

# Law No. 252/2023

## On the external evaluation of judges and prosecutors and amendments of some regulatory acts

In order to ensure the integrity of judges and prosecutors and to increase public confidence in justice, the Parliament adopts this organic law.

### **AMENDED**

[LP353 of 24.11.23, OG465-467/07.12.23 Article 804; in force as of 07.12.23](#)

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## CHAPTER I GENERAL PROVISIONS

### Article 1. Scope of the Law

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

### Article 2. Purpose and Principles of Evaluation

(1) The evaluation is an exceptional one-off time-limited exercise carried out to check the integrity of subjects referred to in Article 3(1).

(2) The evaluation shall be carried out on the basis of the provisions of this law, in compliance with the following principles:

- a) independence of evaluation commissions.
- b) fairness of the evaluation procedure.
- c) public nature of the acts issued under the evaluation process.
- d) exceptional nature of the evaluation.

### Article 3. Subjects of Evaluation

(1) Under this law, the following shall be evaluated:

- a) judges who, since 1 January 2017 until the date this law enters into force, have held the position of court president and/or vice-president, including those who have held these positions on an interim basis for more than one year.
- b) judges of courts of appeal in office on the date of entry into force of this law.
- c) prosecutors who, since 1 January 2017 until the date this law enters into force, have held the position of Prosecutor General, Deputy Prosecutor General, chief prosecutors of General Prosecutor's Office subdivisions, including those who have held these positions or who have been acting on an interim basis for more than one year.
- d) prosecutors who, since 1 January 2017 until the date this law enters into force, have held the position of chief prosecutor of a prosecutor's office and deputy chief prosecutor of a prosecutor's office, including those who have held these positions or who have been acting on an interim basis for more than one year.
- e) prosecutors of specialized prosecutor's offices, including those delegated to them since 1 January 2017 until the date this law enters into force, for more than a year.
- f) judges and prosecutors referred to in sections (a) to (e) who are suspended from office.
- g) candidates who, by 31 December 2025, will have won competitions for the positions mentioned under lit. b) and e);

*[Art.3 para.(1), lit.g) in the wording of LP353 of 24.11.23, OG465-467/07.12.23 Art.804; in force as of 07.12.23]*

h) At most two candidates for the positions mentioned under lit. a), c), and d) who will have obtained the highest scores in the competitions held until 31 December 2025.

*[Art.3 para.(1), lit.h) introduced by LP353 of 24.11.23, OG465-467/07.12.23 Art.804; in force as of 07.12.23]*

(2) Evaluation under this law shall not be applicable to:

- a) persons who have passed the integrity evaluation in accordance with Law No 26/2022 on measures related to the selection of candidates for the positions of members in the self-administration bodies of judges and prosecutors.
- b) persons who have passed the external evaluation in accordance with Law No 65/2023 on the external evaluation of judges and candidates for the position of judge of the Supreme Court of Justice.

- c) judges and prosecutors that fall under one of the categories referred to in para. (1) and who, within 20 days of the notification regarding the beginning of evaluation, submit their resignation request, except for those who have withdrawn their resignation request within that period.
- d) judges and prosecutors who do not fall within the categories referred to in para. (1).

**(3)** Candidates for the position of Prosecutor General, candidates for membership in the Superior Council of Magistracy and the Superior Council of Prosecutors, candidates for membership in the disciplinary boards of judges and prosecutors, members of the boards for the selection and evaluation of judges and prosecutors, as well as prosecutors from the Anti-Corruption Prosecutor's Office shall be evaluated as a matter of priority.

*[Art.3 para. (3) in the wording LP353 of 24.11.23, OG465-467/07.12.23 Art.804; in force as of 07.12.23]*

**(4)** A resignation request submitted under para. 2(c) may be withdrawn only within the 20-day period. Submission of the resignation request after the expiry of this period, regardless of the invoked reason, shall be equivalent to a failure to pass the evaluation.

**(5)** On the date of receiving the resignation request, the Superior Council of Magistracy, the Superior Council of Prosecutors or, as the case may be, the Prosecutor General shall inform the appropriate evaluation commission about that. The resignation request shall be examined and decided upon no later than 10 days after the expiry of the period referred to in para. (4), the Evaluation commission being informed of the decision taken.

## **CHAPTER II EVALUATION COMMISSIONS**

### **Article 4. Competence, Mandate and Funding of the Evaluation Commissions**

**(1)** Judges referred to in Article 3(1) shall be evaluated by the Commission for the Evaluation of Judges.

**(2)** Prosecutors referred to in Article 3(1) shall be evaluated by the Commission for the Evaluation of Prosecutors.

**(3)** The Commission for the Evaluation of Judges and the Commission for the Evaluation of Prosecutors (hereinafter - *evaluation commissions*) shall consist of 6 members each. Each evaluation commission shall be supported by a secretariat.

**(4)** Evaluation commissions are not public authorities within the meaning of the Administrative Code. Their activity is not public, with the exceptions established by this law and their rules of procedure.

