes an essential criterion in the process of recruiting, promoting and dismissing judges. Integrity does not have to be proven; it simply exists. Integrity is a characteristic of a person's character without being conditioned by external elements or situations. In order to determine whether a person is upstanding from an ethical perspective, it is sufficient to observe and analyse his/her actions, beliefs, methods, measures and principles. They all derive from a single set of values that form the person's character.

We are presenting you with an analysis of the situation in the field of judicial integrity in the Republic of Moldova, of the laws and normative acts that regulate the criteria for evaluating the judicial integrity which has been a topical issue in the Moldovan society. As part of the analysis, existing legislative gaps have been identified and recommendations have been put forward with a view to improving the legal framework and the situation in the field of judicial integrity.

## 1

# EVALUATION OF JUDICIAL INTEGRITY

## 1.1 CURRENT LEGAL FRAMEWORK

Currently, the evaluation of judicial integrity is performed by the Judicial Performance Evaluation Board established under the Law no. 154 of 05.07.2012 on the Selection, Judicial Performance and Career Evaluation<sup>1</sup>, “which is subordinated to the Superior Council of Magistracy (SCM). The board is composed of seven members, of which five judges from courts of all levels - three elected by the General Assembly of Judges and two appointed by the SCM - and two members from among civil society selected by public competition by the SCM. The procedure and criteria for the judges’ evaluation are provided in the Regulation approved by the Decision of the Superior Council of Magistracy no. 212/8 of 05.03.2013<sup>2</sup>. According to this Regulation, *all judges are evaluated every three years for their activity as a judge according to the following criteria: efficiency of activity, quality of activity, and professional integrity. At the same time, the Law and the Regulation provide for the possibility of extraordinary evaluation of judges, at the initiative of the members of Superior Council of Magistracy, at the proposal of the judicial inspector (Judicial Inspection) or of the chair of the court in which the judge operates, indicating the reasons for evaluation.* The chairs and vice-chairs of all courts, courts of appeal and the Supreme Court of Justice are also evaluated, both in terms of their activity as judges and their activity as chair or vice-chair, according to the following criteria: management capacity, control and communication. All the decisions of the Board regarding the evaluation of judges are published on the official website of the SCM (*csm.md*).

According to the Evaluation Regulation, judges are evaluated according to three main criteria: efficiency of the activity (maximum score: 38), quality of activity (maximum score: 40), and professional integrity (maximum score: 23). There is also an optional criterion - knowledge of foreign languages and information technologies (maximum score: 4).

The professional integrity criterion is analysed below.

**The professional integrity of judges is evaluated on the basis of the following indicators:**

**1. Respect for professional ethics:** In this sense, the judge’s observance of the provisions of the Judge’s Code of Ethics will be evaluated, insofar as this does not constitute a disciplinary violation. This indicator is assessed based of the information note provided by the Judicial Inspection regarding the verification performed and the complaints with the judge received, the court hearings attended or the audio recording of at least five court hearings chosen at random by the member of the Board.

**2. Professional reputation:** In this sense, the general opinion about the judge, as well as the authority of the judge in the justice sector will be taken into account. This indicator is assessed on the basis of the written opinion of the chair of the court in which the judge operates, the positions held by the judge in the administrative bodies or bodies promoting the judges’ interests, as well as based on other sources such as the media.

**3. Presence of disciplinary violations:** In this sense, the disciplinary violations found by the disciplinary committee during the reference period will be taken into account. In the case of extraordinary evaluation, the disciplinary violations found by the disciplinary committee in the last three years will be taken into account. This indicator is evaluated based on the information provided by the disciplinary committee.