**(5)** Evaluation commissions shall have the following powers:

- a) collect, accumulate and check, by means not prohibited by law, all information relevant to the evaluation.
- b) access, free of charge, any information system containing information relevant to the fulfillment of their mandate, including through the interoperability platform (MConnect).
- c) request information from the subject of evaluation.
- d) request and obtain information free of charge from other natural and legal persons governed by public or private law, including financial institutions.
- e) hear the subject of the evaluation and other persons holding information that is relevant to the evaluation.
- f) carry out the evaluation and approve reports on the results of the evaluation.
- g) other powers provided for by this law.

**(6)** Evaluation commissions shall evaluate all subjects referred to in Article 3 until 31 December 2025. Evaluation commissions shall operate until the Supreme Court of Justice has completed the examination of the last appeal filed under Article 19.

(7) The work of the evaluation commissions and their secretariats shall be financed on the account and within the limits of funds approved in the annual budget law and from other sources not prohibited by law.

(8) National members of the evaluation commissions shall receive a monthly allowance equivalent to twice the basic salary of a judge in the Supreme Court of Justice.

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

(1) Evaluation commissions shall have functional and decisional independence of any natural or legal persons, irrespective of the type of ownership and legal form of organization, including parliamentary factions and development partners, which have participated in the appointment of their members.

(2) In their activity, evaluation commissions shall follow the Constitution, this law, and other regulatory acts governing the fields related to their activity. The evaluation procedure shall be established by this law and by the rules of procedure of the evaluation commissions.

(3) Evaluation commissions shall submit yearly to the Parliament by 31 March a report on their work in the previous year, which shall be published on the official website of the evaluation commissions.

(4) Each evaluation commission shall draw up and approve its own rules of procedure, which shall be published on the official website of the evaluation commissions.

(5) Development partners may not give instructions to the evaluation commissions or their secretariats on matters related to fulfilling the mandate of the evaluation commissions.

(6) Members of the evaluation commissions and the secretariat staff shall have functional immunity and may not be held liable for opinions expressed in the exercise of their mandate and duties. Criminal proceedings against them may be instituted by the Prosecutor General with the consent of the relevant evaluation commission. In the case of *flagrante delicto*, such consent is not required.

*[Art.5 para. (6) in the wording of LP353 of 24.11.23, OG465-467/07.12.23 Art.804; in force as of 07.12.23]*

### **Article 6. Composition of the Evaluation Commissions**

(1) Each evaluation commission shall consist of 6 members, appointed by the vote of 3/5 of the elected Members of the Parliament as follows:

- a) 3 members, citizens of the Republic of Moldova – proposed by the parliamentary factions, following a proportional representation of the majority and the opposition.
- b) 3 members – proposed by the development partners.

(2) For the purpose of appointing the members referred to in para. (1)(a), the parliamentary factions shall submit to Parliament's Legal Committee for Appointments and Immunities information on the candidates proposed by them. The Legal Committee for Appointments and Immunities shall examine the proposed candidates and approve reports on each candidate by a majority vote of the members of the Committee. The Legal Committee for Appointments and Immunities shall draft Parliament decisions on each of the candidates and present them in a plenary session for debates and adoption by majority as provided by para. (1).

(3) If one of the parliamentary factions does not ensure the nomination of the candidate within the prescribed period, the Legal Committee for Appointments and Immunities shall submit the draft decisions of the Parliament and the reports on the proposed candidates in accordance with para. (2) for debate in a plenary session of Parliament. A candidate may be rejected by Parliament only if they do not meet the requirements laid down in Article 7(1). The rejection decision may be challenged in accordance with the Administrative Code.

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

(5) For the purpose of appointing the members referred to in para. (1)(b), the development partners shall submit to the Parliament, via a joint letter, a list of no more than 6 eligible persons for each evaluation commission. The Legal Committee for Appointments and Immunities shall consider the proposed candidates and choose the 3 persons who obtained the highest number of votes at the meeting of that committee. They shall be submitted to Parliament's plenary for appointment as members of the evaluation commissions. The Legal Committee for Appointments and Immunities shall draw up a draft decision of the Parliament, accompanied by a report, which shall be debated in a plenary session of the Parliament and adopted by the majority vote provided for in para. (1).

(6) For the purposes of this law, development partners shall mean international donors (international organizations, diplomatic missions and their representative offices in the Republic of Moldova) that have been active in the field of reforming justice and fighting corruption for the last 2 years. The list of the development partners shall be approved by Government order.

(7) The list of members of each evaluation commission shall be confirmed by a decision of the Parliament.

#### **Article 7. Capacity of Member of the Evaluation Commission**

(1) A member of the evaluation commission shall meet the following requirements:

- a) holds a university degree.
- b) has an irreproachable reputation.
- c) has at least 10 years of experience in one or more of the following fields: law, economics, taxation, finance.
- d) does not hold and has not held the position of member of the Parliament of the Republic of Moldova or member of the Government of the Republic of Moldova.
- e) has not been a member of a political party in the Republic of Moldova for the last 3 years.
- f) has not been a judge or prosecutor in the Republic of Moldova for the last 3 years.
- g) has sufficient knowledge of English to carry out the tasks of the evaluation commission.

(2) Membership of the evaluation commission is incompatible with any public office in the Republic of Moldova. Circumstances of incompatibility of the evaluation commission members shall be declared immediately and shall be resolved within 10 days of such declaration.

(3) The capacity of member of the evaluation commission shall cease in the following cases:

- 1) resignation.
- 2) the member is revoked for:
  - a. the occurrence of circumstances of incompatibility or non-compliance with the requirements laid down in para. (1).
  - b. severe deliberate violation of this law or of the rules of procedure of the evaluation commission of which they are a member.
  - c. committing an intentional crime.
  - d. unfounded failure to attend at least three consecutive meetings of the evaluation commission.
  - e. inability to serve as a member of the evaluation commission, including for health reasons, for more than 30 days.
- 3) death.
- 4) termination of the work of the evaluation commission.

(4) The member of the evaluation commission shall be revoked by its reasoned decision adopted by the secret vote of 2/3 of the members of the evaluation commission, which shall be submitted to the Parliament for information. The member in question shall not be part of the voting.

(5) In the event of termination of membership of the evaluation commission on the grounds set out in para. (3)(1)-(3), the chairperson of the evaluation commission or, where appropriate, the head of secretariat of the evaluation commission concerned shall immediately notify the Parliament for the selection and appointment of a new member, as per provided procedure, instead of the member whose membership has been terminated.

(6) The members of the evaluation commission referred to in Article 6(1)(a) shall fill in, upon appointment, annually and upon termination of membership of the evaluation commission, a declaration of wealth and personal interests within the meaning of the Law No 133/2016 on the declaration of wealth and personal interests. The declarations of wealth and personal interests of the members referred to in Article 6(1)(a) and the curricula vitae of all members shall be published on the official website of the evaluation commission that they are members of.

### **Article 8. The Chairpersons of Evaluation Commissions**

(1) Every evaluation commission shall be led by a chairperson elected from among its members by secret vote of a majority of the members of that commission. In the absence of the chairperson of the evaluation commission, their duties shall be carried out by a member designated by the chairperson of the evaluation commission.

(2) The chairperson of the evaluation commission shall have the following duties:

- a) to coordinate the work of the commission and of its secretariat.
- b) to convene meetings of the evaluation commission.
- c) to chair the meetings of the evaluation commission.
- d) (d) to represent the evaluation commission in its relations with other natural and legal persons governed by public or private law, and sign documents on behalf of the commission it represents.
- e) other duties provided for by this Law and by the rules of procedure of the evaluation commission concerned.

(3) The capacity of chairperson of the evaluation commission shall cease in case of:

- a) termination of membership of the evaluation commission in accordance with Article 7(3).
- b) resignation or removal from this position, approved by a vote of 2/3 of the members of the evaluation commission.

### **Article 9. Secretariat of the Evaluation Commission**

(1) Every evaluation commission shall have its own secretariat, which shall be an entity without legal personality. The secretariat of the evaluation commission (hereinafter referred to as – *the secretariat*) shall be independent of any public authority and shall work solely for the purpose of assisting the evaluation commission in discharging its duties. The organization and operation of the secretariat and its staffing shall be laid down in the rules of procedure of the each evaluation commission.

(2) The staff of the two secretariats shall enter into contractual agreements with the development partners.

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

(4) At the request of the chairperson of the evaluation commission or of the head of the secretariat, the public authorities and institutions shall delegate or temporarily detach employees to assist the evaluation commission discharge its duties, including by way of

derogation from the provisions of the laws governing the operation of those public authorities and institutions and the laws governing the status of certain categories of civil servants.

(5) The secretariat shall be strictly under the authority of the evaluation commission in respect to the work for which it is created.

### **Article 10. Obligations of Evaluation Commissions Members**

- (1) The members of the evaluation commissions shall have the following obligations:
- a) to participate, in person or by videoconference, in the meetings of the evaluation commission.
  - b) to use only for the purposes of the evaluation and to ensure the confidentiality of personal data that they become aware of while in their role as members of the evaluation commission.
  - c) not to carry out activities that could give rise to a conflict of interest, and actions incompatible with their role as members of the evaluation commission and, if they do so – to disclose them in the manner laid down in the rules of procedure of the evaluation commission.
  - d) to refrain from committing any act that might discredit the evaluation commission or cast doubt on its objectivity.
  - e) to discharge their duties professionally, diligently and promptly.
- (2) The obligations laid down in para. 1(b) to (e) shall also apply to the staff of secretariats.