**4. Presence of violations of the European Convention on Human Rights (ECHR)** found by the European Court for Human Rights (ECtHR): In this regard, they will examine whether the ECtHR found violations of the ECHR by a final judgment for reasons attributable to the judge. Only the behaviour of the judge from the last six years until the evaluation is taken into account. In the case of extraordinary evaluation, violations of the ECHR considered in the previous periodic evaluation and the violations identified in the ECtHR judgments adopted after the date of the periodic evaluation will be taken

<sup>1</sup> [https://www.legis.md/cautare/getResults?doc\\_id=93854&lang=ro](https://www.legis.md/cautare/getResults?doc_id=93854&lang=ro)

<sup>2</sup> [https://www.csm.md/files/Acte\\_normative/Legislatia/Interne/2018/Regulament\\_criterii\\_evaluare\\_modificat.pdf](https://www.csm.md/files/Acte_normative/Legislatia/Interne/2018/Regulament_criterii_evaluare_modificat.pdf)

into account, provided that the latest violations relate to the judge's conduct of up to six years until evaluation. This indicator is evaluated based on the information provided by the Government Agent or other sources.

## 1.2. GAPS IDENTIFIED IN THE EVALUATION PROCEDURE OF JUDICIAL INTEGRITY

The above-mentioned norms contain several gaps, namely: composition of the Evaluation Board, insufficient indicators and superficiality of the integrity criterion evaluation.

As described above, the Evaluation Board is composed of seven members and it not clear which criteria they have to meet in order to be elected in the Board. It is only clear that five of them are judges, three of whom are elected by the General Assembly of Judges and two are appointed by the Superior Council of Magistracy. And it is not clear how the latter are appointed by the SCM and what the criteria for their appointment are. It is also not clear why three members are elected and two are appointed. The solution would be for all five members to be elected by the General Assembly of Judges on a contest basis. **As for the two members of civil society, there should be more attention from civil society as to who these people are and what their contribution can be in the judges' evaluation process. At present, these representatives are invisible, they never present public communiqués informing civil society about the judges' evaluation process in which they participate, as namely this should be their role and purpose as members of this Board.**

Regarding the indicators for evaluating the professional integrity of judges, it should be mentioned that there are no indicators regarding the compliance of the declared wealth with the legal income available, observance of tax regime for the income obtained, compliance of the standard of living with the legal income, compliance of the income and wealth declared with the income and wealth in property and use. **In this sense, there is need to adjust this Regulation and introduce the indicators mentioned above. The information could be obtained from the National Integrity Authority (NIA), the latter being obliged to present an opinion on whether, following the verifications, there are doubts about the compliance of the judge's living standards and wealth with the income declared for the reference period.** Thus, NIA would also assume public responsibility for the opinion given on the judge.

Regarding the professional integrity criterion, it should be mentioned that currently it weighs the least in the judge's evaluation, being assessed with only 23 points out of a total of 94 points, which suggests that this criterion is neglected by the Evaluation Board. **Moreover, if we analyse the decisions of the Evaluation Board published on the *esm.md* website, one can see that the Board has never mentioned and analysed in its decisions the information regarding judges in the mass media, although this is a mandatory indicator under the Regulation when assessing the judge's**

**professional reputation.** Thus, the Board does not pay due attention to the integrity indicators, automatically mentioning them in the evaluation decisions and relying exclusively on the lack of disciplinary sanctions. At the same time, it is important to mention the passivity of the Judicial Inspection, which should play a more important role in approving the judge's conduct as this is also limited to mentioning the presence or absence of disciplinary sanctions.

## 1.3. RECOMMENDATIONS

In the context of the above-mentioned, we come up with the following recommendations:

**Make changes to the Law and create a single Selection and Evaluation Board of Judges.** Currently, according to the Law on the Selection, Performance Evaluation and Career of Judges no. 154 of 05.07.2012, there are two boards subordinated to the Superior Council of Magistracy: *the Board for the Selection and Career of Judges*, which aims at ensuring the selection of candidates for the position of judge, promotion of judges in higher courts, appointment of judges as chair or vice-chair of the court and the transfer of judges to courts of the same level or a lower court and the *Judicial Performance Evaluation Board*, which aims 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 at court level. This **Single Board** could be composed of an equal number of judges (for example six and six, a total of twelve members) elected by the General Assembly of Judges and representatives of civil society, notorious personalities (not necessarily lawyers, because justice is not done only for lawyers, and judges should gain the trust of the whole society, not only of lawyers; so the law should specify very clearly the criteria for admission to the competition) to be selected by public competition by the Superior Council of Magistracy. Together with the amendments to the Law, the evaluation of all judges should be imposed by the new Board in accordance with the new criteria described below.

**Adopt a new Regulation on criteria, indicators and procedure for the judges' evaluation, selection, appointment, and promotion.** This Regulation should cover both criteria on the integrity of the judge, the professionalism and the psychological profile of the candidate for judge and of the active judge. Regarding the criteria for appointing, promoting and evaluating judges, there should be a Psychological Council attached to the Superior Council of Magistracy, which provides analysis of the psychological profile of the candidate for judge, but also of judges already active in the system. This profile should be taken into account when evaluating judges, as integrity depends on the psychological profile of the person - how honest he or she is and what his or her ability is to act correctly in a variety of situations. **At the same time, there is need for a declaration of integrity to be kept in the personal file of each judge.** This declaration should include

the names of all relatives, members of family holding public office and functions of public dignity in order to eliminate both at appointment and in the future activity any suspicion or conflict of interest. The judge may have relatives in the public sphere and even in politics, but this fact should be declared and not hidden in order to avoid any affiliation or suspicion from the society in the future. Transparency in this regard can help increase public confidence in the judiciary.

The share of statistical criteria in the evaluation of judges should also be reduced - the simple seniority in any legal function adds up to many points, but this is not enough to assess whether the person meets the requirements of the status of judge. It is necessary to introduce criteria of professional competence and the psychological profile of the candidate for the position of judge, as well as to assess the integrity by means of psychological tests. Compliance with ethics and judicial conduct rules, motivation of the judge and the interview should be important elements and steps in the appointment of judges. Currently, it's more the formal criteria that are taken into account (seniority, training certificates, grades, etc.) and less the personal criteria (*professionalism, ethics, reputation, integrity, motivation, interview*), which individualize the candidate for the position of judge.

Promotion to a hierarchically superior court should be based exclusively on the competences and merits of the

promoted person, not on close relations and common interests with the decision-makers in the system. Promotion to administrative positions should be based on proof of management qualifications, but also on the real, practical skills of the person appointed to administrative positions, with emphasis on the candidates' performance in the interview and the candidates' managerial project. **The chair of the court should remain only a representative figure, fulfilling the role of the representative of the court in relation to other public and private authorities, the media and civil society.** For this, **the candidate for the position of chair/ vice-chair should have good communication skills with the general public, a high level of professionalism and reputation in society so that his/her authority is a guarantee of the authority of justice in the society.** One solution would be to appoint the oldest from among the judges of the court as chair/ vice-chair (with his/her consent) to exclude any fight for power and influence at this level since there is no hierarchy among judges, the chair and vice-chair being only "*primus inter pares*" (first among equals). If the oldest judge does not consent to the exercise of this function, given the role of the chair/ vice-chair in the communication with the general public (not every judge wants to fulfil this role), the next oldest judge is appointed in this position etc. The term of office should be four years with the next chair being appointed also based on age.

## 2

## THE ROLE OF THE SUPERIOR COUNCIL OF MAGISTRACY IN EVALUATING THE INTEGRITY OF JUDGES

At present, the issue of extraordinary evaluation of all judges in order to exclude the compromised judges from the system is widely discussed and debated in the society. In order to ensure this procedure, both the Ministry of Justice and various non-governmental organizations, as well as international bodies, have ruled on various evaluation methods. The Ministry of Justice (MoJ) has repeatedly proposed several draft laws and concepts on how to conduct the extraordinary evaluation of judges. Both concepts proposed by the MoJ have been criticized by the civil society organizations and judges' associations on the grounds that they proposed mechanisms for evaluating the integrity of judges by experts politically selected by the Government or Parliament, bypassing the Superior Council of Magistracy. However, these concepts of extraordinary evaluation have been mainly criticized for violating the constitutional principles of the justice activity, namely the independence and irremovability of judges, without providing sufficient guarantees as to the achievement of the proposed purpose as a result of this evaluation. The Venice Commission also commented on the possibility of an extraordinary evaluation of judges<sup>3</sup>, providing a wide margin of appreciation for the appropriateness of this evaluation to the state in question, given the exceptionally serious situation in the judiciary and the almost total lack of trust of citizens in the justice system. In this context, the Venice Commission has specified that it is, nevertheless, necessary to ensure the leading role in this evaluation to the Superior Council of Magistracy.