## **CHAPTER III THE EVALUATION PROCEDURE**

### **Article 11. Evaluation Criteria**

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

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

- a) over the last 5 years, they have seriously violated the rules of ethics and professional conduct of judges, prosecutors or, as the case may be, other professions, as well as if they acted arbitrarily or issued arbitrary acts, over the last 10 years, contrary to the imperative rules of the law, and the European Court of Human Rights had established, before the adoption of the act, that a similar decision was contrary to the European Convention for Human Rights.
- b) over the last 10 years, the subject had incompatibilities and conflicts of interest in their activity that affected the position held.

(3) The subject of the evaluation shall be deemed not to meet the criterion of financial integrity if the evaluation commission has serious doubts determined by the fact that:

- a) the difference between wealth, expenses and income, for the last 12 years, exceeds 20 average salaries per economy, as set by the Government for the year 2023.
- b) over the last 10 years, the subject committed tax irregularities as a result of which the amount of unpaid tax exceeded, in total, 5 average wages per economy, as set by the Government for the year 2023.

(4) In evaluating financial integrity, the evaluation commission may verify:

- a) compliance by the subject of the evaluation with the tax regime in respect of the payment of taxes on the use of wealth and income derived from the property held, taxable income and the payment of import and export duties.
- b) compliance by the subject of the evaluation with the legal regime for the declaration of wealth and personal interests.

- c) the method of acquisition of the property owned or possessed by the subject of the evaluation or by the persons referred to in para. (5), and the expenses relating to the maintenance of the property.
- d) the sources of income of the subject of the evaluation and, where applicable, of the persons referred to in para. (5).
- e) whether or not there are any loan, credit, leasing, insurance or other contracts which may provide financial benefits, to which the subject of the evaluation, the person referred to in para. (5) or the legal person, in which they are the beneficial owners, is a contracting party.
- f) whether or not there are donations in which the subject of the valuation or the person referred to in para. (5) has the status of donee or donor.
- g) other issues relevant to the verification of the criteria referred to in para. (2) and (3).

**(5)** In evaluating compliance with the criteria set out in para. (3) of this Article, the evaluation commission shall also take into account the wealth, expenses, income of close persons, as defined in Law No 133/2016 on the declaration of wealth and personal interests, as well as of the persons referred to in Article 33(4) and (5) of Law No 132/2016 on the National Integrity Authority.

**(6)** In assessing compliance with the criteria set out in paras (2) and (3), the legal provisions in force when those acts were committed shall be taken into account. The documents or findings of other entities with competence in the areas concerned shall have no predetermined value for the Evaluation Commission. Findings in final judgments shall be taken into account by the Evaluation Commission, except for judgments that the Evaluation Commission believes to be arbitrary or manifestly unreasonable. The Evaluation Commission may rule only on breaches of the rules of ethics and professional conduct, without ruling on the legality of the decisions in question.

*[Art.11 para. (6) in the wording of LP353 of 24.11.23, OG465-467/07.12.23 art.804; in force as of 07.12.23]*

## **Article 12. Initiation of the Evaluation Procedure**

**(1)** Within 5 days from the request submitted by the evaluation commission, the Superior Council of Magistracy or, as the case may be, the Superior Council of Prosecutors shall forward to the corresponding evaluation commission the list of subjects to be evaluated and their contact details (home address, telephone number, e-mail address).

**(2)** The evaluation commission shall start the evaluation upon receipt of the list referred to in para. (1).

**(3)** The evaluation commission shall notify the subject of the evaluation of the initiation of the evaluation and shall ask them to submit:

- a) a declaration of wealth and personal interests with updated data for the last 5 years, including expenses during that period.
- b) the ethics questionnaire.
- c) the declaration on the list of close persons, as defined in the Law No 133/2016 on the declaration of wealth and personal interests, who work or have worked in the last 5 years in the judiciary, prosecution and public service.

**(4)** The declarations and the questionnaire referred to in para. (3) shall be submitted by the deadline set by the evaluation commission, which may not be less than 10 days from the date of the request and shall be signed with an electronic signature. The failure to provide a reasonable justification for the refusal to submit or the failure to submit the declarations or the questionnaire in due time shall constitute grounds for the evaluation commission to establish that the evaluation was failed.

**(5)** By submitting the declarations and the questionnaire referred to in para. (3), the subject of the evaluation declares – under their own responsibility – the veracity and completeness of



the data submitted and consents to the processing of personal data. The template of such declarations and questionnaire shall be approved by the evaluation commissions.

### **Article 13. The Meetings of the Evaluation Commissions**

- (1) The evaluation commissions shall conduct their work in closed meetings, with the exceptions laid down in this Law.
- (2) There shall be at least 4 members for the commission meetings to take place.
- (3) The meetings shall be convened by the chairperson of the evaluation commission or at the request of at least 3 members of the evaluation commission.
- (4) If a member of the evaluation commission is unable to attend a meeting, they shall notify the chairperson of the evaluation commission concerned.
- (5) The rapporteur member shall submit the draft evaluation report to the other members of the evaluation commission.