### 2.1. THE CURRENT LEGAL FRAMEWORK ON THE SUPERIOR COUNCIL OF MAGISTRACY

According to the Law on the Superior Council of Magistracy no. 947 of 19.07.1996<sup>4</sup>, the Superior Council of Magistracy

is an independent body, created in view of organizing and functioning of the judicial system. SCM is the guarantor of the judicial authority's independence and performs the judicial self-administration. The Superior Council of Magistracy is composed of 15 members: seven member-judges elected by secret vote by the General Assembly of Judges, five members elected by the Parliament from among law professors by the majority vote of the elected deputies as well as the Chair of the Supreme Court of Justice, Minister of Justice and the Prosecutor General.

By performing its functions, the Superior Council of Magistracy shall have the following competencies related to the carrier of judges:

- submits proposals to the President of the Republic of Moldova or to the Parliament on appointment, promotion to a higher-level court, transfer to a court of the same level or lower level, or dismissal of judges, chairs or vice-chairs of the courts;
- takes the oath of judges;
- **approves the regulations on the criteria and procedure for the selection of candidates for the position of judge, for promotion to the position of judge to higher court, for appointment as chair or vice-chair of the court and for the transfer of the judge to a court of the same level or a lower court;**
- approves the regulations for the competition for filling the vacant positions of judge, chair or vice-chair of the court and ensures the organization and conduct of the competition;
- orders the interim of the position of chair or vice-chair of the court, of the Court of Appeal or of the Supreme Court of Justice, in case of vacancy or suspension from office, until the vacancy is filled in the manner established by law or cancellation of suspension;

<sup>3</sup> <https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282019%29020-e&fbclid=IwAR19Htqfu-fXvyJBV6bTAjsOdpUv23bV6cff-ytvcVm6OiYQ5tYRkZSLQwqM>

<sup>4</sup> [https://www.legis.md/cautare/getResults?doc\\_id=120592&lang=ro](https://www.legis.md/cautare/getResults?doc_id=120592&lang=ro)



- applies incentive measures to the judge;
- **appoints the members of the Board for the Selection and Career of Judges and of the Judicial Performance Evaluation Board, according to its competence.**
- appoints judges to the Council of the National Institute of Justice;
- approves the strategy on the initial and continuing training of judges, expresses its opinion on the action plan and its implementation;
- examines and expresses its opinion on the Regulation on Organizing the Competition for Admission to the National Institute of Justice, on the didactic programmes and curricula for the initial and continuing training of judges at the Institute, on the Regulation on Announcing Vacancies for Professors, as well as on the composition of the National Institute of Justice admission and graduation examination commissions;
- delegates judges to attend seminars, conferences, training courses and business trips;
- presents annually, until March 31<sup>st</sup>, to the National Institute of Justice, the proposals regarding the number of places that will be put up for the admission contest for the initial training of the candidates for the position of judge in the following year;
- **examines the appeals against the decisions of the Board for the Selection and Career of Judges and of the Judicial Performance Evaluation Board;**
- **adopts decisions on the petitions of the citizens on the issues related to the judicial ethics;**
- **examines the appeals against the decisions issued by the Disciplinary Board;**
- **based on the decision of the Disciplinary Board, submits to the President of the Republic of Moldova or to the Parliament proposals regarding the dismissal of chairs and vice-chairs of courts or regarding the dismissal of judges;**
- hears the information of the Ministry of Justice regarding the activity on the organizational, material and financial support of the courts;
- approves the Regulation on the random distribution of cases for examination in the courts, which ensures the transparency, objectivity and impartiality of this process;
- examines, confirms and proposes, in the manner established by the legislation in force, the draft budgets of the courts;
- submits on the annual basis, however, not later than April 1, to the Parliament and the President of the Republic of Moldova the Annual Report on the Organization and Activity of the Courts in the previous year;
- **collaborates with civil society and the media to inform the public about the activity of the Superior Council of Magistracy and the courts;**
- approves the structure of the personnel of the Superior Council of Magistracy, appoints, promotes, transfers, and dismisses its employees, applies incentive measures and disciplinary sanctions to its employees;
- grants annual leave to chairs and vice-chairs of courts;
- **prepares and keeps the personal files of the judges of courts.**

In order to perform its functions, the Superior Council of Magistracy may have other powers under the law. As a body of judicial self-governing and guarantor of the independence of the judicial authority, the SCM may refer to the Constitutional Court to rule on the constitutionality of normative acts concerning the judicial system.

At the same time, the Superior Council of Magistracy approves by itself normative acts (Decisions) for the execution of the provisions of the legislation in the field of organization and functioning of the judicial system.

## 2.2. LEGISLATIVE GAPS IDENTIFIED IN THE STRUCTURE AND COMPETENCIES OF THE SCM

Analysing the Law on the Superior Council of Magistracy, we note that based on its powers and competencies, the SCM cannot demand accountability of the members of the Board for the Selection and Career of Judges if they don't perform their duties properly or admit serious negligence. For example, when the Evaluation Board does not give an appreciation in the Evaluation Decision of the information published in the press about a judge, it could be qualified, at least, as negligence, if not as a serious deviation from the proper exercise of its function.

At the same time, the law does not mention that members of the Superior Council of Magistracy may act on their initiative or the law should mention the "obligation" of members to act on their own initiative when information appears in the public regarding the integrity and professional reputation of a judge or several judges. The mentioning of acting on its own initiative of the SCM alone wouldn't be sufficient. There should be provided also the procedure for examining this information that affects and denigrates the image of the judicial system. For example, in the Regulation on criteria, indicators and procedure for evaluating the judges' performance, the point 6 c) specifies that the evaluation of judges' performance may also be initiated ex-officio by the SCM members or at the

proposal of the judicial inspector, or by the chair of the court in which the judge operates, indicating the reasons for evaluation. So, such a possibility exists, but the Superior Council of Magistracy has never initiated any ex officio evaluation of any judge so far, even though there were cases when there has appeared controversial information in the press about various judges. We recommend that this provision of the Regulation be included also in the Law on the Superior Council of Magistracy. It should be mentioned, in the same line, that the above-mentioned law contains a provision stipulating that the SCM adopts decisions on citizens' petitions regarding the ethics of judges. However, analysing the work of the Council in recent years, we do not find any decisions in this regard<sup>5</sup>.

Also, it is not necessary to double the appeal regarding the decisions of the Selection, Evaluation, Disciplinary Boards, because the Superior Council of Magistracy is not a court and it is sufficient that these decisions be challenged in the court. The Council cannot subrogate to the powers of these Boards and also examine the professionalism or discipline of judges. However, the Superior Council of Magistracy should be able to control the activity of these Boards through real legal levers.

Last but not least, analysing the provisions of the Law on the Superior Council of Magistracy, there is a serious gap with regard to the regulation of the responsibility and accountability of the SCM members if they themselves do not fulfil their duties properly. According to art.12, paragraph (2) letter c), **the mandate of the member of the Superior Council of Magistracy shall be withdrawn at the proposal of the Council** in case of ill-founded failure to meet the obligations of the member set hereunder, as well as in case of violation of the incompatibilities and prohibitions specified in art.8 of the Law on the Status of Judges no. 544 of 20.07.1995. **The mandate of the member of the Superior Council of Magistracy shall be withdrawn by the body which has elected the person to this position.** According to art.11 of the SCM Law, which stipulates the obligations of the SCM members, they are obliged to perform their duties in accordance with the law, **to ensure the protection of the magistrates' rights and freedoms, their honour and dignity in line with the law, to contribute to the promotion of the principle of independence of the judiciary**, to keep the secret of deliberations and confidentiality of the works, to vote *pro* or *con* against the adoption of decisions, to submit, in accordance with the law, the declaration of wealth and personal interests, **to comply with the legal provisions on conflict of interest and legal regime and prohibitions.** The members of the Superior Council of Magistracy from among law professors are obliged to respect the same restrictions set forth in art. 8 of the Law on the Status of Judges.