### **Article 14. Information Gathering**

- (1) The evaluation commissions and their secretariats shall have real-time access to the information systems containing the information needed to carry out their mandate, subject to the conditions of the legislation on data exchange and interoperability. The evaluation commissions may receive from any person only relevant information on the subject of the evaluation and may gather that information on their own.
- (2) The information requested from the persons referred to in Article 11(5) shall be submitted to the evaluation commission free of charge, including in electronic form, not later than 10 days from the date of the request.
- (3) Natural and legal persons governed by public or private law, including financial institutions, may not refuse to disclose information on the grounds of protection of personal data, banking secrecy or other data to which access is restricted, except for information:
  - a) which falls under the provisions of Law No 245/2008 on State Secrets and which has not been declassified.
  - b) which constitutes a medical secret.
  - c) which constitutes a lawyer's professional secret.
- (4) Failure to submit the requested information by the set deadline shall be sanctioned according to the law.
- (5) By way of derogation from the provisions of Law No 133/2011 on the protection of personal data, the processing of personal data is allowed during the work of the evaluation commissions and of their secretariats. The secretariat shall ensure the access of the subject of the evaluation to that data. The subject of the evaluation shall keep confidential the personal data in the evaluation material presented by the evaluation commission.
- (6) To clarify identified ambiguities, the evaluation commission may request, at any stage of the evaluation procedure, additional data and information from the subject of the evaluation or from other persons, setting a deadline for submission, which may not be less than 5 working days. At the reasoned request of the subject of the evaluation, the evaluation commission may extend once the time limit for the submission of the requested information. If it is impossible to submit the information because it is inaccessible, the subject of the evaluation shall inform the evaluation commission about this. The evaluation commission shall assess the validity of the provided reasons in each case.
- (7) The subject of the evaluation may submit any evidence they deem relevant to address the doubts of the evaluation commission.
- (8) Communication with the subject of the evaluation shall take place electronically, with the subject using the court's or, as appropriate, the prosecutor's office electronic mail system.

If no e-mail address is available in that system, the personal e-mail address of the subject of the evaluation shall be used.

**(9)** Failure of the subject of the evaluation to provide the additional information requested by the evaluation commission by the set deadline, without justifiable reasons, may constitute grounds for refusing to include the late information in the evaluation file. In such case, the evaluation commission shall evaluate the subject on the basis of the information gathered.

**(10)** Information that is not causally related to the evaluation file under examination, information that is a state secret and has not been declassified, and anonymous information not confirmed by other official sources may not be used in the evaluation process.

**(11)** The information gathered by the evaluation commission on the subject of the evaluation shall be kept with the file materials, archived, deleted and destroyed in the manner laid down in the rules of procedure of the evaluation commission.

**(12)** In the evaluation process, the evaluation commissions may use the information on the subjects of the evaluation provided by the commission set up on the basis of the Law No 26/2022 on measures related to the selection of candidates for the positions of members in the self-administration bodies of judges and prosecutors.

### **Article 15. The Evaluation Panel**

**(1)** For the evaluation of the subjects referred to in Article 3(1), each evaluation commission shall have evaluation panels consisting of three members of the evaluation commission, representing both categories of members referred to in Article 6(1).

**(2)** Evaluation files shall be randomly allocated to the evaluation panels for examination.

**(3)** The evaluation file shall be drawn up by a rapporteur member, who shall be assisted by the secretariat of that commission. The procedure for appointing the rapporteur member shall be laid down in the rules of procedure of the evaluation commission.

**(4)** The rapporteur member shall submit the draft report to the other members of the evaluation panel in a timely fashion.

### **Article 16. The Hearing**

**(1)** After analyzing the gathered information, the evaluation panel shall communicate in writing to the subject of the evaluation any doubts it has about them to be discussed at the hearing, and shall give the subject of the evaluation access to the materials in the evaluation file that are related to those doubts.

**(2)** The evaluation panel shall hear the subject of the evaluation within at least seven days after the subject was communicated the doubts. If the subject of the evaluation refuses to attend the hearing, the evaluation panel shall not organize the hearing and shall evaluate them on the basis of the gathered information.

**(3)** The hearing shall be open to the public. If necessary, the hearing may continue in an additional sitting. At the reasoned request of the subject of the evaluation, if necessary for reasons of public order, protection of privacy or morality, the hearing or part of it may take place in closed session. The commission may refuse a request to hold the hearing or part of it in closed session only if there are reasonable grounds for doing so.

**(4)** The video recordings of the public hearings shall be uploaded to the official website of the evaluation commission not later than 3 days after the date of the hearing.

**(5)** The subject of the evaluation shall have the rights to:

- a) provide explanations, at the hearing, regarding the doubts communicated under para. (1).
- b) be assisted by a lawyer or a trainee lawyer during the evaluation procedure.
- c) take cognizance of the material in the evaluation file prior to the hearing.

- d) submit, in writing, additional data and information that they deem relevant.
- e) request a closed hearing.
- f) not to incriminate themselves of committing a crime or misdemeanor.
- g) move for the recusal of a member of the evaluation commission.

(6) The subject of the evaluation shall observe the order in the hearing and shall answer the questions of the evaluation panel.