From the above, we identify a major problem in initiating the procedure for revoking the mandate of the SCM members. We note that it can be initiated by the Council itself, which is

insufficient to ensure the principle of good administration of justice, because it is unlikely that the Council itself will initiate procedures to revoke the mandates of their own members. However, it is not ruled out that in the situation when the SCM members act in good faith, they could, in certain situations, come up with explanations for the General Assembly of Judges and call the vote of confidence or nonconfidence in the judiciary. In the Republic of Moldova, however, we faced a situation on 27 September 2019, when 87 magistrates asked the General Assembly of Judges to withdraw the mandates of the SCM members. However, this initiative was not legal as the law does not provide for such a possibility, although there were reasons for withdrawing the mandates. The law does not provide for such procedures. *We recommend to amend the SCM law and introduce a phrase in art. 12 "the mandate of the Superior Council of Magistracy' members shall be withdrawn at the proposal of the Council, or at the proposal of at least 50 magistrates, or at the proposal of 1/3 (33) of Parliament deputies" (...), and then, to follow the legal procedure, ie. the withdrawal of mandates of the members elected by the General Assembly of Judges to be put to vote at the General Assembly, while the withdrawal of mandates of the members appointed by the Parliament to be voted by Parliament.*

## 2.3. CONCLUSIONS AND RECOMMENDATIONS

An important role in increasing the authority of the judiciary should be played by the Superior Council of Magistracy, which aims at initiating collaborations on an equal footing with representatives of the other two powers in the state, but also to ensure fairness, transparency and integrity in the appointment and promotion of judges.

According to international standards, judges should have a self-governing body, which should be composed mostly by judges elected by the General Assembly of Judges, for it to be a representative body, absolutely independent of the other two powers in the state and decide on the career of judges. Similarly, according to international standards, this Council may include also members of civil society, who are not magistrates and who are, for example, law professors, in order to represent the diversity of civil society. However, they should be selected with the participation of civil society, on a contest basis, with several candidates be proposed to the Parliament for appointment, and the Parliament to elect them by vote. The members of the Superior Council of Magistracy appointed from among the civil society should have the role of ensuring the transparency in the activity of the self-governing body of the judiciary. However, the members of the civil society appointed in the SCM cannot have a decisive role in the career of judges, because they do not know the specifics of organizing the judge's activity and they are not elected by the General Assembly of Judges, thus cannot perform the position of Chair of the Superior Council of Magistracy. Only a representative of the judiciary can be chair of the CSM.

<sup>5</sup> <https://www.csm.md/ro/hotaririle/hotarari-csm.html>

**At the same time, it is necessary to exclude from the composition of the SCM the Minister of Justice, the Prosecutor General and the Chair of the Supreme Court of Justice,** because these administrative functions have other powers that should not interfere with the powers of the self-governing body in order to avoid the conflict of interests and affecting the independence of the judiciary as according to article 6 of the Constitution of the Republic of Moldova, the legislative, executive and judicial powers are separate and independent, but cooperate in exercising their powers in accordance with the provisions of the Constitution.

**In the general context, the recommendation is to amend the Law on the Superior Council of Magistracy, terminate**

**through the effect of the new law the mandates of the current Superior Council of Magistracy, elect a new Superior Council of Magistracy and adjust the SCM Law to the international standards, in line with the recommendations of the Venice Commission, namely the latest Commission Opinion of 20 March 2020<sup>6</sup>:** “The Commission cannot but recall the crucial role of the SCM in ensuring that the Moldovan judiciary be both independent of political influence and self-service. The recent legislative reforms and the manner in which they have been implemented do not meet the expectations of both the international community and the Moldovan society. The genuine aim and meaning of the constitutional reform under analysis becomes questionable.”

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<sup>6</sup> [https://justicemoldova.md/wp-content/uploads/2020/03/opinia-Comisiei\\_Venetia\\_RO.pdf](https://justicemoldova.md/wp-content/uploads/2020/03/opinia-Comisiei_Venetia_RO.pdf)

## 3

## COMMUNICATION OF JUDGES WITH THE GENERAL PUBLIC. THE ROLE OF THE MEDIA IN EVALUATING THE INTEGRITY OF JUDGES

A common topic with multiple opinions, both at international and national level, regarding the interaction of judges with the general public and the media is that the representatives of the judiciary should have good, regular and open communication with the press and the public, which is an important factor in ensuring public confidence in justice.

Justice, society and the press are also a topic of special interest to international bodies, for example the European Networks of Councils for the Judiciary (ENCJ), as all European judicial systems face similar challenges in this area. For example, in its latest report<sup>7</sup>, ENCJ indicated that the European judiciary has been criticized for not being transparent, for being old-fashioned and isolated. At the same time, the judiciary does not have a voice in the public debate, being categorical about the fact that the judiciary should communicate with the public only through its decisions. On the other hand, society has the right to be properly informed about the functioning of the judiciary. If the judiciary does not communicate with the press, does not explain to the general public the solutions on certain cases of resonance through the communication structures of the system, then the press presents the information according to its own perception, which is not always equidistant and correct. And it's not the media's fault. The press needs news. That is why the main role in increasing the authority of the judiciary belongs to the Superior Council of Magistracy, the chairs of courts, but also the spokespersons of the courts. At present, such a communication strategy of the judiciary which would cover all communication structures, from general to particular, is completely lacking. The recommendation of the ENCJ in the above-mentioned report for all European states and to which we subscribe is that "All states should develop and use a system of judicial

spokesperson for relations with the media and advisers in communication that should have in-depth knowledge of the judicial system as well as expertise in mass media."

The Superior Council of Magistracy should have the power not only to make its opinions public, but also to take all necessary measures in relation to the public, the political authorities, and where appropriate, in relation to the courts in order to defend the reputation of the judicial institution and its members. Also, the Superior Council of Magistracy can play a bigger role in promoting and protecting the image of justice, because the performance of such a function often requires identifying a balance between the contradictory freedom of persons, social and political actors and the media, on the one hand, and the public interest in a judicial system that operates independently and efficiently, on the other hand. Thus, for example, the Consultative Council of European Judges (CCJE) recommends in this context that the SCM address the complaints of court users in a much more transparent way. CCJE recommends that the Superior Council of Magistracy perform this function, benefiting from the necessary professional assistance and its staff in this field should not be limited to legal experts within the institution, but should also include journalists, social science and communication experts, statisticians, etc.

The CCJE also emphasizes the role of the court chairs<sup>8</sup> in maintaining and developing relations with other bodies and institutions and with the general public. To do this, the main obligation of the court chairs should be to act as defenders of the independence and impartiality of judges and of the court in its entirety. In relations with the media, the court chairs should take into account the interest of society in being informed, while respecting the principle of the presumption of innocence, the right to a fair trial and

<sup>7</sup> <https://www.csm1909.ro/ViewFile.ashx?guid=b-77ce20f-e5ff-4097-a0d5-de00b816202b%7CInfoCSM>

<sup>8</sup> <https://rm.coe.int/16806f9a8f>

the right to respect the private and family life of all persons involved in procedures, as well as the right to maintaining the confidentiality of deliberations.

### 3.1. CONCLUSIONS AND RECOMMENDATIONS

It is necessary to regulate the relations between the judiciary and the press. **It is recommended to introduce guidelines on the relationship with the press**, regardless of whether they are implemented by law or mandatory protocol (regulation). The guidelines cannot intervene within the existing legal limits. The guidelines on the relationship with the press should be part of a national strategic plan with a planning and reporting cycle for communication with the press and society. They should clarify the different aims and interests of both the judiciary and the media; specify the expectations of the press from the court staff and how the courts should address the needs of the press before, during and after the trial. According to the latest Report of the European Networks of Councils for the Judiciary (ENCJ) 2017-2018 *on public trust and the image of justice*<sup>9</sup>, **all states are encouraged to develop a proactive approach in relation with the press. This approach should focus on individual cases as well as on the justice system as a whole.**

A justice system characterized by integrity, transparency and accountability is one of the preconditions for the good functioning of the rule of law and for the right to a fair, timely and efficient trial by an independent and impartial court provided by law. The ENCJ is aware that, for this reason, in its strategic plan for 2018-2021, the ENCJ specifies (inter alia) that, "in order to maintain the rule of law, the Judicial Councils or similar independent bodies should do their utmost to ensure an open and transparent judicial system." Equally, an open and transparent judiciary is another precondition for establishing

and maintaining the public confidence in justice, which is the basis for the legitimacy of the judiciary.