(7) Each member of the evaluation panel may ask the subject of the evaluation questions.

(8) Moving for the recusal of all the members of the evaluation panel at once is prohibited.

### **Article 17. The Evaluation Report**

(1) Following the evaluation, the evaluation panel shall draw up a reasoned evaluation report, containing the relevant facts, the reasons and the conclusion as to whether or not the evaluation was passed. The rejection of evidence submitted by the subject of the evaluation shall be substantiated in the report.

(2) The evaluation report shall be approved by unanimous vote of the members of the evaluation panel and shall be signed by the chairperson of the evaluation commission.

(3) If the members of the evaluation panel do not vote unanimously, the evaluation report shall be examined by the evaluation commission. That report shall be approved by a majority vote of the members of the evaluation commission, two of whom shall be from the category referred to in Article 6(1)(b), and shall be signed by the chairperson of the evaluation commission. The members of the evaluation commission may not abstain from voting.

(4) The subject of the evaluation shall be deemed not to have passed the evaluation if one or more grounds for non-compliance with the criteria laid down in Article 11 were found.

(5) The evaluation report shall be sent to the subject of the evaluation within 3 days of its approval, to the e-mail address of the subject of the evaluation, and to the Superior Council of Magistracy or, as the case may be, to the Superior Council of Prosecutors. The evaluation commission shall publish on its official website on the same day the information on the result of the evaluation. After having taken the necessary measures to ensure the protection of the privacy of the subject of the evaluation and of other people, the evaluation report shall be published on the official website of the relevant evaluation commission within 3 days after the adoption of the decision referred to in Article 18(3).

(6) Within 3 days of approval, the evaluation report shall also be submitted to the Superior Council of Magistracy or, as the case may be, to the Superior Council of Prosecutors in hard copy, alongside an electronic copy of the evaluation file, containing all evaluation-related materials accumulated during the evaluation process.

(7) If the evaluation commission or, as the case may be, the evaluation panel finds that the information submitted by the subject of the evaluation or by other natural or legal persons is not true or if it finds violations of the law, it shall refer the matter to the competent state bodies for them to document the facts and, as the case may be, to call the subject of the evaluation to account in accordance with the law.

### **Article 18. Review of Evaluation Results by the Superior Council of Magistracy or by the Superior Council of Prosecutors**

(1) The Superior Council of Magistracy or, as the case may be, the Superior Council of Prosecutors, shall examine the results of the evaluation in a meeting on the basis of the evaluation file received from the evaluation commission. The subject of the evaluation may submit additional information which he or she deems relevant only if he or she proves that he or she was unable to submit it previously. The representative of the evaluation commission and the subject of the evaluation, in person, shall have the right to present their position.

(2) When reviewing the results of the evaluation, the Superior Council of Magistracy or, as the case may be, the Superior Council of Prosecutors, shall take into account the evidence confirming that the subject of the evaluation has committed the acts referred to in Article 11(2) and (3).

(3) By a reasoned decision, adopted within 30 days of receipt of the documents referred to in Article 17(6), the Council concerned shall:

- a) accept the evaluation report and establish whether or not the subject passed the evaluation.
- b) reject the evaluation report and order, only once, the evaluation procedure to be resumed, if it finds factual circumstances or procedural errors which could have led to the subject passing or, as the case may be, failing the evaluation.
- c) after receiving the evaluation report, drawn up following the resumed evaluation referred to in letter (b) – it shall either accept the report in line with letter (a) or reject it and establish whether or not the subject passed the evaluation.

(4) The reasoned decision of the Council concerned shall be published on its official website and sent to the e-mail address of the subject of the evaluation and of the evaluation commission on the day of its adoption.

(5) The decision of the Council concerned that the subject fails the evaluation shall have the effect of dismissing the judge or, as the case may be, the prosecutor.

(6) The judge or, as the case may be, the prosecutor released from their duties in accordance with para. (5) of the this Article:

- a) shall not have the right to exercise the office of judge, prosecutor, as well as other offices of public officials for 5-7 years from the date of the finality of the decision of the respective council, of the order of the Prosecutor General or, as the case may be, of the decree of the President of the Republic of Moldova.
- b) shall be deprived of the right to the one-time severance pay provided for in Article 26(3) of the Law No 544/1995 on the status of judges or, as the case may be, in Article 62(2) of the Law No 3/2016 on the prosecutor's office.
- c) shall be deprived of the right to the special pension provided for in Article 32 of Law No 544/1995 on the status of judges, with the maintenance of the general retirement pension under the general conditions laid down by Law No 156/1998 on the public pension system.

### **Article 19. Appealing Against the Decisions of the Superior Council of Magistracy or of the Superior Council of Prosecutors**

(1) By way of derogation from the provisions of the Administrative Code, the decision of the Superior Council of Magistracy or, as the case may be, of the Superior Council of Prosecutors, may be appealed by the subject of the evaluation or by the evaluation commission within 15 days of receipt, by e-mail, of the act in question.

(2) The appeal shall be submitted to the Supreme Court of Justice and shall be examined within 30 days at the latest by a panel of 3 judges who passed the evaluation. One may not move to recuse the entire panel of judges and one may not file a motion to recuse in bad faith repeatedly, abusively, for the purpose of delaying the examination of the appeal.

(3) The lodging of an appeal suspends the enforcement of the decision of the Superior Council of Magistracy or, as the case may be, of the Superior Council of Prosecutors.

(4) The appeal shall be examined in a public hearing, to which the subject of the evaluation, the representative of the respective council and of the evaluation commission shall be invited to present their position.

(5) The Supreme Court of Justice:

- 1) may dismiss the appeal.
- 2) may uphold the appeal and:
  - a) may order, only once, that the evaluation procedure be resumed by the evaluation commission.
  - b) may order, only once, that the evaluation procedure be resumed by the council concerned.

*[Art. 19 para. (5), p.2) lit.c) introduced by LP353 of 24.11.23, OG465-467/07.12.23 art.804; in force as of 07.12.23]*

**(6)** The Supreme Court of Justice may only uphold the appeal if it finds that serious procedural errors affecting the fairness of the evaluation occurred, or that there were factual circumstances that could have led to passing or failing the evaluation.

*[Art. 19 para. (6) as amended by LP353 of 24.11.23, OG465-467/07.12.23 art.804; in force as of 07.12.23]*

**(7)** The decision of the Supreme Court of Justice shall be irrevocable from the moment it is issued. The decision shall be deemed to be issued from the moment it is placed on the official website of the Supreme Court of Justice and shall be notified to the participants within 5 days from the date of issue.

## **Article 20. Resumption of the Evaluation Procedure**

**(1)** The evaluation procedure shall be resumed either by the evaluation commission or, as the case may be, by the council concerned.

**(2)** When the evaluation procedure is resumed, the evaluation commission concerned shall limit itself to examining the issues raised by the council concerned or, as the case may be, by the Supreme Court, and shall hold repeated hearings.

**(3)** The reevaluation report on the subject of evaluation shall be approved by the evaluation commission in accordance with the rules laid down in Article 17.

**(4)** When the evaluation procedure is resumed, the Superior Council of Magistracy or, as the case may be, the Superior Council of Prosecutors, shall limit itself to examining the issues raised by the Supreme Court of Justice.

## **CHAPTER IV FINAL AND TRANSITIONAL PROVISIONS**

### **Article 21. Amendment of Certain Regulatory Acts**

i. Article 10 of the Law No 26/2022 on measures related to the selection of candidates for the positions of members in the self-administration bodies of judges and prosecutors (Official Gazette of the Republic of Moldova, 2022, No 72, art. 103), as amended, is supplemented with paras (12) and (13) with the following content:

“(12) The information on the subjects referred to in Article 2(1)(a) to (d) of this Law – evaluated according to its provisions – shall be forwarded to the evaluation commission established under the Law No 65/2023 on the external evaluation of judges and candidates for the position of judge of the Supreme Court of Justice.

(13) The information on the subjects referred to in Article 2(1)(e) to (h) of this Law – evaluated according to its provisions – shall be forwarded to the Commission for the Evaluation of Prosecutors, established on the basis of the Law No 252/2023 on the external evaluation of judges and prosecutors and amending certain regulatory acts.”

ii. The Law No 65/2023 on the external evaluation of judges and candidates for the position of judge of the Supreme Court of Justice (Official Gazette of Republic of Moldova, 2023, Nos 117-118, Article 192), as amended, is amended as follows:

1. Article 11(2)(a) shall have the following content:

“a) over the last 5 years, they have seriously violated the rules of ethics and professional conduct of judges, prosecutors or, as the case may be, other professions, as well as if they acted arbitrarily or issued arbitrary acts, over the last 10 years, contrary to the imperative rules of the law, and the European Court of Human Rights had established, before the adoption of the act, that a similar decision was contrary to the European Convention for Human Rights.”.

2. Article 18:

in para. (1), after the words “may be challenged by the concerned judge” the words “or by the evaluation commission” are inserted.

para. (2) shall have the following content:

“(2) Appeals shall be submitted with the Supreme Court of Justice and shall be examined within 30 days by a panel consisting of the first 3 judges who passed the evaluation and did not work in the Supreme Court of Justice until 31 December 2022. The Supreme Court of Justice shall allow the appeal only if it finds that there were serious procedural errors in the evaluation procedure that affected the fairness of the evaluation procedure or that there were factual circumstances that could have led to passing or failing the evaluation and, in such cases, it shall order, only once, the resumption of the evaluation procedure by the Evaluation Commission or by the Superior Council of Magistracy.”

in para. (3), the words “the concerned judge” shall be followed by “, the representative of the Evaluation Commission”.

## **Article 22. [Entry into Force]**

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

(2) The Parliament, within 40 working days from the date of entry into force of this Law, shall confirm the nominal composition of the Commission for the Evaluation of Prosecutors.