Based on the latest surveys on public confidence conducted according to the 2017 EU Justice Scoreboard, the ENCJ notes that the low public confidence in the judiciary remains a problem, while the impact of the media on the judges' decisions is increasing, being significant in many states (according to the 2016 Questionnaire on the independence of the judiciary among judges).

**The widespread use of social networks as a means of communication even among judges and prosecutors cannot be ignored**, therefore it would be advisable to develop guidelines for the use of social networks, without seeking to limit their use and therefore freedom of expression. There is need to increase consistency in using the social networks and to promote a careful approach to the use of social networks by identifying and highlighting the risks that could lead even to disciplinary action. This also applies to court officers. **The institution of a media adviser is another possible alternative.**

Confidence is the basic principle of any successful operation, whether private or state. The judiciary is not in competition with other branches of power, but it is fundamental that trust is established and that there is recognition of its independence in the way it works. Confidence cannot be demanded, it has to be earned through the way the judiciary works together with all other participants in the trial, including prosecutors and judges. The objective and subjective independence of the judiciary is closely linked to public confidence, as it can be seen from this analysis. It is important to understand that the independence of the judiciary is not for the benefit of the judiciary, but it is fundamental to the protection of the general public, which is an indispensable condition for ensuring access to justice for all.

<sup>9</sup> <https://www.csm1909.ro/ViewFile.ashx?guid=b-77ce20f-e5ff-4097-a0d5-de00b816202b%7CInfoCSM>

## ABBREVIATIONS

CCJE	Consultative Council of European Judges
ECHR	European Convention on Human Rights
ECtHR	European Court for Human Rights
ENCJ	European Networks of Councils for the Judiciary
MoJ	Ministry of Justice
NIA	National Integrity Authority
SCM	Superior Council of Magistracy

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## JUDICIAL INTEGRITY AS KEY ISSUE OF THE MOLDOVAN JUSTICE SYSTEM REFORM



Integrity is an indispensable quality of a judge. It is assessed not only by the compliance of the declared wealth with the legal disposable income, the observance of the fiscal regime for the obtained incomes, the compliance of the living standard with the legal incomes, the compliance of the declared income and wealth with the income and wealth in ownership and use, but also based on the public image and information in the mass media about judges.

Based on the analysis of the situation in the judicial system regarding the evaluation of integrity, one of the findings is that this criterion weighs the least among the evaluation criteria and therefore neglected by the Judicial Performance Evaluation



Board. The latter, when evaluating judges, does not analyse the controversial information published in the press about judges. Also, there are no evaluation indicators as to the compliance of the declared wealth with the legally available goods and income (in ownership and use). In this respect, the recommendation is to involve the National Integrity Authority in the evaluation process of judges by obliging it to present an opinion on the compliance of the living standard and the wealth of the judge with the legal income declared for the reference period.

The Board dealing with the evaluation of the judicial integrity is subordinated to the Superior Council of Magistracy, the body that deals with the



administration of the judicial system. In order to ensure efficiency of the evaluation process, it is necessary that the self-governing body be absolutely independent of the other two powers in the state, consisting mainly of judges elected by the General Assembly of Judges and representatives of civil society which can together ensure the transparency of the SCM activity and decide on the career of judges.

The objective and subjective independence of the judiciary is closely linked to public confidence, which can be achieved through the way the judicial system works together with all other participants in the process and for this the judiciary should develop good, systematic and open communication with the press and the public.

Further information on the topic can be found here:

[www.fes-moldova.org](http://www.fes-moldova.org)