(3) The powers of the Commission for the Evaluation of Judges shall be exercised by the Evaluation Commission established by Law No 65/2023 on the External Evaluation of Judges and Candidates for Judges of the Supreme Court of Justice. The provisions of this Law on the powers, organization, and operation of the Commission for the Evaluation of Judges shall apply accordingly.

(4) The Government shall take the necessary measures to ensure the implementation of this Law, including to contact, within 5 working days from the date of entry into force of this Law, the development partners and the Parliament with regards to the appointment by them of the members to the Commission for the Evaluation of Prosecutors.

(5) The Ministry of Justice:

- a) not later than 5 working days after confirmation of the nominal composition of the Commission for the Evaluation of Prosecutors – shall ensure the organization of its first meeting.
- b) shall ensure the payment of monthly allowances to the members of evaluation commissions, referred to in Article 6(1)(a), from the approved budget for the external/extraordinary evaluation of judges and prosecutors.

(6) Commission for the Evaluation of Prosecutors:

- a) shall elect its chairperson not later than 10 working days after its the nominal composition is confirmed.
- b) shall draw up and approve its own rules of procedure, including the organization and operation of the secretariat, not later than 20 working days after its the nominal composition is confirmed.

**(7)** During the period of application of this Law, in addition to the conditions for access to the positions listed in Article 3, the judges and the prosecutors may occupy those positions provided that they pass the external evaluation.

**(8)** Judges and prosecutors in office on the date of entry into force of this Law and who will have passed the evaluation shall continue working as judges or, as the case may be, as prosecutors.

**(8<sup>1</sup>)** In case if the proper functioning of a court of appeal is severely affected by the number of vacant positions, the Superior Council of Magistracy, by derogation from the provisions of Law No. 544/1995 on the Status of Judges, may temporarily transfer judges from lower-level courts who meet the legal criteria for holding the position of a judge in a court of appeal. The temporary transfer shall be terminated by a decision of the Superior Council of Magistracy after a sufficient number of judge positions will have been filled in the respective court of appeal. During the transfer period, the transferred judges shall receive the salary of a judge of a court of appeal, based on their respective length of service.

*[Art. 22, para. (8<sup>1</sup>) introduced by LP353 of 24.11.23, OG65-467/07.12.23, Art. 804; in force as of 07.12.23]*

**(9)** In case the proper operation of one or more courts of appeal is seriously affected due to the number of vacancies, the Superior Council of Magistracy may transfer from lower level courts, on a temporary basis, by way of derogation from the provisions of the Law No 544/1995 on the status of judges, judges who meet the legal criteria for the position of judge of a court of appeal. The temporary transfer shall be terminated when at least 1/2 of the posts of the concerned court of appeal judges are filled, and the temporarily transferred judges shall return to the posts held before the transfer. During the period of the transfer, the transferred judges shall receive the salary of court of appeal judge reflecting their seniority.

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

**(10<sup>1</sup>)** By derogation from Article 4(1)(f) of Law No. 1104/2002 on the National Anticorruption Center and Article 32 of Law No. 133/2011 on Personal Data Protection, the National Anticorruption Center shall conduct and submit, at the request of the evaluation commissions, the background check of candidates for positions in the evaluation commission secretariat.

*[Art. 22, para. (10<sup>1</sup>) introduced by LP353 of 24.11.23, OG465-467/07.12.23, Art. 804; in force as of 07.12.23]*

**(11)** The independent evaluation commission established by the Law No 26/2022 on measures related to the selection of candidates for the positions of members in the self-administration bodies of judges and prosecutors (hereinafter – *Law No 26/2022*) shall complete the evaluation of the applications submitted by 1 September 2023 of the subjects referred to in Article 2(1)(a) and (e) of the aforementioned law. This Commission shall continue to work until the examination of appeals against its decisions is completed.

**(12)** The powers of the commission referred to in para. (11), as set out in the Law No 26/2022, shall be exercised as follows:

- a) the subjects referred to in Article 2(1)(a) of Law No 26/2022, for applications filed after 1 September 2023, and the subjects referred to in Article 2(1)(b) to (d) of Law No

26/2022, regardless of the date of submission of the application, shall be evaluated by the Commission for the Evaluation of Judges.

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

**(13)** The evaluation commission shall evaluate the subjects referred to in para. (12) according to the procedure and criteria regulated by Law No 26/2022, if the positions for which they applied become vacant by 31 August 2025.

**(14)** This law shall cease to have effect upon the occurrence of the last of the following events:

- a) the completion of the examination by the Supreme Court of Justice of the last appeal lodged against the decision of the Superior Council of Magistracy or of the Superior Council of Prosecutors referred to in Article 20.
- b) the expiry of the time limit for challenging the last decision of that Council.
- c) expiry of the time limit for challenging decisions on the subjects referred to in para. (12).

THE DEPUTY SPEAKER OF PARLIAMENT, IGOR GROSU, Chisinau, August 17, 2023.  
No. 252.